



# PUBLIC NOTICE

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## NOTICE OF DENIAL OF APPLICATION OF SAY-HEY, INC. FOR CERTIFICATION AS A PROVIDER OF VIDEO RELAY SERVICE ELIGIBLE FOR COMPENSATION FROM THE INTERSTATE TELECOMMUNICATIONS RELAY SERVICE FUND

### CG DOCKET NO. 10-51

By the Chief, Consumer and Governmental Affairs Bureau:

On September 21, 2011, SAY-HEY, Inc. (“SAY-HEY”) filed an application to be certified<sup>1</sup> as a provider of video relay service (VRS), Internet Protocol (IP) Relay, and IP CTS that is eligible for compensation from the Interstate TRS Fund (Fund).<sup>2</sup> For the reasons discussed below, we deny SAY-HEY’s application for VRS certification.<sup>3</sup>

In the *iTRS Certification Order* released on July 28, 2011, the Commission amended its requirements and processes for certifying iTRS providers as eligible for compensation from the Fund, to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission’s rules, and to eliminate waste, fraud and abuse through improved oversight of such

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<sup>1</sup> SAY-HEY, Inc., *Internet-Based TRS Certification Application*, CG Docket No. 10-51 (Sept. 21, 2011), supplemented on November 7 and 9, 2011. See 47 C.F.R. § 64.606; *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*).

<sup>2</sup> The Communications Act of 1934, as amended, defines telecommunications relay services (TRS) as:

... telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

47 U.S.C. § 225(a)(3) (as amended by the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, § 103(b), 124 Stat. 2751, 2755 (2010); Pub. L. No. 111-265 (technical amendments to CVAA)). VRS is a form of Internet-based TRS (iTRS) that uses a broadband Internet connection between the VRS user and the communications assistant (CA) to enable a person using American Sign Language to communicate over video with another party through a CA. During a VRS call, the CA relays the communications between the two parties, signing what the other party says to the deaf or hard of hearing user and responding in voice to the other party to the call. The Interstate TRS Fund compensates eligible providers of VRS and other forms of interstate TRS for their reasonable costs of providing these services. See 47 C.F.R. § 64.604(c)(5)(iii).

<sup>3</sup> We will address SAY-HEY’s application for IP Relay and IP CTS certification in a subsequent Public Notice.

providers.<sup>4</sup> These new rules require that all iTRS providers obtain certification from the Commission to be eligible to receive compensation from the Fund.<sup>5</sup> They further require that all VRS applicants for certification lease, license or own, as well as operate, essential facilities associated with iTRS call centers and employ their own CAs to staff those centers on the date of their application for certification.<sup>6</sup> Each iTRS applicant for certification is also required to submit specific types of documentary evidence that demonstrate its compliance with Commission rules, including those adopted in the *VRS Practices R&O*.<sup>7</sup> On October 17, 2011, the Commission released the *iTRS Certification Clarification Order*,<sup>8</sup> clarifying certain aspects of the certification requirements adopted in the *iTRS Certification Order*, and modifying section 64.606 of the Commission's rules to lessen the burdens on applicants for certification and providers associated with providing certain documentation to the Commission.<sup>9</sup>

Based on our review of the application submitted by SAY-HEY, we conclude that the applicant has failed to satisfy the requirements set forth in the Commission's certification rules, including but not limited to failing to demonstrate that it will meet section 64.604(b)(4)(i) of the Commission's rules, a mandatory minimum technical standard requiring VRS facilities to be operated every day, 24 hours a day.<sup>10</sup> In the *iTRS Certification Clarification Order*, the Commission reiterated its expectation that VRS providers would adequately staff their call centers 24/7, and noted its obligation to ensure that all certified providers are capable of providing their own services on a continuous basis, in a manner that meets the Commission's rules.<sup>11</sup> SAY-HEY has not demonstrated that its staffing proposal will meet these requirements. On the basis of SAY-HEY's application, including but not limited to the number of CAs it will employ, we are unable to determine that it is capable of meeting this mandatory minimum standard codified in section 64.604(b)(4)(i) of the Commission's rules.<sup>12</sup>

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<sup>4</sup> *iTRS Certification Order*, 26 FCC Rcd at 10899, ¶ 1. The Commission noted that the measures adopted therein were part of its transitional efforts to reform the structure and practices of the VRS program and that the new certification process may be superseded or modified by future Commission actions on VRS reform.

<sup>5</sup> *Id.* at ¶ 2.

<sup>6</sup> *Id.*

<sup>7</sup> *See, e.g.*, 47 C.F.R. § 64.606(a); *see also Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (*VRS Practices R&O*).

<sup>8</sup> *Structure and Practices of the Video Relay Service Program, Sprint Nextel Corporation Expedited Petition for Clarification, Sorenson Communications, Inc. Petition for Clarification, 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 (2011) (*iTRS Certification Clarification Order*).

<sup>9</sup> *See id.* at ¶¶ 16-20.

<sup>10</sup> 47 C.F.R. § 64.604(b)(4)(i).

<sup>11</sup> *iTRS Certification Clarification Order* at ¶¶ 10, 13.

<sup>12</sup> In order to be found qualified as a provider of VRS in compliance with the Commission's rules, the applicant must establish, among other things, that it is equipped to handle VRS calls placed from anywhere across the country, 24 hours a day, seven days a week. In addition, the number of CAs specified must be sufficient to allow the provider to answer concurrent calls without compromising the speed-of-answer requirement. *See* 47 C.F.R. § 64.604(b)(2)(iii) (requiring that VRS providers answer 80 percent of all calls within 120 seconds). In adopting the 24/7 and speed-of-answer requirements for VRS, the Commission found that both requirements are vital towards implementing the "fundamental policy considerations underlying the TRS regime," including that TRS provide access for individuals with disabilities to the telephone system in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order, 20 FCC Rcd 13165, 13175, ¶ 19 (2005) (finding that

Accordingly, we conclude that SAY-HEY has failed to demonstrate that it satisfies the requirements set forth in the Commission's rules for iTRS provider certification. We therefore deny SAY-HEY's application for certification to be eligible for compensation from the Fund as a VRS provider. Because we deny SAY-HEY's certification application, we find that its request for waiver of section 64.604(c)(5)(iii)(N)(I)(iii) of the Commission's rules is rendered moot.<sup>13</sup>

A redacted copy of SAY-HEY's application is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Suite CY-A257, Washington, DC 20554, (202) 418-0270. The full text of this *Public Notice* is similarly available for public inspection or copying. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its web site: [www.bcpiweb.com](http://www.bcpiweb.com), or by calling 1-800-378-3160. A redacted copy of SAY-HEY's application may also be found by searching on the Commission's Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 10-51 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *Public Notice* can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

For further information, please contact Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (866) 954-4053 (voice/videophone), (202) 418-0431 (TTY), or e-mail at [Gregory.Hlibok@fcc.gov](mailto:Gregory.Hlibok@fcc.gov).

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VRS speed-of-answer requirements promote functional equivalency because "reaching a CA ready to place the call is the same as reaching a dial tone"; *id.* at 13179, ¶ 29 ("Congress expressly recognized that having TRS available 24/7 is central to the notion of functional equivalency"). *See also* note 2, *supra* (quoting statutory definition of TRS, including functional equivalence standard).

<sup>13</sup> SAY-HEY, Inc., *Section 64.604(c)(5)(iii)(N)(I)(iii) Waiver Request*, CG Docket No. 10-51 (Sept. 29, 2011). Section 64.604(c)(5)(iii)(N)(I)(iii) of the Commission's rules generally prohibits the subcontracting of VRS CA services or call center functions.