

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
)	
Petitions for Waiver filed by CODAVRS Corporation, Healinc Telecom, LLC, IWRelay, Inc., Malka Communications Group, Inc., PowerVRS, LLC, and Say-Hey, Inc.)	

ORDER

Adopted: August 10, 2012

Released: August 10, 2012

By the Acting Chief, Consumer and Governmental Affairs Bureau:

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau), acting pursuant to delegated authority, denies waiver requests filed by Healinc Telecom, LLC (Healinc),¹ an eligible video relay service (VRS) provider,² and five companies who identify themselves as subcontractors of Healinc: CODAVRS Corporation (CODAVRS), IWRelay, Inc. (IWRelay), Malka Communications Group, Inc. (Malka), PowerVRS, LLC (PowerVRS), and Say-Hey, Inc. (Say-Hey) (collectively, the Subcontractors).³ The petitioners seek temporary waivers of Sections 64.604(c)(5)(iii)(N)(I)(i), (ii), and (iii) of the Commission’s rules, which require that only eligible VRS providers may hold themselves out as offering VRS,⁴ regulate eligible VRS providers’ use of names, brands, sub-brands and URL addresses,⁵ and

¹ As explained in note 33, *infra*, Healinc’s request is denied in part, and to the extent not denied, action on that request is deferred until the necessity for a decision becomes more evident.

² See 47 C.F.R. § 64.604(c)(5)(iii)(F). On January 5, 2012, The Bureau granted Healinc's recertification as a VRS provider on a conditional basis, “pending inspection of Healinc’s facilities and confirmation of Healinc’s compliance with all applicable rules and orders, as well as our determination that Healinc is qualified to receive compensation from the Fund and that grant of full certification would be consistent with the objective of preventing waste, fraud, and abuse to the Fund, as embodied in our VRS rules and orders.” *Notice of Conditional Grant of Application of Healinc Telecom, LLC for Recertification as a Provider of Video Relay Service Eligible for Compensation from the Interstate Telecommunications Relay Services (TRS) Fund*, Public Notice, 27 FCC Rcd 116, 117 (CGB 2012).

³ See IWRelay, Petition for Waiver, CG Docket No. 10-51 (filed Sept. 23, 2011) (IWRelay Petition); PowerVRS, Petition for Waiver, CG Docket No. 10-51 (filed Sept. 27, 2011) (PowerVRS Petition); Healinc, Petition for Waiver, CG Docket No. 10-51 (filed Sept. 28, 2011) (Healinc Petition); Request of Malka Communications Group, Inc. for Conditional Certification or for Waiver, CG Docket No. 10-51 (filed Sept. 29, 2011) (Malka Petition); Say-Hey, Petition for Waiver, CG Docket No. 10-51 (filed Sept. 29, 2011) (Say-Hey Petition); CODAVRS, Petition for Waiver, CG Docket No. 10-51 (filed Sept. 30, 2011) (CODAVRS Petition). Healinc and the Subcontractors, collectively, are referred to herein as the petitioners.

⁴ 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(i).

prohibit eligible providers from subcontracting with ineligible providers for the provision of interpretation services and call center functions.⁶ For the reasons discussed below, we deny the requests for waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii), and dismiss the requests for waiver of Section 64.604(c)(5)(iii)(N)(I)(iii) as moot.

I. BACKGROUND

2. On April 6, 2011, the Commission adopted rules designed to detect and prevent fraud and abuse in the provision of VRS, a form of Telecommunications Relay Service (TRS) that allows users to communicate in sign language via a video link utilizing an Internet connection and a communications assistant (CA).⁷ The Commission found that much of the recently discovered VRS fraud had been perpetrated by “white label” VRS providers operating without FCC certification or other authority and, thus, without effective regulatory oversight.⁸

3. Among other anti-fraud measures, the Commission adopted a rule prohibiting “white label” operations. Section 64.604(c)(5)(iii)(N)(I)(i) requires that only an eligible (*i.e.*, FCC-certified) entity may hold itself out to the public as a VRS provider.⁹ In addition, Section 64.604(c)(5)(iii)(N)(I)(ii) requires that: (1) VRS “must be offered under the name by which the eligible VRS provider offering such service became certified as eligible and in a manner that clearly identifies that provider of the service”; (2) “[w]here a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider”; and (3) “[p]roviders must route all VRS calls through a single URL address used for each name or sub-brand used.”¹⁰ In the *Anti-Fraud Order*, the Commission explained that these branding and URL provisions were adopted in part because “the complex branding and commercial relationships that have existed between white labels and eligible providers” hindered consumers from making informed choices, and because “the use of multiple URLs facilitates fraud by enabling providers to track minutes of calls made by users assigned to specific URLs.”¹¹

4. Another provision, Section 64.604(c)(5)(iii)(N)(I)(iii), states that eligible providers may not subcontract the provision of communications assistant (CA) or call center functions to entities that are not eligible providers.¹² Together, these rules are intended to reduce fraud and establish better oversight of

⁵ *Id.* § 64.604(c)(5)(iii)(N)(I)(ii).

⁶ *Id.* § 64.604(c)(5)(iii)(N)(I)(iii).

⁷ 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) (*Anti-Fraud Order*).

⁸ *Id.* at 5572-74, ¶¶ 54-56. The term “white label” refers to entities who, prior to the effective date of the *Anti-Fraud Order*, held themselves out as VRS providers, who were not themselves eligible to receive payments from the TRS Fund, and who made arrangements with eligible providers to submit payment claims to the TRS Fund on their behalf (or to receive a share of the TRS Fund payments to the eligible provider). *Id.* at 5571, ¶ 52 n.147. See also *id.* at 5570, ¶¶ 48-49.

⁹ 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(i).

¹⁰ *Id.* § 64.604(c)(5)(iii)(N)(I)(ii). Herein, we refer to these requirements as the branding and URL provisions.

¹¹ *Anti-Fraud Order*, 26 FCC Rcd at 5574, ¶ 57.

¹² 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(iii).

the VRS program, and to address the escalation of unauthorized revenue sharing arrangements in the VRS program.¹³

5. In adopting 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 *Anti-Fraud Order*. The Commission therefore stated that it would consider requests for a temporary waiver of those requirements, to allow these entities to continue providing VRS as a subcontractor with an eligible provider pending their certification.¹⁴ In the *Anti-Fraud Order*, the Commission directed any applicant seeking a waiver of the new rules to submit detailed documentation “demonstrating the applicant’s plan and ability to come into compliance with all of [the *Anti-Fraud Order*’s] requirements” within three months from the date on which the rules became effective, or September 1, 2011.¹⁵

6. After a number of “white label” providers, including the petitioners, requested temporary waivers of Section 64.604(c)(5)(iii)(N)(I)(iii), the Commission stayed the effective date of that provision until October 1, 2011, and later extended the stay to November 15, 2011.¹⁶ Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii), however, were not stayed, and took effect on June 1, 2011.¹⁷ A number of providers sought a temporary waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) before those provisions took effect,¹⁸ and the Commission granted one of those waiver requests.¹⁹ Neither Healinc nor any of the Subcontractors requested such a waiver at that time.

7. On September 29, 2011, the Commission’s Enforcement Bureau issued citations against each of the Subcontractors for violations of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii).²⁰ The citations state that each of the Subcontractors: (1) “[h]eld itself out to the public as offering and providing VRS when the [Subcontractor] is not an Eligible Provider”; (2) “[d]id not clearly identify an Eligible Provider as the entity that a VRS user is using when the [Subcontractor] handled a VRS call initiated through the

¹³ *Anti-Fraud Order*, 26 FCC at 5574, ¶ 57.

¹⁴ *Id.* at 5575, ¶ 62.

¹⁵ *Id.* at 5575-76, ¶ 63; see also *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).

¹⁶ *Structure and Practices of the Video Relay Service Program*, Order Suspending Effective Date, 26 FCC Rcd 8327 (2011) (*Stay of Subcontracting Prohibition*); *Structure and Practices of the Video Relay Service Program*, Order Extending Suspension of Effective Date, 26 FCC Rcd 13820 (2011).

¹⁷ See *Structure and Practices of the Video Relay Service Program*, 76 Fed. Reg. 24393 (May 2, 2011).

¹⁸ See Convo Communications, LLC Waiver Request, CG Docket Nos. 03-123 and 10-51 (filed May 18, 2011); ONE Technologies Petition for Temporary Waiver, CG Docket No. 10-51 (filed May 24, 2011).

¹⁹ *Structure and Practices of the Video Relay Service Program*, Order, 26 FCC Rcd 15051 (CGB 2011) (*Convo Waiver Order*) (granting a waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) to Convo Communications, LLC (Convo)).

²⁰ See *CODAVRS Corporation*, EB-11-TC-097, Citation, 26 FCC Rcd 13406 (EB 2011) (*CODAVRS Citation*); *IWRelay, Inc.*, EB-11-TC-102, Citation, 26 FCC Rcd 13422 (EB 2011) (*IWRelay Citation*); *Malka Communications Group, Inc.* EB-11-TC-079, Citation, 26 FCC Rcd 13427 (EB 2011) (*Malka Citation*); *PowerVRS, Inc.*, EB-11-TC-084, Citation, 26 FCC Rcd 13443 (EB 2011) (*PowerVRS Citation*); *Say-Hey, Inc.*, EB-11-TC-086, Citation, 26 FCC Rcd 13451 (EB 2011) (*Say-Hey Citation*).

[Subcontractor]'s URL"; and (3) "[r]outed a VRS call through the [Subcontractor]'s URL, a URL not used by an Eligible Provider for its brand or sub-brand(s)".²¹

II. THE PETITIONS

8. Each of the Subcontractors identifies itself as a subcontractor of Healinc,²² and, at the time the petitions were filed, had an application pending with the Commission for certification as an eligible VRS provider.²³ Petitioners each request that waivers of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) be granted retroactively to June 1, 2011, the provisions' effective date.²⁴ Each of the Subcontractors also requests a waiver of Section 64.604(c)(5)(iii)(N)(I)(iii).²⁵

9. As noted above, the petitions were filed between September 23 and 30, 2011, after the effective date of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii). As some of the petitioners acknowledge, the event that triggered the petitioners' requests for waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) was the withholding by the TRS Fund Administrator (Administrator), on September 20, 2011, of payment for the VRS minutes submitted by Healinc for the month of July 2011.²⁶ As Healinc explains, the Administrator withheld payment on the basis that Healinc did not comply with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii).²⁷

²¹ See, e.g., *CODAVRS Citation*, 26 FCC Rcd at 13408.

²² Some of the petitioners indicate that they also acted as subcontractors for other certified entities. See *PowerVRS Petition* at 2, 3.

²³ On November 15, 2011, each of the Subcontractors' applications for certification was denied. See *Notice Of Denial Of Application Of Powervrs, LLC For Certification As A Provider Of Video Relay Service Eligible For Compensation From The Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15932 (CGB 2011); *Notice Of Denial Of Application Of IWRelay, Inc. For Certification As A Provider Of Video Relay Service Eligible For Compensation From The Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15935 (CGB 2011); *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*, Public Notice, 26 FCC Rcd 15938 (CGB 2011); *Notice of Denial of Application of CODA VRS Corporation for Certification as a Provider of Video Relay Service Eligible for Compensation from the Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15941 (CGB 2011); *Notice Of Denial Of Application Of Malka Communications Group, Inc. For Certification As A Provider Of Video Relay Service Eligible For Compensation From The Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15944 (CGB 2011).

²⁴ See, e.g., *Healinc Petition* at 1 (requesting a waiver "retroactively to June 1, 2011, the effective date of these rules, through September 23, 2011"); *CODAVRS Petition* at 1 (requesting a waiver "retroactively to June 1, 2011, the effective date of these rules, through September 30, 2011").

²⁵ As discussed in Section III.B., *infra*, we dismiss, as moot, the requests for waiver of Section 64.604(c)(5)(iii)(N)(I)(iii).

²⁶ See *Healinc Petition* at 3. See also *IWRelay Petition* at 4, 7 ("IWRelay understands that the Commission may have directed the TRS Fund administrator to withhold recovery payments to some VRS providers"); *Say-Hey Petition* at 4 ("Last week SAY-HEY learned that the Fund Administrator partially withheld Fund reimbursement to certain Fund-eligible providers, including Healinc Telecom, LLC, for certain calls processed by SAY-HEY and other Fund-ineligible providers").

²⁷ *Healinc Petition* at 3.

III. DISCUSSION

A. Petitions for Waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) Are Denied

10. Generally, the Commission's rules may be waived for good cause shown.²⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁰ 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.³¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.³²

11. We find that the petitioners have not shown good cause for the requested waivers of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii).³³ In the *Anti-Fraud Order*, the Commission specified criteria to be satisfied by providers requesting waiver of any of the new rules adopted therein. Under the *Anti-Fraud Order*, a waiver applicant must provide "documentation demonstrating the applicant's plan and ability to come into compliance with all of these requirements" within three months after the rules become effective, *i.e.*, by September 1, 2011.³⁴ Such documentation must include a "detailed plan for modifying its business structure and operations in order to meet the new requirements."³⁵ 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 *Anti-Fraud Order*] to eliminate the fraud and abuse that have plagued the VRS program."³⁶ None of the petitioners has made a showing of meeting any of these criteria.

12. First, it is obvious that the petitioners have failed to demonstrate a "plan and ability to come into compliance" by September 1, 2011. The petitions were not even filed until several weeks after the date on which compliance would have been required had a waiver been granted. By seeking a waiver, retroactively, for the period from June 1, 2011, through the filing dates of their petitions in late September 2011, the petitioners effectively conceded that they had no plan to "come into compliance" by September 1, 2011.

²⁸ 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").

²⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

³¹ *Id.* at 1166.

³² *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).

³³ Healinc's petition is denied to the extent that it seeks a retroactive waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) as applied to the branding practices and URLs of its subcontractors. At this time, we do not address Healinc's petition to the extent that it seeks a waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) for calls using the "LifeLinks brand" and the associated URL, <llvrs.tv>, since Healinc has been paid in full for the calls it reported for July and August 2011 with the <llvrs.tv> URL.

³⁴ *Anti-Fraud Order*, 26 FCC Rcd at 5575-76, ¶ 63.

³⁵ *Id.*

³⁶ *Id.* at 5576, ¶ 63.

13. Second, the petitioners failed to show any specific steps they took to comply even partially with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii), in any relevant respect, prior to September 1, 2011. Specifically, neither Healinc nor its Subcontractors provide any specific information regarding the brands, sub-brands, and URLs displayed and used by the Subcontractors or regarding any specific steps they took prior to September 1, 2011, to attempt to ensure that the display and use of such brands, sub-brands, and URLs clearly identified Healinc as the eligible provider.³⁷

14. In short, the petitions fail to show that any of the petitioners had, or even attempted to have, a “plan and ability to come into compliance” with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) by September 1, 2011, three months after the June 1, 2011 effective date of those provisions. Therefore, we find that the petitioners have failed to meet the specific waiver criteria set forth in the *Anti-Fraud Order*, and that failure in itself is sufficient to justify a denial of the requested waivers.³⁸

15. Further, petitioners have shown no reason why grant of the requested waivers of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) is otherwise justified. Unlike Convo Communications, LLC (Convo), to whom we granted a temporary waiver of the same provisions, the petitioners did not seek waivers of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) in a timely manner.³⁹ Indeed, the petitioners only requested waivers after the Administrator withheld Healinc’s July 2011 payment on September 20, 2011, more than three months *after* the effective date, based on a finding that Healinc had violated Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii). Petitioners offer no reasons for their failure to seek a waiver sooner, other than simple assertions that they believed they were operating in compliance with the rules prior to September 20, 2011. In light of their failure to describe any specific measures that they took in that period that would make such a belief reasonable, and given the importance of timely implementation of these rules to the Commission's efforts to combat fraud and abuse, we find that they have failed to plead with particularity any facts and circumstances that would justify the requested waiver.⁴⁰

16. Accordingly, we find that the petitioners have failed to satisfy the waiver standard in section 1.3 of the Commission's rules and the conditions for waiver set forth in the *Anti-Fraud Order*, and we accordingly deny the requested waivers of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii).

³⁷ Healinc itself does not provide any specific information regarding the pre-September 1 use of brands and URLs with calls processed by its Subcontractors – even though Healinc, as the eligible provider, was responsible for ensuring that such calls complied with the Commission’s rules. The Subcontractors also failed to provide specific information regarding any pre-September 1 attempts to comply with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii). For example, while CODAVRS argues that it complied with those provisions, it does not describe any specific steps that it took to comply. CODAVRS Petition at 5. Other providers describe various practices that they say were in effect as of the date the waiver petitions were filed, but fail to provide any indication when such practices were adopted. *See, e.g.*, IWRelay Petition at 4-6. Moreover, as noted earlier, the Enforcement Bureau issued citations against each of the Subcontractors, finding them in violation of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the rules. *See* ¶ 7, *supra*.

³⁸ As the Commission made clear in the *Anti-Fraud Order*, Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) and other provisions were adopted because the Commission believed them to be necessary to prevent fraud and abuse of the TRS Fund. *Anti-Fraud Order*, 26 FCC Rcd at 5576, ¶ 63 n.169. In adopting strict criteria for waiving these important rules, the Commission expressly found that “three months is an adequate time to come into compliance with the new requirements.” *Id.*

³⁹ *See Convo Waiver Order*, 26 FCC Rcd at 15051 n.1 (showing that Convo filed for a waiver on May 18, 2011).

⁴⁰ *WAIT Radio*, 418 F.2d at 1157.

B. Petitions for Waiver of Section 64.604(c)(5)(iii)(N)(I)(iii) Dismissed as Moot

17. We dismiss the requests for waiver of Section 64.604(c)(5)(iii)(N)(I)(iii) as moot. At the time that most of the petitions were filed, the stay of Section 64.604(c)(5)(iii)(N)(I)(iii) previously ordered by the Commission was set to expire on October 1, 2011. Therefore, each of the Subcontractors sought a prospective waiver of Section 64.604(c)(5)(iii)(N)(I)(iii), in order to enable each Subcontractor to continue performing the services subcontracted by Healinc until the Commission acted on the Subcontractor's application for certification.⁴¹ On September 30, 2011, the Commission extended the stay of Section 64.604(c)(5)(iii)(N)(I)(iii) until November 15, 2011. On November 15, 2011, each of the Subcontractors' applications for certification was denied.⁴² Therefore, the requests for waiver of Section 64.604(c)(5)(iii)(N)(I)(iii) are dismissed as moot.

IV. ORDERING CLAUSES

18. ACCORDINGLY, IT IS ORDERED that, pursuant to 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 requests for waiver of Section 64.604(c)(5)(iii)(N)(I)(i-ii) of the Commission's rules filed by CODAVRS Corporation, IWRelay, Inc., Malka Communications Group, Inc., PowerVRS, LLC, and Say-Hey, Inc., are DENIED, and Healinc Telecom, LLC's request for waiver of Section 64.604(c)(5)(iii)(N)(I)(i-ii) of the Commission's rules is DENIED to the extent indicated herein.

19. IT IS FURTHER ORDERED that the requests for waiver of Section 64.604(c)(5)(iii)(N)(I)(iii) filed by CODAVRS Corporation, IWRelay, Inc., Malka Communications Group, Inc., PowerVRS, LLC, and Say-Hey, Inc. are DISMISSED AS MOOT.

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Consumer and Governmental Affairs Bureau

⁴¹ See, e.g., IWRelay Petition at 2, 9.

⁴² See note 23, *supra*.