

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Telecommunications Relay Services)
and Speech-to-Speech Services for) CC Docket No. 98-67
Individuals with Hearing and Speech)
Disabilities)
)
)
)

ORDER

Adopted: February 23, 2004

Released: February 24, 2004

By the Chief, Consumer & Governmental Affairs Bureau:

INTRODUCTION

1. This *Order* addresses two issues concerning the Commission’s oversight of the provision of telecommunications relay services (TRS).¹ First, in the *Second Improved TRS Order & NPRM* we required TRS providers to offer three-way calling functionality as a mandatory minimum standard for TRS.² This requirement becomes effective February 24, 2004,³ but some providers assert that it is not presently possible for a TRS facility to provide this service, at least to the extent the facility is required to set up the three-way call. Second, as a result of the significant growth of monthly minutes of use of Video Relay Service (VRS) and IP Relay over initial projections,⁴ the Interstate TRS Fund is facing a

¹ See generally 47 U.S.C. § 225; 47 C.F.R. § 64.601 et seq. (the implementing regulations). Section 225 is Title IV of the Americans with Disabilities Act of 1990, and requires that common carriers providing telephone voice transmission services must also provide TRS as a means of giving persons with hearing and speech disabilities access to the nation’s telephone system.

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 at ¶¶ 72-75 (June 17, 2003) (*Second Improved TRS Order & NPRM*).

³ I.e., six months after publication of the *Second Improved TRS Order & NPRM* in the Federal Register. See *Second Improved TRS Order & NPRM* at ¶ 62.

⁴ See Letter from National Exchange Carrier Association (NECA) to Marlene Dortch, Secretary, FCC, CC Docket No. 98-67, dated January 16, 2004 (revising forecasts for IP Relay and VRS and attaching exhibits of projected growth for these services through June 2004). VRS and IP Relay are both forms of TRS. See generally *Second Improved TRS Order & NPRM* at ¶¶ 1, 4 (describing VRS and IP Relay).

shortfall in funds so that, without additional funding, it will likely not be able to compensate the providers in full for their provision of eligible TRS minutes during the present fund year.

2. In this *Order*, therefore, we waive for one year the requirement that TRS providers must offer three-way calling functionality. In addition, we adjust the annual carrier contribution factor for the July 2003 through June 2004 funding period from .00149 to .00220 in order to collect the additional monies needed over the remaining months of the fund year.⁵ As a result of this adjustment to the carrier contribution factor, the Interstate TRS Fund administrator (NECA) predicts that the total TRS fund size will increase from \$115,455,570 to \$170,500,000.⁶

DISCUSSION

3. *Three-Way Calling.* In the *Second Improved TRS Order & NPRM* we required TRS providers to offer three-way calling functionality as a mandatory minimum standard for TRS. We defined three-way calling to be a TRS feature that allows more than two parties to be on the telephone line at the same time with the communications assistant (CA).⁷ We stated that three-way calling could be arranged in one of two ways: set up by the TRS facility and the CA at the request of a party calling the TRS facility, or set up by one of the parties to the call.⁸

4. On September 24, 2003, AT&T filed a petition seeking waiver of the deadline for providing three-way calling, asserting it is not presently possible for the TRS facility to set up a three-way call, subject to clarification regarding how three-way calling may be provided in compliance with the Commission's TRS regulations.⁹ On December 11, 2003, Ultratec, Inc., and Sprint filed a petition¹⁰ seeking clarification that our new rule requiring three-way calling either does not apply to captioned telephone service, such as CapTel,¹¹ or, in the alternative, that a TRS provider complies with this rule

⁵ See Letter from National Exchange Carrier Association (NECA) to Marlene Dortch, Secretary, FCC, CC Docket No. 98-67, dated February 23, 2004.

⁶ *Id.*

⁷ See *Second Improved TRS Order & NPRM* at ¶ 72.

⁸ *Id.* at ¶ 73.

⁹ *AT&T Petition for Limited Reconsideration and for Waiver* at 7-10, CC Docket No. 98-67, CG Docket No. 03-123, filed on September 24, 2003 (*AT&T Waiver Request*). The *AT&T Waiver Request* was placed on Public Notice, and comments and reply comments were received in response. All of the commenters state that they interpret the new requirement for three-way calling functionality to be fully satisfied if a TRS facility *processes* such traffic initiated by an end user using a LEC's customer calling service (CCS) feature. Comments were filed by Hamilton Relay, Inc, October 20, 2003; SBC Communications, Inc., October 20, 2003; and Sprint Corporation, October 20, 2003. Reply Comments were filed by AT&T, October 30, 2003; Telecommunications for the Deaf, Inc., October 30, 2003; and Ultratec, Inc., October 28, 2003. The Commission will address the other issues raised in the *AT&T Waiver Request* in a separate proceeding.

¹⁰ *Petition for Clarification by Ultratec, Inc. and Sprint Corporation*, CC Docket No. 98-67, CG Docket No. 03-123, filed December 11, 2003 (*Joint Petition*).

¹¹ Captioned telephone service is an enhanced Voice Carry Over (VCO) service that allows a user, on one standard telephone line, to both listen to what the other party is saying and simultaneously read captions of what the other (continued....)

regardless of the actual method used to set up these calls (*e.g.*, if the call is set up by one of the parties and handled by the CA).¹²

5. We apply the established legal standards for waiver of Commission rules. As we have often noted, the Commission will adhere strictly to its rules unless it is demonstrated that “in the public interest the rule should be waived.”¹³ Furthermore, the Commission may only waive a provision of its rules for “good cause shown.”¹⁴ “The agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation.”¹⁵ Applying this standard and, as directed in this matter by the Commission, we find good cause exists to waive for one year – *i.e.*, until February 24, 2005 – the Commission’s rule requiring that TRS providers (including providers of captioned telephone service) provide three-way calling functionality as part of the TRS mandatory minimum standards. The record reflects that it is presently not technologically possible for a TRS facility to set up a three-way call.¹⁶

6. *Interstate TRS Fund.* The Interstate TRS Fund compensates eligible TRS providers for the reasonable costs of providing interstate and certain intrastate TRS services.¹⁷ There are two aspects to this cost recovery scheme: (1) collecting money from various telecommunications services to create a fund from which TRS providers may be compensated; and (2) the payment of money from the fund to eligible TRS providers to compensate them for the costs of providing eligible TRS services.¹⁸ With regard to collecting money to create the fund, Section 225 provides that the costs caused by the provision of *interstate* TRS “shall be recovered from all subscribers for every interstate service.”¹⁹ Under the
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party is saying. This way, a typical user of this service, who has the ability to speak and some residual hearing, can

both listen to what is said over the telephone and read captions for clarification. A CA using specially developed voice recognition technology generates the captions. *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, FCC 03-190, 18 FCC Rcd 16121 (Aug. 1, 2003) (finding that captioned telephone service is a type of TRS). CapTel is a proprietary technology of Ultratec.

¹² *Joint Petition* at 4.

¹³ *FPC v. Texaco, Inc.*, 377 U.S. 33, 39 (1964).

¹⁴ 47 C.F.R. § 1.3.

¹⁵ *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *See, e.g., AT&T Waiver Request* at 7-10.

¹⁷ *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 03-211, 18 FCC Rcd 12823 at ¶¶ 5-10 (June 30, 2003) (*Bureau TRS Order*).

¹⁸ *See* 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5). The regulations, addressing these matters separately, characterize the former as “cost recovery,” *see* 47 C.F.R. §§ 64.604(c)(5)(ii) & (iii)(A) – (D), and the latter as “payments to TRS providers,” 47 C.F.R. §§ 64.604(c)(5)(iii)(E) & (F).

¹⁹ 47 U.S.C. § 225(d)(3)(B); *see also* 47 C.F.R. § 64.604(c)(5)(ii). On an interim basis, the Commission has permitted *all* IP Relay and VRS calls, whether interstate or intrastate, to be compensated from the Interstate TRS Fund. *See, e.g., Bureau TRS Order* at ¶ 7.

(continued...)

Commission's regulations, by May 1 of each year the TRS fund administrator must submit to the Commission its "TRS payment formulas and revenue requirements" for the following fund year (beginning July 1 of each year).²⁰ This information includes the administrator's proposed carrier contribution rate and fund size for the upcoming fund year.

7. As a result of the significant growth of monthly minutes of use of VRS and IP Relay over initial projections,²¹ it has become clear that the Interstate TRS Fund will not have enough funds to compensate eligible TRS providers for the provision of TRS services this fund year unless the carrier contribution rate and fund size are adjusted. Therefore, we find it necessary to adjust the annual carrier contribution factor for the July, 2003, through June, 2004, funding period. Because the TRS regulations provide that the carrier contribution factor shall be determined annually,²² we once again apply the established legal standards for waiver of Commission rules, noted above.

8. Applying these standards, we conclude that good cause exists to waive our rules to the extent they require that the carrier contribution factor be determined on an annual basis. The increase in minutes of use of IP Relay and VRS was unprojected, and the Commission must ensure that the Interstate TRS Fund has adequate funds to compensate eligible TRS providers for the provision of eligible TRS services. Therefore, as a result the significant growth of monthly minutes of use of VRS and IP Relay over initial projections, we adjust the annual carrier contribution factor for the July 2003 through June 2004 funding period from .00149 to .00220 in order to collect the additional monies needed over the remaining months of the fund year. As a result of this adjustment to the carrier contribution factor, NECA predicts that the total TRS fund size will increase from \$115,455,570 to \$170,500,000.²³

ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 0.141, 0.361, 1.3 of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, this *Order* is ADOPTED.

10. IT IS FURTHER ORDERED that the requirement that TRS providers offer three-way calling functionality as part of the TRS mandatory minimum standards is waived for one year until February 24, 2005.

11. IT IS FURTHER ORDERED that the *AT&T Waiver Request* is GRANTED to the extent indicated herein.

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²⁰ See 47 C.F.R. § 64.604(c)(5)(iii)(H).

²¹ See Letter from National Exchange Carrier Association (NECA) to Marlene Dortch, Secretary, FCC, CC Docket No. 98-67, dated January 16, 2004 (revising forecasts for IP Relay and VRS and attaching exhibits of projected growth for these services through June 2004).

²² See 47 C.F.R. § 64.604(c)(5)(iii)(B).

²³ We note that additional monies must be obtained to compensate providers for increased minutes of TRS use, whether done so mid-year or during the next funding year's calculation of the fund size and carrier contribution factor. We believe that it is more expeditious to adjust the contribution factor and fund size presently, rather than to wait to fund the entire shortfall in the next funding year.

12. IT IS FURTHER ORDERED that the TRS annual carrier contribution factor for the July 2003 through June 2004 funding period shall be adjusted from .00149 to .00220 and that, as a result, the total TRS fund size will increase from \$115,455,570 to \$170,500,000.

FEDERAL COMMUNICATIONS COMMISSION

K. Dane Snowden

Chief, Consumer & Governmental Affairs Bureau