

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Sorenson Communications, LLC)	File No.: EB-TCD-16-00022015
)	Acct. No.: 201732170008
)	FRN: 0015648942

ORDER

Adopted: September 29, 2017

Released: September 29, 2017

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Sorenson Communications, LLC (Sorenson or Company) met its obligations as a Telecommunications Relay Service (TRS) provider. Sorenson experienced a preventable service outage which resulted in the Company’s failure to handle all types of calls and provide Video Relay Service (VRS) in the manner required by the Commission’s rules (Rules). To settle this matter, Sorenson has agreed to reimburse the TRS Fund the sum of \$2,700,000, and pay a settlement to the United States Treasury in the amount of \$252,000.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Sorenson’s compliance with Sections 64.604(a)(3)(ii) and 64.604(b)(4) of the Rules.¹

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Sorenson’s basic qualifications to hold or obtain any Commission license or authorization.²

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁴ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

¹ 47 CFR §§ 64.604(a)(3)(ii), (b)(4).

² See 47 CFR § 1.93(b).

³ 47 U.S.C. § 154(i).

⁴ 47 CFR §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to R. Scott Wood, General Counsel, Sorenson Communications, LLC, 4192 South Riverboat Road, Salt Lake City, UT 84234, and to John T. Nakahata, Esq., Harris, Wiltshire & Grannis, LLP, 1919 M Street NW, 8th Floor, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Sorenson Communications, LLC, by their authorized representatives, hereby enter into this Consent Decree to settle the Enforcement Bureau's investigation of the service outage affecting Sorenson's Video Relay Service between June 6 and 8, 2016.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.¹
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Sorenson is subject by virtue of its business activities, including but not limited to the TRS Rules.
 - (f) "Default Provider" has the same meaning as the term is defined in 47 CFR § 64.601(a)(11).
 - (g) "Dial-Around" means a VRS call handled by a Provider other than the Registered Internet-based TRS User's Default Provider.
 - (h) "Effective Date" means the date by which both the Bureau and Sorenson have signed the Consent Decree.
 - (i) "Internet-based TRS" or "iTRS" has the same meaning as the term is defined in 47 CFR § 64.601(a)(15).
 - (j) "Investigation" means the investigation commenced by the Bureau in EB-TCD-16-00022015 regarding whether Sorenson violated the TRS Rules.
 - (k) "Parties" means Sorenson and the Bureau, each of which is a "Party."
 - (l) "Point-to-Point" means a non-relay video call between two parties that uses a TRS platform but does not involve a Communications Assistant.
 - (m) "Provider" means an entity that is eligible to receive compensation from the TRS Fund for providing compensable TRS service.

¹ 47 U.S.C. § 151 *et seq.*

- (n) “Registered Internet-based TRS User” has the same meaning as is defined in 47 CFR § 64.601(a)(27).
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Service Outage Notice” means a notice, as described in paragraph 14 below, which provides consumers information related to a VRS Service Interruption.
- (q) “Sorenson” or “Company” means Sorenson Communications, LLC, its parent, subsidiaries, and successors in interest.
- (r) “Sorenson.com” means the domain name Sorenson uses as the primary access point for users to initiate a Video Relay Service call through SVRS.
- (s) “SVRS” means the brand name of Sorenson’s video relay service.
- (t) “Telecommunications Relay Service” or “TRS” has the same meaning as the term is defined in 47 CFR § 64.601(a)(32).
- (u) “TRS Fund” or “Fund” means the fund used to compensate Providers for their reasonable costs of providing interstate relay service and Internet-based TRS, which include interstate and intrastate relay calls.²
- (v) “TRS Fund Administrator” means the entity designated by the Commission to administer the TRS Fund.³
- (w) “TRS Rules” means the regulations set forth at 47 CFR §§ 64.601 through 64.636 and §§ 64.5101 through 64.5111, Commission orders implementing and interpreting 47 U.S.C. § 225 of the Act, and any other Rules and orders applicable to iTRS Providers.
- (x) “Video Relay Service” or “VRS” has the same meaning as the term is defined in 47 CFR § 64.601(a)(40).
- (y) “VRS Service Interruption” means any event resulting from the Company’s action or failure to act, that results in an inability of multiple VRS users using a commercially deployed service to make or receive calls for more than thirty (30) minutes by: (i) SVRS’ Registered Internet-based TRS Users, regardless of the device used; or (ii) Dial-Around or Point-to-Point callers using Sorenson’s platform.

II. BACKGROUND

3. Telecommunications Relay Service (TRS) allows persons with hearing or speech disabilities to communicate with others in a manner similar to hearing persons using a telephone.⁴ There are currently multiple forms of TRS, some of which use only the public switched telephone network, and others of which also utilize the Internet. Video Relay Service (VRS), Internet Protocol Relay Service (IP Relay), and Internet Protocol Captioned Telephone Service (IP CTS) are forms of Internet-based TRS (iTRS) and require Internet Protocol-enabled devices.

² See 47 CFR § 64.604(c)(5)(iii).

³ *Id.*

⁴ See 47 CFR § 64.601(a)(15). There are multiple forms of TRS, three of which are iTRS—Video Relay Service (VRS), Internet Protocol Relay Service (IP Relay), and Internet Protocol Captioned Telephone Service (IP CTS).

4. Sorenson is a TRS Provider based in Salt Lake City, Utah. The Company holds a Commission certification to provide two forms of iTRS—VRS and IP CTS.⁵ Sorenson is eligible for compensation from the TRS Fund if it provides service in accordance with the TRS Rules and submits “true and adequate data” to the TRS Fund Administrator.⁶ As a Provider, Sorenson’s VRS must be capable of handling any type of call normally provided by telecommunications carriers, including 911 calls,⁷ and be provided for 24 hours every day.⁸

5. Sorenson.com is a domain name Sorenson uses to provide access to SVRS.⁹ On the morning of June 6, 2016, Sorenson experienced a VRS Service Interruption that resulted from a preventable, internal operational failure.¹⁰ This failure led the domain registration for Sorenson.com to expire and be deactivated. After the deactivation occurred and before Sorenson could correct the situation, some Internet Service Providers (ISPs) updated their records to reflect that the domain was expired. If a user’s ISP updated its records while the domain was shown as expired, that user could not make or receive calls routed through Sorenson.com—including VRS, 911, Dial-Around, and Point-to-Point calls—during at least part of the outage.

6. Upon discovery of the VRS Service Interruption, Sorenson took immediate steps to correct the problem and notify callers. Once the domain name was reactivated, each caller’s ISP had to take certain steps to ensure that calls were routed through Sorenson.com. To expedite this process, Sorenson reached out to multiple large ISPs, such as Verizon and Comcast, and posted information about the VRS Service Interruption on its website¹¹ and social media outlets. The VRS Service Interruption continued for some callers through the morning of June 8, 2016.

⁵ See *Notice of Grant of Conditional Certification for Sorenson Communications, Inc., as Reorganized Pursuant to Chapter 11, to Provide Internet-Based Telecommunications Relay Services Pending Commission Action on Sorenson’s Application for Certification*, CG Docket Nos. 03-123, 10-51, & 13-24, Public Notice, 29 FCC Rcd 4111 (CGB 2014).

⁶ See 47 CFR § 64.604(c)(5)(iii)(D)(1). Data submitted to the TRS Fund Administrator is also used to determine TRS Fund revenue requirements and the per-minute compensation rate. TRS Providers are also required to retain all data to support claims for payment from the TRS Fund for five years. See 47 CFR § 64.604(c)(5)(iii)(D)(7). The TRS Fund Administrator and the Commission have the authority to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments. 47 CFR § 64.604(c)(5)(iii)(D)(6).

⁷ See 47 CFR §§ 64.604(a)(3)(ii), (a)(4). The mandatory minimum standards governing the provision of TRS require that TRS providers have the capability to handle any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so or the requirement to handle a specific type of call has been waived by the Commission. Therefore, this requirement applies to both forms of iTRS provided by Sorenson.

⁸ 47 CFR § 64.604(b)(4)(i). See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 03-123 & 98-67, Report and Order, 20 FCC Rcd 13165 at 13179, para. 30 (2005) (*VRS 24/7 Order*) (“VRS providers must offer this service 24/7 to be eligible for compensation from the Interstate TRS Fund.”); see also *VRS 24/7 Order*, 20 FCC Rcd 13179, para. 29 (“As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, it becomes imperative that consumers have access to this service 24/7. Indeed, Congress expressly recognized that having TRS available 24/7 is central to the notion of functional equivalency; it included that requirement in the statute.”).

⁹ See Letter from John T. Nakahata, Harris, Wiltshire & Grannis, LLP, Counsel to Sorenson, to Chana Wilkerson, Telecommunications Consumers Division, FCC Enforcement Bureau (July 7, 2016) (on file in EB-TC-16-00022015).

¹⁰ Sorenson notified the Commission’s Consumer and Governmental Affairs Bureau of the system outage on the morning of June 6, 2016.

¹¹ The Company acknowledged that while an ISP was affected by the outage, its users would not have been able to view information on Sorenson.com through that ISP.

7. The Bureau and Sorenson negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

III. TERMS OF AGREEMENT

8. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

9. **Jurisdiction.** Sorenson agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Sorenson agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Sorenson concerning the matters that were the subject of the Investigation.

12. **Representations and Warranties.** Sorenson represents and warrants that it will treat the Settlement Amount set forth herein as a penalty within the meaning of Section 162(f) of the Internal Revenue Code.¹² The Company also agrees that it will not treat any payment of the Settlement Amount described below in paragraph 19 as tax deductible for purposes of federal, state, or local law or include the expense as a business cost in its annual cost submission (i.e., the Annual Relay Service Data Request filing) to the TRS Fund Administrator.

13. **Notification to the Commission.** As of the Effective Date, Sorenson shall notify the Commission within one (1) business day of the Company's detection of any VRS Service Interruption of more than two (2) hours in duration. The notification shall describe the VRS Service Interruption and at a minimum shall state when the VRS Service Interruption was discovered, the steps being taken to restore service, the effect of the VRS Service Interruption on callers to the extent known, and the anticipated time of service restoration. Once service is fully restored, Sorenson must notify the Commission within one (1) business day of such restoration. Sorenson's notification shall include, at a minimum, the day and time at which service was fully restored, the cause of the VRS Service Interruption, and to the extent known, the full effect on callers, including the Company's current estimate of the total number of callers and calls impacted during the duration of the VRS Service Interruption, and a separate count of the number of affected 911 calls. Sorenson's notifications shall be submitted electronically to the Deputy Chief, Telecommunications Consumers Division (TRS), Enforcement Bureau via e-mail to fccebaaccess@fcc.gov; and to the Deputy Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau via e-mail to TRSreports@fcc.gov.

14. **Notification to the Public.** Within sixty (60) calendar days after the Effective Date, when a VRS Service Interruption occurs, Sorenson shall prominently display on the front page of the Company's website, a Service Outage Notice. The Service Outage Notice will be linked to a webpage that provides consumers with: (i) the latest information on the VRS Service Interruption including the estimated time of service restoration, (ii) information or instructions for making and receiving calls, including 911 calls, during the VRS Service Interruption, and (iii) notice of any recommended actions that users should take during or after a VRS Service Interruption. Within thirty (30) calendar days of the

¹² See 26 U.S.C. § 162(f).

Effective Date, the Company shall also use its social media pages to notify users of a VRS Service Interruption and how to seek additional information. Additionally, within 180 days after the Effective Date, the Company shall deploy and/or make available a software update that allows the Company to post notice of VRS Service Interruptions on the front screen of videophones and mobile and desktop applications. The Company shall issue any Service Outage Notice described above as soon as possible and, to the extent possible, within two (2) hours of Sorenson's discovery of any VRS Service Interruption unless the VRS Service Interruption is fully resolved by the time notice would be required.

15. **Reporting Noncompliance.** Sorenson shall report any noncompliance with the TRS Rules with respect to VRS Service Interruptions and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; (iv) an estimate of the number of callers and/or the number of calls impacted by the noncompliance; and (v) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, SW Washington, DC 20554, with a copy submitted electronically to the Deputy Chief, Telecommunications Consumers Division (TRS), Enforcement Bureau via e-mail to fcebaccess@fcc.gov; and to the Deputy Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau via e-mail to TRSreports@fcc.gov.

16. **Annual Certification.** Sorenson shall file an annual certification signed by Sorenson's Compliance Officer or General Counsel certifying that the Company has conducted quarterly staff review of every domain used for VRS to ensure that all steps have been taken to renew any domain names that are set to expire within the next year. Sorenson shall file this annual certification by October 31 of each calendar year.

17. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 13-16 shall expire 24 months after the Effective Date.

18. **Fund Reimbursement.** The Company will pay the sum of two million seven hundred thousand dollars (\$2,700,000) to the TRS Fund within two (2) business days after the Effective Date to reimburse the Fund for payments received for the days when SVRS was unavailable to some callers as described in paragraphs 5 and 6.

19. **Settlement Amount.** Sorenson will pay a settlement to the United States Treasury in the amount of two hundred fifty-two thousand dollars (\$252,000) within thirty (30) calendar days of the Effective Date. This Settlement Amount is separate from and does not include the Fund Reimbursement included in Paragraph 18. Sorenson shall send electronic notification of payment to fcebaccess@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

¹³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Event of Default.** The Parties agree that an Event of Default shall occur upon failure by Sorenson to pay any amount due under the terms of this Consent Decree by the due date specified in this Consent Decree. An Event of Default constitutes a violation of this Consent Decree.

21. **Interest and Charges for Collection.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Settlement Amount and/or Fund Reimbursement shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Settlement Amount, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Sorenson. Upon an Event of Default, the then unpaid amount of the Fund Reimbursement shall become immediately due and recovered through offsets from the TRS Fund.

22. **Waivers.** As of the Effective Date, Sorenson waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Sorenson shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Sorenson nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Sorenson shall waive any statutory right to a trial *de novo*. Sorenson hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁴ relating to the matters addressed in this Consent Decree.

23. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

24. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

¹⁴ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

25. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Sorenson does not expressly consent) that provision will be superseded by such Rule or Order.

26. **Successors and Assigns.** Sorenson agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

27. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a legal finding or determination regarding any compliance or noncompliance with the Communications Laws with regards to the matters described in paragraphs 3-7; and that, by entering into the Consent Decree, Sorenson makes no admissions of liability of any kind.

28. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

29. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

30. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

31. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

R. Scott Wood
General Counsel
Sorenson Communications, LLC

Date