

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telecommunications Relay Services
And Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities
E911 Requirements for IP-Enabled Service
Providers
CG Docket No. 03-123
WC Docket No. 05-196

MEMORANDUM OPINION AND ORDER

Adopted: June 27, 2014

Released: June 27, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau, and Acting Chief, Wireline Competition Bureau:

1. By this Order, the Consumer and Governmental Affairs Bureau (CGB) and the Wireline Competition Bureau (WCB) (collectively, Bureaus) extend certain waivers of the Commission’s mandatory minimum standards for telecommunications relay services (TRS). These waivers, which are set to expire on July 1, 2014, are extended until the Commission determines, in a pending rulemaking, whether the standards at issue should cover the affected services, except that the waivers of the customer premises equipment (CPE) portability requirement, discussed in section II below, are extended until July 1, 2015.

2. Generally, the Commission’s rules may be waived for good cause shown.1 The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.2 In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.3 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.4

I. GENERALLY APPLICABLE WAIVERS

3. Over the past decade, the Commission has granted waivers to providers of Internet-based TRS5 of various TRS mandatory minimum standards that the Commission deemed inapplicable to or

1 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion . . . if good cause therefor is shown.”).

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

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

4 Id.

5 TRS enables a person who is deaf, hard of hearing, deaf-blind, or who has a speech disability to access the nation’s telephone system to communicate with other telephone users through a communications assistant (CA). See 47 (continued...)

technologically infeasible for Internet-based TRS. These waivers typically have been granted for a one-year period on an annual basis. In the most recent of the waiver orders, the Bureaus extended the waivers of these rules until July 1, 2014.⁶

4. In September 2013, the Commission initiated a rulemaking proceeding to consider the continuing need for and applicability of the rules underlying each of these waivers.⁷ The Commission sought comment on proposals to exempt certain iTRS and CTS providers permanently from certain mandatory minimum standards because of the technical infeasibility or inapplicability of these mandatory minimum standards to the services in question and on the need to continue to waive various other mandatory minimum standards, given the current state of the technologies pertaining to these standards and in light of annual reports submitted by providers reporting their ability to comply with such mandatory minimum standards.⁸ This rulemaking proceeding will not be completed before the expiration of the existing waivers.

5. We find that a temporary extension of these waivers is in the public interest. The record indicates that the reported status of providers' ability to comply with the waived rules remains largely unchanged.⁹ Moreover, as noted above, the Commission is considering the continuing need for each of these waivers and the applicability of the underlying rules. Therefore, for VRS and IP Relay providers, except as otherwise indicated herein, we extend the waivers of each of the following rules until the effective date of an amendment or Commission order addressing the merits of the application of such rule to VRS and IP Relay: (1) types of calls;¹⁰ (2) pay-per-call (900) calls;¹¹ (3) one-line VCO, VCO-to-TTY,

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U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. § 64.601(a)(22). The TRS mandatory minimum standards govern the provision of relay service. *See id.* § 64.604. "Internet-based TRS" refers, essentially, to all forms of TRS in which a TRS user employs an Internet connection to access the TRS communications assistant (CA). *Id.* § 64.601(a)(15) (defining "Internet-based TRS"). The forms of Internet-based TRS affected by this Order are Internet Protocol relay service (IP Relay), which permits the TRS user to communicate in text messages via a computer (or other similar device) (*see id.* § 64.601(a)(17)), and video relay service (VRS), which enables the TRS user and the CA to communicate in sign language via a video link over broadband, rather than through text (*see id.* § 64.601(a)(40)).

⁶ *Telecommunications Relay Services and Speech-To-Speech Services for Individuals with Hearing and Speech Disabilities E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Order, 28 FCC Rcd 9246 (CGB/WCB 2013) (*2013 TRS Waiver Order*).

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, CG Docket No. 03-123, WC Docket No. 05-196, Notice of Proposed Rulemaking, 28 FCC Rcd 13514 (2013) (*2013 TRS Waiver NPRM*).

⁸ *2013 TRS Waiver NPRM*, 28 FCC Rcd at 13515, ¶ 1. On March 26, 2014, CGB issued an order waiving the requirement to file an annual progress report, in light of the pending rulemaking, unless any provider's ability to comply with any waived requirement had changed. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 29 FCC Rcd 3162 (2014).

⁹ Comments and other filings submitted in the rulemaking docket indicate that the provision of some forms of voice carry-over (VCO) and hearing carry-over (HCO) may now be feasible for some VRS providers for which these TRS features were not previously feasible. *See, e.g.*, Letter from Mark D. Davis, Wiltshire & Grannis LLP, to Marlene H. Dortch (filed April 18, 2014). Because these matters are before the Commission, we do not attempt to differentiate among individual providers in temporarily extending the waivers of the relevant requirements. Rather, pending the outcome of the Commission's rulemaking proceeding, we temporarily extend these existing waivers for all providers to which the waivers currently apply. This will allow the Commission to address these issues efficiently and comprehensively based on the full record compiled in the rulemaking proceeding.

¹⁰ *Id.* § 64.604(a)(3)(ii).

¹¹ *Id.* § 64.604(a)(3)(iv).

and VCO-to-VCO;¹² (4) one-line HCO, HCO-to-TTY, and HCO-to-HCO;¹³ and (5) call release.¹⁴ In addition, we extend, for VRS providers, the waiver of the requirement for equal access to interexchange carriers,¹⁵ and for IP Relay providers, the waiver of STS requirements for IP Relay.¹⁶ Because we anticipate that the issues raised in the *2013 TRS Waiver NPRM* will be resolved prior to April 2015, we do not condition the extension of these waivers on the filing of an annual report in April 2015, addressing the ability to comply with the mandatory minimum standards and whether it is necessary for the waivers to remain in effect.¹⁷

II. CPE PORTABILITY WAIVERS

6. We also find good cause to extend waivers of certain TRS mandatory minimum standards for VRS and IP Relay providers that remain unable to meet such standards for newly-registered Internet-based TRS users who are using CPE, or iTRS access technology,¹⁸ from a former default service provider. We extend the waivers, which are set to expire on July 1, 2014,¹⁹ until July 1, 2015.

¹² *Id.* § 64.604(a)(3)(v). In 2012, based on statements made by CSDVRS in its 2012 report, CGB extended CSDVRS's waiver for one-line VCO only with respect to the provision of this service to users with non-CSDVRS-provided equipment or software. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Order, 27 FCC Rcd 7113, 7119-20, ¶ 11 n. 60 (CGB/WCB 2012) (*2012 TRS Waiver Order*). We further extended the waiver for CSDVRS, as modified, in 2013. *2013 TRS Waiver Order*, 28 FCC Rcd at 9247, ¶ 3 n. 13. We take the same action here, extending the one-line VCO waiver for CSDVRS subject to the same modification.

¹³ 47 C.F.R. § 64.604(a)(3)(v). In 2012, based on statements made by CSDVRS in its 2012 report, CGB allowed CSDVRS's waiver for HCO-to-TTY to expire and extended CSDVRS's waiver for (1) HCO-to-HCO with respect to all users and (2) one-line HCO only with respect to the provision of this service to users with non-CSDVRS-provided equipment or software. *2012 TRS Waiver Order*, 27 FCC Rcd at 7119-20, ¶ 11 n. 60 (CGB/WCB 2012). We further extended these waivers for CSDVRS, as modified, in 2013. *2013 TRS Waiver Order*, 28 FCC Rcd at 9248, ¶ 3 n. 14. We take the same action here, extending the HCO-related waivers for CSDVRS only to the extent that they were extended in those prior orders.

¹⁴ 47 C.F.R. § 64.604(a)(3)(vi).

¹⁵ *Id.* § 64.604(b)(3). The Commission previously waived this requirement indefinitely for IP Relay. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7789, ¶ 31 (2002).

¹⁶ 47 C.F.R. § 64.601(a)(20) (defining STS). The Commission previously waived this requirement indefinitely for VRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571, 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12526-27, ¶¶ 134-135 (2004).

¹⁷ For the same reason, we allow the extensions of these waivers to continue until the Commission addresses the merits of the waivers, rather than setting a specific end date.

¹⁸ In the *VRS Reform Order*, the Commission replaced use of term "CPE" in the Internet-based TRS context with the term "iTRS access technology," effective 30 days after publication of the text or summary of the *VRS Reform Order* in the Federal Register. *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8641-42, ¶¶ 45-46 (2013) (*VRS Reform Order*).

¹⁹ *2012 TRS Waiver Order* at 7124, ¶¶ 22-23.

7. These waivers were originally granted in 2008, after the Commission required VRS and IP Relay service providers to register users with their preferred “default” service providers and to assign such registered users ten-digit numbers linked to the North American Numbering Plan (NANP).²⁰ In the *Second Internet-based TRS Numbering Order*, the Commission clarified that providers who provide CPE to users “must ensure that their devices are capable of making calls after a change in default provider” and “must make available to other VRS providers enough information about that equipment to enable any VRS provider to perform all its functions as a default provider.”²¹ As a corollary, the Commission also ruled that “no provider may begin providing service as a new default provider for a customer until the provider is capable of performing [default provider functions] with respect to any device that was being used with the former default provider’s service.”²²

8. Recognizing that standards allowing full compliance with these requirements were not yet in place, the Commission granted a one-year limited waiver of any TRS mandatory minimum requirement that a new default provider is unable to meet “for a new registered user who is using CPE from a former default provider because that new default provider does not have access to the [necessary] technical information about that user’s CPE.”²³ The standards subject to limited waiver under this ruling include operational requirements such as the provision of speed dialing,²⁴ emergency call handling requirements,²⁵ and the requirement to offer point-to-point calling as clarified in the *Second Internet-based TRS Numbering Order*.²⁶

9. The Commission encouraged Internet-based TRS providers to work together to develop standards to ensure that default providers could carry out their responsibilities after a change in providers.²⁷ However, the industry did not fully achieve on its own the standardization needed for full interoperability and portability; therefore, the waiver was extended for additional periods in the *2009 TRS Waiver Order*,²⁸ *2010 TRS Waiver Order*,²⁹ *2011 TRS Waiver Order*,³⁰ *2012 TRS Waiver Order*,³¹ and

²⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11592-93, ¶ 1 (2008).

²¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 820-21, ¶ 65 (2008) (*Second Internet-Based TRS Numbering Order*).

²² *Id.* at 821, ¶ 65.

²³ *Id.* at 822, ¶ 68.

²⁴ 47 C.F.R. §64.604(a)(3).

²⁵ *Id.* §64.605.

²⁶ *Second Internet-based TRS Numbering Order*, 24 FCC Rcd at 820, ¶ 65 (stating, “we clarify that all default providers must support the ability of VRS users to make point-to-point calls without the intervention of an interpreter. Second, we clarify that *all* providers must ensure that their devices are capable of making calls after a change in default provider, including point-to-point calls to other VRS users”).

²⁷ *Id.*

²⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123 and WC Docket No. 05-196, Order, 24 FCC Rcd 14721, 14728, ¶ 21 (CGB/WCB 2009).

²⁹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123 and WC Docket No. 05-196, Order, 25 FCC Rcd 8437, 8438, ¶ 2 (CGB/WCB 2010).

2013 TRS Waiver Order.³² Accordingly, in the *VRS Reform Order* adopted by the Commission in 2013, the Commission directed Commission staff to participate in the development of voluntary, consensus standards to facilitate interoperability and portability;³³ authorized CGB to incorporate such consensus standards by reference into the Commission rules;³⁴ directed CGB to conduct an accelerated rulemaking, if necessary, to adopt standards for the portability of address book and speed dial list features;³⁵ and, generally stated the Commission's intention to take whatever steps are necessary to ensure the development and promulgation of interoperability and portability standards.³⁶

10. Because we recognize that a transition period for VRS access technologies or other action is necessary to ensure full interoperability and portability pursuant to the directives in the *VRS Reform Order*, we find that a further extension of the waiver is in the public interest, to allow time for the full implementation of the interoperability and portability standards that will enable Internet-based TRS providers to comply with all mandatory minimum standards regardless of the type of CPE used to access their services. Anticipating that implementation of the *VRS Reform Order* will result in sufficient progress in standardization to allow us to terminate this waiver, we grant a further extension of the CPE waiver until July 1, 2015, at which time we will assess such progress and determine whether the waiver should be terminated.

III. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to sections 151, 225, and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 225, and 251(e), and sections 0.91, 0.141, 0.291, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.141, 0.291, 0.361, and 1.3, each of the waivers described in section I hereof IS EXTENDED until the effective date of an amendment or Commission order addressing the merits of the application of such rule to VRS and IP Relay.

12. IT IS FURTHER ORDERED that the waivers described in section II hereof are EXTENDED until July 1, 2015.

13. IT IS FURTHER ORDERED that this *Order* shall be effective upon release.

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³⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; E911 Requirements for IP-Enabled Service Providers, CG Docket No. 03-123 and WC Docket No. 05-196, Order, 26 FCC Rcd 9449, 9450-51, ¶ 2 (CGB/WCB 2011).

³¹ *2012 TRS Waiver Order*, 27 FCC Rcd at 7124, ¶¶ 22-23.

³² *2013 TRS Waiver Order*, 28 FCC Rcd at 9250-51, ¶¶ 9-11.

³³ *VRS Reform Order*, 28 FCC Rcd at 8642, ¶ 48.

³⁴ *Id.* at 8643, ¶ 49.

³⁵ *Id.*, ¶ 50.

³⁶ *Id.* at 8644, ¶ 52.

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

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