

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

In the Matter of
Structure and Practices of the Video Relay Service
Program
CG Docket No. 10-51

DECLARATORY RULING

Adopted: February 25, 2010

Released: February 25, 2010

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, the Consumer and Governmental Affairs Bureau (Bureau) addresses the compensability from the Interstate TRS Fund (Fund) of certain types of calls made through Video Relay Service (VRS), a form of Telecommunications Relay Service (TRS). First, we emphasize that VRS calls made by or to a VRS provider's employee, or the employee of a provider's subcontractor, are not eligible for compensation from the TRS Fund on a per-minute basis from the Fund, but rather as business expenses. Second, we emphasize that VRS calls placed for the purpose of generating compensable minutes are not, and never have been, compensable from the Fund. Finally, we emphasize that two categories of calls do not meet the definition of TRS or otherwise are not compensable from the Fund under plain statutory language: (1) VRS Voice Carry Over used to connect two hearing users and (2) VRS calls used to connect two users who are both outside the United States.

II. BACKGROUND

2. VRS is a form of TRS that enables the VRS user with hearing or speech disabilities to access the nation's telephone system and communicate in American Sign Language (ASL) by using a video-to-video link with a communications assistant (CA). The CA communicates in ASL with the VRS user and by voice with the voice telephone user, and in so doing relays the conversation back and forth between the two users. Since the Commission first established the compensability of VRS from the Fund in 2000, persons who are deaf or hard of hearing and communicate in ASL have been able to make a telephone call by connecting to a VRS provider over the Internet. This ability to make or receive a telephone call while communicating in ASL has revolutionized TRS, and, in turn, the lives of many persons who are

1 TRS is defined in section 225 of the Communications Act of 1934, as amended (Act or Communications Act). See 47 U.S.C. § 225(a)(3); Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990) (ADA). See also 47 C.F.R. § 64.601(26) (defining VRS); 47 C.F.R. §§ 64.601 et seq. (implementing regulations).

2 See 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, 5152-54, paras. 21-27 (2000).

deaf or hard of hearing. At the same time, recent events have demonstrated that VRS is vulnerable to fraud and abuse.³ As the Commission moves forward with VRS reform to address these issues,⁴ we also emphasize that the Commission is committed to ensuring that VRS continues to be readily available in accordance with the Act for those who depend upon it to access the nation's telephone system. As a step toward reform, in this *Declaratory Ruling*, we address the compensability of certain types of calls and state that calls made to generate revenue from the Fund are not, and have never been, compensable. We anticipate that, in a forthcoming action, the Commission will address TRS payment suspension processes and the lawfulness of other categories of VRS calls, among other issues, as next steps in VRS reform and to bring greater predictability to VRS users and providers.⁵

III. DISCUSSION

A. VRS Calls Already Compensated Through the Rate Base

3. We emphasize that VRS calls made by or to a VRS provider's employee, or the employee of a provider's subcontractor, are not eligible for compensation from the TRS Fund on a per-minute basis as part of the provider's calls submitted monthly to the Fund administrator for payment. Instead, the costs of such calls are business expenses that can and should be included in the providers' cost data submitted to the Fund administrator for purposes of setting VRS compensation rates.⁶ The Relay Services Data Request form, which is submitted to the Fund Administrator annually by each provider for purposes of determining the compensation rate, expressly identifies such expenses (*e.g.*, for telecommunications expenses, operations support, human resources, and marketing and advertising) as business expenses.

4. Just as a provider bears the business expense of providing telephone service for use by its employees who do not have a hearing or speech disability, it likewise bears as a business expense the costs of accommodating those employees who require relay service to use the telephone. In either case, the cost associated with providing telephone service for use by employees is properly reflected in the VRS compensation rate. Providers have had ample notice that such costs should be treated as business expenses. The Relay Services Data Request form submitted annually by providers to identify, among

³ See *Twenty-six Charged in Nationwide Scheme to Defraud the FCC's Video Relay Service Program*, United States Department of Justice (DOJ) (Nov. 19, 2009) at <http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html>; see also, *e.g.*, *Two Former Executives of Video Relay Services Company Plead Guilty to Defrauding FCC Program*, DOJ (Feb. 18, 2010) at <http://www.justice.gov/opa/pr/2010/February/10-crm-157.html>.

⁴ See Federal Communications Commission, *FCC Chief of Staff Praises Decisive Action to Prosecute Fraud in VRS Program*, News Release (Nov. 19, 2009); Federal Communications Commission, *FCC Announces Workshop on VRS Reform to be Held on December 17, 2009*, News Release (Dec. 3, 2009).

⁵ This Declaratory Ruling is being released under a new docket number, **CG Docket No. 10-51**, which shall include VRS structure, reform, practices, and all other VRS matters. The heretofore omnibus TRS docket, CG Docket No. 03-123, will remain open for the ongoing filing of documents in proceedings under that docket number, and documents in that docket concerning VRS matters also shall be incorporated by reference into CG Docket No. 10-51. Going forward, however, no document concerning VRS matters shall be filed in CG Docket No. 03-123 unless responding to a Commission document released after today and containing CG Docket No. 03-123 in its caption. This new docket number is established to further administrative efficiency. Notwithstanding the release of this Declaratory Ruling in a new docket specifically relating to VRS, the principles enunciated in this Declaratory Ruling pertain to all forms of TRS.

⁶ We note that calls made by installers and maintenance or repair personnel of VRS providers relating to the installation and use of customer premises equipment, including video phones (VP) and VP accessories are not compensable either on a per minute basis or through the rate setting process. See *Telecommunications Relay Services and Speech-To-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20170-71, para. 82 (2007) (*2007 TRS Rates Order*).

other things, business costs and expenses that ultimately determine the compensation rate specifically requests that providers identify costs related to telecommunications expenses. For example, section I.A.1. of the form instructions sent to providers in the spring of 2009 allows providers to report as business expenses annual recurring expenses related to providing Video Relay Service, including “[t]elephone service expenses.”⁷ In addition, section I.B.4. refers to “[t]elecommunications expenses” associated with detecting service problems.⁸ Furthermore, section I.C.5. refers to “[o]perations support,” which are expenses that “ensure the sustainability of service including troubleshooting, customer service and technical support.”⁹ Finally, section I.C.6. refers to “[h]uman resources,” which are expenses incurred in performing activities such as “training, scheduling, counseling employees and reporting,”¹⁰ and section I.E. refers to marketing, advertising, and outreach expenses.¹¹ Because providers already are able to include the costs of providing telephone and telecommunications services for use by employees in their annual submissions,¹² to permit providers also to be compensated from the Fund for such calls on a per-minute basis would result in double recovery from the Fund.

5. Therefore, we emphasize that providers may not receive reimbursement from the Fund for VRS calls to which an employee, or an employee of a provider’s subcontractor, is a party. This includes calls between provider employees (including employees of subcontractors) and calls made to an outside party or received from an outside party (e.g., customer service calls or calls to a “Helpdesk”).¹³ Although such calls meet the definition of “telecommunications relay services” to the extent that they are a call between a person with a hearing or speech disability and a hearing person,¹⁴ in this context the costs of such calls are a provider business expense that is not eligible for compensation from the Fund on a per-minute basis for the reasons stated above. We stress that VRS may continue to be used by a provider’s employees to make or receive telephone calls, and compensation for such use is provided through Fund mechanisms. We address here only how providers recoup the costs of such calls from the Fund, which is through the rate base used to determine the per-minute compensation rates that compensate providers for their reasonable actual costs of providing service consistent with the TRS rules, and not on a per-minute basis.

B. VRS Calls Placed For the Purpose of Generating Compensable Minutes

6. We further emphasize that individuals who place or arrange for VRS calls for the purpose of generating compensable minutes of use are not using the service as intended; that is, Congress intended TRS to provide the ability for individuals with hearing or speech disabilities to communicate over the telephone system with hearing individuals in a functionally equivalent manner. Using VRS as a means to generate compensation from the TRS Fund is antithetical to that statutory purpose. We

⁷ See Relay Services Data Request Instructions at: https://www.neca.org/cms400min/NECA_Templates/TRSInterior.aspx?id=1265.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See 47 C.F.R. § 64.604(c)(5)(iii)(C) (requiring TRS providers to submit to the Fund administrator, *inter alia*, “total TRS operating expenses,” for purposes of computing payment rates and Fund revenue requirements).

¹³ Employees’ reasonable use of the provider’s telephone services for personal or non-business related calls at the workplace would be consistent with standard business practice and would be a business expense for the provider. Personal or non-business related VRS calls placed by employees outside the workplace would not be business expenses of the provider and, therefore, would be compensable from the Fund on a per-minute basis.

¹⁴ See 47 U.S.C. § 225(a)(3).

therefore emphasize that VRS calls made or arranged, in whole or in part, for the purpose of generating compensable minutes of use as a source of revenue for the providers, because they do not support or further the purposes of TRS, are not and have never been compensable from the TRS Fund.¹⁵ This includes, but is not limited to, calls to podcasts or other pre-recorded material and calls ostensibly for marketing or outreach purposes, when initiated by or on behalf of VRS providers. But for the availability of per-minute compensation from the Fund, such calls likely would not have been made.¹⁶ Similar to practices by VRS providers that encourage users to place VRS calls that they might not ordinarily make -- such as paying independent marketing firms to have deaf employees place marketing calls through the providers' VRS -- we find that such calls violate the Commission's established policy against providers using TRS other than to provide "an accommodation to persons who, because of a disability, cannot meaningfully use the voice telephone system."¹⁷ Likewise, for example, when a provider directly or indirectly sponsors events (*e.g.*, lectures, courses, story times) that deaf callers can listen to by placing VRS calls to a bridge number, that is encouraging users to place VRS calls that they would not ordinarily make; but for the provider establishing the event for the deaf caller to call via VRS, no such call would occur.

C. VRS Voice Carry Over (VCO) Calls

7. Some providers offer VCO service to deaf or hard of hearing consumers who use VRS. VRS VCO permits the deaf or hard of hearing user to speak to the other party to the call rather than communicate via ASL;¹⁸ in return, the CA signs in ASL to the consumer what the other party to the call (the voice telephone user) has said. Such calls are generally set up by having the VRS CA, after the VRS user has initiated the video call to the CA, call back the VRS user on a voice telephone line. As a result, the VRS user has both the video link to the CA (to see, in ASL, what the called party has said) and a voice telephone link to the called party so that the VRS user can speak directly to that party.¹⁹

¹⁵ See, *e.g.*, note 3, *supra* (indictments for calls that "served no purpose other than to generate call minutes that would be billed" to the Fund, and for engaging in "sham 'marketing calls' for the stated purpose of marketing VRS services, but for the alleged true purpose of fraudulently generating additional VRS minutes); *Publix Network Corporation; Customer Attendants, LLC; Revenue Controls Corporation; Signtel, Inc.; and Focus Group, LLC*, EB Docket No. 02-149, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487, 11501, para. 33 (2002) (generating conversation time for purposes of inflating minutes billable to the Fund -- *i.e.*, "the purpose of the activity was merely to generate payments" -- not compensable under the Act or Commission's rules).

¹⁶ See, *e.g.*, *2007 TRS Rates Order*, 22 FCC Rcd at 20175, para. 93 (finding impermissible financial incentive programs that have "the intent and the effect . . . of giving consumers an incentive to make relay calls that they might not otherwise make); *Telecommunications Relay Services and Speech-To-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466, 1469, para. 8 (CGB 2005) (*2005 Financial Incentives Declaratory Ruling*). In the *2005 Financial Incentives Declaratory Ruling*, in concluding that providers may not offer consumers any financial incentives or rewards to encourage them to make relay calls, the Bureau explained that such incentives or rewards have "the effect of enticing TRS consumers to make TRS calls that they would not otherwise make, which allows the provider to receive additional payments from the Fund, and results in 'payments' to consumers for using the service, put[ting] such programs in violation of Section 225." The Bureau further explained that the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them, and that "[b]ecause the Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make."

¹⁷ *2005 Financial Incentives Declaratory Ruling*, 20 FCC Rcd at 1469, para. 9 (finding that a provider that offers financial incentives for using TRS is ineligible for compensation from the TRS Fund).

¹⁸ See generally 47 C.F.R. § 64.601(27) (definition of VCO).

¹⁹ In the end, there is a video to video link between the VRS user and the CA, and a three-way voice telephone call, initiated by the CA, between the VRS user, the CA, and the called party.

8. To the extent that some users have abused VRS by using VRS VCO to make voice-to-voice calls for the purpose of making a free long distance call,²⁰ we take this opportunity to remind VRS providers of Congress's explicit limitation that VRS calls "provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication . . . with a hearing individual."²¹ Therefore, VRS VCO may be used only when a person who is deaf or hard of hearing wants to use his or her own voice to speak to the hearing party during the VRS call. If it becomes clear that what was initially set up as a VRS VCO call is in fact a call between two voice telephone users, the call is no longer a TRS call compensable from the Fund.

D. VRS Calls that Originate and Terminate Outside of the United States

9. We also remind providers that VRS calls that both originate *and* terminate outside of the United States are not compensable from the Fund under section 225. Section 225 provides that "the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals *in the United States*."²² Because section 225 expressly states that TRS is for individuals "in the United States," the statute does not authorize compensation from the Fund for VRS or other TRS calls that do not either originate or terminate in the United States. Similarly, as part of the registration and verification requirements applicable to the provision of ten-digit, North American Numbering Plan (NANP), telephone numbers to Internet-based TRS users,²³ providers must verify that only persons with hearing or speech disabilities *residing in the United States* may obtain from them, and be registered with, a ten-digit NANP number.²⁴

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and 225, and Sections 0.141, 0.361 and 1.2 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361 and 1.2, this *Declaratory Ruling* IS hereby ADOPTED.

11. IT IS FURTHER ORDERED that this *Declaratory Ruling* shall become effective upon release.

12. 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

²⁰ For instance, if a voice telephone user is with the VRS user, a VRS VCO call can be established and the voice telephone user (rather than the VRS user who initiated the call) can have a voice conversation with the called party.

²¹ 47 U.S.C. § 225(a)(3).

²² 47 U.S.C. 225(b)(1) (emphasis added). This includes United States Territories. *See* 47 U.S.C. § 153(51).

²³ *See 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, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 808-10, paras. 36-38 (2008).

²⁴ Our analysis of the iTRS Numbering Directory suggests that some ten-digit numbers appear to have been assigned to non-United States residents.

at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Declaratory Ruling* also can be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

FEDERAL COMMUNICATIONS COMMISSION

Joel Gurin
Chief
Consumer and Governmental Affairs Bureau