REDACTED-PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
	)	OMB Control No. 3060–1150

PAPERWORK REDUCTION ACT COMMENTS OF SORENSON COMMUNICATIONS, INC.

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EXECUTIVE SUMMARY

In these Paperwork Reduction Act ("PRA") comments, Sorenson Communications, Inc. ("Sorenson") challenges two aspects of the FCC's recent Certification Order,[1] which creates substantial paperwork burdens for Internet-based Telecommunications Relay Service ("iTRS") providers. Specifically, Sorenson objects to the Certification Order's requirements that iTRS providers must provide (as part of their initial certification application and in annual updates):

1) complete copies of *all* proofs of purchase, leases or license agreements for equipment and infrastructure relating to core VRS call center functions (including automatic call distribution, routing, call setup, mapping, call feature, billing for compensation from the TRS Fund, and registration) (the "Core Information Collections"); and

2) *all* written sponsorship agreements relating to iTRS (the "Sponsorship Information Collections").

The PRA is intended to "minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government."[2] In its Federal Register publication, the Commission implausibly estimated that there would be *zero* annual costs of compliance with its entire Certification Order,[3] including the Core and Sponsorship Information Collections. However, as set forth in the Tables included on page 10, below, Sorenson estimates that the challenged Core and Sponsorship Information Collections would require approximately 2,850 in-house hours for Sorenson's initial applications alone—far more than the 165 hours estimated by the FCC for a company that provides three forms of iTRS, as Sorenson does. Using the Commission's estimate of an applicant's cost of $87.37/hour, the Core and Sponsorship

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1 *See Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, CG Docket No. 10-51 (rel. July 28, 2011) ("Certification Order").

2 44 U.S.C. § 3501(1).

3 In the Commission's Supporting Statement to OMB, its estimates indicate that Sorenson's total costs for preparing its *entire* three iTRS certification applications—not just the information collections challenged by Sorenson here—would be only $14,416.

Information Collections for the initial applications would cost Sorenson nearly $250,000 in in-house expenses (not counting external costs like outside counsel). In addition, Sorenson estimates its ongoing annual costs of compliance under the Certification Order at nearly $40,000.

The substantial burdens imposed by the Core and Sponsorship Information Collections cannot be justified on the basis of the Commission's stated objectives. The Commission claims that these requirements will: "[1] help the Commission and Fund administrator oversee iTRS in an effective manner and [2] ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers."[4] But in the case of a company like Sorenson that has provided iTRS for many years, its lengthy track record of compliance demonstrates its capability far more reliably than would its providing copies of agreements and licenses. Moreover, fraud perpetrated by unscrupulous providers on the TRS Fund in the past has consisted primarily of various "minute pumping" schemes, and such schemes would not have been deterred in any way by the new requirement that iTRS providers supply proofs of purchase and license agreements for their hardware and software. In short, the challenged Information Collections are likely to be of virtually no practical utility to the Commission—particularly since, as discussed below, the recent experience of iTRS providers is that the Commission simply lacks the staff to review and process large information submissions from the industry.

[4] Supporting Statement included in FCC Information Collection Request (ICR) Package at 4 (Aug. 5, 2011), *available at* http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201108-3060-006 ("Supporting Statement").

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PAPERWORK REDUCTION ACT COMMENTS
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I. SUMMARY

Sorenson Communications, Inc. ("Sorenson") submits these comments under the Paperwork Reduction Act ("PRA")[5] to challenge two related aspects of a recent Federal Communications Commission ("Commission" or "FCC") order[6] that amends the process by which Internet-based Telecommunications Relay Service ("iTRS") providers obtain Commission certification allowing them to receive payment from the Interstate TRS Fund ("TRS Fund" or "Fund").[7] Specifically, Sorenson objects to the Certification Order's requirements that iTRS providers must provide (as part of their initial certification application and in annual updates):

1) complete copies of *all* proofs of purchase, leases or license agreements for equipment and infrastructure relating to core VRS call center functions (including automatic call distribution, routing, call setup, mapping, call feature, billing for compensation from the TRS Fund, and registration) (the "Core Information Collections"); and

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5 44 U.S.C. § 3501 et seq.

6 *See Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, CG Docket No. 10-51 (rel. July 28, 2011) ("Certification Order").

7 *See Public Information Collection Being Submitted to OMB for Review and Approval*, Notice and Request for Comments, 76 Fed. Reg. 47,582 (Aug. 5, 2011) (establishing September 6, 2011, as the PRA comment deadline) ("PRA Comment Request").

2) *all* written sponsorship agreements relating to iTRS (the "Sponsorship Information Collections").

Both of these Information Collections are unduly burdensome, are not necessary for the proper performance of agency functions and have no practical utility in their current form.

As its name suggests, a core purpose of the PRA is to "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government."[8] Agencies are thus required to estimate the burden of proposed information collections, to justify the need for the collection and to certify that the collection is necessary for the proper performance of agency functions.[9] The Director of the Office of Management and Budget must then independently assess and determine "whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility."[10]

The FCC claims that the Core and Sponsorship Information Collections will impose little or no burden on the iTRS industry. In its Federal Register publication, the Commission implausibly estimated that there would be *zero* annual costs of compliance with its entire Certification Order, including the Core and Sponsorship Information Collections. However, as

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8 44 U.S.C. § 3501(1).

9 *See* 44 U.S.C. § 3506(c).

10 44 U.S.C. § 3508. The PRA regulations further explain that the purpose of the Act is "to reduce, minimize and control burdens and maximize the practical utility and public benefit" of information collected by or for the Federal government. 5 C.F.R. § 1320.1. Notably, the Commission's obligation to limit the burdens of any new regulations was only enhanced by President Obama's January 2011 Executive Order regarding improving regulation and the regulatory review process. *See* Exec. Order No. 12,866, *Improving Regulation and Regulatory Review* (Jan. 18, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order.

set forth in the Tables included on page 10, below, Sorenson estimates that the challenged Core and Sponsorship Information Collections would require approximately 2,850 in-house hours for Sorenson's initial applications alone—far more than the 165 hours estimated by the FCC for a company that provides three forms of iTRS, as Sorenson does. Using the Commission's estimate of an applicant's cost of $87.37/hour, the Core and Sponsorship Information Collections for the initial applications would cost Sorenson nearly $250,000 in in-house expenses (not counting external costs like outside counsel). In addition, Sorenson estimates its ongoing annual costs of compliance—to provide the FCC with updated Core and Sponsorship Information Collections on an annual basis, as required by the Certification Order—at nearly $40,000.

The substantial burdens imposed by the Core and Sponsorship Information Collections cannot be justified on the basis of the Commission's stated objectives. The Commission claims that these requirements will: "[1] help the Commission and Fund administrator oversee iTRS in an effective manner and [2] ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers."[11] But in the case of a company like Sorenson that has provided iTRS for many years, its lengthy track record of compliance demonstrates its capability far more reliably than would its providing copies of agreements and licenses.

Moreover, fraud perpetrated by unscrupulous providers on the TRS Fund in the past has consisted primarily of various "minute pumping" schemes,[12] and such schemes would not have been deterred in any way by the new requirement that iTRS providers supply proofs of purchase

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11 Supporting Statement at 4.

12 *See, e.g.,* FCC Press Release, *Enforcement Bureau Settles Investigations of Purple Communications, Inc.* (rel. Sept. 20, 2010).

and license agreements for their hardware and software. In short, the challenged Information Collections are likely to be of virtually no practical utility to the Commission—particularly since, as discussed below, the recent experience of iTRS providers is that the Commission simply lacks the staff to review and process large information submissions from the industry.

Finally, OMB regulations prohibit the imposition of record-retention requirements of longer than three years for employee records. The Commission's Supporting Statement does not attempt to justify the Certification Order's retention requirement with a "five year duration" for "employment agreements and other employee records."[13] The Certification Order's record-retention requirement accordingly should not be approved, or at a minimum should be reduced to the maximum of three years stated in the regulations.

II. BACKGROUND

Sorenson: Sorenson provides Video Relay Service ("VRS"), IP Relay Service ("IP Relay"), and IP Captioned Telephone Service ("IP CTS") to the deaf and hard-of-hearing community.[14] VRS is a service that permits deaf individuals using videophones to communicate with hearing people. The deaf individual uses his videophone to contact an interpreter using American Sign Language ("ASL"), and the interpreter translates that ASL communication into a spoken message for the hearing person (who uses a telephone). IP Relay allows deaf individuals to contact hearing persons by typing a message that is relayed verbally to the hearing person by a communications assistant, who also relays the spoken response back to the deaf individual in text form. IP CTS allows a person who can speak and has some residual hearing to simultaneously listen to what is said over a telephone and read on-screen captions of what the other person is saying. With IP CTS, an Internet connection carries the captions between the relay provider and

[13] Certification Order, ¶ 28.

[14] VRS, IP Relay, and IP CTS are each a form of iTRS.

the deaf or hearing impaired user. iTRS providers like Sorenson do not obtain payment directly from deaf or hearing impaired end users, but rather from the TRS Fund, to which all interstate telecommunications carriers and interconnected VoIP providers must contribute.

Background Regarding the Certification Order: The FCC regulates iTRS providers, including setting eligibility requirements for providers seeking compensation from the TRS Fund. In April 2011, the Commission issued a FNPRM suggesting that applicants seeking FCC certification (or renewal of certification) to provide iTRS should be required to "demonstrate [their] ability to comply with all of the Commission's rules"[15] through "documentary and other evidence that the applicant owns and operates facilities associated with TRS call centers and employs interpreters . . . to staff such call centers."[16] The FNPRM proposed that applicants provide a wide array of materials—including the Core and Sponsorship Information Collections—"at the date of the application," while also submitting "at the Commission's discretion" to "other measures, including on-site visits to the premises of applicants, to assess the merits of certification applications."[17]

Sorenson objected to the Core and Sponsorship Information Collections as "unduly burdensome" and "unnecessary" to meet the Commission's stated goals.[18] With respect to the Core Information Collections, Sorenson argued:

> [T]he FNPRM proposes unnecessary and unreasonable document productions, when a narrative description will suffice. The Commission does not need actual copies of leases to learn that an applicant owns and operates facilities, nor does it

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15 *Structure and Practices of the Video Relay Service* Program, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 5545, 5590 ¶ 97 (2011) ("FNPRM").

16 *Id*. at 5606.

17 *Id.* at 5590-91, ¶¶ 97-98.

18 Sorenson Comments at 3.

> need proofs-of-purchase or software licenses to learn that an applicant has the infrastructure needed to engage in TRS.[19]

Sorenson further maintained that at least "[a]fter the first year," the best proof of a provider's ability to comply with minimum standards is "the provider's [actual] performance and its annual report."[20] Sorenson suggested that the Commission should "maintain the Commission's current narrative-based certification process" (with an added requirement of certification under penalty of perjury), while "reserv[ing] the right to request any of the specific evidence listed in the FNPRM as needed."[21]

Sorenson also objected to the Sponsorship Information Collections proposed by the FNPRM, arguing that they are "at best only tangentially connected to the Commission's stated goals for certification of TRS providers."[22] In light of this tenuous connection to the Commission's goals, Sorenson argued that "[r]equiring the submission and annual updating of voluminous, detailed records"—including sponsorship information—"that do not directly relate to the Commission's certification goals renders the proposals unduly burdensome, both for applicants and for Commission staff."[23]

The Certification Order adopted the challenged Core and Sponsorship Information Collections over Sorenson's objections, offering two brief justifications for these burdensome new requirements. First, the FCC stated in conclusory fashion that provision of actual copies of equipment proofs of purchase and agreements—as opposed to only a description of them—"will help the Commission to ensure that the applicant has the full operational and technical capability

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19 *Id.* at 3-4.

20 *Id.* at 4.

21 *Id.* at 5.

22 *Id.* at 4.

23 *Id.*

to operate a call center."[24] Second, the FCC claimed that "having such documentation will help the Commission to ensure that providers and other entities comply with the Commission's rules designed to reduce fraud, and to put an end to unauthorized revenue sharing arrangements."[25] The Commission likewise maintained that the Sponsorship Information Collections would enable it to "determine how applicants market their services as providers, whether fraud or abuse of the Fund is likely to occur from such activities, and whether it is probable that such marketing will produce inefficiencies."[26]

III. THE FCC SUBSTANTIALLY UNDERESTIMATES THE BURDENS OF INFORMATION COLLECTIONS IN THE CERTIFICATION ORDER.

The core purpose of the PRA is, of course, to "minimize the paperwork burden" for reporting entities.[27] Accordingly, a key question in reviewing regulations under the PRA is just how much burden they impose. The Commission's estimates on this critical issue are inconsistent and, more importantly, flatly unrealistic. In this section, Sorenson contrasts the estimates provided by the Commission with its own more realistic estimates, including describing the conservative methodology by which Sorenson arrived at its estimates.

A. The Commission Grossly Underestimates the Costs to the iTRS Industry.

The Commission's position on the costs that the challenged Information Collections will impose on the iTRS industry is unclear. The Commission is required to publish a notice in the Federal Register setting forth "[a]n estimate of the total annual reporting and recordkeeping

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24 Certification Order, ¶ 30.

25 *Id*.

26 *Id*., ¶ 31.

27 44 U.S.C. § 3501(1).

burden that will result from the collection of information."[28] The Commission's Federal Register publication was flawed in several respects.

First, the Commission in its August 5, 2011, Notice and Request for Comments published in the Federal Register estimates that only 0.5 to 50 hours per response will be required.[29] Yet, the Commission itself estimated in its Supporting Statement that the application for VRS certification alone would require 65 hours,[30] which is clearly in conflict with the upper range of the Commission's estimate published in the Federal Register. In addition, the Notice and Request for Comments states that there will be zero annual costs related to the all of the information collections contained in the Certification Order.[31] But the estimates in the Commission's Supporting Statement submitted to OMB are different, although scarcely more credible. The Commission estimates, for example, that a provider such as Sorenson that provides "3 forms of iTRS"—*i.e.*, VRS, IP Relay, and IP CTS—will have to spend approximately 165 hours to "complete the application for certification consisting of full and detailed information" including the challenged Information Collections—a total of only 65 hours for a VRS certification application, and 50 hours for each of the other iTRS applications.[32] This means, of course, that the Commission allocates only *fifteen hours* for a company to complete the Core Information Collections, which apply to VRS and not to other forms of iTRS.[33] As further discussed below, Sorenson believes that figure is low by orders of magnitude.

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28 5 C.F.R. § 1320.5(a)(iv).

29 PRA Comment Request, 76 Fed. Reg. at 47,583.

30 *See* Supporting Statement at 6.

31 PRA Comment Request, 76 Fed. Reg. at 47,583.

32 Supporting Statement at 6.

33 *See* Certification Order, ¶ 29.

Sticking for the moment to the Commission's estimates, however, the Supporting Statement indicates that the total costs of initial applications for a company like Sorenson may be calculated by multiplying 165 hours by $87.37/hour, for a total of $14,416 in in-house costs. This estimate, however, does not include any *external* costs to comply with the proposed information collections in the Certification Order—such as the costs of outside legal counsel, which most, if not all, iTRS applicants and providers will require. Additionally, the Commission estimates that updating all of the information collections on an annual basis will take only 25 hours per provider per form of iTRS provided.[34]

Sorenson's estimates of the time needed to assemble *only* the documentation required by the Core and Sponsorship Information Collections are far higher than the Commission's estimate for completing the entire initial application process. The following Tables set forth the information pertinent to Sorenson's estimates. First, Table 1 gives a sense of just how extensive Sorenson's network for providing services to deaf and hard-of-hearing individuals is—it shows that Sorenson's network comprises nearly **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** separate asset and equipment items: **** BEGIN CONFIDENTIAL****

TABLE 1

Asset Categories	Approximate # of Assets
Telephony	[ ]
Desktop (Monitors, PC's, Printers)	[ ]
Network	[ ]
Servers	[ ]
Total:	[ ]

[34] *See* Supporting Statement at 7.

**** END CONFIDENTIAL**** Table 2 specifically sets forth the different steps that Sorenson will need to complete to comply with the challenged Information Collections, and the time that Sorenson estimates each step will take: **** BEGIN CONFIDENTIAL****

TABLE 2

Process Flow	# of Minutes Per Step
Find/Obtain Asset Tag	[ ]
Find Asset in Tracking System	[ ]
Validate Line of Business	[ ]
Find in AP System	[ ]
Finding Packing Slip & Copying (P.O., Invoice, etc)	[ ]
Confirm Data and Send	[ ]
Total:	[ ]

**** END CONFIDENTIAL**** Although Table 2 requires some explanation, Sorenson believes that it reflects realistic, even conservative, estimates.

To begin, Sorenson's internal procedures call for each of the nearly **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** physical assets in its network to be issued an "asset tag" bearing an identification number uniquely identifying that asset. For capitalization purposes, Sorenson attempts to track assets valued in excess of **** BEGIN CONFIDENTIAL**** $[ ] **** END CONFIDENTIAL**** by entering those identification numbers into a database. Assets with values below **** BEGIN CONFIDENTIAL**** $[ ] **** END CONFIDENTIAL**** are not tracked by the system. In either case, however, Sorenson maintains supporting purchase information for all asset purchases—whether expensed or capitalized—in the normal course of business that may include: 1) purchase orders; 2) receipt lists; 3) vendor invoices; and 4) proofs of payment.

The first estimate of time ("Find/Obtain Asset Tag") in Table 2 is an estimate for how long it would take to physically locate the asset tag for each asset. In many cases, when the

number is available in Sorenson's system, that time will be very short. In other cases, when it will be necessary to physically locate the asset and record the asset tag identification information, that time will be significant. Sorenson estimates that, on average, it will take approximately **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** to locate this information for each of its **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** assets—many VRS assets are remotely located so this step will require communication with and responses from over 100 different managers. Once asset identification information has been assembled, Sorenson will need to find each particular asset in its asset tracking system (where applicable). This will speed up the later steps discussed below, and Sorenson estimates that it will take about **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** to locate each asset in the system.

Once an asset has been identified and/or located in the system, Sorenson must determine whether the asset should be deemed to "relate to core call center functions" such that documentation must be provided as part of the Core Information Collections, and if so, to which type of iTRS—VRS, IP Relay, or IP CTS—it is related. This task is reflected in Table 2 as "Validate Line of Business." Sorenson estimates that, on average, it will take about **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** per asset to make this determination. In the vast majority of cases, however, assets will relate to the provision of VRS, since approximately **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** of Sorenson's business (by revenue) is from VRS and its asset structure is similar.

Once Sorenson has determined that an asset is subject to the Core Information Collections for VRS, it must: 1) determine the applicable vendor; 2) obtain supporting documents from individual vendor files; 3) make copies of these supporting documents; and 4)

confirm the consistency of all data and organize it for submission to the FCC. The first task is reflected in Table 2 as "Find in AP System," the time it will take Sorenson to determine the vendor through its accounts payable system. Sorenson estimates that this task—which involves determining the relevant vendor, confirming whether the asset was capitalized or expensed, finding the associated Purchase Order and approvals, and determining the appropriate line item on the Purchase Order (as most contain more than one item)—will take, on average, approximately **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** per asset. The second and third of these tasks—including locating and copying physical documents—are combined in Table 2 as "Finding Packing Slip & Copying," which Sorenson estimates will take about **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** per asset. Finally, the fourth task appears in Table 2 as "Confirm Data and Send," which Sorenson estimates will take an average of **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** per asset. This work will go very quickly in most cases, but problems or discrepancies may take considerable time to resolve, raising the average significantly.

Notably, Table 2 does *not* contain a column for identifying and producing software licenses, although that is also part of the Core Information Collections. There are many fewer such agreements than physical assets because agreements are typically enterprise-wide, but the total is still **** BEGIN CONFIDENTIAL**** [ ]. **** END CONFIDENTIAL**** And while some such licenses are centrally stored, others will take a substantial amount of time to locate. Finally, once all agreements have been located, considerable time will be required to physically copy the documents. Sorenson estimates that this entire process will take about 20 hours to comply with the initial certification rules. Table 2 also does not include time for

developing a process to comply with the Core Information Collections mandates—Sorenson estimates that it has *already* spent more than 50 hours on that task, however, and more will be required.

Finally, Table 2 does not address the burden of the Sponsorship Information Collections. Sorenson, however, enters a significant number of sponsorship agreements each year, and each agreement runs to multiple pages. Sorenson estimates that it would take about 240 hours to find all of these agreements, make copies, and process those copies for submission to the Commission, whether through mailing or scanning for electronic transmission.

Overall, Sorenson estimates that the challenged Core and Sponsorship Information Collections alone will require approximately 2850 in-house hours related to Sorenson's initial applications for VRS, IP Relay, and IP CTS certifications. This is more than *seventeen times* the Commission's estimate of 165 hours to complete the entire application process for those three forms of iTRS. Moreover, using the Commission's figure of $87.37/hour, these Core and Sponsorship Information Collections for the initial applications would cost Sorenson nearly $250,000 in in-house costs. And as a result of the requirement that iTRS providers update this information annually, Sorenson will also need to develop a process for continually keeping information collections current, particularly in connection with core call center equipment, which Sorenson is constantly replacing. Sorenson estimates that it will take about 35 hours per month (more than 400 hours annually) on an ongoing basic to track and produce annual updates to the required Core Information Collections, and an additional 26 hours per year to track and produce Sponsorship Information Collection updates. Sorenson thus estimates the ongoing annual cost of compliance at nearly $40,000.

In sum, it bears emphasis that Sorenson's best efforts at accurate estimates lead to figures that are orders of magnitude larger than those presented by the Commission's Supporting Statement. Indeed, the Commission estimates that the *total* cost to *all* applicants of completing initial iTRS certification applications will be about $100,000 on a non-annualized basis—or less than half of what Sorenson thinks that it alone will spend on the challenged Information Collections that compose only a part of the initial certification application requirements.[35] In addition, the Commission estimates that cumulative annual costs to respondents related to *all* of the information collections in the Certification Order would total $78,640.28—only approximately a *third* of what Sorenson expects that it alone will spend in-house on the challenged Information Collections alone during the first year.[36] In short, Sorenson believes that the Commission has dramatically miscalculated the burden that the Core and Sponsorship Information Collections will impose on the iTRS industry.

B. The Commission's Estimates of its Own Costs are Understated and Do Not Take Account of its Demonstrated Inability to Evaluate Large Amounts of iTRS Data.

The Commission estimates that initial staff review of all the information received under the Certification Order—including but not limited to initial applications for certification—will take only approximately 12 man-hours per month, and that senior staff review will require only approximately 15 man-hours per month.[37] In other words, the Commission expects that the Certification Order will add only approximately three working days per month to its workload. This frankly makes no sense, unless the Commission simply does not intend to look at the vast majority of information that must be submitted under the Certification Order.

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35 *See* Supporting Statement at 6.

36 *See id.* at 9.

37 *See id.* at 9-10.

As discussed above, the Certification Order would require documentation for approximately **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** equipment assets from Sorenson alone, as well as **** BEGIN CONFIDENTIAL**** [ ] [ ] ****END CONFIDENTIAL**** licensing agreements, and a great many more pages of sponsorship agreements. It is difficult for Sorenson to estimate how long it should take to review all of this information, but if Commission staff were to **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL****, it would take about 125 hours, or more than 15 8-hour days. But these figures are clearly conservative—Sorenson expects that the Core and Sponsorship Information in its initial applications will far exceed **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** pages (since it will have to provide documentation for more than **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** individual assets and agreements), and it is difficult to see what could be gleaned from a page of information in only ****BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL****. And this estimate, of course, is to review Sorenson's data alone, not that of the entire iTRS industry.

The Commission's cost estimates are correspondingly understated—it estimates that its annual cost to review all of the information collections combined—again, *not* only those challenged here—is only $20,325.[38] But that figure is based on the Commission's unrealistic estimate of only 27 hours per month of staff review—and as discussed above, Sorenson believes that estimate is again off by orders of magnitude.

In addition, the Commission's time required to review and process a large number of initial iTRS applications will be significantly front-loaded, making annualized estimates virtually

[38] *See id.* at 10.

useless. There are currently 14 eligible TRS providers that will be subject to the Certification Order's proposed information collection requirements if they want to provide a form of iTRS.[39] And the Certification Order requires that currently-eligible iTRS providers that are not certified by the FCC (but rather by state agencies) must submit their applications within 30 days of any OMB approval of information collection requests.[40] Thus, Sorenson and at least one other VRS provider will have to submit their applications within 30 days of any OMB approval. In addition, several iTRS providers *with* current FCC certifications that would expire before November 4, 2011—absent a Commission extension of a blanket waiver it released on May 6, 2011[41]—also must submit their applications, "at least 30 days prior to the expiration of their currently extended certifications – that is, no later than October 5, 2011, provided that the rules are effective by that date."[42] Finally, providers that are not currently certified are urged to "file their certification applications on, or as soon as possible after, the day the rules…become effective, so that review of their applications can commence as soon as possible."[43] Approximately *two dozen* providers currently participating in revenue sharing arrangements filed individual waiver requests following the Commission's publication of the Anti-Fraud Order,[44] because they were not currently certified providers. Any of those two dozen providers wishing

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39 *See* TRS Providers, *available at* http://www.fcc.gov/encyclopedia/trs-providers.

40 Certification Order, ¶ 59; The Commission in the Certification Order specifically, "decline[d] to give [such] providers six months to apply for certification under the new rules." *Id.*

41 *See Structure and Practices of the Video Relay Service Program,* Public Notice, Consumer and Governmental Affairs Bureau Announces Extension of Expiring Certifications for Providers of Internet-Based Telecommunications Relay Services, CG Docket No. 10-51 (rel. May 6, 2011).

42 Certification Order, ¶ 60.

43 *Id.*, ¶ 61.

44 *See* FNPRM, 26 FCC Rcd. at 5556-59 ¶¶ 16-20.

to continue to provide a component of VRS will also have to submit an application. In short, the Commission will likely be obliged to review potentially two to three dozen[45] individual applications in short order—which recent experience in the VRS context demonstrates that the FCC is ill-equipped to do.[46]

IV. THE BURDEN FROM THE CHALLENGED COLLECTIONS WAS NOT AND CANNOT BE JUSTIFIED ON THE BASIS OF THE COMMISSION'S STATED OBJECTIVES.

Under Section 1320(d)(1)(iii) of OMB's regulations implementing the PRA, "[t]o obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information…has practical utility."[47] The regulations further explain that "[p]ractical utility means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account…the agency's ability to process the information it collects…in a useful and timely fashion."[48] In other words, an agency cannot impose paperwork burdens without demonstrating sound, practical reasons for doing so. The Commission has failed to make that showing here.

The FCC's "Supporting Statement," submitted in connection with the Certification Order, repeats the purported justifications for the challenged Information Collections from the Certification Order. Again, according to the Commission, these requirements will "[1] help the Commission and Fund administrator oversee iTRS service in an effective manner and [2] ensure

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45 This total number of providers that may wish to submit applications as calculated above also calls into question the validity of the Commission's estimate that only *eleven* potential iTRS providers would be affected by the proposed information collections. *See* Supporting Statement at 5.

46 *See infra* at 20.

47 5 C.F.R. § 1320.5(d)(1).

48 5 C.F.R. § 1320.3(*l*).

that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers."[49] But these arguments fall short of demonstrating the "practical utility" of the Core and Sponsorship Information Collections in the real world.

First, with respect to a provider like Sorenson that has been providing iTRS services for many years, the Commission's bald assertion that the Core Information Collections will help ensure the company's ability to provide services in compliance with the Commission's rules makes no sense. Sorenson's lengthy track record of compliance with the Commission's performance standards demonstrates its capability far more reliably than copies of agreements and licenses. Plainly, if an iTRS provider already meets the Commission's performance standards, it must have "the full operational and technical capability to operate a call center."[50] Sorenson made this point in its comments,[51] as noted above, but the Commission failed to consider or respond to it.

The Commission's second claim—that the Core Information Collections will help to ensure compliance with the Commission's rules against fraud—also makes no sense. Fraud perpetrated by unscrupulous providers on the TRS Fund in the past has consisted primarily of various "minute pumping" schemes, such as paying people to make VRS calls to increase a provider's compensable minutes.[52] Such schemes would not have been deterred in any way by the new requirement that iTRS providers supply proofs of purchase and license agreements for their hardware and software. Nothing indicates that the perpetrators of those schemes had failed

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49 Supporting Statement at 4.

50 Certification Order, ¶ 30.

51 *See* Sorenson Comments at 4.

52 *See, e.g.,* FCC Press Release, *Enforcement Bureau Settles Investigations of Purple Communications, Inc.* (rel. Sept. 20, 2010).

to purchase or license their software and equipment properly. Moreover, entities willing to engage in minute-pumping fraud would presumably be equally willing to submit false documentation, even if such documentation could conceivably aid in the detection of minute-pumping—which it cannot.

The Commission's "combatting fraud" justification is the only one offered for the Sponsorship Information Collections, and it fares no better in that context. If the FCC is concerned about the possibility of "minute-pumping" fraud, it would be sufficient to request sponsorship agreements that call for outside parties to process or make iTRS calls. But the Certification Order contains no such limitation—it says that applicants must "submit a list of *all* sponsorship or marketing arrangements and associated agreements."[53] But among the sponsorship agreements Sorenson enters each year, many have nothing to do with the provision of iTRS, let alone reflecting potential minute-pumping schemes. If, for example, Sorenson sponsors a little league team, it is hard to see how that could conceivably bear on discovering "fraud"—and the question whether such marketing might "produce inefficiencies"[54] seems far beyond the legitimate scope of FCC inquiry.

Even apart from the fact that the information sought by the Commission in the challenged Information Collections does not bear on the justifications offered by the agency, however, there is a more fundamental reason why the Commission cannot demonstrate the "practical utility" of this information: The sheer volume of the documentation sought renders it impracticable for the Commission to process and use it in a timely fashion. As noted above, Sorenson estimates that as it has nearly **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** pieces of equipment for which it would need to provide documentation as part of its iTRS certification

53 Certification Order, ¶ 31.

54 *Id*. (emphasis added).

applications; software licenses with more than **** BEGIN CONFIDENTIAL**** [ ] **** END CONFIDENTIAL**** companies; and a significant number of sponsorship agreements each year. Sorenson estimates—as also further discussed above—that it would take *thousands* of hours for it to gather the documents involved. Needless to say, it would take the Commission many *hundreds* of hours to make any sense of this information, and the Commission simply lacks the staff to undertake such an ambitious project.

Moreover, recent experience in the VRS context illustrates that the FCC lacks the resources to handle the flood of paperwork that Core and Sponsorship Information Collections would unleash. In the Anti-Fraud Order released in April 2011, the Commission adopted rules barring non-eligible companies from contracting with eligible providers to handle VRS calls, but it stated it would consider requests for temporary waivers to avoid service disruptions.[55] Approximately two dozen non-eligible companies filed individual waiver requests including the limited data submissions that the Commission had required, which notably did not include a requirement to submit the voluminous information called for in either the Core or Sponsorship Information Collections. Rather than evaluate the requests on a case-by-case basis to determine whether each made the "rigorous showing" that the Order required,[56] the Commission instead issued on its own motion a blanket waiver to all of those providers the day before their ability to participate in such arrangements was scheduled to expire.[57]

This experience shows that the Commission has difficulty managing and processing substantial information submissions from the iTRS industry. Since issuing the blanket waiver,

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55 *See* FNPRM, 26 FCC Rcd. At 5574-75 ¶¶ 57-62.

56 *Id.* at 5576 ¶ 63.

57 *See Structure and Practices of the Video Relay Service Program*, Order Suspending Effective Date, 26 FCC Rcd. 8327, 8327 ¶ 1 (2011).

the Commission has done nothing to expand staff or otherwise make more resources available to handle the even greater flow of data that the Information Collections will generate. In sum, as in the emergency backup power proceeding, the Commission here has failed to "demonstrate[], given the minimal staff assigned to analyze and process this information, that the collection ha[d] been developed by an office that ha[d] planned and allocated resources for the efficient and effective management and use of the information collected"[58] within the schedule mandated by its own Certification Order.

V. THE COMMISSION FAILED TO MINIMIZE THE EXTRAORDINARY BURDEN OF THE PROPOSED INFORMATION COLLECTIONS.

OMB's regulations also require that to obtain "approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information [i]s the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives."[59] The Commission has not met that requirement here.

The challenged Core and Sponsorship Information Collections mandate that companies submit complete copies of *all* proofs of purchase, leases or license agreements for *all* equipment and infrastructure relating to core call center functions (including automatic call distribution, routing, call setup, mapping, call feature, billing for compensation from the TRS Fund, and registration), as well as *all* written sponsorship agreements relating to iTRS.[60] These broad

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58 *See* Notice of Office of Management and Budget Action, ICR Reference Number 200802-3060-019, at 1 (Nov. 28, 2008), *available at* http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200802-3060-019#section0_anchor.

59 5 C.F.R. § 1320.5(d)(1)(i).

60 Certification Order, ¶¶ 29-31; *See also* PRA Comment Request, 76 Fed. Reg. at 47,583.

mandates are far from the least burdensome collections necessary for the Commission to properly perform or to meet its stated objectives.

For example, with respect to some information collections imposed by the Certification Order (which Sorenson does not challenge here), the Commission required only a "representative sampling" of documentation, *e.g.*, for call center deeds or leases.[61] The Commission could have done the same for call center equipment. Alternatively, as Sorenson urged, the Commission could have minimized the information collection burden by requiring applicants to submit a description of their call infrastructure, a statement regarding whether such equipment is owned, leased or licensed and, if not owned, from whom the equipment was procured, and also to retain records for a limited period of time and to make them available for inspection.[62] Again, the Commission declined even to respond to this suggestion.[63]

The Commission could similarly have minimized the burdens of the Sponsorship Information Collections by requiring that applicants simply submit a list of sponsorship arrangements above a certain dollar threshold, with an associated requirement to retain the agreements themselves for a period of time and to make them available for inspection. Or, as another iTRS provider proposed to the Commission, it could "[a]t the very least" have "establish[ed] a threshold contract amount"—*e.g.*, "sponsorship arrangements with an annual value" under $10,000 should be considered "*de minimis*" to "relieve providers of some of the burden."[64] Or the Commission could have considered a rule limited to sponsorship agreements with iTRS users or somehow related to iTRS usage. The Commission did not even consider any

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61 Certification Order, ¶ 24.

62 *See* Sorenson Comments at 5.

63 *See infra* at 23-24.

64 Hamilton Relay Comments at 8.

of these possibilities, but instead incorrectly maintained that "[n]o commenter objects" to the Sponsorship Information Collections.[65]

VI. THE PROPOSED INFORMATION COLLECTIONS ARE DUPLICATIVE OF INFORMATION OTHERWISE ACCESSIBLE TO THE COMMISSION.

OMB's regulations also indicate that an agency must "demonstrate that it has taken every reasonable step to ensure that the proposed collection of information…[i]s not duplicative of information otherwise accessible to the agency,"[66] and that "[t]he agency shall also seek to minimize the cost to itself of collecting, processing, and using the information."[67] The Commission has failed in these responsibilities as well.

As Sorenson pointed out in its comments to the FCC, the Information Collections imposed by the Order are unnecessary because *the FCC could have access to the same materials whenever it wants without imposing these burdensome new requirements.* Specifically, Sorenson urged that "[a] more appropriate solution would be to maintain the Commission's current narrative-based certification process—buttressed by a requirement that applicants certify the truth of their submissions under penalty of perjury—while the Commission could reserve the right to request any of the specific evidence listed in the FNPRM as needed to resolve any specific issues that arise with specific providers."[68]

The Commission did not specifically address this less burdensome alternative at all. As part of the Certification Order, however, it did "reserve the right to include, as part of the iTRS certification process, an on-site visit to an applicant's headquarters, offices, or call centers" and "to make subsequent, unannounced on-site visits of iTRS providers once they receive

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65 Certification Order, ¶ 31.

66 5 C.F.R. § 1320.5(d)(1)(ii).

67 5 C.F.R. § 1320.5(d)(1)(iii).

68 Sorenson Comments at 5.

certification, for the purpose of ensuring continued compliance with certification requirements."[69] Plainly, the proposed Core and Sponsorship Information would be accessible to the Commission during any such on-site visit upon request, if there were reasonable records-retention requirements as part of the certification application process. In addition, the Commission's costs would likely be significantly less if it did not collect the voluminous and unnecessary proposed Core and Sponsorship Information Collections and instead relied on a less burdensome and non-duplicative alternative.

VII. THE COMMISSION HAS NOT DEMONSTRATED THAT THERE IS SUBSTANTIAL NEED TO REQUIRE iTRS APPLICANTS TO MAINTAIN NAMES AND COPIES OF EMPLOYMENT AGREEMENTS FOR FIVE YEARS.

Finally, OMB regulations indicate that it "will not approve a collection of information…[r]equiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years" unless the promulgating "agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need."[70] The Certification Order, however, purports to impose on iTRS providers a retention requirement with a "five year duration period for the employment agreements and other employee records"[71] that the Commission wants providers to retain.[72] The Commission does not even attempt to justify this retention period, which is plainly in excess of the maximum permitted by OMB regulations. Accordingly, the Certification Order's record-retention requirement should

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69 Certification Order, ¶ 36.

70 5 C.F.R. § 1320.5(d)(2).

71 Certification Order, ¶ 28.

72 *See* Supporting Statement at 3.

not be approved, or at a minimum should be reduced to the maximum of three years unambiguously set forth in the regulations.

VIII. CONCLUSION

For the reasons described, Sorenson respectfully requests that OMB not approve the proposed Core and Sponsorship Information Collections.

Respectfully submitted,

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