

Before the
Federal Communications Commission
Washington, DC 20554

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

ORDER

Adopted: November 8, 2011

Released: November 8, 2011

By the Chief, Consumer and Governmental Affairs Bureau:

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau), pursuant to delegated authority, denies the "Motion to Extend Stay" filed on October 31, 2011 by Gallaudet University (Gallaudet).1 Gallaudet seeks a further extension of the stay of effectiveness of 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(iii), adopted in the VRS Practices R&O,2 which prohibits an eligible VRS provider from contracting with or otherwise authorizing any third party to provide communications assistant (CA) services or call center functions on its behalf, unless that authorized party also is an eligible provider.3 The Commission's stay of the effectiveness of this rule will expire on November 15, 2011.4 We deny the Motion for the reasons discussed below.

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), and establish better Commission oversight of the VRS program.5 Among those rules is the new section 64.604(c)(5)(iii)(N)(I)(iii), which was originally scheduled to become effective on June 1, 2011. The

1 See Gallaudet University, Motion to Extend Stay, CG Docket No. 10-51 (filed Oct. 31, 2011) (Motion).

2 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) (VRS Practices R&O).

3 See Structure and Practices of the Video Relay Service Program; Sprint Nextel Corporation Expedited Petition for Clarification; Sorenson Communications, Inc. Petition for Reconsideration of Two Aspects of the Certification Order; AT&T Services, Inc. Petition for Reconsideration of AT&T, CG Docket No. 10-51, Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, FCC 11-155 (rel. Oct. 17, 2011) (iTRS Certification Clarification Order and Certification FNPRM; or iTRS Certification Clarification Order when just referring to its Memorandum Opinion and Order and Order portions, and iTRS Certification FNPRM when just referring to its FNPRM portion) at ¶¶ 11-13, 29-36 (clarifying this rule, and tentatively concluding that the Commission will modify it in a subsequent order, after public comment and analysis of the record).

4 See Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, Order Extending Suspension of Effective Date, 26 FCC Rcd 13820 (2011) (VRS Stay Extension Order).

5 VRS Practices R&O, 26 FCC Rcd at 5546, ¶ 1.

Commission, however, stayed its effective date until October 1, 2011,⁶ to provide entities the opportunity to apply for eligibility, via Commission certification, to provide VRS and potentially become eligible prior to the expiration of the stay, but only after the Commission had adopted new certification requirements for Internet-based TRS (iTRS) services. On July 28, 2011, the Commission adopted new iTRS certification rules and processes, requiring, among other things, that all iTRS providers receive certification from the Commission to be eligible to receive compensation from the Interstate TRS Fund (Fund).⁷ On September 30, 2011, the Commission extended the stay of the effectiveness of section 64.604(c)(5)(iii)(N)(1)(iii) for an additional 45 days, until November 15, 2011.⁸ The Commission did so in order to address petitions for reconsideration and clarification of the *iTRS Certification Order* and to allow the new certification rules adopted in that Order to become effective,⁹ while still affording entities the opportunity to apply for certification prior to the expiration of the stay. This was designed to allow such entities an opportunity for a seamless transition to VRS eligibility, without interruption in service.¹⁰

3. On October 17, 2011, the Commission released a Memorandum Opinion and Order addressing those petitions for reconsideration and clarification of the *iTRS Certification Order*.¹¹ In the *iTRS Certification Clarification Order*, the Commission, among other things, clarified that a certified VRS provider may seek reimbursement from the Fund for minutes of use that it routes to another certified VRS provider where exigent circumstances warrant such routing to handle an unexpected and temporary increase in the certified provider's incoming traffic.¹² In addition, the Commission clarified that "non-certified applicants for certification may not rely on the ability to subcontract for or otherwise authorize the provision of CA services or call center functions on their behalf after they are certified, to demonstrate their *eligibility* for certification."¹³ Furthermore, in an accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on its tentative conclusion that it should modify section 64.604(c)(5)(iii)(N)(1)(iii) "to allow an eligible VRS provider to contract with or otherwise authorize another eligible provider to provide CA services or call center functions on its behalf *only* when such arrangements are necessitated by an unexpected and temporary surge in call traffic due to exigent circumstances, such as in the event of a natural disaster or other comparable emergency that is outside the

⁶ 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 Revenue Sharing Prohibition Stay Order*).

⁷ 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) (*iTRS Certification Order*).

⁸ See *VRS Stay Extension Order*.

⁹ Certain of the rules adopted in the *iTRS Certification Order* were subject to the Paperwork Reduction Act (PRA) and therefore needed Office of Management and Budget (OMB) approval before becoming effective.

¹⁰ See *id.*, 26 FCC Rcd at 13821, ¶ 4 (citing *VRS Revenue Sharing Prohibition Stay Order*, 26 FCC Rcd at 8328, ¶ 4).

¹¹ See *iTRS Certification Clarification Order*.

¹² *Id.* at ¶ 11.

¹³ *Id.* at ¶ 12 (emphasis in original). As a corollary to this clarification, the Commission noted its expectation that, once it has certified (conditionally or fully) a VRS provider, the provider will continue to employ and utilize its own CAs and provide its own call center functions, as represented in its certification application, and may not attempt to rely solely or in part on subcontracting or similar arrangements for these core services and functions. See *id.* at ¶ 13.

provider's control.”¹⁴ OMB approved the new certification rules that were subject to the PRA on October 20, 2011,¹⁵ and the rules became effective on November 4, 2011.¹⁶

4. We find no good cause to further extend the stay of the effective date of section 64.604(c)(5)(iii)(N)(I)(iii), as requested by Gallaudet. At the time the Commission extended the effective date of this rule for the second time (in the *VRS Stay Extension Order*), some of the new requirements governing the iTRS certification process had not yet become effective, leaving potential applicants unable to apply for certification in accordance with the new certification rules and processes prior to the original October 1, 2011 expiration of the stay. In contrast, because the new rules governing the certification process became effective on November 4, 2011, Gallaudet and any other interested entities may now apply for certification in accordance with these rules and processes. We note that, in its Motion, Gallaudet acknowledges that OMB approved the rules subject to the PRA in the *iTRS Certification Order* on October 20, 2011, nearly four weeks prior to the November 15, 2011 expiration of the stay.¹⁷ Thus, we find that Gallaudet had sufficient advance notice of these new rules and processes. Indeed, even the *iTRS Certification Clarification Order*, which clarified the certification rules adopted in the *iTRS Certification Order*, was released on October 17, 2011, several weeks prior to the stay's scheduled expiration on November 15, 2011.

5. For these reasons, we find that the Commission has provided adequate notice and time for interested parties, including Gallaudet, to make the necessary preparations to apply for certification, and to adjust their contemplated operations, if necessary, in response to the July 2011 *iTRS Certification Order* and the minor clarifications that the Commission adopted in the *iTRS Certification Clarification Order*. We disagree with Gallaudet's contentions that the *iTRS Certification FNPRM* has unforeseeably cast uncertainty upon the planning of would-be certified VRS providers, and that, depending on how the Commission ultimately resolves the proposals in the *iTRS Certification FNPRM*, certification applications submitted prior to November 15, 2011 may be denied or delayed.¹⁸ As discussed above, among the Commission's clarifications in the *iTRS Certification Clarification Order* was that non-certified applicants seeking initial certification may not rely on their ability to subcontract for the provision of CA services or call center functions on their behalf after they are certified, to demonstrate their eligibility for certification.¹⁹ This clarification itself emanated from the Commission's reiterating that section 64.604(c)(5)(iii)(N)(I)(iii) “only allows *an eligible provider* to subcontract for CA services or call center

¹⁴ *iTRS Certification FNPRM* at ¶ 32 (emphasis in original).

¹⁵ See OMB, Notice of Office of Management and Budget Action, OMB Control Number 3060-1150 (Oct. 20, 2011), at <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3060-1150>; Notice of Office of Management and Budget Action, OMB Control Number 3060-1160 (Oct. 20, 2011), at <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3060-1160#>.

¹⁶ See *Consumer and Governmental Affairs Bureau Announces Effective Date of iTRS Certification Rules and Timeline for Filing Applications*, CG Docket No. 10-51, Public Notice, DA 11-1861 (CGB rel. Nov. 4, 2011).

¹⁷ Motion at 3.

¹⁸ See *id.* at 4-6.

¹⁹ See *iTRS Certification Clarification Order* at ¶ 12.

functions with, or otherwise authorize the provision of such services or functions from, *another eligible provider*.²⁰

6. Thus, contrary to Gallaudet's arguments, we find that the Commission's *iTRS Certification Clarification Order*, *iTRS Certification Order* and the rules adopted pursuant thereto, made sufficiently clear what is expected of certification applicants. Certification applications filed in time for the Commission to render a decision by November 15, 2011²¹ will be evaluated based on the Commission's policies and rules, including those adopted in the *VRS Practices R&O*, *iTRS Certification Order*, and *iTRS Certification Clarification Order*.²²

7. Finally, although Gallaudet contends that the public will be harmed, should the Commission not grant its Motion, because there would purportedly be a significant disruption and degradation of VRS service,²³ we do not find this argument persuasive. Even if, as Gallaudet posits, existing, non-certified providers cannot be certified by November 15, 2011 and would be required to terminate their currently offered services, several other VRS providers will be available to handle relay calls nationwide upon expiration of the stay on November 15. We therefore conclude that Gallaudet has not met its burden of showing that good cause exists for further extension of the stay.

8. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, 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 Motion to Extend Stay filed by Gallaudet University IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Joel Gurin
Chief, Consumer and Governmental Affairs Bureau

²⁰ *Id.* (emphasis in original). The Commission adopted section 64.604(c)(5)(iii)(N)(I)(iii) in the *VRS Practices R&O*, released April 6, 2011.

²¹ See *iTRS Certification Order*, 26 FCC Rcd at 10923, ¶ 61 (urging iTRS providers not currently eligible to receive compensation directly from the Fund to file their certification applications on, or as soon as possible after, the day the rules adopted therein become effective, so that review of their applications can commence as soon as possible).

²² Moreover, even if the Commission were to adopt its tentative conclusion in the *iTRS Certification FNPRM*, see para. 3, *supra*, the resulting rule would have no operational effect on a new entrant such as Gallaudet, which may not demonstrate its eligibility for certification by relying on its intention to subcontract for the provision of CA services or call center functions on its behalf after it has been certified.

²³ See Motion at 4, 8-9.