



Federal Communications Commission
Washington, D.C. 20554

April 12, 2017

DA 17-350

David A. O'Connor
1800 M Street, N.W.
Suite 800N
Washington, DC 20036

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; Waiver of Speed of Answer Rule

Dear Mr. O'Connor:

This letter order grants a waiver of the Commission's speed of answer (SOA) rule to Hamilton Relay, Inc. (Hamilton), for Internet Protocol Captioned Telephone Service (IP CTS) calls handled on January 7, 2017, and directs the TRS Fund administrator to pay all compensation for these calls otherwise due for that day.¹ As explained below, we are persuaded that the confluence of two events, first the destruction of Hamilton's Albany, Georgia call center on January 2, 2017, and second, a significant increase in call volume due to a major ice storm on the east coast on January 7, 2017, significantly interfered with Hamilton's ability to answer IP CTS² calls in the time required by the Commission's rules, and provides good cause for this waiver.

The Commission's rules require that IP CTS providers answer 85 percent of all calls within 10 seconds, measured daily (SOA rule).³ Our rules further require that TRS providers "ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network."⁴ Hamilton does not contest that it failed to meet the SOA metric on January 7, 2017. Instead, Hamilton requests that the Commission waive the SOA rule for that day.⁵

A Commission rule may be waived for "good cause shown."⁶ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁷ In

¹ See Hamilton Petition for Waiver, CG Docket No. 03-123 (filed Jan. 19, 2007) (Petition); 47 CFR § 64.604(b)(2).

² IP CTS is a telecommunications relay service designed to allow people with hearing loss to speak directly to another party on a telephone call and to simultaneously listen to the other party and read captions of what that party is saying over an IP-enabled device. 47 CFR § 64.601(a)(16). The Interstate Telecommunications Relay Services (TRS) Fund compensates eligible providers of IP CTS and other forms of Internet-based and interstate TRS for their reasonable costs of providing these services. *Id.* § 64.604(c)(5)(iii).

³ 47 CFR § 64.604(b)(2)(ii) ("TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network.").

⁴ *Id.*

⁵ Petition at 1.

⁶ 47 CFR § 1.3.

⁷ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸ Waiver of a Commission rule is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁹ Applying the waiver standard, under the particular circumstances here, we find that Hamilton has shown good cause for a waiver of the SOA rule for January 7, 2017.

According to Hamilton's petition, on January 2, 2017, a severe storm destroyed Hamilton's largest IP-CTS call center in Albany, Georgia, a center that had been staffed by 225 communications assistants.¹⁰ Hamilton reports that it immediately began increasing staff at other call centers in order to process incoming IP CTS calls. To that end, Hamilton offered its Georgia employees incentives to work at call centers in two other states, on a temporary basis.¹¹ Hamilton states that these steps enabled it to meet the SOA requirement from January 2 through January 6 despite the sudden decrease in available staff.¹² On January 7, however, Hamilton missed the SOA metric, as a result of a significantly increased volume of calls that appeared to be caused by a major ice storm on the east coast.¹³

As the Commission has previously explained, TRS providers are required to ensure adequate staffing to achieve service that is functionally equivalent to that experienced by voice telephone users,¹⁴ and to engage in intelligent planning for network design and CA staffing, consistent with the Commission's blocked-call standard, so that they do not have difficulty meeting the minimum SOA standard, absent extraordinary circumstances.¹⁵ Nevertheless, we find that extraordinary circumstances are present in this case. Hamilton could not have foreseen the sudden destruction of its largest call center, which left it without 225 employees as of January 2, nor the unanticipated spike in call volume resulting from the east coast ice storm, which occurred only five days later while this center was still down.¹⁶ It is also relevant that Hamilton took immediate action to mitigate its reduction in staff,¹⁷ and actually met the SOA standard in the wake of the destruction of its call center. It only failed to meet the SOA standard on January 7, when suddenly hit with a second weather event that Hamilton could not reasonably have foreseen. Further, despite being dealt this "second whammy," Hamilton quickly took steps to ensure compliance with the SOA rule by the very next day. In these unusual circumstances, we find that demanding strict compliance with the SOA rule would be inconsistent with the public interest and that a waiver is appropriate.

⁸ See *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.

⁹ See *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ *Id.*; see also WALB News 10, Call center staff survives office roof collapse, www.walb.com/story/34172471/call-center-staff-office-roof-collapse (Jan. 3, 2017). In the days that followed, Hamilton explains, the county and the state of Georgia declared a state of emergency. Petition at 2 nn.3-4

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ See 47 CFR § 64.604(b)(2)(i).

¹⁵ *2000 TRS Report and Order*, 15 FCC Rcd at 5167-68, para. 65; see also *Purple Communications, Inc.*, Order, 27 FCC Rcd 8014, 8022, para. 22 (2012).

¹⁶ Petition at 1-3.

¹⁷ *Id.* at 2.

Accordingly, IT IS ORDERED that, pursuant to sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, a waiver is GRANTED to Hamilton to the extent indicated herein. Hamilton shall be paid the compensation otherwise due for IP CTS minutes provided on January 7, 2017. This order shall be effective as of the date of issuance.

Sincerely,

Karen Peltz Strauss
Deputy Chief
Consumer and Governmental Affairs Bureau