

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

In the Matter of)
)
Telecommunications Relay Services)
And Speech-to-Speech Services for) CG Docket No. 03-123
Individuals with Hearing and Speech)
Disabilities)

DECLARATORY RULING ON RECONSIDERATION

Adopted: May 25, 2006

Released: May 25, 2006

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. On May 16, 2006, the Consumer & Governmental Affairs Bureau released a Declaratory Ruling¹ denying a petition filed by Telco Group Inc. (Telco Group),² which requested that the Commission either exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate Telecommunications Relay Service³ Fund (Fund), or in the alternative, waive the portion of Telco Group's contribution based on its international end-user revenues.⁴ That Order, however, did not contain an analysis of the complete record.⁵ We therefore, on our own motion, reconsider the merits of the *Petition*.

¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, DA 06-1043 (May 16, 2006).

² Telco Group, Inc., Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver, CG Docket No. 03-123 (filed July 26, 2004) (*Petition*).

³ "Telecommunications Relay Service" (TRS), created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability. See 47 U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. § 64.601(14); see generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Dockets 90-571 and 98-67 and CG Docket 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12479-12480, para. 3 n.18 (June 30, 2004) (*2004 TRS Report & Order*) (discussing how TRS works).

⁴ *Petition* at 1. Further, Telco Group requested a stay of its payment obligation pending the Commission's decision.

⁵ The May 16, 2006, Declaratory Ruling did not consider reply comments filed by Telco Group in this proceeding.

2. On reconsideration, we again deny the *Petition*. For the reasons discussed below, we find that the inclusion of international end-user revenues in calculating carriers' obligations to the Interstate TRS Fund is appropriate. In addition, we are unable to find good cause to waive the portion of Telco Group's Interstate TRS Fund assessment based on its international services revenue. Because we address the merits of the *Petition*, the request for stay is dismissed as moot.

II. BACKGROUND

3. Title IV of the ADA directs the Commission to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to individuals with hearing and speech disabilities in the United States.⁶ Section 225 requires the Commission to establish regulations to ensure the quality of relay service.⁷ The Commission initially implemented this mandate in three orders.

4. In *TRS I*, the Commission adopted rules identifying the relay services that carriers offering voice telephone transmission services must provide to persons with hearing and speech disabilities and the TRS mandatory minimum standards that govern the provision of service.⁸ In *TRS II*, the Commission adopted a shared funding mechanism for interstate TRS cost recovery, spreading the cost of providing TRS to all subscribers of every interstate service.⁹ The Commission also proposed that under this mechanism a charge would be assessed on all common carriers that offer interstate telecommunications services to create the Interstate TRS Fund, and that the providers would be compensated from the Fund for providing TRS based on a national average TRS interstate minute of use rate.¹⁰ In *TRS III*, the Commission established the Interstate TRS Fund, currently administered by the National Exchange Carrier Association (NECA), to reimburse TRS providers for the costs of providing interstate TRS.¹¹ That order also finalized the contribution methodology for payments into the Fund and defined the interstate services subject to the contribution assessment. The Commission adopted a regulation providing that “[c]ontributions shall be made by all carriers who provide interstate services,

⁶ See generally Pub. L. 101-336, 104 Stat. 327, 366-69 (July 26, 1990), codified at 47 U.S.C. § 225; see also 47 U.S.C. § 225(b)(1).

⁷ 47 U.S.C. § 225(b).

⁸ See *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (July 26, 1991) (*TRS I*); see 47 C.F.R. § 64.604 (the TRS “mandatory minimum standards”).

⁹ See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1805-1806, at paras. 19-27 (Feb. 25, 1993) (*TRS II*). Under Section 225(d)(3), the Commission’s regulations governing the jurisdictional separation of costs shall generally provide that the costs caused by interstate TRS shall be recovered from all subscribers to every interstate service, and the costs caused by intrastate TRS shall be recovered by the states. 47 U.S.C. § 225(d)(3).

¹⁰ *TRS II*, 8 FCC Rcd at 1806, paras. 23-26.

¹¹ See *Telecommunications Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (July 20, 1993) (*TRS III*).

including, but not limited to ... international ... services.”¹²

5. In its *Petition*, Telco Group requests that the Commission exclude international revenues from the revenue base used to calculate payments due to the Interstate TRS Fund, “at least for those carriers whose international revenues comprise a significant portion of their total interstate and international revenues,” or in the alternative, find good cause to waive Telco Group’s obligations to the Fund that are based on its international revenues.¹³

6. Telco Group maintains that such relief is warranted because, in what Telco Group argues is an analogous case involving the Universal Service Fund (USF), the United States Court of Appeals for the Fifth Circuit required the Commission to revisit the USF assessment on the international services revenue of a provider of primarily international services and *de minimis* interstate services.¹⁴ The Court found that requiring a carrier to pay an assessment on its international services revenue that exceeded the carrier’s total interstate revenue violated the equitable and nondiscriminatory contribution requirement of the Universal Service statute, Section 254 of the Communications Act of 1934 (Act), as amended.¹⁵ Although the Interstate TRS Fund is governed by Section 225 of the Act, rather than Section 254, Telco Group argues that the Interstate TRS Fund contribution rules also are “designed to be equitable and nondiscriminatory” and, therefore, the relief afforded in *TOPUC* should be extended to TRS.¹⁶ Telco Group argues that its circumstance is comparable to the *TOPUC* plaintiff because the “vast majority” of Telco Group’s revenues – approximately 96 percent¹⁷ – are derived from international services. Moreover, Telco Group argues the public interest will be served by granting the requested relief because it will ensure Telco Group “remains as a viable competitor in the market for interstate services.”¹⁸ Telco Group adds that the “high payment obligations also hinder Telco Group’s ability to compete outside the United States, and so contradict the Commission’s efforts to promote and encourage competition in the international and interstate markets.”¹⁹

¹² 47 C.F.R. § 64.604(c)(5)(iii)(A); *see also TRS III*, 8 FCC Rcd at 5306, para. 33 (ordering clause adopting rule amendments set forth in Appendix B); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines*, CC Docket No. 98-67, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948, 22949-22950, para. 2 (Dec. 21, 2001) (noting that *TRS III* required “that every carrier providing interstate telecommunications services contribute to the TRS Fund on the basis of ... interstate and international revenues”).

¹³ *Petition* at 1.

¹⁴ *Id.* at 3 (citing *Texas Office of the Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*TOPUC*)).

¹⁵ *TOPUC*, 183 F.3d at 434-435; *see* 47 U.S.C. § 254(b)(4).

¹⁶ *Petition* at 4.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 9-10 (citing *2000 Biennial Regulatory Review – Policies and Procedures Concerning the International, Interexchange Marketplace*, IB Docket No. 02-202, Report and Order, 16 FCC Rcd 10647 (March 20, 2001)).

7. On October 25, 2004, the Telco Group *Petition* was placed on Public Notice.²⁰ Two oppositions were filed, one from a carrier and one from an organization representing the deaf community.²¹ Telco Group filed reply comments.²²

III. DISCUSSION

8. Telco Group's *Petition* is premised on the congruence between Section 254 of the Act, which establishes Universal Service requirements, and Section 225 of the Act, which establishes requirements for the provision of TRS. Sections 254 and 225, however, differ in fundamental and, in this case, dispositive ways. Unlike USF assessments, contributions to the Interstate TRS Fund are used, in part, to reimburse international relay calls. Therefore, in this case, the public interest lies in ensuring adequate funding for interstate TRS – including international TRS – by assessing contributions on as broad a revenue base as can be justified. Accordingly, Telco Group's request that the Commission exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate TRS Fund is denied. Because Telco Group has not demonstrated why individualized relief is appropriate, the company's request for waiver of the interstate TRS assessment on international services revenue is also denied.

9. Unlike the Universal Service Fund, which does not directly support international services but only may be used only to support domestic services, the Interstate TRS Fund is used to support *international* TRS.²³ Therefore, unlike the USF assessments at issue in *TOPUC*, excluding international

²⁰ *Telco Group, Inc. Files Petition for Declaratory Ruling or Waiver to Exclude International Revenues from the Revenue Base Used to Calculate Payment to the Interstate TRS Fund*, CC Docket No. 98-67, Public Notice, 19 FCC Rcd 20965 (Oct. 25, 2004).

²¹ Comments were filed by MCI (MCI) (Nov. 26, 2004) and Telecommunications for the Deaf, Inc. (TDI) (Nov. 24, 2004). Late filed comments were filed by Globecom Systems, Inc. ("GSI") on February 14, 2006. On that same date, GSI also filed a petition for declaratory ruling that there is no obligation to pay into the Interstate TRS Fund based on revenues arising from traffic that does not originate or terminate in the United States. Globecom Systems, Inc., *Petition for Declaratory Ruling* (filed Feb. 14, 2006). Because the issue in the GSI petition – whether certain calls should be considered international calls – is distinct from the issue raised in Telco Group's *Petition*, we will address GSI's petition in a separate order.

²² Reply of Telco Group, Inc. to Oppositions to Telco Group's *Petition for Declaratory Ruling*, or in the Alternative, *Petition for Waiver* (filed Dec. 10, 2004, in CC Docket No. 98-67).

²³ *TRS I Order*, 6 FCC Rcd at 4660-4661, para. 18 (discussing comments that relay services should relay international calls that originate or terminate in the United States provided that equipment of the foreign country is compatible with U.S. equipment); *TRS III Order*, 8 FCC Rcd at 5301, para. 9 n.14 (in adopting rule requiring contributions to the Fund to be based on, *inter alia*, international services, Commission notes Sprint's argument "that international services should be included because TRS providers will be compensated by the administrator for international TRS minutes of use"). IP Relay service is an exception to this rule. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 12224, 12242, at para. 48 n.121 (June 30, 2004) (noting that the Fund "does not currently reimburse providers for the costs of providing international calls via IP Relay"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 18 FCC Rcd 12823, 12837, at para. 42 (June 30, 2003) (noting that in March 2003 NECA was directed to suspend payment to TRS providers for international IP Relay service minutes); *see also 2004 TRS Report & Order*, 19 FCC Rcd at 12525, para. 129 (noting that although Fund does not pay for international IP Relay service calls, it does pay for international Video Relay Service calls).

revenues from the revenue base used for calculating TRS contributions would not serve the public interest. With the TRS Fund, it is not the case – as in *TOPUC* – that a provider of only *de minimis* interstate service may be required to bear a disproportionately heavy burden in subsidizing the provision of such services by other carriers. Contributions to the Interstate TRS Fund based on Telco Group’s international services revenue can, in turn, be used to subsidize international TRS. Moreover, Telco Group is required to contribute the same percentage of its interstate and international revenues to the Interstate TRS Fund as other carriers that provide both interstate and international services. Therefore, this approach is both equitable and nondiscriminatory,²⁴ even as applied to an entity like Telco Group that may largely have international revenues.²⁵

10. In any event, *TOPUC* is specifically based on the equitable and nondiscriminatory contribution requirement of Section 254.²⁶ Section 225, however, contains no such express requirement. In the absence of such language, and particularly because international services are supported by the Interstate TRS Fund, the Commission is not bound by the *TOPUC* decision to reduce or eliminate Interstate TRS Fund assessments on international services for Telco Group or similarly situated providers.²⁷ Accordingly, Telco Group’s request for a declaratory ruling excluding international services revenue from the interstate contribution base is denied.²⁸

²⁴ Opposition of MCI at 3. As MCI notes, “it would be discriminatory if Telco Group, and other internationally-oriented carriers, were allowed to exclude international revenues from the TRS contribution base. Companies such as MCI, who also earn international revenues by providing international prepaid calling services, as well as other international services, would be required to compete against companies who would have been granted a discriminatory cost advantage were the Commission to grant Telco Group’s request.” *Id.*

²⁵ See Telco Reply Comments at 2-3 (arguing that the TRS funding mechanism is not equitable and nondiscriminatory *as applied* to Telco Group because it must pay a high proportion of its “U.S. interstate revenues into the TRS Fund”).

²⁶ Section 254 states that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.” 47 U.S.C. § 254(b)(4). The Court found that requiring COMSAT, a satellite provider of primarily international services along with *de minimis* interstate service offerings, to contribute to the Universal Service Fund based on its international services revenues was inequitable and discriminatory given that COMSAT’s contribution based on international services revenue would exceed the company’s total interstate revenues. The Court stated that “the agency’s interpretation of ‘equitable and nondiscriminatory,’ allowing it to impose prohibitive costs on carriers such as COMSAT, is ‘arbitrary and capricious’ ... [because] COMSAT and carriers like it will contribute more in universal service payments than they will generate from interstate service.” *TOPUC*, 183 F.3d at 434-435.

²⁷ With respect to contributions, the only limiting language of Section 225 is jurisdictional in nature. See 47 U.S.C. § 225(d)(3) (addressing jurisdictional separation of costs). Telco Group also suggests that even if *TOPUC* does not apply in the TRS context, the Commission has the discretion to apply a similar rule for TRS. Telco Reply Comments at 4. The issue presented is not, however, whether the Commission *could* apply the *TOPUC* principle to TRS, but whether the rule the Commission did adopt for TRS (requiring payments into the Fund based on international revenues) is reasonable and in the public interest.

²⁸ Telco Group also asserts that because it does not *receive* any TRS funds, and does minimal business in the United States, it should not have to pay into the Fund based on international revenues “in return for ‘benefits’ largely and primarily enjoyed by other carriers.” Telco Reply Comments at 3-4. The obligation to pay into the Fund, however, is not tied to particular benefits contributors may receive from the Fund. Under the rules, a broad range of interstate telecommunications carriers are required to pay into the Fund, regardless of whether they also (continued....)

11. Telco Group's request for waiver of the interstate TRS assessment on its international services revenue is also denied. Although the Commission may waive a provision of its rules for "good cause shown,"²⁹ Telco Group's argument rests on the fact that a high percent of its revenues derive from international services and therefore its TRS payment is substantially higher than it would be if international revenues were not included and burdensome.³⁰ As noted above, however, because the Fund supports both international and interstate TRS, TRS assessments are based on both international and interstate revenues, and the fact that some contributors have relatively more international revenues, or more interstate revenues, is not relevant to ensuring adequate funding for these services.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and Sections 0.141, 0.361, and 1.108 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 1.108, this *Declaratory Ruling on Reconsideration* IS hereby ADOPTED.

13. 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). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/egb.dro>.

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provide relay services paid for by the Fund or otherwise "benefit" directly from the provision of relay service. See 47 C.F.R. § 64.604(c)(5)(iii)(A).

²⁹ 47 C.F.R. § 1.3; see generally *2004 TRS Report & Order*, 19 FCC Rcd at 12520, para. 110 (discussing standard for waiving Commission rules).

³⁰ *Petition* at 9-10.