Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of:

Structure and Practices of the Video Relay Service Program
CG Docket No. 10-51

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
CG Docket No. 03-123

SORENSON COMMUNICATIONS, LLC, PETITION FOR PARTIAL RECONSIDERATION, OR IN THE ALTERNATIVE, SUSPENSION OF THE RUE IMPLEMENTATION DEADLINE

John T. Nakahata
Julie A. Veach
Austin Bonner
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW, 8th Floor
Washington, DC 20036
(202) 730-1300

Counsel for Sorenson Communications, LLC

May 30, 2017
TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY ................................................................. 2

II. THE COSTS OF IMPLEMENTING THE RUE PROFILE FOR THE ACE APP FAR
OUTWEIGH ANY BENEFITS ............................................................................. 4

III. THE RUE PROFILE WAS NOT VALIDLY INCORPORATED INTO THE RULES
FOR ANY PURPOSE ....................................................................................... 6
   A. The Bureau’s Delegated Authority Extended Only to Voluntary, Consensus
      Standards ................................................................................................. 6
   B. As an FCC-Created “Standard,” the RUE Profile Cannot Be Incorporated by
      Reference into the Commission’s Rules .................................................... 11

IV. PROVIDER IMPLEMENTATION OF THE RUE PROFILE SHOULD BE
SUSPENDED WHILE OUTSTANDING PROBLEMS ARE ADDRESSED ........... 13
   A. The Draft RUE Profile Is Incomplete .................................................... 14
   B. The ACE App Is Not Completed ............................................................ 15
   C. Interoperability Testing Does Not Require RUE Profile Implementation ... 17
   D. Any Implementation Deadline Should Be Suspended ............................. 18

V. USE OF THE RUE PROFILE AND ACE APP REQUIRE LICENSING FROM
SORENSON .................................................................................................... 18

VI. CONCLUSION ............................................................................................. 20
I. INTRODUCTION AND SUMMARY

Pursuant to section 405 of the Communications Act of 1934, as amended, and section 1.429 of the Commission’s rules, Sorenson Communications, LLC (“Sorenson”) hereby seeks partial reconsideration of the order adopted by the Consumer and Governmental Affairs Bureau (“Bureau”) on January 17, 2017.¹ Sorenson supports the Bureau’s adoption of the VRS Provider Interoperability Profile and its decision to seek further comment on whether to require all VRS providers to use the draft Relay User Equipment or “RUE” Profile in all equipment and software that they distribute or loan to their customers. Sorenson remains concerned, however, with use of the draft RUE Profile for communications involving the Accessible Communication for Everyone or “ACE” App. Notwithstanding that the RUE Profile is in draft form² and that the ACE App has serious known problems, such as not enabling the user to update his or her Registered Location for 911 purposes, the Bureau incorporated the draft RUE Profile into the Commission’s rules and established a one-year deadline for VRS providers to implement the draft RUE Profile for purposes of communications using the ACE App.

Known problems with the draft RUE Profile and ACE App should be addressed before the implementation clock starts to tick. In fact, as Sorenson suggested prior to the Bureau’s order, the stumbling blocks with the RUE Profile and ACE App present an opportunity to take a


fresh look at the endeavor to create an ACE App. Since the ACE App was first envisioned in 2013 as a tool for improving interoperability among VRS providers, the industry has greatly improved interoperability through collaborative efforts and engineering-focused conferences and calls. Furthermore, the Bureau has adopted the VRS Provider Interoperability Profile for all providers as well as the xCard standard to facilitate the portability of contact lists and speed dial entries. To the extent that interoperability issues persist, the implementation of the VRS Provider Interoperability Profile and the xCard standard will address the key concerns that consumer groups have articulated. On top of these improvements, a national provider-to-provider testing laboratory is underway. A cost-benefit analysis, had one been conducted, would have shown that the incremental benefits—if any—of the ACE App project fail to justify the multiple millions of dollars in provider and Commission costs to continue. In addition, the Bureau lacked delegated authority to incorporate the RUE Profile into the Commission’s rules. For these reasons, Sorenson respectfully requests that the Commission or Bureau reconsider the decision to mandate implementation of the RUE Profile and ACE App.

In the alternative, if the agency believes upon further review that the benefits of the ACE App outweigh its costs and thus proceeds with the ACE App project and a RUE Profile mandate, the deadline for provider implementation should be suspended until the known and serious problems with the draft RUE Profile and ACE App are resolved and a fully compliant version of the ACE App is available for testing. The Commission also needs to address the fact that the RUE Profile (and therefore the ACE App) rely on Sorenson patents and require appropriate licensing arrangements before they can be used by other providers, developers, the Commission, or the general public.
II. THE COSTS OF IMPLEMENTING THE RUE PROFILE FOR THE ACE APP FAR OUTWEIGH ANY BENEFITS

As it did last fall on the record of this proceeding, Sorenson encourages the Commission to step back and consider the ACE App endeavor, particularly whether the continuing and substantial costs of the ACE App project are “truly justified” by the purported benefits. The hoped-for benefit of the ACE App, back in 2013, was to improve interoperability by creating a “reference platform” against which providers could test their own VRS access technology to ensure that it is fully compliant with interoperability requirements. But the utility of such a “reference platform” has been greatly diminished because the industry has since developed and adopted a standard to govern interoperability (which the Commission has incorporated into its rules), and MITRE is building a national provider-to-provider interoperability testing laboratory, which will provide even greater transparency in identifying and addressing any interoperability issues. In addition, the issues about which the consumer groups have expressed the greatest concern—portability of personal contacts lists and speed dial settings—are addressed by the xCard standard, which has been adopted for implementation by October 24, 2017. Given the

---

3 See Letter from Gabrielle Joseph, ASL Services Holdings, LLC and representatives of Convo, CSDVRS, Purple, and Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 & 03-123, at 4 (filed Nov. 8, 2016) (“Joint Provider Letter”) (suggesting that the Commission “assess whether the ACE endpoint is still needed to provide an interoperability benchmark or whether interoperability has been adequately addressed through other means”).


6 CGB January Order, 32 FCC Rcd. at 693 ¶ 16.
very positive developments since the VRS Reform Order in 2013, the utility of the ACE App is
doubtful at best. Certainly, there has been no “meaningful attempt to determine the net benefits”
of the ACE App.\(^7\)

Yet the implementation of the RUE Profile for the ACE App imposes significant costs on
VRS providers as well as the Commission. The Bureau failed to address record evidence
regarding the costs to providers of implementing the RUE Profile to support the ACE App. The
Joint Providers estimated that implementation of the RUE Profile \textit{limited to support of the ACE
App} will cost each provider multiple millions of dollars.\(^8\) Indeed, as explained below, the RUE
Profile and ACE App require modifications if they are to be used responsibly by the public, and
that process will create additional costs to the Commission as well as to the providers. The
Commission should take this opportunity to “grapple in a serious way with the costs that [the
prior Commission’s] regulatory wish-list will impose.”\(^9\) It should perform a cost-benefit analysis
for the ACE App project before imposing implementation costs of this magnitude on the industry
for no identified relevant benefit. Sorenson believes that the costs are not justified and for that
reason the requirement to facilitate communications with the ACE App should be reconsidered.

\(^7\) Ajit Pai, Chairman, FCC, Remarks at the Hudson Institute: The Importance of Economic
Analysis at the FCC, at 3 (Apr. 5, 2017); \textit{see also} Michael O’Rielly, Commissioner, FCC,
Remarks before the Prosperity Caucus, at 2 (Sept. 21, 2015) (calling for the Commission to
identify a market failure before acting, carefully tailor its solution, and ensure that the benefit
of regulation outweighs the burdens).

\(^8\) \textit{See} Joint Provider Letter at 3.

\(^9\) \textit{Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage
Data}, Report and Order, 31 FCC Rcd. 7947, 7996 (Dissenting Statement of Commissioner
Ajit Pai) (2016); \textit{see also id.} at 8003 (noting that federal agencies are obligated by the
Administrative Procedure Act and principles of good government to “ensure in advance that
its decisions will be beneficial on net to the American public”).
III. THE RUE PROFILE WAS NOT VALIDLY INCORPORATED INTO THE RULES FOR ANY PURPOSE

Regardless of any merits of the ACE App endeavor, the RUE Profile is not enforceable in its current form. In August 2016, the Bureau proposed to incorporate the RUE Profile by reference into the Commission’s rules. The Bureau’s proposal would have required VRS providers to implement the RUE Profile for all endpoints, including their own distributed endpoints as well as ACE App endpoints. In response to this tentative conclusion, the Providers pointed out the flaws in this proposal, including the Bureau’s lack of delegated authority to incorporate the RUE Profile in the Commission’s rules. The Bureau did not address the bulk of the Providers’ comments, and its decision to apply the draft RUE Profile only to communications with ACE App endpoints pending resolution of the CGB January Further Notice fails to cure the legal infirmities.

A. The Bureau’s Delegated Authority Extended Only to Voluntary, Consensus Standards

The Joint Providers explained in their comments that the Bureau lacked authority to adopt the RUE Profile as it did. In the VRS Reform Order, the Commission delegated to the Bureau the authority to conduct rulemakings to adopt “interoperability and portability standards developed under the auspices of the SIP Forum, now or in future, or such other voluntary, consensus standard organization as may be formed to address these issues.”10 The full Commission also required that FCC staff participation in the development comport with Office of Management and Budget (“OMB”) requirements regarding standards set by such

10 VRS Reform Order, 28 FCC Rcd. at 8643 ¶ 49 (emphasis added). Absent an express delegation to the Bureau, a rulemaking must be initiated by the full Commission. See 47 C.F.R. § 0.361(a) (providing that a notice of proposed rulemaking “shall be referred to the Commission en banc for disposition”).
organizations.\footnote{VRS Reform Order, 28 FCC Rcd. at 8642 \S 48 n.129.} As explained in detail by the Joint Providers,\footnote{See Comments of Convo Communications, CSDVRS, Purple Communications, and Sorenson Communications at 3, CG Docket Nos. 03-123 & 10-51 (filed Sept. 14, 2016) (“Joint Provider Comments”) (explaining in detail how FCC staff and contractors controlled the draft RUE Profile and the input process).} by ZVRS,\footnote{See Comments of ZVRS on the VRS Interoperability FNPRM at 4, CG Docket Nos. 03-123 & 10-51 (filed Sept. 14, 2016) (“ZVRS Comments”) (“[T]he drafting process for the RUE Profile involved an informal solicitation of feedback by the ACE software developer, FCC staff, and eventually the MITRE Corporation, and not a formalized process involving a ‘voluntary, consensus standard organization’ in which all VRS providers were afforded a meaningful opportunity to make contributions and raise objections.”).} and by GlobalVRS,\footnote{See Comments of ASL Services Holdings, LLC dba GlobalVRS in Response to Further Notice of Proposed Rulemaking at 5-6, CG Docket Nos. 03-123 & 10-51 (filed Sept. 14, 2016) (“GlobalVRS Comments”) (explaining in detail how RUE Profile development “marginally involved the providers” who had “limited opportunity to make generalized recommendations” and “no control over – or direct technical development involvement in – the RUE Profile”).} the “group” that produced the current RUE Profile was not a “voluntary, consensus standard organization,”\footnote{Though the Bureau acknowledges that four VRS providers argued that the RUE Profile was not developed by a voluntary consensus standards organization, \textit{CGB January Order}, 32 FCC Rcd. at 691 \S 10, it does not answer—or even address—those concerns. Nor does the Bureau find any facts that would contradict the VRS providers’ version of events. That failure to “consider an important aspect of the problem” with the development and adoption of the RUE Profile also renders its incorporation into the Commission’s rules arbitrary and capricious in violation of the Administrative Procedure Act. \textit{Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.}, 463 U.S. 29, 43 (1983).} and FCC staff participants did not follow Commission instructions to limit their participation in accordance with OMB requirements.

The RUE Profile was born out of a series of informal conference calls hosted by Commission contractor VTCSecure, who was later replaced, and ultimately dominated by Commission representatives. The resulting document cannot be called a “voluntary consensus standard” because the process that developed the RUE Profile did not include several of the
elements required by the Office of Management and Budget and federal statute: openness, balance, due process, appeals process, and consensus.\textsuperscript{16}

First, the proceedings lacked due process, which requires “documented and publically available policies and procedures, adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and a fair and impartial process for resolving conflicting views.”\textsuperscript{17} VTCSecure initially adopted a process for distributing drafts through a Google Doc that “might change drastically from day to day.”\textsuperscript{18} That moving target prevented VRS providers from offering meaningful edits.\textsuperscript{19} An FCC representative later “took control of the document, substantially revised it, and distributed it as draft zero to the providers for comment and revisions in March 2016.”\textsuperscript{20} The new “draft zero” fundamentally changed the purpose of the document—without explanation or discussion among the parties—to impose much broader requirements than


\textsuperscript{17} OMB Circular A-119 at *15.

\textsuperscript{18} Joint Provider Comments at 3.

\textsuperscript{19} \textit{Id.}

\textsuperscript{20} \textit{Id.}
had been discussed over the proceeding months. When VRS providers objected to the change, there was no fair and impartial process for resolving the disagreement. The FCC’s representatives simply “declined to change” the disputed language while assuring VRS providers that revisions would not create the new obligations to which they objected—statements that turned out to be false.\textsuperscript{21}

Second, the process lacked “balance,” which requires that “no single interest dominat[es] the decision-making.”\textsuperscript{22} The FCC’s representatives maintained “close control” of the drafting process, maintaining “sole control” of the document at all times—unilaterally revising the document and deciding which feedback to accept or reject.\textsuperscript{23} They also refused to seriously consider the views of participating VRS providers—even on issues as fundamental as the RUE Profile’s applicability.\textsuperscript{24} In doing so, the FCC did not participate “on an equal basis with other members” as federal policy requires, and instead impermissibly dominated the RUE Profile’s development.\textsuperscript{25}

Third, the draft RUE Profile does not reflect any consensus among the participants. Unanimity is not required, but “general agreement” is.\textsuperscript{26} Joint VRS Providers’ comments in this proceeding made their position clear: “The Commission should not adopt the RUE Profile.”\textsuperscript{27} Moreover, it is not clear that the RUE Profile has been “adopted” by anyone but the Bureau. The

\begin{itemize}
\item \textsuperscript{21} Id. at 4.
\item \textsuperscript{22} OMB Circular A-119 at *14.
\item \textsuperscript{23} Joint Comments of VRS Providers at 6.
\item \textsuperscript{24} Id. at 5.
\item \textsuperscript{25} OMB Circular A-119 at *27.
\item \textsuperscript{26} Id. at *15.
\item \textsuperscript{27} Joint Provider Comments at 4.
\end{itemize}
website where the Commission says the RUE Profile is “reasonably available” to the public makes clear that the document is an expired draft that the guidelines of the Internet Engineering Steering Group, which maintains the IETF standards database, call a “tombstone file.”

The Commission’s original delegation to the Bureau did nothing more than require the Bureau to comply with federal law. The National Technology Transfer and Advancement Act (“NTTAA”) calls on all federal agencies “to use standards developed or adopted by voluntary consensus standards bodies rather than government-unique standards,” with limited exceptions. Congress requires federal agencies to use “voluntary consensus standards” whenever practical and consistent with law in order to reduce costs to the federal government and regulated industry, incentivize the creation of standards that drive economic growth, and leverage private-sector expertise in drafting regulations. Because the RUE Profile was developed and adopted by Commission representatives for the Commission’s purposes—and not by a standards body representing the consensus view of industry stakeholders—the RUE Profile is a disfavored “government-unique standard.”

As it was not developed by a voluntary, consensus standard organization, the draft RUE Profile as it emerged was beyond the Bureau’s delegated authority to adopt and incorporate into the Commission’s rules for any purpose—whether for communications involving ACE App endpoints or other endpoints. The CGB January Order did not acknowledge or address the arguments below on precisely this point.

28 See supra note 2.
30 OMB Circular A-119 at *12.
31 Id. at *13.
B. As an FCC-Created “Standard,” the RUE Profile Cannot Be Incorporated by Reference into the Commission’s Rules

If it can be called a “standard” at all, the RUE Profile is a “government-unique standard” that was created “by and for use by the Federal government in its regulations” and will not be “generally used by the private sector unless required by regulation.”32 As such, the RUE Profile is agency-produced material that should not have been incorporated by reference into the Code of Federal Regulations.33

Though federal policy strongly favors voluntary consensus standards, agencies may use government-unique standards under limited circumstances, including “cases where no suitable voluntary consensus standards exist.”34 Doing so, however, comes with mandatory procedural and reporting requirements. Among other things, agencies that propose to use a government-unique standard must invite commenters to suggest non-government-unique alternatives in any rulemaking notice.35 If they still decide to proceed with the government-unique option, agencies must “include a statement to that effect in the preamble of the final rule or guidance

32 Id. at *14.
33 As discussed above, VRS providers’ arguments about the Commission’s domination of the RUE Profile’s development were not addressed in the Report and Order. See supra note 15. This argument is appropriate for reconsideration because it relies on facts and events that occurred after the Report and Order was published. See 47 C.F.R. § 1.429(b)(1). On April 27, 2017, the Report and Order was published in the Federal Register, 82 Fed. Reg. 19,322. The Federal Register indicates that the Commission sought and received approval from the Director of the Federal Register to incorporate the RUE Profile by reference pursuant to 1 C.F.R. Part 51. To receive the approval, Commission presumably represented to the Office of the Federal Register that the RUE Profile was eligible for incorporation by reference—even though Bureau had never addressed the VRS providers’ arguments and associated facts showing that Commission representatives impermissibly dominated the process of developing the RUE Profile.
34 OMB Circular A-119 at *18.
35 See id. at *33.
document.” 36 The NTTAA also requires that agencies report any government-unique standards they use to the National Institute of Standards and Technology. 37

Additionally, agency-created standards generally cannot be incorporated by reference into the Code of Federal Regulations. Only “unique” and “highly unusual” agency-produced material can only be incorporated by reference into an agency’s rules. 38

As the proceedings described above illustrate, the RUE Profile was created “by and for” the Commission for use in this regulation. 39 But for the regulatory requirement to use the ACE App, no VRS providers would have any reason to adopt the RUE Profile. It will never be “generally used by the private sector unless required by regulation.” 40 Nonetheless, the Bureau has failed to comply with the procedure requiring agencies to provide notice of its intended use of government-unique standards—it has not even identified the RUE Profile as a government-unique standard. The RUE Profile, which is presented as a text document like hundreds of other FCC rules, has no “unique” or “highly unusual features” that would prevent it from being included directly in the Commission’s rules.

At its core, the RUE Profile is nothing more than an “agency pronouncement[] with general legal effect” that “should be uniformly codified” in the Code of Federal Regulations after an appropriate rulemaking process just like any other technical rule developed by the

36 Id.
37 See id. at *18.
40 Id.
Commission would be. In failing to acknowledge its own central role in the RUE Profile’s development and adoption, the Bureau has circumvented protections designed to facilitate compliance with the NTTAA and a complete and accurate Code of Federal Regulations. The RUE Profile’s incorporation into the FCC’s rules therefore violates federal law and longstanding federal policy. It must be reconsidered.

IV. PROVIDER IMPLEMENTATION OF THE RUE PROFILE SHOULD BE SUSPENDED WHILE OUTSTANDING PROBLEMS ARE Addressed

In the CGB January Order, the Bureau incorporated the RUE Profile by reference into the Commission’s existing rule on interoperability for purposes of interactions between VRS providers and the ACE App and set a twelve-month implementation deadline that began to run with Federal Register publication. Under the new requirement, providers must use the RUE Profile to facilitate communications with endpoints using the ACE App, ensuring that their back-end systems correctly and consistently handle these communications.

In their comments filed more than seven months ago, VRS providers explained that they need one year to implement this interoperability, starting after the ACE App is finalized and available for testing. In its order, the Bureau stated, “[a]s we expect that the ACE App will be

---

42 The Bureau’s action is therefore “not in accordance with law” and “without observance of procedure required by law” under the requirements of the Administrative Procedure Act. 5 U.S.C. § 706(2)(A), (D).
44 See Joint Provider Comments at 2; ZVRS Comments at 2 (urging the Commission to clarify that compliance with the RUE Profile for interactions with the ACE Application “will not be required until at least 12 months after completion of the ACE software”); see also GlobalVRS
released in the near future in a version suitable for interoperability testing, we conclude that it is reasonable to allow one year for VRS providers to complete software development, testing, and deployment to ensure that their networks are interoperable with the ACE App.\textsuperscript{45} Just last week an updated version of the Windows-based version of the ACE App was made available, which still has bugs, does not include application (client) certificates, has not completed a full regression test, and lacks basic 911 address features that were required by the \textit{VRS Reform Order}.\textsuperscript{46} The Bureau provided one year for VRS providers to come into compliance, measured from Federal Register publication of the \textit{CGB January Order}. The Bureau’s deadline ignores record evidence regarding the state of the RUE Profile, provides too little time for testing with a certified-compliant app, and potentially jeopardizes the safety of ACE App users and the security of VRS providers’ networks.

\textbf{A. The Draft RUE Profile Is Incomplete}

The Bureau did not acknowledge, much less address, the incomplete status of the draft RUE Profile itself. The draft RUE Profile sets the parameters for the ACE App, and a working RUE Profile is a necessary precondition to developing a RUE Profile-compliant ACE App. As the Joint Providers explained in November 2016, “the security provisions of the RUE Profile, and critical operational detail with respect to security, maintenance, support, and centralized

\textsuperscript{\textit{45}} \textit{CGB January Order}, 32 FCC Rcd. at 692 ¶ 14.

\textsuperscript{\textit{46}} \textit{VRS Reform Order}, 28 FCC Rcd. at 8645-46 ¶ 56 (“The VRS access technology reference platform will be fully functioning VRS access technology; that is, it will function as current provider-specific products function to provide the ability to place VRS and point-to-point calls, including dial-around functionality, \textit{the ability to update the users registered location}, and such other capabilities as are required by our rules.”) (emphasis added).
services, have not yet been defined.” Notwithstanding that security provisions such as a client certificate, the ability for users to update Registered Locations for 911 purposes, and other critical gaps in the RUE Profile remained unaddressed at the time the Bureau adopted the CGB January Order (and remain so more than four months later), the Bureau nonetheless required VRS providers to implement the (incomplete) RUE Profile to facilitate communications with the (half-complete) ACE App within one year.

B. The ACE App Is Not Completed

Even if the RUE Profile were complete, the Bureau’s deadline is unreasonable and arbitrary because the ACE App is not done. The providers explained below that they need “more than a year of intensive work from their engineering departments after there is a working ACE.” While Bureau apparently hoped that “the ACE App will be released in the near future in a version suitable for interoperability testing,” that did not materialize. More than four months later, an updated version of the ACE App has only just been released for preliminary, in-lab testing. In addition, as far as Sorenson is aware, there is no timeline for building necessary support functions if the ACE App is to work at all. For example, full use of the ACE App requires web-based repositories of information regarding each VRS Provider to assist with establishing communication between the ACE App user and the VRS Provider’s network. These

47 Joint Provider Letter at 3.
48 Id. (emphasis added) (“Only after ACE application and its centralized servers have been tested can providers then move forward with implementing and testing of their back-end changes that would be necessary to support and interoperate with the ACE application in a production environment.”); Joint Provider Comments at 2 (“Accordingly, the Providers respectfully request that the Bureau allow them 12 months following the availability of a certified profile-compliant version of the ACE application to ensure that their networks are compliant with the RUE Profile.”).
49 CGB January Order, 32 FCC Rcd. at 692 ¶ 14.
repositories do not exist nor does there appear to be any action toward creating and maintaining them.

Moreover, implementing the RUE Profile for communications with the current version of the ACE App would be a step backwards in the quest for ever better options for consumers. For example, the current version of the ACE App does not support the ability for VRS users to update the user’s Registered Location—a feature that is required by the Commission’s rules and that the VRS Reform Order specifically required the ACE App to support. This is a dangerous omission. As the ACE App currently stands, a user could download the app to a Windows device—such as a laptop—and provide an initial Registered Location for purposes of identifying the user’s location in case he or she places a 911 call. The ACE App, however, provides no in-app mechanism for the user to update that location. As a result, the originally entered location will be used to route the user’s 911 call to the appropriate PSAP and to identify his or her location for purposes of providing emergency assistance, regardless how many times the user has since changed locations, unless the user takes affirmative steps to notify the VRS Provider by calling customer service each time he or she changes location. (Of course, the user would have to call during normal customer service hours and would be unable to update the

---

50 See 47 C.F.R. § 64.605(b)(4)(ii) (“If the VRS or IP Relay is capable of being used from more than one location, provide their registered Internet-based TRS users one or more methods of updating their Registered Location, including at least one option that requires use only of the iTRS access technology necessary to access the VRS or IP Relay. Any method utilized must allow a registered Internet-based TRS user to update the Registered Location at will and in a timely manner.”).

51 See VRS Reform Order, 28 FCC Rcd. at 8645-46 ¶ 56.

52 Providers understood that the Bureau originally planned for versions of the ACE App for four different operating systems (Android, Apple, iOS, and Windows). However, Sorenson understands that the current vendor has been told not to develop or maintain any versions but the Windows version.
Registered Location during nighttime or some weekend periods.) This alarming gap in the ACE App jeopardizes the safety of the very users the App is intended to benefit.

Furthermore, Sorenson understands that the ACE App provides no method for the VRS Provider to verify the authenticity of the ACE App. Applications can be verified through the use of a client certificate, which authenticate the application. In this case, a client certificate would authenticate the version of the ACE App as one that has been tested (presumably by MITRE) and not tampered with. Once the ACE App is released, the absence of a client certificate means that anyone could modify the App to include malware. This poses a security threat to VRS providers’ networks, which contain consumers’ personal information, are subject to privacy requirements to ensure the confidentiality of consumer information, and facilitate emergency communications. Sorenson has not yet determined how it will ensure that calls coming in via the ACE App do not pose security risks to its network. The draft RUE Profile specifies that a client certificate is optional and that providers may reject calls coming into their networks from versions of the ACE App that lack a client certificate. But rejecting calls is no way to facilitate interoperability testing and consumer choice. The ACE App and draft RUE Profile simply are not ready.

C. Interoperability Testing Does Not Require RUE Profile Implementation

At this point, the Commission’s intentions for the ACE App are unclear. It is not being developed for platforms other than Windows, and it lacks security and 911 features. It is in no shape for distribution to the public. If the Commission’s intent is to use the App to test interoperability among providers, that can be done without requiring the providers to implement

---

53 See RUE Profile § 5.
the RUE Profile. The Bureau should suspend the requirement to implement the RUE Profile unless and until it clarifies that a fully functional ACE App will be made available to the public.

Interoperability testing with the ACE App can proceed without any implementation of the RUE Profile in VRS Providers’ backend systems. MITRE has already shown that it can register the ACE App with its own SIP service (ACE Connect Lite), and then use the ACE App to test point-to-point and dial-around interoperability between the ACE App and any provider’s endpoints or dial-around service. From this isolated environment the Commission’s contractor can place and receive calls of every type required to verify minimum required feature interoperability. Unless and until the Commission invests sufficiently in the ACE App to modify it for general public use, there is no need for providers to implement the RUE Profile.

**D. Any Implementation Deadline Should Be Suspended**

To the extent that the Bureau presses forward with the RUE Profile and ACE App, the implementation deadlines should be suspended until after the RUE Profile is corrected and the certified-compliant version or versions of the ACE App are released for testing. At that time, providers should have no less than one year for implementation and testing. Efforts to implement unfinished versions of the ACE App will do nothing but increase providers’ costs and divert resources from other, more worthwhile efforts that will actually improve the experience for customers.

**V. USE OF THE RUE PROFILE AND ACE APP REQUIRE LICENSING FROM Sorenson**

Sorenson has consistently pointed out to the Bureau and its vendors that it owns intellectual property (“IP”) embedded in the draft RUE Profile and implicated by its use in the
ACE App. The Bureau was well-aware that any use of the RUE Profile—whether as required solely for communication with the ACE App or for communication with all VRS-distributed endpoints—implicates Sorenson’s IP rights, and that Sorenson stands ready to discuss appropriate licensing arrangements. The Bureau nonetheless put the Commission in the position of violating those IP rights without even acknowledging that they exist.

In its separate comments in response to the Bureau’s Further Notice, Sorenson identified its relevant patents and repeated the history of its prior disclosures of its IP rights to the Commission’s vendor. Sorenson explained to the Bureau that “Sorenson has a deep portfolio of patents that may be implicated by the RUE Profile. In a further effort to ensure full disclosure (and notwithstanding Sorenson’s separately requested clarifications and arguments against implementation of the RUE profile), Sorenson has reviewed the RUE profile and concluded that either the ACE endpoint or the use of the ACE platform, as the RUE profile is currently drafted, may implicate one or more claims of at least Sorenson’s United States Patent Nos. 7,142,643, 7,206,386, 7,016,479, 7,583,286, 7,746,985, and 9,185,211.”

The Commission has implicitly recognized the value of intellectual property in the provision of TRS. Licensing costs appear to be accepted as allowable costs of providing IP CTS, and there is no principled basis to distinguish intellectual costs for IP CTS from intellectual property costs for VRS. The Commission should likewise recognize that when it and its

54 See Separate Comments of Sorenson Communications, Inc. in Response to Further Notice of Proposed Rulemaking, CG Docket Nos. 03-123 & 10-51 (filed Sept. 14, 2016) (detailing prior disclosures and repeating disclosure of specific patents).
55 Id. at 3-4.
56 See, e.g., Letter from John T. Nakahata, Counsel to Sorenson Communication, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 & 10-51, at 4 (filed May 4, 2017).
vendors use the intellectual property of private parties, they owe appropriate compensation for use of that property.

Sorenson therefore repeats its offer to discuss reasonable and appropriate licensing terms of any of its IP affected by development or use of the ACE App and RUE Profile. Barring appropriate arrangements, Sorenson will necessarily consider its other options.

VI. CONCLUSION

For the reasons stated in this Petition, Sorenson respectfully requests reconsideration of the requirement that VRS providers implement the RUE Profile for any purpose. At a minimum, the implementation deadline should be suspended, and VRS providers should have no less than a full year after the RUE Profile is corrected and the certified-compliant version or versions of the ACE App are released for testing before they must support communications with ACE App endpoints.

Respectfully submitted,

John T. Nakahata
Julie A. Veach
Austin Bonner
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW, 8th Floor
Washington, DC 20036
(202) 730-1300

Counsel for Sorenson Communications, LLC

May 30, 2017