March 18, 2010

To Whom It May Concern:

Is the Federal Communications Commission (FCC) in violation of the 1934 Telecommunications Act?

When the FCC was created in 1934, its main mission was to protect consumer rights. To date, it appears that the FCC has been protecting the rights of the industry, especially one large company, rather than the rights of consumers, especially deaf and hard-of-hearing consumers.

Is the FCC in violation of Title 4 of the Americans with Disabilities Act (ADA)?

The purpose of Title 4 of the ADA was and is to ensure that deaf and hard-of-hearing American citizens have equal access to telecommunications, similarly to hearing peers. When the ADA was enacted in 1990, the FCC, a federal agency which had no history in protecting the rights of people with disabilities, was given the responsibility to regulate and enforce the functional equivalency of all telecommunications-related services, including video relay services (VRS), that enabled deaf and hard-of-hearing people to use videophones to see and communicate in sign language with video interpreters who use voice telephones to speak with hearing people and convey messages back to the VRS user in sign language. Functional equivalency includes interoperability of telecommunication services and interconnect-ability of telecommunication equipment. It appears that due to the apparent impassivity of the FCC, one company has created ways to keep relay customers in their walled garden in order to gain a monopoly.

The FCC has allowed Sorenson Communications to develop various strategies that generate federally operated funds at the expense of deaf and hard-of-hearing Americans. For example, this company has had a tradition of encouraging sole use of its videophones and minimized interconnectivity with competitor videophones (see below for further description). Also, through its free equipment loaner program, this company prevented hearing people with signing skills from having videophones for direct communication access with deaf sign language users; thereby forcing them to use federally funded VRS instead of communicating directly with their deaf and hard-of-hearing children, parents, siblings or friends, thereby generating additional federal revenue for Sorenson Communications. In addition, the FCC has allowed Sorenson Communications to use profits from federally funded programs to hire high-powered lawyers and lobbyists to justify their apparent abuses to maximize capital gains and create its
own consumer organization, which carries the name of VRS Consumer Association.


In response to the U.S. Department of Justice’s antitrust suit against AT&T, Judge Greene in 1981 issued an order of restrictions including the separation of services and products that led to the break-up of AT&T. The Telecommunications Act of 1996 included these restrictions. It appears that the FCC has been encouraging the service providers to manufacture their own products. This directly contravenes a 1968 FCC ruling on interconnect-ability. For example, VRS providers such as Sorenson Communications and Purple Communications manufacture and program their own videophones. Purple sells their videophones while Sorenson has a free loan program for their videophones. In addition, Purple and Sorenson also provide video relay services.

Is the FCC in violation of the Sherman Antitrust Act?

The purpose of the Sherman Antitrust Act was and is to prohibit abusive monopolies. It appears that recent FCC decisions or non-decisions (delayed decisions, if any) have resulted in abusive monopoly at the expense of consumers with disabilities and the telecommunications industry that should ideally encourage competition. Also, it appears that the FCC has developed a federal monetary mechanism to allow one monopolistic company, run by several hearing executives earning federally funded seven figure salaries, net at least 50% or at least $3.00 per minute or total federally funded annual net of $500,000,000 while the rest of its competitors net a few pennies per minute.

Is the FCC in violation of Title 1 of the Americans with Disabilities Act?

The purpose of Title 1 of the Americans with Disabilities Act was to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. The FCC recently issued a ruling stating that the VRS companies will be responsible for the cost of VRS calls made by respective deaf and hard-of-hearing employees. Interestingly, practically all of the administrators or directors within the FCC who made decisions that affect daily life of deaf and hard-of-hearing people had no or minimal hands-on experience with relay services, orientation, or training of any kind on deafness and the obstacles to equal treatment in the workplace. Also, within several thousand FCC employees, there is only one deaf VRS user in the whole agency. This ruling, even though it may have been well intended for this specific case, could start the precedent for all other agencies and employers to issue similar policies which would be discriminatory in terms of deaf and hard-of-hearing employees being unable to use their company’s telecommunications
setup to do job-related functions as their hearing counterparts do. These employees would also be viewed as a liability instead of as an asset.

Background:

In 1991, the FCC created regulations for intra- and inter-state telecommunications relay services using text telephone networks. Since the average typing speed of text users speed was about 30-40 words per minute, the voice users were finding the traditional relay service using text telephones not functionally equivalent, as it was inconvenient and extremely time ineffective.

Eventually, a more functional equivalent system, namely video relay services (VRS) was created. Through the use of webcams and sign language interpreters, the transmission speed of words approached a normal rate of about 200 words per minute through the Internet. As a result, hearing people in various settings including employment settings were much more receptive and accepting of the possibility of effective, rapid communication with deaf and hard-of-hearing people through VRS.

When Sorenson Communications learned about the VRS and the FCC’s federally managed reimbursement program, they created the company’s own VRS network and loaned their videophones, which were originally designed for telemedicine, to deaf and hard of hearing people at no cost with the understanding that these individuals were to use their services at least 30 minutes each month. These videophones were programmed to be operable only with Sorenson VRS, meaning that they were non-operable with any other video relay services including the federal relay services. Also, they isolated their Internet network to create segregation from the videophones developed by competing companies, which thereby resulted in a monopoly. After several years of lengthy prodding from deaf and hard of hearing consumer-oriented national organizations such as Telecommunications for the Deaf, Inc. (TDI), Deaf and Hard of Hearing Consumer Action Network (DHHCAN) and National Association of the Deaf (NAD), the FCC finally issued a succinct order to discontinue the 30-minute requirement and minimize the non-interoperability of services without any reprimand. Sorenson cooperated with this order but took a long time to discontinue the 30-minute requirement and inform the public of the discontinuance, which left users with the fear of losing their access to the videophone network if they did not adhere to the 30-minute requirement. In addition, the connections between Sorenson and all other videophones remain complicated. This is clearly NOT equivalent to the flexibility of people who hear regarding product and user choices and automatic interoperability.

Due to the FCC’s inactivity in the past eight years, and the possible role of a Senator’s influence within the FCC, Sorenson Communication’s market share grew to about 85%.
The FCC ignored the functional equivalent recommendations made by the FCC’s sponsored VRS Reform panel held on December 17, 2009 and followed up on Sorenson Communication’s complaints regarding some of its competitors’ apparent illicit abuse of federally managed funds by unilaterally issuing non-functional equivalent restrictions on the use of relay services among consumers and requested smaller companies to return funds retroactively for two years. Due to the insolvency caused by severe reduction in cash flow, several companies either have to be or are in the process of being dissolved, thereby severely constricting competition. As a result of the dissolution, a few hundred deaf and hard-of-hearing employees, especially in management positions, who for the most part have followed regulations, lost their jobs.

Regarding all of the above, we should ask the following questions:

1. Since the FCC was charged to implement the ADA, what modifications of telecommunications laws or rules such as inter-connections of videophones has the FCC made to comply with the ADA?
2. Why is the FCC complying with Sorenson’s recommendations to penalize its competitors for possible abuses while not penalizing Sorenson for forcing thousands of users to patronize its services for at least 30 minutes each month?
3. Why is the FCC allowing this company to net at least $3.00 per minute or about half a billion dollars in 2009 while the rest of its competitors earn a few pennies each minute?
4. Why is the FCC requesting new videophones made by smaller competitors to include obsolete technology to be interconnect-able with Sorenson videophone and not requesting Sorenson to include current technology to be interconnect-able with all other videophones?
5. Why is the FCC allowing Sorenson to refrain from showing Caller IDs while requesting all other competitors to do so?
6. Why is the FCC allowing Sorenson to have toll-free numbers interconnect-able within its videophone network and non-interconnect-able with competing videophones?
7. Why is the FCC allowing Sorenson practice reverse discrimination by not allowing hearing people have videophones and force them to use their services paid by federally managed funds?

In closing, it is strongly recommended that the FCC be investigated for possible violations non-compliance with federal statutes as mentioned earlier and corrections be made as soon as possible. I believe your investigation will corroborate what I have described in this letter. As an extremely concerned consumer, I appreciate your consideration of the contents in this communication.

Sincerely,
Alfred Sonnenstrahl
TDI Executive Director 1987-1996
Participant in the development of Titles 2 and 4 of the ADA