

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

ORDER

Adopted: August 30, 2018

Released: August 30, 2018

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. By this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) grants CSDVRS, LLC, d/b/a ZVRS (ZVRS) and Purple Communications, Inc. (Purple) (collectively, the Companies) limited waivers of sections 64.604(c)(5)(iii)(E)(4) and (N)(2)(iii) of the Commission’s rules. As a result, the Companies may be compensated for video relay service (VRS) calls handled at a ZVRS call center that was relocated on June 4, 2018, for which ZVRS provided notification to the Commission, but not to the telecommunication relay service (TRS) Fund administrator.

II. BACKGROUND

2. The Commission’s TRS rules direct the TRS Fund administrator to make compensation payments “only to eligible TRS providers operating pursuant to the mandatory minimum TRS standards as required in § 64.604.”¹ Among these standards is a requirement that VRS providers “file written notification with the Commission and the TRS Fund administrator of any change in a center's location, including the opening, closing, or relocation of any center, at least 30 days prior to any such change.”² In adopting this rule, the Commission explained that “this new reporting obligation will provide us with critical information that will facilitate oversight, including immediate and effective investigations into suspicious activities.”³

¹ 47 CFR § 64.604(c)(5)(iii)(E)(4) (Compensation Payment Rule).

² Id. § 64.604(c)(5)(iii)(N)(2)(iii) (emphasis added) (Call Center Notice Rule). In addition, in the call detail reports submitted in support of requests for TRS Fund compensation, providers must include the identification number of the call center handling each call for which compensation is sought. Id. § 64.604(c)(iii)(D)(2)(ix).

³ Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5554, para. 12 (2011) (2011 VRS Call Practices R&O).

3. On April 27, 2018, ZVRS submitted to the Commission a notification that one of its call centers would be moved to a new location on June 4, 2018.⁴ However, ZVRS failed to also notify the TRS Fund administrator of this call center relocation.⁵ On July 9, 2018, after discovering its error, ZVRS notified the TRS Fund administrator of the change and updated the call center lists for both Companies with the required information.⁶ However, due to ZVRS's failure to provide the administrator 30 days' advance notice of the relocation, the administrator withheld compensation for all calls processed by that call center in June 2018, after its relocation, in an amount totaling [***BEGIN CONFIDENTIAL*** ██████████ ***END CONFIDENTIAL***].⁷

4. The Companies request, on an expedited basis, a retroactive waiver of the Call Center Notice Rule in order to secure payment of the withheld compensation.⁸ According to the Companies, granting the waiver request is in the public interest because (1) the Commission has previously found good cause exists to waive its rules to permit petitioners to correct inadvertent, ministerial, or clerical errors associated with Commission forms or other submissions; (2) the amount of the withholding constitutes a disproportionate punishment for its filing error and would create an undue hardship on the Companies; and (3) after discovering the error, steps were taken to correct the mistake and subsequent actions have been taken to limit the chance of recurrence.⁹

III. DISCUSSION

5. A Commission rule may be waived for "good cause shown."¹⁰ In particular, a waiver is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.¹¹ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹² Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹³ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹⁴ We find that in the particular circumstances of this case, there is good cause to grant limited waivers of the Compensation Payment and Call Center Notice rules for the period when the Companies were in partial violation of the Call Center Notice rule, i.e., from June 4 through August 7, 2018.¹⁵

⁴ See Petition of ZVRS Holding Company, parent company of CSDVRS, LLC, d/b/a ZVRS and Purple Communications, Inc. for Expedited Retroactive Waiver, CG Docket Nos. 10-51 and 03-123, at 2 & Exh. 1 (confidential) (filed July 27, 2018) (Petition for Waiver).

⁵ *Id.* at 2.

⁶ *Id.* at 2-3.

⁷ *Id.* at 3.

⁸ *Id.* at 3.

⁹ *Id.* at 4-5 & Exh. 2 (confidential).

¹⁰ 47 CFR § 1.3.

¹¹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *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.

¹³ *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

¹⁴ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁵ June 4, 2018 is the first day on which the relocated call center was used without advance notice to the administrator. July 9, 2018 is the date that ZVRS provided notice to the administrator. August 7, 2018 is the last day on which the call center was used without the required 30 days' notice having been provided.

6. It appears that ZVRS's failure to notify the administrator of the relocation of its call center was inadvertent. However, inadvertence, in itself, is not sufficient to establish good cause to waive a Commission rule.¹⁶ Persons with business before the Commission have a responsibility to familiarize themselves with, and to follow, applicable regulations.¹⁷ Accordingly, the Commission has consistently held that, as a rule, businesses are responsible for the conduct of their employees and contractors and that mistakes and negligence, as such, are not automatic grounds for waiver of Commission rules.¹⁸ To justify a waiver, a more specific justification is required, and the Commission must be able to "explain why the deviation serves the public interest *and* articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation."¹⁹

7. Given the particular circumstances of this case, we do find that there is good cause to grant limited waivers of the Call Center Notice and Compensation Payment rules to the extent necessary to permit compensation for VRS calls processed at the affected call center.²⁰ First, ZVRS partially complied with the Call Center Notice rule, by timely notifying the Commission regarding the call center change.²¹ Second, after discovering the error, ZVRS took prompt steps to correct the mistake by notifying the TRS Fund Administrator of the error.²² Third, ZVRS reports that it has taken action to limit the chance of recurrence.²³ Specifically, employees of the Companies have been instructed[***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***].²⁴

8. Additionally, denial of so large a payment for calls processed at the affected call center during the period of violation would be disproportionate to the gravity of the violation and, according to the Companies, could be "operationally material," because "[***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]."²⁵

¹⁶ *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et al.*, Order, 25 FCC Rcd 10861, 10864, para. 7 (WCB 2010) (*Airband Order*) ("As such, . . . simple negligence on the part of a filer is insufficiently unique to justify waiver of the deadline for revising FCC Forms 499."); *see also id.* n.23 (*citing NetworkIP*, 548 F.3d at 127 (D.C. Cir. 2008)).

¹⁷ 47 CFR § 0.0406; *Airband Order*, 25 FCC Rcd at 10864, para. 7.

¹⁸ *See, e.g., Federal-State Joint Board on Universal Service; Request for Review by National Network Communications, Inc.*, Order, 22 FCC Rcd 6783, 6785, paras. 7-8 (2007); *Requests for Waiver of Decisions of the Universal Service Administrator by ComScape Telecommunications of Raleigh-Durham, Inc. and Millennium Telecom, LLC*, Order, 25 FCC Rcd 7399, 7400-01, paras. 5-6 (WCB 2010); *Airband Order*, 25 FCC Rcd at 10864, para. 7; *Universal Service Contribution Methodology; Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, Order, 28 FCC Rcd 13358, 13361-62, para. 12 (WCB 2013).

¹⁹ *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP*, 548 F.3d at 127-28 (*quoting Northeast Cellular*).

²⁰ Although the Companies did not request waiver of the Compensation Payment rule, we find, *sua sponte*, that granting a limited waiver of this rule will enable payment to the Companies for any otherwise compensable minutes handled at the affected call center.

²¹ Petition for Waiver at 2 & Exh. 1 (confidential).

²² *Id.* at 2-3 & Exh. 2 (confidential).

²³ *Id.* at 4-5 & Exh. 2 (confidential).

²⁴ *Id.* at 5.

²⁵ *See id.* at 4-5.

9. Conversely, we are unable to identify any significant harm to the TRS program, related Commission policies, or the public interest resulting from the Companies' rule violation. First, there was no change in the provision of the Companies' service, and no consumers were harmed by the lack of notification to the Fund administrator because the location of a call center is transparent to the consumer. Further, the purpose of the Call Center Notification Rule—to provide the Commission with critical information to “facilitate oversight, including immediate and effective investigations into suspicious activities”²⁶—was nevertheless fulfilled because ZVRS timely notified the Commission of the change in call center location.²⁷ In addition, we have no evidence that any fraudulent activity was associated with the lack of notification to the Fund administrator,²⁸ and such lack of notification would not have resulted in ineligible calls being compensated.

10. Based on the above unique circumstances, we conclude that strict enforcement of the notification requirement would be disproportional to the potential hardship caused, that the notification failure did not affect our ability to achieve effective implementation of the oversight objectives underlying the waived rules, and that granting a limited waiver will not adversely affect the Commission's ability to prevent waste, fraud, and abuse or oversee the service that the Companies provide to VRS users.²⁹ Our decision here is supported by prior orders in which the Bureau partially waived a Commission rule requiring VRS providers to capture and report certain call data when the unique circumstances underlying such noncompliance were sufficient to justify these waivers.³⁰

11. Accordingly, we waive sections 64.604(C)(5)(iii)(E)(4) and (N)(2)(iii) of the Commission rules to the extent necessary to permit compensation for otherwise compensable VRS calls handled at the affected call center from June 4 through August 7, 2018. In reaching this determination, we emphasize that waivers of the Call Center Notice and Compensation Payment rules will not be routinely granted. As noted above, by requiring timely reporting of call center relocations, the Call Center Notice Rule enables effective oversight by the Commission and the TRS Fund administrator, allowing for prompt investigation of potential waste, fraud, and abuse where warranted.³¹ The Compensation Payment Rule ensures that TRS providers are accountable for compliance with mandatory minimum standards. Adherence to these rules is therefore essential to the integrity of the TRS program.³²

²⁶ *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5554, para. 12 (2011) (*2011 VRS Call Practices Order*).

²⁷ Petition for Waiver at 1 & Exh. 1 (confidential).

²⁸ *2011 VRS Call Practices Order*, 26 FCC Rcd at 5554, para. 12. Because ZVRS timely notified the Commission of the change of call center location and promptly notified the TRS Fund administrator of this change after discovering its error, there does not appear to have been any intent to withhold information about the change of the center's location.

²⁹ See *Federal-State Joint Board on Universal Service et al.*, Order, 23 FCC Rcd 10096, 10097-97, paras. 4-6 (WCB 2008); *Federal-State Joint Board on Universal Service; Verizon Communications Inc. Petition for Waiver of Section 54.802(A) of the Commission's Rules*, Order, 21 FCC Rcd 10155, 10157-58, paras. 7-10 (WCB 2006); see also 47 U.S.C. § 225.

³⁰ See *William Banks*, Letter Order, 25 FCC Rcd 1257, 1258 (CGB 2010) (granting limited waiver of a Commission rule requiring the submission of certain call data, where a provider's new billing platform failed to capture call conversation time, but the provider took steps to resolve the issue and prevent recurrence, and was able to use a proxy to estimate conversation minutes); *Mr. Gil M. Strobel*, Letter Order, 25 FCC Rcd 5836, 5837 (CGB 2010) (granting limited waiver of the same rule, after a technical malfunction caused a loss of call data for certain calls handled on a single day, but the call data was accurately verified using a secondary database); see also Petition for Waiver at 4 n.8 (citing these decisions).

³¹ See *2011 VRS Call Practices R&O*, 26 FCC Rcd at 5554, para. 12.

³² Cf. *Bishop Perry Order*, 21 FCC Rcd at 5320, para. 19 (cautioning that “even in the context of the schools and libraries program, the waivers here should not be read to mean that applicants will not be required in the future to

(continued....)

We also make no finding as to whether the withheld minutes are otherwise compensable, as this is determined in the first instance by the TRS Fund administrator under its established procedures.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, this Order is ADOPTED.

13. IT IS FURTHER ORDERED that the Companies' Petition for Waiver filed on July 27, 2018, IS GRANTED to the extent described herein.

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

15. 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 & Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2275 (videophone), or (202) 418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre
Chief
Consumer and Governmental Affairs Bureau

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comply fully with our procedural rules, which are vital to the efficient operation of the E-rate program"); *id.* at 5327, para. 26 (stressing that "filing deadlines and minimum processing standards are necessary for the efficient administration of the E-rate program").