

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Structure and Practices of the Video Relay Service
Program
CG Docket No. 10-51

ORDER

Adopted: September 13, 2011

Released: September 13, 2011

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau), on delegated authority, denies three waiver requests filed separately by: (1) Deaf Link, Inc. ("Deaf Link"); (2) NorthStar Relay, LLC ("NorthStar"); and (3) ONE Technologies LLC ("ONE Technologies") (collectively "Petitioners"). Each seeks temporary waiver of certain rules adopted by the Commission in the VRS Practices R&O. These rules became effective on June 1, 2011. We deny each of the waiver requests for the reasons discussed below.

II. BACKGROUND

2. On April 6, 2011, the Commission released the VRS Practices R&O, in which it adopted rules designed to detect and prevent fraud and abuse in the provision of video relay service (VRS), a form of Telecommunications Relay Service (TRS) that allows users to communicate in sign language via a

1 See Deaf Link, Inc., Request for Waiver, CG Docket No. 10-51 (filed May 24, 2011)(Deaf Link Request).

2 See NorthStar Relay, LLC, Petition for Waiver, CG Docket No. 10-51 (filed May 24, 2011)(NorthStar Request).

3 See ONE Technologies, LLC, Waiver Request, CG Docket No. 10-51 (filed May 24, 2011)(ONE Technologies Request).

4 See Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (Together, VRS Practices R&O and Certification FNPRM; VRS Practices R&O where related to the Report and Order only; Certification FNPRM where related to the Further Notice of Proposed Rulemaking only).

5 On May 31, 2011, the Commission stayed until October 1, 2011 the effective date of new section 64.604(c)(5)(iii)(N)(I)(iii) of the Commission's rules, 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(iii), which prohibits an eligible VRS provider from contracting with or otherwise authorizing any third party to provide interpretation services or call center functions on its behalf, unless that authorized party also is an eligible provider. See Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, Order Suspending Effective Date, 26 FCC Rcd 8327 (2011) (VRS Stay Order). To the extent each of the Petitioners requests waiver of this rule as part of its waiver request, we decline to address such requests as moot. See ¶ 16, infra.

video link utilizing an Internet connection. Among the measures the Commission adopted in the *VRS Practices R&O* are the following subsections of new section 64.604(c)(5)(iii)(N)(I) of the Commission's rules:⁶ (i) only an eligible VRS provider⁷ may hold itself out to the general public as providing VRS;⁸ (ii) VRS must be offered under the name by which the eligible provider became certified, in a manner that clearly identifies the provider of the service, and providers must route all VRS calls through a single URL address for that brand;⁹ (iii) an eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions on its behalf, unless that authorized party also is an eligible provider;¹⁰ and (iv) a third party that subcontracts with an eligible VRS provider to provide services related to the provision of VRS other than interpretation service or call center functions may not hold itself out as a provider of VRS, and must clearly identify the eligible VRS provider to the public.¹¹ Taken together, these measures are intended to reduce fraud and establish better oversight of the VRS program, and address the escalation of unauthorized revenue sharing arrangements in the VRS program.¹²

3. Notwithstanding the goals underlying these rules, the Commission recognized that some companies offering VRS through an arrangement with an eligible VRS provider might require additional time to make adjustments to their operations in order to come into compliance with the new requirements adopted in the *VRS Practices R&O*. The Commission therefore stated that it would consider requests for a temporary waiver of the new requirements, to give these entities an opportunity to continue to provide VRS as a subcontractor with an eligible provider until these providers are able to obtain certification under new procedures to be adopted pursuant to the accompanying *Certification FNPRM*.¹³ The Bureau subsequently issued a Public Notice providing guidance on filing requests for waiver of the new requirements adopted in the *VRS Practices R&O*.¹⁴

⁶ 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(i-iv).

⁷ Under Commission rules in effect at the time Petitioners filed their waiver requests, an eligible provider was defined as an entity that meets at least one of four Commission eligibility requirements to provide TRS and receive compensation from the Interstate TRS Fund (Fund). See 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4)(2010). The Commission recently released an order amending its rules to require that all Internet-based TRS (iTRS) providers, including VRS providers, obtain certification from the Commission in order to be eligible to receive compensation from the Fund. See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898 (2011) (*Certification Order*). The Commission therein established the timeframes by which entities seeking to become or remain eligible for compensation from the Fund must apply for Commission certification. See *id.* at paras. 59-61.

⁸ *VRS Practices R&O*, 26 FCC at 5574, para. 57.

⁹ *Id.*

¹⁰ *Id.* at para. 58.

¹¹ *Id.* at para. 59.

¹² *Id.* at para. 57.

¹³ *Id.* at 5575, para. 62; see *Certification Order* (subsequently adopting new procedures proposed in the *Certification FNPRM*).

¹⁴ *Consumer and Governmental Affairs Bureau Provides Guidance on Filing Requests for Waiver of New Requirements Adopted in the Video Relay Services Fraud Order*, CG Docket No. 10-51, Public Notice, 26 FCC Rcd 6863 (CGB 2011) (*Waiver Guidance Public Notice*).

4. On May 31, 2011, the Commission released the *VRS Stay Order* suspending the effective date of section 64.604(c)(5)(iii)(N)(1)(iii) until October 1, 2011, in order to allow the Commission to complete its review of the certification requirements for iTRS providers. The *VRS Stay Order* specified that the waiver requests filed in response to the *VRS Practices R&O* and subsequent *Waiver Guidance Public Notice* were mooted by the *VRS Stay Order* only to the extent that they seek waiver of section 64.604(c)(5)(iii)(N)(1)(iii). Requests for waiver of other Commission rules or requirements filed in response to the *VRS Practices R&O* and *Waiver Guidance Public Notice* were not mooted by the *VRS Stay Order*, and thus remained pending.¹⁵ Thus, below we address Petitioners' requests for waiver of other rules adopted by the Commission in the *VRS Practices R&O*.

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²⁰

6. In addition to the general "high hurdle" that waiver applicants face, the Commission specified in the *VRS Practices R&O* what was particularly required of applicants for waiver of any of the new requirements adopted therein. The Commission stated that a waiver applicant "will have the burden of showing that the waiver is in the public interest, that grant of the waiver request will not undermine the purposes of the rules that we adopt today, and that it will come into compliance with those rules within a short period of time."²¹ In addition, the Commission required each waiver applicant "to provide, in writing, a description of the specific requirement(s) for which it is seeking a waiver, along with documentation demonstrating the applicant's plan and ability to come into compliance with all of these requirements (other than the certification requirement)" within three months after the rules become effective, and elaborated that "[e]vidence of the applicant's plan and ability to come into compliance with the new rules shall include the applicant's detailed plan for modifying its business structure and operations in order to meet the new requirements."²² The Commission further specified that it would grant waivers "only after a rigorous showing that the applicant has workable plans and the ability to continue providing VRS in a manner that will not undermine the measures adopted in [the *VRS Practices*

¹⁵ See *VRS Stay Order*, 26 FCC Rcd at 8328, para. 3 n.6.

¹⁶ 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown").

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *WAIT Radio*, 418 F.2d at 1157 (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

²¹ *VRS Practices R&O*, 26 FCC Rcd at 5575, para. 62.

²² *Id.* at 5575-76, para. 63.

R&O] to eliminate the fraud and abuse that have plagued the VRS program.”²³ We address each of the waiver requests below, and for the reasons given, find that they should be denied.

A. NorthStar Waiver Request

7. NorthStar was formed on May 18, 2011 as a combination of the Communications Access Center for the Deaf and Hard of Hearing (CAC), CP&J Investments, LLC d/b/a PAH! Relay (PAH), Interpretel LLC (Interpretel), Sign Language Access, Inc., d/b/a CallVRS (CallVRS), and URrelay, Inc. (URrelay).²⁴ According to NorthStar, CAC has been authorized to receive compensation from the Fund for its provision of TRS since 2002.²⁵ Furthermore, according to NorthStar, the other companies “have previously provided VRS” as follows: URrelay, through an agreement with CAC since 2006; CallVRS, through several agreements with eligible providers since 2008; PAH!, through an agreement with URrelay and CAC since 2008; and Interpretel, through an agreement with SNAP LLC since January 2011.²⁶ Because it is not currently eligible to receive compensation from the Fund for its provision of VRS, NorthStar explains, its waiver request “is predicated on its desire and operational imperative to continue providing responsible and compliant VRS to the public through its underlying Fund eligible partner, CAC, which itself has entered into a definitive purchase agreement by virtue of which it is in the process of being combined with NorthStar Relay.”²⁷

8. NorthStar requests waiver of section 64.604(c)(5)(iii)(N)(I)(ii) of the Commission’s rules, which requires providers to offer VRS service under the name of a certified VRS provider and via a single URL address for the certified provider, “until such time as the Commission grants NorthStar Relay’s application for Telecommunications Relay Service Fund eligibility certification.”²⁸ NorthStar argues that it requires this waiver to allow it time to educate the public and its established consumer base about its formation from the combination of its component entities, “as well as the integration of several other entities that had previously combined with Interpretel.”²⁹ For the duration of its requested waiver, NorthStar seeks to continue using the trademarks, logos, URLs and IP addresses associated with each of its constituent parts.³⁰

9. We find that NorthStar has not shown good cause for allowing these multiple, apparently affiliated companies to continue to provide VRS service under separate names and using separate URLs. This is precisely the type of offering that the Commission in the *VRS Practices R&O* found would likely undermine the goals of the VRS program because of the susceptibility of such arrangements to fraud and the difficulty in exercising oversight of them.³¹ Specifically, the Commission determined that “virtually none of the fifty or so ineligible carriers that are now providing VRS . . . are accountable for compliance

²³ *Id.* at 5576, para. 63.

²⁴ *NorthStar Request* at 1, 4.

²⁵ *Id.* at 4.

²⁶ *See id.*

²⁷ *Id.* at 2.

²⁸ *Id.* at 8.

²⁹ *Id.*

³⁰ *Id.* at 8-9.

³¹ *See VRS Practices R&O*, 26 FCC Rcd at 5572-74, paras. 54-56.

with our rules, even though each has held itself out to the public as providing VRS service.”³² Moreover, under these circumstances, proper oversight by the Commission and the Fund administrator is impeded because the Commission, as well as other investigatory authorities, often has a difficult time identifying these entities or what services they provide.³³ The Commission also expressed concern that “[a]lthough the eligible provider is responsible for ensuring that the calls it bills to the Fund are legitimate, we are concerned that in many instances, the eligible provider may exercise very little oversight over the call handling operations of these affiliates and subcontractors.”³⁴

10. The arrangement that NorthStar describes illustrates these problems pointedly. For instance, NorthStar requests continued use of the trademarks, logos, URLs and IP addresses associated with “several other entities that had previously combined with Interpretel,”³⁵ without specifically naming these entities. Furthermore, NorthStar itself is a newly formed entity, and thus has no track record of compliance with the Commission’s rules, nor does it explain how it will ensure that each company will individually and collectively provide VRS in compliance with Commission requirements. We find that it would not be in the public interest to allow these individual companies that have not been shown to be capable of providing VRS in compliance with the Commission’s rules now, or in the near future, to continue to provide VRS under their own names and using their own URLs. We further find that granting a waiver would undermine the goals and purposes of the rules that the Commission adopted in the *VRS Practices R&O*.³⁶ Therefore, we deny NorthStar’s request for waiver of section 64.604(c)(5)(iii)(N)(I)(ii).

B. Deaf Link Waiver Request

11. Deaf Link offers a “suite of services” for individuals with disabilities, including Video Remote Interpreting (VRI),³⁷ accessible emergency information for government entities, and pre-recorded, American Sign Language signed videos for websites and in-house playback at client sites.³⁸ It purports to operate a call center 24 hours per day, seven days per week from which it processes VRS calls as a subcontractor to other VRS providers for overnight and weekend shifts.³⁹

12. Deaf Link requests a waiver of section 64.604(c)(5)(iii)(N)(I)(i) of the Commission’s rules, which states that only an eligible provider may hold itself out to the public as a VRS provider, but fails to provide any justification for why, as a subcontractor that provides overnight and weekend VRS coverage

³² *VRS Practices R&O*, 26 FCC Rcd at 5572, para. 54.

³³ *See id.* at 5572-73, para. 55.

³⁴ *Id.* at 5573, para. 55.

³⁵ *NorthStar Request* at 8.

³⁶ *See VRS Practices R&O*, 26 FCC Rcd at 5575, para. 62 (waiver applicant has burden of showing that grant of the waiver request will not undermine the purposes of the rules).

³⁷ VRI is a fee-for-service offering that utilizes a video connection to provide access to an interpreter who is at a remote location, and is used when an interpreter cannot be physically present to interpret for two or more people who are together at the same location. *See, e.g., Reminder that Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot be Used as a Substitute for “In-Person” Interpreting Services or Video Remote Interpreting (VRI)*, Public Notice, 20 FCC Rcd 14528 (CGB 2005).

³⁸ *See Deaf Link Request* at 3.

³⁹ *Id.* at 4.

for other VRS providers, it should be allowed to hold itself out to the general public as providing VRS. Deaf Link fails to show that it is or soon will be providing VRS in compliance with the Commission's rules, and thus should be allowed to hold itself out as a VRS provider prior to being certified as a VRS provider. We find that Deaf Link has not demonstrated that good cause exists to waive section 64.604(c)(5)(iii)(N)(I)(i), nor has it met its burden of showing that such a waiver is in the public interest. Therefore, we deny Deaf Link's request for waiver of section 64.604(c)(5)(iii)(N)(I)(i).

C. ONE Technologies Waiver Request

13. ONE Technologies describes itself as a "leading provider of remote video interpretation,"⁴⁰ and it provides mobile device captioning as well as on-site sign language interpretation.⁴¹ It asserts that it began providing "white label" VRS in 2009, and opened a call center and began processing calls branded as "ONE VRS" during off-peak hours in 2010.⁴² ONE Technologies maintains that it submitted an application for certification in 2007.⁴³

14. ONE Technologies requests waiver of section 64.604(c)(5)(iii)(N)(I)(i), (ii), and (iv) of the Commission's rules. We deny its requests. As support for its requested waiver of section 64.604(c)(5)(iii)(N)(I)(i), ONE Technologies states that such a waiver will give it time to make the necessary arrangements to staff its call center 24 hours per day, seven days per week, by September 1, 2011. Regarding section 64.604(c)(5)(iii)(N)(I)(ii), ONE Technologies expresses its intent to co-brand its VRS as "Powered by CAC" on its website, emails, and other promotional material for the duration of the waiver, and argues that this will minimize confusion for consumers.⁴⁴ ONE Technologies does not advance any particular reason for its requested waiver of section 64.604(c)(5)(iii)(N)(I)(iv).

15. Like Deaf Link, nowhere does ONE Technologies provide any justification for why, as a subcontractor that provides "off-peak" coverage for other VRS providers, it should be allowed to hold itself out to the general public as providing VRS, or continue branding calls as processed by "ONE VRS" during such off-peak times. Moreover, we do not find that adding "Powered by CAC" or another co-branding moniker to the branding remedies One Technologies' otherwise deficient request for waiver. One Technologies simply has not shown good cause for waiver of sections 64.604(c)(5)(iii)(N)(I)(i), (ii),⁴⁵ and (iv), and thus should not be allowed to hold itself out as a VRS provider prior to being certified as a VRS provider. ONE Technologies likewise does not meet its burden of showing that such waivers are in the public interest, and that grant of the waiver request will not undermine the purposes of the rules and goals of the VRS program.

⁴⁰ See note 37, *supra*.

⁴¹ See *ONE Technologies Request* at i, 2.

⁴² See *id.* at 2-3, 7. "White label" refers to an entity that is offering relay service but not eligible for direct payment from the Fund, and instead bills the Fund through an eligible provider. See *VRS Practices R&O*, 26 FCC Rcd at 5571, para. 52 n.147.

⁴³ *ONE Technologies Request* at 4-5.

⁴⁴ *Id.* at 6.

⁴⁵ We note that ONE Technologies does not specifically address the portion of section 64.604(c)(5)(iii)(N)(I)(ii) related to the routing of VRS calls through a single URL address.

IV. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154 and 225, and pursuant to authority delegated in sections 0.141 and 0.361 of the Commission's rules, 47 C.F.R. §§ 0.141 and 0.361, the requests for waiver filed by Deaf Link, Inc., NorthStar Relay, LLC, and ONE Technologies, LLC, of section 64.604(c)(5)(iii)(N)(1)(i), (ii), and (iv), as applicable, ARE DENIED, and the requests for waiver of section 64.604(c)(5)(iii)(N)(1)(iii) ARE DISMISSED AS MOOT.

17. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.141 and 0.361 of the Commission's rules, 47 C.F.R. §§ 0.141 and 0.361, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Gurin
Chief, Consumer and Governmental Affairs Bureau