



Federal Communications Commission  
Washington, D.C. 20554

August 10, 2012

Stanley Schoenbach, M.D.  
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**Re: Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51; Healinc Telecom, LLC, Request for Reimbursement of July 2011 and August 2011 Video Relay Service Minutes**

Dear Dr. Schoenbach:

Pursuant to Section 64.604(c)(5)(iii)(E) and (L) of the Federal Communications Commission's (FCC or Commission) rules,<sup>1</sup> the Consumer and Governmental Affairs Bureau (Bureau) permanently denies payment to Healinc Telecom, LLC (Healinc), of the amounts withheld by the Telecommunications Relay Service (TRS) Fund administrator, Rolka Loube Saltzer Associates (Administrator, or RLSA), from Healinc's video relay service (VRS) payment for the months of July 2011 and August 2011. We affirm RLSA's determination that, during the relevant months, Healinc failed to comply with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the Commission's rules, which (1) require that only eligible VRS providers may hold themselves out as offering VRS<sup>2</sup> and (2) regulate eligible VRS providers' use of names, brands, sub-brands and Uniform Resource Locator (URL) addresses.<sup>3</sup> Accordingly, we find that Healinc is not entitled to compensation for VRS calls made during that time period.

### **Background**

*The Commission's Anti-Fraud Rules.* On April 6, 2011, the Commission adopted rules to "detect and prevent fraud and abuse in the provision of [VRS],"<sup>4</sup> much of which had been perpetrated by "white

<sup>1</sup> Section 64.604(c)(5)(iii)(E) provides that the Administrator "shall make payments only to eligible [Telecommunications Relay Service] providers operating pursuant to the mandatory minimum standards as required in § 64.604." 47 C.F.R. § 64.604(c)(5)(iii)(E). Section 64.604(c)(5)(iii)(L) establishes procedures for withholding payment and for determining whether minutes submitted are compensable under the Commission's rules. *Id.* § 64.604(c)(5)(iii)(L).

<sup>2</sup> *Id.* § 64.604(c)(5)(iii)(N)(I)(i).

<sup>3</sup> *Id.* § 64.604(c)(5)(iii)(N)(I)(ii).

<sup>4</sup> *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, 5546, ¶ 1 (2011) (*Anti-Fraud Order*).

label” VRS providers operating without FCC certification or other authority and, thus, without effective regulatory oversight.<sup>5</sup> 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.<sup>6</sup> In addition, Section 64.604(c)(5)(iii)(N)(I)(ii) provides 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.”<sup>7</sup> 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.”<sup>8</sup>

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.<sup>9</sup> A number of providers sought waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) prior to the June 1, 2011 effective date,<sup>10</sup> and the Commission granted one of those waiver requests.<sup>11</sup> However, neither Healinc nor any of its subcontractors requested a waiver of those provisions prior to the June 1, 2011 effective date.

*RLSA’s Withholding of Payment and Healinc’s Protest.* On September 20, 2011, RLSA withheld payment to Healinc for VRS minutes submitted for July 2011 on the basis that Healinc had failed to comply with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) by failing to identify itself as the eligible VRS provider and by using URL addresses not associated with Healinc.<sup>12</sup> Healinc protested the withholding to the Commission.<sup>13</sup> Subsequently, RLSA released payment for those minutes reported with the URL

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<sup>5</sup> *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.

<sup>6</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(i).

<sup>7</sup> *Id.* § 64.604(c)(5)(iii)(N)(I)(ii).

<sup>8</sup> *Anti-Fraud Order*, 26 FCC Rcd at 5574, ¶ 57.

<sup>9</sup> *Id.* at 5575-76, ¶ 63. Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) became effective June 1, 2011. *See Structure and Practices of the Video Relay Service Program*, 76 Fed. Reg. 24393 (May 2, 2011).

<sup>10</sup> *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).

<sup>11</sup> *Structure and Practices of the Video Relay Service Program*, Order, 26 FCC Rcd 15051 (CGB 2011) (granting a waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) to Convo Communications, LLC).

<sup>12</sup> *See* Healinc, Petition for Waiver, CG Docket No. 10-51, at 3 (filed Sept. 28, 2011) (Healinc Petition).

<sup>13</sup> Letter from Stanley F. Schoenbach, M.D., Managing Member, Healinc, to Marlene H. Dortch, Secretary, FCC (Sept. 22, 2011) (Schoenbach Letter); Letter from Andrew O. Isar, Regulatory Consultant, Miller Isar Inc., to Marlene H. Dortch, Secretary, FCC, re HealincTelecom, LLC Request for Reimbursement (Sept. 23, 2011) (Healinc

<llvrs.tv>,<sup>14</sup> which Healinc indicated was associated with its own brand.<sup>15</sup> RLSA continued to withhold payment for minutes reported with other URLs. RLSA followed the same approach regarding the minutes submitted by Healinc for August 2011.

*Petitions for Waiver.* Shortly after RLSA's denial of payment for Healinc's July 2011 minutes, Healinc and several companies identifying themselves as Healinc's subcontractors individually petitioned for waiver of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the rules, retroactively to June 1, 2011.<sup>16</sup> In their petitions, Healinc's subcontractors identified various URLs used by the subcontractors.<sup>17</sup> The petitions described various changes made by Healinc and the subcontractors *after* payment was withheld, in an attempt to ensure that they were in full compliance with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii). However, neither Healinc nor its subcontractors provided evidence that in July and August 2011, in processing calls that Healinc submitted for payment, Healinc's subcontractors had identified Healinc as the eligible VRS provider, or that the URLs used by the subcontractors were associated with Healinc brands or sub-brands.

*Citations Issued Against Healinc's Subcontractors.* On September 29, 2011, the Commission issued citations against its subcontractors for violations of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the Commission's rules.<sup>18</sup> In each case, the citation stated that the cited company: (1) "[h]eld itself out to the public as offering and providing VRS when the Company 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 Company handled a

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Request). Healinc also made a supplemental filing on October 18, 2011. Healinc Telecom, LLC, Supplement to Request of Healinc Telecom for Expedited Reimbursement, CG Docket No. 10-51 (filed Oct. 18, 2011). Healinc has requested confidential treatment for the entire text of these filings, a request that we do not address at this time. See Schoenbach Letter at 2; Healinc Request at 3; Letter from Andrew M. Klein and Elise L. Hiller, Klein Law Group PLLC, to Marlene H. Dortch, Secretary, FCC (Oct. 18, 2011). Healinc did not request confidential treatment of the Healinc Petition, which repeats some of the assertions and arguments in the other filings. Thus, citations in this order are primarily to the Healinc Petition.

<sup>14</sup> See Healinc Petition at 3 n.7. Thus, the issue of payment to Healinc for the calls reported with the <llvrs.tv> URL is no longer before us in this proceeding.

<sup>15</sup> *Id.* at 4-5.

<sup>16</sup> See IWRelay, Inc., 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); Malka, Petition for Waiver, CG Docket No. 10-51 (filed Sept. 29, 2011) (Malka Petition); Say-Hey, Inc., Petition for Waiver, CG Docket No. 10-51 (filed Sept. 29, 2011) (Say-Hey Petition); CODAVRS Corporation, Petition for Waiver, CG Docket No. 10-51 (filed Sept. 30, 2011) (CODAVRS Petition). In an order issued concurrently with this order, the Bureau denies the subcontractors' retroactive waiver requests. The Bureau also denies Healinc's request to the extent that it seeks a waiver for Healinc's subcontractors' use of brands, sub-brands, and URLs.

<sup>17</sup> See IWRelay Petition at 5-6 (acknowledging IWRelay's use of <iwrelay.tv>, <dbvrs.tv>, <ldsvrs.tv>, <goiw.tv>, and <mylds.tv>); PowerVRS Petition at 3 ("the POWERVRS.TV domain has been suspended"); Say-Hey Petition at 6 (stating it "has now disabled" <say-hey.tv>).

<sup>18</sup> 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).

VRS call initiated through the Company's URL"; and (3) "[r]outed a VRS call through the Company's URL, a URL not used by an Eligible Provider for its brand or sub-brand(s)."<sup>19</sup>

## **Discussion**

When TRS payments are withheld, the provider has the burden to establish that the calls in dispute are compensable.<sup>20</sup> In this case, Healinc has not provided sufficient justification for the release of payment for any of the minutes currently in dispute, *i.e.*, for any calls reported with URLs other than <llvrs.tv>.<sup>21</sup>

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.<sup>22</sup> Healinc has not shown that in July and August 2011, the VRS provided by Healinc through its subcontractors complied with this requirement. Moreover, in its September 29, 2011 citations against the subcontractors, the Enforcement Bureau expressly found that each subcontractor "[h]eld itself out to the public as offering and providing VRS when the Company is not an Eligible Provider" in violation of Section 64.604(c)(5)(iii)(N)(I)(i).<sup>23</sup> In addition, the web pages of several of Healinc's subcontractors, viewed on August 19, 2011, confirm that as of that date, those subcontractors held themselves out as providing VRS.<sup>24</sup>

Section 64.604(c)(5)(iii)(N)(I)(ii) provides that 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" and that "[w]here a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider".<sup>25</sup> Healinc has not shown that in July and August 2011, the VRS offered through its subcontractors was offered under Healinc's name, or under any Healinc sub-brand that "clearly identif[ied]" Healinc, as would be required for sub-brands under the Commission's rules.<sup>26</sup> Moreover, in its September 29, 2011 citations against the subcontractors, the Enforcement Bureau expressly found that each subcontractor "[d]id not clearly identify an Eligible Provider as the entity that a VRS user is using when the Company handled a VRS call initiated through the Company's URL."<sup>27</sup> In addition, the web pages of several of the subcontractors,

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<sup>19</sup> See, *e.g.*, *CODAVRS Citation*, 26 FCC Rcd at 13408.

<sup>20</sup> 47 C.F.R. § 64.604(c)(5)(iii)(L)(4) ("If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use"). See also *id.* §§ 64.604(c)(5)(iii)(L)(2), (5) (also indicating that the burden is on the provider).

<sup>21</sup> Neither Healinc nor any of its subcontractors claims that the URLs were incorrectly reported by Healinc.

<sup>22</sup> *Id.* § 64.604(c)(5)(iii)(N)(I)(i).

<sup>23</sup> See, *e.g.*, *IWRelay Citation*, 26 FCC Rcd at 13429.

<sup>24</sup> See <<http://callcodavrs.net/>>; <<http://www.iwrelay.com/About.aspx>>; <<http://www.powervrs.com/>>; <<http://www.say-hey.com/index.cfm?event=home>> (all visited Aug. 19, 2011).

<sup>25</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(ii).

<sup>26</sup> While some of Healinc's subcontractors made representations regarding their "current" branding practices (as of the dates in late September 2011 when they filed the petitions), they offered no evidence that the described practices were in place in July and August 2011. See, *e.g.*, *IWRelay Petition* at 5-6.

<sup>27</sup> See, *e.g.*, *Say-Hey Citation*, 26 FCC Rcd at 13453.

viewed on August 19, 2011, confirm that as of that date, those subcontractors' web pages failed to identify Healinc in any manner as the eligible provider offering VRS.<sup>28</sup>

Nor is there evidence that the subcontractors operated consistent with the requirement in Section 64.604(c)(5)(iii)(N)(I)(ii) that “[p]roviders must route all VRS calls through a single URL address used” for each name or sub-brand used by the eligible provider.<sup>29</sup> Healinc has not demonstrated that any of the URLs used by its subcontractors in July and August 2011 were used for Healinc sub-brands.<sup>30</sup> Moreover, in its September 29, 2011 citations against the subcontractors, the Enforcement Bureau expressly found that each subcontractor “[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).”<sup>31</sup> In addition, the web pages of several of Healinc’s subcontractors, viewed on August 19, 2011, confirm that as of that date, those subcontractors advertised a number of the URLs at issue as *their* URLs, not Healinc’s.<sup>32</sup>

To be compensable, TRS must be provided in accordance with the mandatory minimum standards of Section 64.604.<sup>33</sup> For the reasons stated above, we find that Healinc has failed to show that any of the July and August 2011 calls for which payment was withheld were handled in compliance with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii). Healinc has not attempted to disprove any of the violations for which its subcontractors have incurred citations; rather, Healinc (as well as its subcontractors) requests that any violations be waived. In an order issued concurrently with this order, however, we find no basis for granting waivers of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) with respect to the branding practices and URLs of Healinc’s subcontractors. We conclude that Healinc has failed to meet its burden to establish that the minutes in question are compensable under the Commission’s rules.<sup>34</sup>

<sup>28</sup> See <<http://callcodavrs.net/>>; <<http://www.iwrelay.com/About.aspx>>; <<http://www.powervrs.com/>>; <<http://www.say-hey.com/index.cfm?event=home>> (all visited Aug. 19, 2011).

<sup>29</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(ii). The Commission stated that its purpose in permitting “sub-brand” URLs was to allow sub-brands “such as those dedicated to particular states, communities or regions in which [an eligible VRS provider] provides service.” *Anti-Fraud Order*, 26 FCC Rcd at 5574, ¶ 57. See also *id.* at 5574, ¶ 57 n.162 (“For example, to the extent that an eligible provider offers Spanish-to-ASL VRS service, the provider may add a separate URL address dedicated to this particular version of service that nevertheless still identifies the eligible provider.”). Nothing in the *Anti-Fraud Order* suggests that the Commission intended to allow “sub-brands” dedicated to particular subcontractors, which would be the case if the URLs used by Healinc’s subcontractors actually represented “sub-brands” of Healinc. Indeed, such an approach would be utterly contrary to the Commission’s explicit intent to end the involvement of ineligible providers in marketing VRS. *Id.* at 5573-74, ¶¶ 56-57.

<sup>30</sup> Although some of Healinc’s subcontractors contended, in their waiver petitions, that the URLs they used actually did represent “sub-brand[s]” of Healinc (*see, e.g.*, CODAVRS Petition at 5; IWRelay Petition at 5), they provided no facts demonstrating that such URLs belonged to Healinc rather than to its subcontractors. And, as noted in the text, the subcontractors’ own web pages from August 19, 2011, which do not mention Healinc at all, contradict the subcontractors’ claims that these URLs somehow represented Healinc sub-brands.

<sup>31</sup> See, *e.g.*, *Malka Citation*, 26 FCC Rcd at 13429.

<sup>32</sup> See <<http://www.iwrelay.com/About.aspx>>; <<http://www.powervrs.com/>> (all visited Aug. 19, 2011).

<sup>33</sup> 47 C.F.R. § 64.604(c)(5)(iii)(E). See also *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51; *Purple Communications, Inc.; Request for Review of the Decision of the TRS Administrator to Withhold TRS Payments*, Order, DA 12-1130 (CGB, rel. Jul. 13, 2012) (denying payment for calls processed on days when the TRS provider violated the speed-of-answer requirements of Section 64.604).

<sup>34</sup> 47 C.F.R. § 64.604(c)(5)(iii)(L)(5).

Accordingly, IT IS ORDERED that, pursuant to the authority granted by sections 1, 4(i), 4(j), 5, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155 and 225, and pursuant to the authority delegated in sections 0.141, 0.361, and 64.604 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 64.604, RLSA's partial withholding of payment to Healinc Telecom, LLC for the months of July 2011 and August 2011 is AFFIRMED and such withheld payment is permanently DENIED. RLSA is DIRECTED not to pay the amounts heretofore withheld. This Order shall be effective upon release, in accordance with Section 1.4(b)(2) of the Commission's rules, 47 C.F.R. § 1.4(b)(2).

If you have any questions, please contact Bob Aldrich, Consumer and Governmental Affairs Bureau, FCC, at (202) 418-0996 and [robert.aldrich@fcc.gov](mailto:robert.aldrich@fcc.gov).

Sincerely,

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Consumer and Governmental Affairs Bureau