

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

In the Matter of)
Structure and Practices of the Video Relay Service) CG Docket No. 10-51
Program)
Telecommunications Relay Services and Speech-) CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)
and Speech Disabilities)

ORDER

Adopted: April 20, 2020

Released: April 20, 2020

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. By this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission), on its own motion, grants a waiver of the expiration date of the at-home call-handling pilot program for video relay service (VRS), extending the program through the effective date of the Commission’s permanent rules regarding at-home VRS call-handling (Final Rules).

II. BACKGROUND

2. In March 2017, the Commission established a one-year pilot program allowing participating VRS providers to let some of their communications assistants (CAs) work at home instead of in call centers. Participating VRS providers may be compensated for calls handled by CAs at home workstations for up to 30% of a participating provider’s monthly minutes, so long as the provider complies with the Commission’s mandatory minimum standards, including the personnel, technical, and environmental safeguards and monitoring, oversight, and reporting requirements adopted for the pilot program. The Bureau has granted several extensions of the pilot program expiration date, and as a result, the program is currently scheduled to terminate on April 30, 2020.

3. On May 9, 2019, the Commission adopted a Further Notice of Proposed Rulemaking proposing to convert the VRS at-home call handling pilot program to a permanent program, subject to personnel, technical, and environmental safeguards. On January 30, 2020, the Commission adopted

1 VRS is a form of “telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment.” 47 CFR § 64.601(a)(47).

2 This monthly maximum is calculated as the greater of (1) 30% of the provider’s total compensated minutes for that month, or (2) 30% of the provider’s average monthly minutes for the 12 months ending October 31, 2017. 47 CFR § 64.604(b)(8)(iii).

3 Id. § 64.604(b)(8).

4 Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10-51 and 03-123, Order, 34 FCC Rcd 9880 (CGB 2019) (Third Pilot Program Extension Order).

5 Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10-51 and 03-123, Order, 34 FCC Rcd 9880 (CGB 2019) (Third Pilot Program Extension Order). (continued...)

Final Rules authorizing the TRS Fund to compensate VRS providers for calls handled by CAs from home workstations, converting the pilot program to a permanent one.⁶ The Commission found that the at-home option enables providers to attract and retain additional qualified CAs, appears to improve CA productivity and performance, and adds flexibility in unforeseen circumstances, such as inclement weather and civic emergencies.⁷ Moreover, by “largely retaining” the safeguards established for the pilot program, the Commission determined that it “can permit at-home VRS call handling without increasing the risk of waste, fraud and abuse or endangering the confidentiality, reliability, and quality of VRS.”⁸

4. The Final Rules will become effective upon approval of new or revised information collections by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act,⁹ which has not yet been given. Meanwhile, VRS providers continue to operate under the pilot program rules pursuant to the waivers previously granted, which will expire April 30, 2020.¹⁰

III. DISCUSSION

5. A Commission rule may be waived for good cause shown.¹¹ In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.¹² In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ Waiver of a rule is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest and will not undermine the policy underlying the rule.¹⁴

6. We find there are special circumstances establishing good cause for granting a further extension of the expiration date for the at-home VRS call handling pilot program to avoid an undesirable lapse in authorized use of at-home call handling. Because a number of the rule amendments adopted in the *VRS At-Home Call Handling R&O* contain new or modified information collection requirements, they require approval by OMB, which, due to required comment cycles, will not be granted on or before April 30, 2020. As a result, the current pilot program extension will expire before all the Final Rules become effective.

7. In deciding to adopt the Final Rules, the Commission concluded that at-home VRS call handling produces important benefits that outweigh the associated costs.¹⁵ Further, recent Bureau actions

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Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 3396 (2019).

⁶ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, 35 FCC Rcd 831 (2020) (*VRS At-Home Call Handling R&O*).

⁷ *Id.* at 833-34, para.7.

⁸ *Id.* at 834, para. 8.

⁹ *Id.* at 835, para. 9.

¹⁰ See *Third Pilot Program Extension Order*, 34 FCC Rcd at 9885, para. 14.

¹¹ 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

¹² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ *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.

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *VRS At-Home Call Handling R&O*, 35 FCC Rcd at 835, para. 9.

to address the national novel coronavirus (COVID-19) emergency¹⁶ underscore the importance of allowing at-home VRS call handling to continue uninterrupted.¹⁷ In addition to its severe impact on VRS communications during this national emergency, allowing the pilot program to expire before the effective date of the Final Rules would needlessly interrupt a program that the Commission has found cost-beneficial and would burden VRS providers with unnecessary wind-down and start-up costs.¹⁸

8. Accordingly, to prevent such costs and loss of the benefits of currently authorized at-home call handling, we find good cause to modify on our own motion the previously granted waivers to provide that the pilot program expiration date is extended through the date when all the Final Rules for VRS at-home call-handling become effective. VRS providers that continue participating in the CA at-home program must comply with the pilot program's requirements in section 64.604(b)(8) of the rules,¹⁹ except to the extent temporarily waived by the *March 16 TRS Waiver Order* and *April 3 TRS Waiver Order*. In addition to the submission of monthly reports to the TRS Fund administrator as specified in section 64.604(b)(8)(viii) of the pilot program rules, the providers shall submit compliance reports with the information specified in section 64.604(b)(8)(ix) of the rules.²⁰ A compliance report covering the six-month extension authorized by the *Third Pilot Program Extension Order* (which expires April 30, 2020) shall be filed on or before June 1, 2020. A subsequent report, covering the extension authorized by this Order, shall be filed no later than two months after all the Final Rules become effective.

IV. PROCEDURAL MATTERS

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 (voice) or 202-418-0432 (TTY).

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 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, 1.3, this Order IS ADOPTED.

11. IT IS FURTHER ORDERED that the at-home VRS call-handling pilot program and the rules governing the program, SHALL REMAIN IN EFFECT until the effective date of the amendments to sections 64.604 and 64.606 of the Commission's rules adopted in the *VRS At-Home Call Handling R&O*, 35 FCC Rcd 831.

12. IT IS FURTHER ORDERED that VRS providers authorized to participate in the at-home call handling pilot program may continue to participate in the at-home call handling pilot program through the effective date of the amendments to sections 64.604 and 64.606 of the Commission's rules

¹⁶ See Executive Office of the President, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

¹⁷ See *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, DA 20-281, paras. 3-5 (CGB rel. Mar. 16, 2020) (temporarily waiving multiple rules applicable to VRS to accelerate the installation of at-home workstations and ensure continued services at increasing demand levels during COVID-19 emergency); *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, DA 20-378 (CGB rel. Apr. 3, 2020) (temporarily waiving rule restricting VRS providers from contracting for interpretation services with non-VRS certified entities during COVID-19 emergency).

¹⁸ See *Third Pilot Program Extension Order*, 34 FCC Rcd at 9883-84, para. 7.

¹⁹ 47 CFR § 64.604(b)(8).

²⁰ *Id.* § 64.604(b)(8)(viii), (ix).

adopted in the *VRS At-Home Call Handling R&O*, 35 FCC Rcd 831.

13. 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 immediately upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief
Consumer and Governmental Affairs Bureau