

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

In the Matter of
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
Hamilton Relay, Inc., and Sprint Corporation
Petitions for Interim Waiver of Sections 64.604(b)(3) and 64.604(a)(3)(ii)
CG Docket No. 03-123

ORDER

Adopted: August 20, 2019

Released: August 20, 2019

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. By this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commissions (FCC or Commission) extends the expiration dates of the temporary waivers, previously granted to Sprint Corporation (Sprint) and Hamilton Relay Inc. (Hamilton), of two mandatory minimum standards applicable to telecommunications relay services (TRS) offered through state TRS programs. The waived standards require state-program TRS providers to offer consumers (1) their choice of long distance carrier (equal access rule) and (2) alternative billing options for TRS calls. We extend these waivers until the earlier of August 24, 2020, or the effective date of a Commission decision as to the continuing application of the waived standards to the affected relay services.

II. BACKGROUND

2. Pursuant to section 225 of the Communications Act (the Act), the Commission has prescribed mandatory minimum standards for TRS to ensure that it provides people with hearing or speech disabilities with telephone service that is functionally equivalent to voice communications service. The equal access and billing options rules were adopted in 1991 as a part of the Commission's

1 See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Hamilton Relay, Inc. and Sprint Corporation Petitions for Interim Waiver of Section 64.604(b)(3) and 64.604(a)(3)(ii), CG Docket No. 03-123, Order, 31 FCC Rcd 9511, 9511, para. 1 (2016) (Hamilton and Sprint Waiver Order); see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Hamilton Relay, Inc. and Sprint Corporation Petitions for Interim Waiver of Section 64.604(b)(3) and 64.604(a)(3)(ii), CG Docket No. 03-123, Order, 33 FCC Rcd 8063 (CGB 2018) (Hamilton and Sprint Waiver Extension). TRS provides the ability for an individual who has a hearing or speech disability to engage in telephone communication with other individuals. 47 CFR § 64.601(a)(39).

2 47 CFR § 64.604(a)(3)(ii), (b)(3).

3 47 U.S.C. § 225(d).

4 See 47 CFR § 64.604.

first proceeding to implement the TRS program.⁵ The equal access rule provides that “TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users.”⁶ The billing options rule directs TRS providers to offer “the same billing options (*e.g.*, sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services.”⁷ In 2014, the Commission amended the rules to generally exempt Internet-based forms of TRS—video relay service, IP Relay service, and IP CTS—from these requirements,⁸ but did not address whether the rules should continue to apply to TRS offered through state programs—*i.e.*, traditional TRS, speech-to-speech relay service (STS), and Captioned Telephone Service (CTS).⁹

3. Subsequently, Sprint and Hamilton each petitioned for a temporary waiver of the equal access and billing options requirements as applied to traditional TRS, STS, and CTS.¹⁰ The providers also petitioned the Commission to initiate a rulemaking to broaden the conditional exemption for Internet-based TRS to include state-program TRS.¹¹ The Bureau granted the waiver requests, with an expiration date of August 24, 2018, subject to the condition that providers of these services not assess charges on TRS users for long distance calls.¹² In August 2018, the Bureau extended the expiration date for one year, until the earlier of August 24, 2019, or the effective date of a Commission decision as to the continuing

⁵ See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4660-62, paras. 17-19, 22 (1991) (*First TRS Report and Order*).

⁶ 47 CFR § 64.604(b)(3).

⁷ See *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, CG Docket No. 03-123, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10703-04, para. 11 (2014) (*iTRS Exemptions Order*). The billing options requirement is part of what has come to be known as the “types of calls” rule, which directs TRS providers to handle any type of telephone call normally provided by carriers. See 47 CFR § 64.604(a)(3)(ii); *First TRS Report and Order*, 6 FCC Rcd 4657, 4600, para. 17.

⁸ *iTRS Exemptions Order*, 29 FCC Rcd at 10703-06, para. 11-16. Specifically, providers of Internet-based forms of TRS are (1) exempt from the equal access requirement if they do not assess charges for long distance calling, and (2) exempt from the billing options requirement if they do not assess charges for long distance or if they allow for long distance calls to be placed using calling cards or credit cards. *Id.* at 10705-06, paras. 14, 16.

⁹ In traditional TRS, one party uses a text telephone (TTY) to communicate with another party through a communications assistant (CA), who relays the typed message orally in real time to the other party and types back spoken responses to the TTY user. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, 19 FCC Rcd 12475, 12480, para. 3 n.18 (2004); see also 47 CFR § 64.601(a)(40) (definition of TTY). With STS, a person with a speech disability communicates with another party through a specially trained CA who repeats the spoken words to the other party. 47 CFR § 64.601(a)(37). With CTS, a person with a hearing disability speaks directly to the other party, and the other party’s speech is transcribed as captions, which are displayed on the first person’s device. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16122-23, 16125, paras. 3-5, 11 (2003).

¹⁰ See *Petition for Interim Waiver of Sprint Corporation*, CG Docket No. 03-123 (filed Sept. 23, 2015); *Petition for Interim Waiver of Hamilton Relay, Inc.*, CG Docket No. 03-123 (filed Mar. 14, 2016); *Hamilton, Supplement to Petition for Interim Waiver*, CG Docket No. 03-123 (filed Aug. 17, 2016) (*Hamilton Supplement*).

¹¹ *Hamilton Relay, Inc. and Sprint Corporation Joint Petition for Rulemaking to Reform the Commission’s Mandatory Minimum Requirements for Traditional TRS and CTS Providers*, CG Docket No. 03-123 (filed Sept. 23, 2015); *Hamilton Supplement*.

¹² *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515, 9516, paras. 12, 14.

application of the waived standards to the affected relay services.¹³ Hamilton and Sprint each request a further extension of these waivers.¹⁴

III. DISCUSSION

4. A Commission rule may be waived for “good cause shown.”¹⁵ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹⁶ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁷ Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁸

5. CGB previously concluded that in these special circumstances, it is in the public interest to waive, on a temporary basis, the equal access and billing options requirements for Sprint and Hamilton with respect to their provision of traditional TRS, STS, and CTS.¹⁹ We find that there is good cause to extend these waivers because the circumstances supporting these waiver grants have not changed. As was the case when the waiver was first approved, current practices in the voice telephone communications marketplace, including the routine inclusion of long distance services in wireline and wireless telephone service plans offered at a bundled or flat rate, appear to have eliminated any residual need for equal access and alternative billing options, both for mainstream users and to achieve functional equivalency for TRS users.²⁰ Further, requiring compliance with these rules would unreasonably burden Hamilton and Sprint by requiring them to retrofit their TRS platforms with technology that may well become obsolete if the Commission determines to act on these providers’ joint rulemaking petition.²¹ We affirm the Bureau’s previous conclusion that, as long as these providers do not charge users for long distance, extension of the waivers will appropriately avoid imposing a burden with no associated public interest benefit.²²

6. We therefore extend Sprint’s and Hamilton’s waivers of these requirements as they apply to the provision of traditional TRS, STS, and CTS. These temporary waivers will remain subject to the condition set forth in the current waiver, i.e., that covered providers not assess charges for long distance

¹³ *Hamilton and Sprint Waiver Extension*, 33 FCC Rcd at 8065-66, para. 6.

¹⁴ Petition of Hamilton for Extension of Waiver, CG Docket No. 03-123 (filed Aug. 2, 2019) (Hamilton Extension Petition); Letter from Scott R. Freiermuth, Counsel, Government Affairs, Federal Regulatory, Sprint, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Aug. 13, 2019).

¹⁵ 47 CFR § 1.3.

¹⁶ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515-16, paras. 11-14; *Hamilton and Sprint Waiver Extension*, 33 FCC Rcd at 8065-66, paras. 4-6.

²⁰ *Hamilton and Sprint Waiver Order*, at 9514-16, paras. 10-14; *Hamilton and Sprint Waiver Extension*, 33 FCC Rcd at 8065-66, paras. 5-6; Hamilton Extension Petition at 2-4.

²¹ See *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515, para. 11 (noting that application of the equal access rule compels TRS providers to expend resources to maintain and replicate equal access capabilities); Hamilton Extension Petition at 3 (forcing Hamilton and other providers to build and maintain the infrastructure necessary to come into compliance with the currently-waived requirements would impose an unnecessary burden on providers and consumers alike).

²² *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515-16, para. 13; see also *Hamilton and Sprint Waiver Extension*, 33 FCC Rcd at 8065, para. 5.

calls. Further, this waiver will expire on August 24, 2020, or on the effective date of a Commission decision as to the continuing application of the equal access and billing options requirements to these forms of TRS, whichever is earlier.²³

IV. PROCEDURAL MATTERS

7. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to: fcc504@fcc.gov, or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

V. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, the Petition for Extension of Waiver filed by Hamilton Relay, Inc. is GRANTED to the extent stated in this Order.

9. IT IS FURTHER ORDERED, that sections 64.604(a)(3)(ii) and 64.604(b)(3) of the Commission's rules, 47 CFR § 64.604(a)(3)(ii), (b)(3), ARE WAIVED to the extent stated in this Order.

10. IT IS FURTHER ORDERED, that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief
Consumer and Governmental Affairs Bureau

²³ As with the initial grant of waivers, Sprint and Hamilton, as TRS providers, must continue to handle and complete inmate calls in a manner that is consistent with the applicable billing methods allowed by a correctional facility for any charges lawfully assessed by an inmate calling services provider. *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9516, para. 15; *Hamilton and Sprint Waiver Extension*, 33 FCC Rcd at 8066, n.24.