



PUBLIC NOTICE

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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU CLARIFIES THE ELIGIBILITY REQUIREMENT FOR COMPENSATION FROM THE INTERSTATE TELECOMMUNICATIONS RELAY SERVICE (TRS) FUND FOR PROVIDERS OF INTERNET PROTOCOL CAPTIONED TELEPHONE SERVICE

CG DOCKET NO. 03-123

In the January 2007 *IP CTS Declaratory Ruling*, the Commission recognized Internet Protocol (IP) captioned telephone service (IP CTS) as a form of telecommunications relay service (TRS)¹ eligible for compensation from the Interstate TRS Fund (Fund).² Because the Consumer & Governmental Affairs Bureau (CGB) has received questions concerning the manner in which IP CTS providers may be eligible for compensation from the Fund, we issue this clarification. To establish such eligibility, IP CTS providers must either: (1) seek certification from the Commission pursuant to 47 C.F.R. § 64.605; (2) become part of a certified state program; or (3) subcontract with an entity that is part of a certified state program. We also clarify that an IP CTS provider seeking compensation from the Fund must notify the Interstate TRS Fund administrator³ 30 days prior to the date they submit minutes for payment.

The Commission's eligibility rules set forth in 47 C.F.R. § 64.604(c)(5)(iii)(F) provide that TRS providers eligible for receiving payments from the Interstate TRS Fund must be:

- (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; or
- (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or
- (3) Interstate common carriers offering TRS pursuant to § 64.604; or

¹ TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users. See 47 U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. § 64.601(14).

² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (Jan. 11, 2007) (*IP CTS Declaratory Ruling*). IP CTS is a form of captioned telephone service that transmits the captions between the relay provider and the user via the Internet, rather than the Public Switched Telephone Network).

³ The current Interstate TRS Fund administrator is the National Exchange Carrier Association (NECA).

(4) Video Relay Service (VRS)[, ...] Internet Protocol (IP) Relay ...[, and IP CTS] providers certified by the Commission pursuant to § 64.605.⁴

The fourth eligibility criterion – certification by the Commission – was adopted in the *2005 IP Relay/VRS Certification Order*.⁵ Prior to that time, there was no federal certification process for relay providers seeking compensation from the Fund; the regulations provided only for the certification of state TRS programs.⁶

The Commission has interpreted the third eligibility criterion – an interstate common carrier offering TRS pursuant to section 64.604 – to apply only to common carriers “offering telephone voice transmission services that are obligated to provide TRS in a state that does not have a certified TRS program.”⁷ As the Commission explained in the *2005 IP Relay/VRS Certification Order*:

The third eligibility category – “Interstate common carriers offering TRS pursuant to § 64.604” – has been the means by which some entities that are not voice telephone service providers have sought to offer VRS, and not the other forms of TRS, and be compensated for doing so from the Interstate TRS Fund. The Commission previously construed [in the *2004 TRS Report & Order*] the third eligibility prong, however, as applying to common carriers obligated to provide TRS in a state that does not have a certified program. Because we now adopt a fourth eligibility criterion, which will allow common carriers seeking to offer VRS or IP Relay and receive compensation to do so without being part of a certified state program or contracting with an entity that is, it is not necessary at this time to revisit this construction of the third eligibility category.[⁸]

Against this background, in the *IP CTS Declaratory Ruling* the Commission expressly addressed the manner in which IP CTS providers may be eligible for compensation from the Fund. The Commission concluded that “an entity desiring to provide IP captioned telephone service ... may choose to seek certification from the Commission under [section 64.605],” and that therefore, “[a]s a general matter, potential IP CTS providers may become eligible for compensation from the Fund by being accepted into a certified state TRS program or subcontracting with an entity that is part of a certified state program, or by seeking Commission certification.”⁹ The Commission made clear that “[p]resent eligibility to receive compensation from the Fund for the provision of other forms of TRS (including captioned telephone

⁴ 47 C.F.R. § 64.604(c)(5)(iii)(F).

⁵ *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (Dec. 12, 2005) (*2005 IP Relay/VRS Certification Order*) (amending 47 C.F.R. § 64.605).

⁶ See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12516, para. 99 (June 30, 2004) (*2004 TRS Report & Order*).

⁷ *Id.*, 19 FCC Rcd at 12517, para. 103 n.304.

⁸ *2005 IP Relay/VRS Certification Order*, 20 FCC Rcd at 20587, para. 18 (footnotes omitted). The Commission added, “in the event that in the future a state either declines to seek recertification or fails to qualify for recertification, common carriers in that state may need to rely on the third eligibility category to receive compensation from the Interstate TRS Fund for eligible TRS services.” *Id.*

⁹ *IP CTS Declaratory Ruling*, 22 FCC Rcd at 391, para. 28.

service) does not confer eligibility with regard to the provision of the IP CTS recognized in this Declaratory Ruling.”¹⁰

We therefore clarify that, to establish eligibility for compensation from the Fund, IP CTS providers must either: (1) seek certification from the Commission pursuant to section 64.605; (2) become part of a certified state program; or (3) subcontract with an entity that is part of a certified state program. As noted above, only where an IP CTS provider is a common carrier offering telephone voice transmission services and obligated to provide IP CTS in a state that does not have a certified TRS program would it be able to establish eligibility for compensation from the Fund via section 64.604(c)(5)(iii)(F)(3) of the Commission’s rules.¹¹ Further, the fact that a provider is eligible to receive compensation from the Fund for the provision of other forms of TRS is not sufficient grounds, on its own, to establish a provider’s eligibility to receive compensation from the Fund for the provision of IP CTS. The intent of the more specific eligibility rules for IP CTS providers set forth in the *IP CTS Declaratory Ruling* is to ensure that either the Commission or a state has oversight responsibility for each provider.

We also clarify that IP CTS providers seeking compensation from the Fund must notify the Fund administrator 30 days prior to the date they submit minutes to the Fund administrator for payment.¹² This requirement applies even if the provider presently offers other forms of TRS and is compensated from the Fund. Because the *IP CTS Declaratory Ruling* specifically states, as noted above, that merely being a relay provider of another service is not enough to confer eligibility, it follows that for IP CTS providers to become eligible for compensation, they must both seek Commission or state certification (or be a subcontractor), *and* must notify NECA 30 days prior to submitting minutes for payment.

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For further information, please contact Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office, at (202) 418-1475 (voice), (202) 418-0597 (TTY), or e-mail at Thomas.Chandler@fcc.gov.

¹⁰ *Id.*

¹¹ Presently, all states, the District of Columbia, and the territories of Puerto Rico and the United States Virgin Islands have a certified TRS program. In addition, because presently IP CTS is not a mandatory form of TRS, even if a state does not have a certified state program, IP CTS providers presently could not fall under section 64.604(c)(5)(iii)(F)(3). See *IP CTS Declaratory Ruling*, 22 FCC Rcd at 379, para. 1 n.3 (noting that the Commission will address whether IP CTS should be a mandatory form of TRS in a separate proceeding).

¹² 47 C.F.R. § 64.604(c)(5)(iii)(G) (“Any eligible TRS provider as defined in paragraph (c)(5)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.”).