

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)
Structure and Practices of the Video Relay Service Program)
CG Docket No. 03-123
CG Docket No. 10-51

ORDER

Adopted: December 18, 2020

Released: December 18, 2020

By the Chief, Consumer and Governmental Affairs Bureau:

1. In light of the ongoing COVID-19 national emergency, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission), on its own motion, grants Hamilton Relay, Inc. (Hamilton) and Sprint Communications Company L.P. (Sprint) partial waivers, through February 28, 2021, of the Commission’s rule prohibiting early termination of Telecommunication Relay Service (TRS) calls.1

2. Section 64.604(a)(3)(i) of the Commission’s rules prohibits a TRS provider’s communications assistants (CAs) from limiting the duration of a relay call.2 However, the CA initially handling a call may be replaced by a different CA—after any applicable minimum time period has elapsed3—if that can be accomplished without disconnecting the call. In an ex parte letter, Hamilton and Sprint explain that, on those occasions when the CA handling a TRS call must be replaced, their ability to substitute a new CA without ending the call has been disrupted due to operational changes necessitated by the COVID-19 pandemic.4 Prior to the pandemic, when Hamilton or Sprint allowed substitution of a CA in the middle of a call, the new CA would physically replace the first CA by sitting down at the same

1 See 47 CFR § 64.604(a)(3)(i) (“Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.”). As explained below, this Order partially waives the prohibitions on “limiting the length of calls” and “refusing . . . sequential calls,” but does not waive the prohibition on “refusing single . . . calls.”

2 Id.

3 CA transfers can be disruptive even under normal circumstances. For some types of TRS (TTY-based TRS, video relay service (VRS), and speech-to-speech relay service (STS)), the CA initially handling a call is required to stay with the call for a specified minimum time period (10 minutes for TTY-based TRS and VRS and 20 minutes for STS). 47 CFR § 64.604(a)(1)(v). In setting these minimum time periods, the Commission sought to balance the need to minimize call disruptions with the need to prevent CA fatigue and overuse injuries. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Notice of Proposed Rulemaking, CC Docket No. 98-67, 13 FCC Rcd 14187, 14211, para. 62 (1998). For other types of TRS, no minimum time period is required, and a new CA can take over at any time during a call. Waiver of the applicable minimum time periods is not at issue here.

4 Letter from Hamilton Relay, Inc., and T-Mobile USA, Inc. (on behalf of Sprint), to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 and 03-123, at 2 (filed July 10, 2020) (Hamilton & Sprint Ex Parte).

workstation.⁵ Since the start of the pandemic in March 2020, Hamilton and Sprint have had to discontinue this practice due to the social distancing requirements now applicable in call centers and the need for many CAs to work from home.⁶

3. To address the changed situation, Hamilton and Sprint updated their call-handling procedures to minimize mid-call CA substitutions, allowing them only where “the CA is unable to continue to provide captioning service due to an exigent, unavoidable circumstance.”⁷ As a result, Hamilton and Sprint report that the frequency of mid-call CA substitutions is extremely low.⁸ When a CA substitution is necessary, the providers explain, a number of approaches have been temporarily adopted for different types of TRS. For the most widely used configuration of Internet Protocol Captioned Telephone Service (IP CTS),⁹ in which captions are delivered over an Internet connection that is separate from the user’s voice line, the providers’ initial approach to the CA substitution problem (while they were developing a technical solution to address this issue) was to direct the user to press the captions button, connecting the call to a new CA without terminating the voice connection between the parties.¹⁰ Under this approach, depending on the length of the interval between the initial CA leaving the call and the replacement CA restarting captions, there could be an interruption in the captioning of the call.¹¹ As of July 24, 2020, however, both providers completed deployment of a seamless back-office solution for the above configuration of IP CTS, which automatically transfers a call to a new CA without any action by the user or any interruption in the captioning of the call.¹²

4. For other, less frequently used relay services, however, Hamilton and Sprint state that seamless technical solutions such as the one described above “will be more difficult due to technology limitations, and may not be feasible.”¹³ For two-line Captioned Telephone Service (CTS),¹⁴ the CA

⁵ *Id.*

⁶ *Id.* at 2-3.

⁷ *Id.* at 3.

⁸ For example, for telephone captioning during the period from April 1 to June 9, 2020, according to Hamilton and Sprint, CA substitutions occurred on 0.0058% of Hamilton’s calls (i.e., 58 of every 1 million calls) and 0.01086% of Sprint’s calls (i.e., approximately 109 of every 1 million calls). *Id.* at 3-4.

⁹ IP CTS permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and a display device to simultaneously listen to the other party and read Internet-delivered captions of what the other party is saying. 47 CFR § 64.601(a)(22).

¹⁰ Hamilton & Sprint *Ex Parte* at 3.

¹¹ If another CA was not immediately available to respond when the user pressed the caption button, there would be an interruption in the captioning of the call, which could be substantial in busy periods. *Cf. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 2715 (CGB 2020) (*March 16 TRS Waiver Order*) (granting temporary, partial waivers of certain TRS rules, including the speed-of-answer requirement, to ensure continued service at increased demand levels during the COVID-19 emergency).

¹² Letter from Hamilton Relay, Inc. to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 and 03-123, (filed September 15, 2020) (Hamilton September 15 *Ex Parte*); Letter from T-Mobile USA, Inc. (on behalf of Sprint), to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24 and 03-123 (filed September 16, 2020) (Sprint September 16 *Ex Parte*). Hamilton states it completed deployment of this solution July 23. Hamilton September 15 *Ex Parte*.

¹³ Hamilton & Sprint *Ex Parte* at 3.

¹⁴ *Id.* at 3. The term “CTS” refers to a form of telephone captioning, offered through state TRS programs, that functions similarly to IP CTS but without using the Internet for the delivery of captions. *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Speech and Hearing Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121 (2003) (*2003 Captioned Telephone Declaratory Ruling*). Two-

(continued....)

substitution method is currently the same method initially used in the IP CTS context described above, requiring the user to press the caption button to connect the call to a new CA—and thereby causing a gap in captioning if a new CA is not immediately available. On the other hand, for web-based and mobile IP CTS¹⁵ and one-line CTS,¹⁶ when the CA needs to leave the call, the CA “direct[s] the user to end the [voice] call and dial again” to reach a new CA.¹⁷ In general, such complete disconnection of the voice call, as well as the captioning connection, has also proved unavoidable for CA substitutions in Sprint’s Internet Protocol Relay (IP Relay) service and traditional (TTY-based) TRS.¹⁸ With Hamilton’s TTY-based TRS, if a mid-call substitution is necessary, the CA must disconnect the called party, but not the calling party.¹⁹

5. By prohibiting CAs from limiting the duration of a TRS call, section 64.604(a)(3)(i) of the Commission’s rules²⁰ necessarily prohibits directing the user to disconnect an ongoing TRS call, even for the purpose of substituting a new CA—and regardless whether such disconnection interrupts the communication of voice, text, or both. Such interruptions, however infrequently they may occur, are inconsistent with the provision of “functionally equivalent” TRS—as defined by the Commission’s mandatory minimum standards²¹—because voice telephone users are not subject to comparable interruptions.²²

6. However, we find good cause to partially waive section 64.604(a)(3)(i), with respect to the prohibition on “limiting the length of calls,” for Hamilton and Sprint’s offerings of IP CTS, one-line and two-line CTS, traditional (TTY-based) TRS, and Sprint’s IP Relay service, through February 28, 2021, to the extent necessary to address the foregoing technical issues faced by Hamilton and Sprint,

line CTS uses two telephone lines, one for the voice conversation between the parties and one for delivery of captions. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67 and CG Docket No. 03-123, Order, 20 FCC Rcd 13195 (2005).

¹⁵ Web-based IP CTS is accessed by the user on a computer or laptop, using the same Internet connection for both voice and delivery of captions. Mobile IP CTS is offered through the provider’s application on a mobile device.

¹⁶ One-line CTS uses one standard telephone line to transmit both voice and captions. The providers explain that the “limitations of the [public switched telephone network] architecture” have made it very difficult for them to devise alternative solutions for CA substitutions during one-line CTS calls. *Hamilton & Sprint Ex Parte* at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 4. IP Relay permits an individual with a hearing or speech disability to communicate in text with a CA via the Internet. 47 CFR § 64.601(a)(23). Traditional TRS allows individuals with disabilities to communicate with CAs over a circuit-switched telephone network using a text telephone (TTY) device. *See id.* § 64.601(a)(43). On June 19, 2020, Sprint began implementing a technical solution for these services that allows at-home CAs to transfer calls to a call-center CA, but that solution is not available where a call is initially handled at a call center. *Hamilton & Sprint Ex Parte* at 4.

¹⁹ *Hamilton & Sprint Ex Parte* at 4.

²⁰ 47 CFR § 64.604(a)(3)(i).

²¹ *See* 47 U.S.C. § 225(a)(3) (defining TRS in terms of functional equivalence); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5143, para. 4 (2000) (“Functional equivalence is, by nature, a continuing goal that requires periodic reassessment.”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals and Hearing and Speech Disabilities*, CG Docket No. 03-123, 19 FCC Rcd 12475, 12548-49, para. 189 (2004); *see also Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035, 1042 (10th Cir. 2011) (“the FCC has determined that ‘functional equivalency’ is met when the service complies with the mandatory minimum standards applicable to the specific service.”).

²² *See* 47 U.S.C. § 225(d)(1)(E) (directing the Commission to adopt a rule prohibiting “relay operators from failing to fulfill the obligations of common carriers by . . . limiting the length of calls that use telecommunications relay services”).

which arise as a result of social-distancing requirements necessitated by the COVID-19 pandemic.²³ For the same reason, we partially waive the rule’s prohibition on “refusing . . . sequential calls.”²⁴ From the beginning of the COVID-19 pandemic, the Commission has found good cause to temporarily waive certain TRS rules to ensure the continuing availability of relay services during the extraordinary circumstances presented by the pandemic.²⁵ In a recent order, these waivers were extended through February 28, 2021.²⁶ As emphasized in these orders, the overwhelming public interest in ensuring the continuing availability of TRS during the pandemic justifies waiver of certain mandatory minimum standards to the extent necessary, and we are persuaded that permitting brief interruptions of service involving an extremely small percentage of calls—to allow the replacement of the CA in exigent circumstances—is necessary to allow the continued provision of important TRS services during the pandemic.²⁷ In light of the difficulties faced by all TRS providers in this period, the providers’ relatively prompt action (given the COVID-19 context) in raising this issue with the Commission, and their diligence in devising and deploying technical solutions to the extent practicable, we grant the waivers

²³ See 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, on the Commission’s own motion or pursuant to a petition, for good cause shown). Good cause may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

²⁴ 47 CFR § 64.604(a)(3)(i) (prohibiting TRS CAs from “refusing single or sequential calls”). The same “exigent, unavoidable circumstances” cited by Hamilton and Sprint, which (due to COVID restrictions) occasionally necessitate directing a consumer to end an *ongoing* call in order to replace the CA, could also necessitate a TRS CA declining to place a second call for a consumer after an initial call has ended (and thus requiring a consumer to hang up and reconnect to the TRS call center, rather than continuing the same TRS session, for the purpose of placing another call). The prohibition on refusing “single” calls, which is not implicated by the CA substitution issue, is not waived.

²⁵ See *March 16 TRS Waiver Order*, 35 FCC Rcd 2715 (temporarily waiving multiple TRS rules to ensure continued service at increased demand levels during the COVID-19 emergency); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 3018 (CGB 2020) (*April 3 TRS Waiver Order*) (temporarily waiving rule restricting VRS providers from contracting for interpretation services with non-VRS certified entities); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 4894 (CGB 2020) (extending and modifying COVID-19 waivers); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 6432 (CGB 2020) (extending COVID-19 waivers); *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 9783 (CGB 2020) (extending COVID-19 waivers); *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10892-94, paras. 54-56 (2020) (*2020 IP CTS Compensation Order*) (extending all previously granted COVID-19 waivers through Feb. 28, 2021). These orders are collectively referred to herein as the “COVID-19 Waiver Orders.”

²⁶ *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10892-94, paras. 54-56.

²⁷ See, e.g., *March 16 TRS Waiver Order*, 35 FCC Rcd at 2715, para. 1; *April 3 TRS Waiver Order*, 25 FCC Rcd at 3018-29, para. 2. As indicated above, the number of interrupted calls is likely to be even smaller in the future due to the recent deployment by both providers of a technical solution that avoids any need for interruption of captioning during CA substitution for the most commonly used form of IP CTS. See Hamilton September 15 *Ex Parte*; Sprint September 16 *Ex Parte*.

retroactively to March 16, 2020, the date of our first COVID-19 Waiver Order.²⁸ These waivers are conditioned on each provider's deployment, to the extent practicable for each affected form of TRS, of a technical solution that permits the substitution of a new CA without interruption of service.²⁹

7. To ensure that this waiver is not extended longer than necessary, each waiver is conditioned on the provider's submission of a report, no later than January 31, 2021, describing the provider's progress in developing and deploying technical solutions, to the extent possible, to allow CA substitution without service interruption for each form of TRS included in this waiver,³⁰ including an anticipated implementation timetable. In addition, the report shall update the data included in Hamilton and Sprint's July 10 *ex parte* regarding each provider's percentage of calls requiring mid-call CA substitutions.³¹

8. We remain committed to the integrity of the TRS program, to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the TRS program are used for appropriate purposes. We find that the overwhelming public interest in ensuring the continued availability of TRS services during this national emergency justifies granting Hamilton and Sprint a temporary, partial waiver of section 64.604(a)(3)(i) through February 28, 2021. The Bureau will continue to monitor the emergency situation and will consider and take additional actions as warranted. In the event that the circumstances described in this Order appear likely to persist or evolve beyond the expiration of the

²⁸ Grant of this waiver is also fully consistent with the statutory scheme for ensuring the availability of TRS. The rule at issue is one of several adopted by the Commission in 1991 pursuant to specific statutory directives, which were included in section 225 to ensure that TRS is made available in a manner functionally equivalent to voice service as provided by telephone common carriers. *See* 47 U.S.C. § 225(d)(1)(E); Americans With Disabilities Act of 1990, 101 H. Rpt. 485, Pt. 4, at 65 (May 15, 1990) (Section-by-Section Analysis, Title IV Telecommunications) (“Consistent with their common carrier obligations, the common carriers relay operators must not refuse calls, nor limit the length of calls to users of the telecommunications relay services.”). Prior to the enactment of section 225, many state relay service programs, in order to conserve funds—and contrary to common carrier principles—had imposed severe restrictions on the duration of relay calls, in some instances permitting operators to indiscriminately cut off conversations that they perceived as too “chatty.” Karen P. Strauss, *A New Civil Right: Telecommunications Access for Deaf and Hard of Hearing Americans* 60 (2006). As the Commission recognized at the time, however, the common carrier obligation to provide service upon request, which underlies section 225(d)(1)(E), “is not absolute.” *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4660, para. 15 (1991). Further, section 225 also requires the Commission to ensure that functionally equivalent relay services are available “to the extent possible.” 47 U.S.C. § 225(d)(1). Here, neither Hamilton nor Sprint is acting contrary to common carriage principles. They are not refusing to place a TRS call or placing arbitrary limits on how long TRS users may converse. To the contrary, they are seeking to continue providing functionally equivalent TRS “to the extent possible” despite the unexpected social-distancing requirements and operational difficulties resulting from the pandemic. In these extraordinary circumstances, as discussed above, it is necessary to balance the competing directives of section 225, as it is not now technically practicable for Hamilton and Sprint to provide TRS without limiting the duration of relay calls in certain narrowly defined situations.

²⁹ Thus, once a technical solution has been found and deployed for a particular form of TRS, the waiver is no longer applicable to that form of TRS. For example, for the most common form of IP CTS, in which captions are delivered over an Internet connection that is separate from the user's voice line, Hamilton and Sprint report that as of July 24, 2020, they deployed technical solutions permitting CA substitution when necessary, without interruption of captioning service. *See* Hamilton September 15, 2020 *Ex Parte*; Sprint September 16, 2020 *Ex Parte*. Therefore, for this type of IP CTS, the waiver is retroactive only and is inapplicable after July 24, 2020.

³⁰ We recognize that for some forms of TRS, e.g., one-line CTS, as that service is currently configured, it may not be possible to deploy a technical solution that avoids the pandemic-induced necessity to disconnect a call when the CA must be replaced before the call ends. Hamilton & Sprint *Ex Parte* at 3. Regardless, the report should address each form of TRS subject to this waiver.

³¹ *See id.* at 3-4.

waiver period, we will address in a further order any necessary additional extension of or modification to any of the temporary waivers granted in this order.

9. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

10. *Additional Information.* For further information regarding this item, please contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716 (voice) or by email to William.Wallace@fcc.gov.

11. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, and 1.3, section 64.604(a)(3)(i) of the Commission's rules is WAIVED to the extent described herein, through February 28, 2021.

12. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief
Consumer and Governmental Affairs Bureau