

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
Hamilton Relay, Inc., and Sprint Corporation
Petitions for Interim Waiver of Sections 64.604(b)(3) and 64.604(a)(3)(ii)
CG Docket No. 03-123

ORDER

Adopted: August 24, 2016

Released: August 24, 2016

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

1. By this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) grants requests from Sprint Corporation (Sprint) and Hamilton Relay Inc. (Hamilton) for temporary waivers of two mandatory minimum requirements that currently apply to the provision of traditional telecommunications relay service (TRS), speech-to-speech relay service (STS), and captioned telephone service (CTS). The rules at issue require TRS providers to allow users to have long distance calls carried by their preferred long distance carrier and to offer the same billing options (such as collect, calling card, and third party billing) traditionally offered by wireline telephone companies. By this Order, these two requirements are temporarily waived for providers of traditional TRS, STS, and CTS, to the extent that the providers do not assess a toll charge for long-distance calls. Each waiver remains in effect for two

1Traditional TRS is text-based relay service that is provided over the public switched telephone network (PSTN) and that makes use of a text telephone (TTY). See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12480, para. 3 n.18 (2004); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5142, para. 2 (2000); see also 47 CFR § 64.604(a)(33) (definition of TTY).

2 STS is a type of TRS that is provided over the public switched telephone network (PSTN), and that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person. 47 CFR §§ 64.604(a)(30).

3 CTS is a type of TRS that is provided over the PSTN and that is generally used by a consumer who has the ability to speak and some residual hearing. CTS enables the consumer to speak directly to the other party and, when the other party speaks, to simultaneously both listen to what the other party is saying (to the extent possible) and read captions of what the other party is saying. The other party's speech is transcribed as captions, which are transmitted directly to the CTS user and are displayed on the user's device. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling, 18 FCC Rcd 16121, 16122-23, 16125, paras. 3-5, 11 (2003).

years, or until the effective date of a Commission rulemaking or other decision as to the continuing application of the requirement to traditional TRS, STS, and CTS, whichever occurs first.

I. BACKGROUND

2. Section 64.604(b)(3) of the Commission's TRS rules, adopted in 1991, and known as the "equal access" requirement, states, in relevant part:

TRS users shall have access to their chosen interexchange carrier through the TRS and to all other operator services to the same extent that such access is provided to voice users.⁴

Section 64.604(a)(3)(ii) of the rules, also adopted in 1991, and known as the "types-of-calls" requirement, states, in relevant part:

Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.⁵

With respect to the latter rule, for purposes of this order, we address the requirement to handle only a subsection of "any type of call normally provided by telecommunications carriers," namely "non-coin sent-paid, third party number, calling card and collect calls."⁶ In this Order, this aspect of the types-of-call rule is referred to as the "billing options" requirement.

3. When the Commission authorized Internet-based forms of TRS, it granted temporary waivers of these TRS requirements for some or all iTRS providers, subject to certain conditions, and these waivers were periodically renewed for many years.⁷ In 2014, the Commission amended the equal access requirement to permanently exempt providers of Internet-based TRS if they do not assess specific charges for long distance calling.⁸ The Commission also amended the types-of-calls requirement to permanently exempt providers of Internet-based TRS from the requirement to "provide the same billing options (*e.g.*, sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services if they allow for long distance calls to be placed using calling cards or credit cards or do not assess charges for long distance calling."⁹

4. On September 23, 2015, Sprint and Hamilton filed a joint petition requesting the Commission to initiate a rulemaking to adopt similar amendments to the equal access and types-of-calls requirements that would exempt providers of traditional TRS and CTS from these requirements to the

⁴ 47 C.F.R. § 64.604(b)(3); *see also Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act*, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4661-62, para. 22 (1991) (*First TRS Report and Order*).

⁵ 47 C.F.R. § 64.604(a)(3)(ii); *see also First TRS Report and Order*, 6 FCC Rcd at 4660-61, paras. 17-19.

⁶ *See First TRS Report and Order*, 6 FCC Rcd at 4660, para. 17.

⁷ *See Telecommunications Relay Services And Speech-to-Speech for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10703-04, 10705, paras. 11, 15 (2014) (*iTRS Exemptions Order*).

⁸ *iTRS Exemptions Order*, 29 FCC Rcd 10697, 10705-06, paras. 15-16; 47 C.F.R. § 64.604(b)(3).

⁹ 47 C.F.R. § 64.604(a)(3)(ii); *iTRS Exemptions Order*, 29 FCC Rcd 10697, 10703-05, paras. 11-14. The amended rule provides further that Internet-based TRS providers "need not allow for long distance calls to be placed using calling cards or credit cards if they do not assess charges for long distance calling." 47 C.F.R. § 64.604(a)(3)(ii).

extent that they do not assess a separate toll charge for long-distance traffic that they carry.¹⁰ On the same day that the petitioners filed the Joint Petition for Rulemaking, Sprint petitioned for a temporary waiver of the same requirements, to the extent that a traditional TRS or CTS provider does not charge for long-distance service.¹¹ Hamilton subsequently filed a similar request for a temporary waiver.¹² In addition, on August 17, 2016, Hamilton filed a supplement to its petition, requesting that STS be included in any waiver granted by the Commission.¹³

5. Sprint and Hamilton request that these temporary waivers remain in effect until the Commission completes a rulemaking on a permanent exemption from these requirements.¹⁴ Sprint also seeks a clarification that, to the extent it does not charge other (non-TRS) telephone users for long distance calls,¹⁵ it may cease charging TRS users for long distance without violating the Commission's prohibition against TRS providers offering free long distance service as an incentive to make more or longer TRS calls.¹⁶

6. Sprint and Hamilton assert that the equal access and billing options requirements are no longer needed due to the changing landscape of telecommunications billing.¹⁷ Sprint explains that the requirements were adopted "more than twenty years ago, when per-minute long-distance charges were standard and standalone long-distance service was a thriving industry."¹⁸ Today, when bundled calling plans "have rendered per-minute charges for long-distance calls and standalone long-distance service increasingly uncommon," Sprint contends that the equal access and billing options requirements serve no useful purpose.¹⁹ In this changed environment, Hamilton adds, TRS users are increasingly migrating to IP-based and wireless services that render equal access inapplicable, and even wireline carriers are eliminating their operator service offerings.²⁰ In addition, according to Sprint, traditional TRS users rarely select alternative carriers for their long distance TRS calls.²¹

7. Sprint also contends that grant of the requested waivers would improve service for traditional TRS and CTS users.²² If the equal access requirement is waived, Sprint argues that users of traditional TRS and CTS will benefit because charges for long distance calls will be largely eliminated.²³

¹⁰ Hamilton, Relay, Inc. and Sprint Corporation Joint Petition for Rulemaking to Reform the Commission's Mandatory Minimum Requirements for Traditional TRS and CTS Providers (filed Sept. 23, 2015) (Joint Petition for Rulemaking).

¹¹ Petition for Interim Waiver of Sprint Corporation (filed Sept. 23, 2015) (Sprint Petition).

¹² Petition for Interim Waiver of Hamilton Relay, Inc. (filed Mar. 14, 2016) (Hamilton Petition).

¹³ Hamilton, Supplement to Petition for Interim Waiver (filed Aug. 17, 2016) (Hamilton Supplement).

¹⁴ Sprint Petition at 2; Hamilton Petition at 2.

¹⁵ Sprint notes that it intends to discontinue its provision of wireline consumer long-distance services.

¹⁶ Sprint Petition at 4 n.9 (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 20 FCC Rcd 12503 (CGB 2005) (*Long Distance Incentives Ruling*)).

¹⁷ Sprint Petition at 2; Hamilton Petition at 2.

¹⁸ Sprint Petition at 2; *see also* Hamilton Petition at 2.

¹⁹ Sprint Petition at 2.

²⁰ Hamilton Petition at 2.

²¹ Sprint Petition at 7-8.

²² *Id.* at 3.

²³ Sprint Petition at 2, 3-4. According to its petition, Hamilton does not currently charge TRS users for long distance calls. Hamilton notes, however, that users may be charged for such calls where the user requests connection to a carrier that does charge for such calls. Hamilton Petition at 3 n.7.

In addition, according to Sprint, waiving the equal access requirement will simplify the process for placing long distance calls via traditional TRS and CTS. Sprint explains that “given the infrequency with which consumers today use a standalone long-distance service,” many consumers are confused by provider questions or advisories regarding long distance carrier selection. As a consequence, according to Sprint, implementing a TRS user’s choice of carrier unnecessarily adds time and complexity to call set-up, especially if the user does not have an account with the carrier selected.²⁴

8. Finally, Sprint claims, waiving both requirements would advance Sprint’s efforts to upgrade its wireline TRS and CTS platform to the next generation, IP-based technology,²⁵ thereby advancing the statutory policy of “not discourag[ing] or impair[ing] the development of improved technology.”²⁶ Without a waiver, Sprint states that it would have to either maintain a portion of its TDM network solely for the purpose of fulfilling these two requirements or undertake the taxing process of replicating and maintaining these capabilities on an IP platform.²⁷ Hamilton explains that the rationale for granting a waiver of the equal access and billing options requirements for traditional TRS and CTS also justifies waiving those requirements for STS.²⁸

II. DISCUSSION

9. A Commission rule may be waived “if good cause therefor is shown.”²⁹ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.³⁰ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³¹ A waiver is thus appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.³² Under this standard, we find good cause to grant temporary waivers of the equal access and billing options requirements.

A. Waiver of the Equal Access Requirement

10. As the petitioners point out, the equal access requirement was adopted in order to ensure that TRS consumers had functionally equivalent service at a time when consumers’ ability to choose a particular long distance service provider was a fundamental aspect of telephone service.³³ Today, by contrast, as the Commission recently found, “stand-alone long distance service . . . has become a fringe market.”³⁴ As noted by Sprint, bundled calling plans “have rendered per-minute charges for long distance

²⁴ Sprint Petition at 4-5.

²⁵ *Id.* at 6.

²⁶ *Id.* Petition at 6, *citing* 47 U.S.C. § 225(d)(2).

²⁷ *Id.*

²⁸ Hamilton Supplement at 2.

²⁹ 47 C.F.R. § 1.3.

³⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

³² *Northeast Cellular*, 897 F.2d at 1166.

³³ *See First TRS Report and Order*, 6 FCC Rcd at 4661-62, para. 22; 47 U.S.C. § 225(a)(3) (defining 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”).

³⁴ *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, Memorandum Opinion and Order and Report and Order and Further Notice

(continued...)

calls and standalone long-distance service increasingly uncommon,” and this has largely eliminated the concerns underlying the equal access requirement.³⁵ The Commission considered these marketplace changes when it amended its rules to exempt Internet-based TRS providers from the equal access requirement. In ruling on such exemption, the Commission expressly determined that equal access to interexchange carriers is not necessary for functionally equivalent service if Internet-based TRS providers do not charge for long distance service.³⁶ Where consumers do not pay long distance charges and consequently have no interest in price shopping for a long distance provider, the Commission reasoned, they derive no value from having equal access to long distance carriers.³⁷

11. Based on the Commission’s reasoning in that decision, we conclude that it is in the public interest to waive this requirement for traditional TRS, STS, and CTS providers on a temporary basis.³⁸ Now that stand-alone long distance has become a fringe market, it would appear that, for traditional TRS, STS, and CTS as well as for iTRS, when a TRS provider does not charge users for long distance service, there is no public interest reason for continuing to require the TRS provider to offer its users the ability to use an alternative long distance carrier. In addition, we are persuaded by Sprint’s concern that the requirement imposes an unnecessary burden because it compels TRS providers to expend resources to maintain and replicate obsolete equal access capabilities at a time when they are updating their TRS platforms to incorporate more modern telecommunications.³⁹ We thus conclude that granting a temporary, conditional waiver of the equal access requirement will permit “more effective implementation of overall policy” with respect to Sprint’s and Hamilton’s provision of traditional TRS, STS, and CTS.⁴⁰

12. Therefore, we grant petitioners a temporary waiver of the equal access requirement as applied to traditional TRS, STS, and CTS, provided that they do not assess separate charges on TRS users for long distance service. This temporary waiver will expire two years from the date of this Order, or on the effective date of a Commission rulemaking or other decision as to the continuing application of the equal access requirement to traditional TRS, STS, and CTS, whichever is earlier.

B. Waiver of the Billing Options Requirement

13. The Commission adopted the billing-options requirement in order to enable TRS consumers to use collect calling and other billing options then available to the general public in the telecommunications service market.⁴¹ However, the same marketplace and billing changes that have, for

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of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7637, para. 16 (2013) (*2013 Forbearance Order*) (forbearing from applying the Commission’s requirement that independent local exchange carriers (1) inform prospective customers that they may obtain stand-alone long distance service from other carriers and, (2) if requested, read customers a list of long distance carriers); *see also Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements et al.*, Report and Order, 22 FCC Rcd 16440, 16501-02, paras. 125-26 (2007) (applying similar forbearance to AT&T, Verizon, and Sprint).

³⁵ Sprint Petition at 2.

³⁶ *iTRS Exemptions Order*, 29 FCC Rcd at 10706, para. 16.

³⁷ *Id.*

³⁸ In the *iTRS Exemptions Order*, the Commission addressed whether various minimum TRS standards that had been previously waived for iTRS providers remained infeasible or inapplicable in the iTRS context. Because the equal access and billing options requirements had not been waived previously for providers of TRS, STS, and CTS, the Commission did not consider whether to exempt such providers from those requirements.

³⁹ Sprint Petition at 6.

⁴⁰ *WAIT Radio*, 418 F.2d at 1159.

⁴¹ *iTRS Exemptions Order*, 29 FCC Rcd at 10705, para. 14, *citing First TRS Report and Order*, 6 FCC Rcd at 4660-61, ¶¶ 17-19.

the most part, eliminated the need for the equal access requirement discussed above also appear to have eliminated the need to offer such billing options in order to achieve functionally equivalent service. For example, stand-alone long distance competition has given way to competition between service bundles that include both local and long distance calling.⁴² As a result, as Hamilton points out, even wireline carriers are seeking to discontinue offering these billing options.⁴³ Moreover, as with the equal access requirement, if TRS providers do not charge for long distance service, any residual need for long distance billing options appears to be eliminated, rendering the requirement to offer this TRS feature a burden with no associated public interest benefit. Citing similar reasons, among others, in 2014, the Commission permanently exempted iTRS providers from the billing options requirement.⁴⁴ As with the equal access waiver discussed above, we thus conclude that granting a temporary, conditional waiver of the billing-options requirement will permit “more effective implementation of overall policy” with respect to Sprint’s and Hamilton’s provision of traditional TRS, STS, and CTS.⁴⁵

14. Therefore, we grant petitioners temporary waivers of the billing options requirement as applied to traditional TRS, STS, and CTS, provided that they do not assess separate charges on users of these services for long distance calls. In other words, petitioners need not provide the same billing options (*e.g.*, sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services if they do not assess charges for long distance calling.⁴⁶ This temporary waiver will expire two years from the date of this Order, or on the effective date of a Commission rulemaking or other decision as to the continuing application of the billing options requirement to traditional TRS, STS, and CTS, whichever is earlier.

15. We caution, however, that Sprint and Hamilton must continue to handle and complete TRS calls from inmates of correctional facilities. In this regard, we note that Hamilton states in its petition that, even though Hamilton itself “does not charge [TRS] users for long distance services directly,” others may do so, including inmate calling service (ICS) providers.⁴⁷ Specifically, Hamilton explains that “certain relay calls, such as inmate relay calls, typically are made through collect calling or through the use of calling cards. Those options, which are primarily designed to avoid the misuse of relay, may remain in place even if the requested waiver is granted.”⁴⁸ Nothing in this Order relieves Sprint and Hamilton, as TRS providers, of the obligation to complete inmate calls in a manner that is consistent with the applicable billing methods allowed by the correctional facility for any charges lawfully assessed by an ICS provider.⁴⁹ For example, we expect a TRS provider to cooperate with inmate

⁴² 2013 *Forbearance Order*, 28 FCC Rcd at 7636, para. 14.

⁴³ Hamilton Petition at 3 (*citing Comments Invited on Application of AT&T Services, Inc. on Behalf of Affiliates to Discontinue Domestic Telecommunications Services*, Public Notice, 31 FCC Rcd 209 (WCB 2016)).

⁴⁴ *iTRS Exemptions Order*, 29 FCC Rcd at 10704, para. 12. The Commission also cited, as one reason for permanently exempting iTRS providers from the billing-options requirement, the lack of a billing relationship between iTRS providers and iTRS users. *Id.* at 13. As explained *supra* note 38, the scope of the *iTRS Exemptions Order* rulemaking proceeding was limited to determining whether certain waivers of TRS requirements previously granted for iTRS providers should be made permanent and did not focus on billing-options or other requirements for traditional TRS, STS, and CTS providers. However, now that even PSTN-based carriers are seeking to discontinue these billing options, we conclude here that such options are no longer necessary to ensure functionally equivalent communication as long as the TRS provider does not charge for long distance TRS calls.

⁴⁵ *WAIT Radio*, 418 F.2d at 1159.

⁴⁶ 47 C.F.R. § 64.604(a)(3)(ii). We note that the term “operator assisted” here refers to operator-assisted *billing*, as opposed to other forms of operator assistance.

⁴⁷ Hamilton Petition at 3 n.7.

⁴⁸ *Id.*

calling service (ICS) providers and correctional facilities in taking appropriate steps to determine whether a called party agrees to be billed for a collect call from an inmate.

C. Permissibility of Free Long Distance Calling

16. We also clarify that, given the changes that have occurred in telecommunications markets and billing practices, including the common practice of bundling long distance with local exchange service,⁵⁰ a TRS provider's practice of allowing long distance calls without separate charges does not, by itself, support an inference that the provider is offering an impermissible financial incentive for TRS use. The Bureau previously ruled that the ban on financial incentives for TRS use prohibits "only those long distance discounts for TRS consumers that go beyond ensuring that the long distance service cost of the TRS call is equivalent to what that cost would have been for hearing parties."⁵¹ Given the widespread bundling of long distance with local calling, we find no basis to conclude that, in today's environment, offering free long distance calling to TRS users would provide an impermissible incentive for them to make long distance calls.⁵²

III. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, the petitions for interim waiver filed by Sprint and Hamilton are GRANTED and sections 64.604(a)(3)(ii) and 64.604(b)(3) of the Commission's rules, 47 C.F.R. §§ 64.604(a)(3)(ii) and 64.604(b)(3), ARE TEMPORARILY WAIVED, to the extent stated in this Order, for two years, or until the effective date of a Commission rulemaking or other decision as to the continuing application of each such provision to traditional TRS, STS, and CTS, whichever is earlier.

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⁴⁹ Recently, the Commission adopted a rule prohibiting ICS providers from assessing charges for inmates' TRS calls, except to the extent that any per-call or per-minute charges are assessed on the ICS provider by another carrier or service provider to complete a call made through a TRS center. *Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking*, 30 FCC Rcd 12763, 12879, para. 236 & n.842 (2015). With the exception of such pass-through charges, there would appear to be no need for collect billing or other billing options with respect to inmate calls using traditional TRS, STS, or CTS. In the event that such billing options remain necessary, however, this waiver does not authorize a TRS provider to decline to cooperate in arranging appropriate billing.

⁵⁰ See *supra* para.10.

⁵¹ *Long Distance Incentives Ruling*, 20 FCC Rcd at 12505, para. 6.

⁵² In other words, the incentive to make long distance calls that results from allowing free long distance TRS calling does not appear to be significantly greater than the incentive to make such calls that results from a carrier's offering of bundled long distance service to hearing consumers. We also note that all forms of TRS remain subject to the statutorily mandated requirement that "users of telecommunications relay services pay rates *no greater* than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination." 47 U.S.C. § 225(d)(1)(D) (emphasis added); 47 CFR § 64.604(c)(4).

18. 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), (844) 432-2275 (videophone), or (202) 418-0432 (TTY). This Order may be downloaded from <https://www.fcc.gov/general/telecommunications-relay-services-trs>.

FEDERAL COMMUNICATIONS COMMISSION

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