

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) CG Docket No. 03-123
Structure and Practices of the Video Relay Service Program) CG Docket No. 10-51
Misuse of Internet Protocol (IP) Captioned Telephone Service) CG Docket No. 13-24
Petition for Rulemaking and Interim Waiver of Convo Communications, LLC)

ORDER

Adopted: June 30, 2023

Released: June 30, 2023

By the Chief, Consumer and Governmental Affairs Bureau:

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (FCC or Commission), on its own motion, extends previously granted waivers of the following Video Relay Service (VRS) rules: (1) the 50% cap on call minutes handled by VRS communications assistants (CAs) working at home; (2) the requirement that CAs working at home have three years of experience as an American Sign Language (ASL) interpreter; and (3) the ban on contracting with non-VRS-certified entities for VRS interpreting services. In a June 2022 Order, the Commission waived these three requirements pending action on proposed amendments. We extend each of the waivers for an additional six months, through December 31, 2023, or the effective date of Commission action amending the waived rule, if earlier.

2. Background. To prevent disruption in the provision of VRS during the COVID-19 pandemic, each of the above requirements was waived, on an emergency basis, in a series of orders by which the waivers remained in effect from early 2020 through June 30, 2022. In the 2022 VRS

1 47 CFR § 64.604(b)(8)(i).
2 Id. § 64.604(b)(8)(ii)(A).
3 Id. § 64.604(c)(5)(iii)(N)(I)(iii).

4 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; Misuse of Internet Protocol (IP) Captioned Telephone Service; Petition for Rulemaking and Interim Waiver of Convo Communications LLC, CG Docket Nos. 03-123, 10-51, and 13-24, Report and Order, Notice of Proposed Rulemaking, Order, and Declaratory Ruling, FCC 22-51 (June 30, 2022) (2022 VRS Improvements Notice or 2022 VRS Waiver Order).

5 See 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); Telecommunications Relay Services and Speech-to-Speech Services for Individuals (continued....)

Improvements Notice, the Commission proposed to substantially modify these requirements to allow VRS providers more CA staffing flexibility. Specifically, the Commission proposed to: (1) raise the cap on the percentage of VRS traffic handled by at-home CAs from 50% to 80% of a VRS provider’s monthly minutes; (2) reduce or eliminate the requirement that CAs working at home have three years of interpreting experience; and (3) allow a VRS provider to contract for interpretation services for up to 30% of its monthly minutes.⁶

3. In an Order accompanying the *2022 VRS Improvements Notice*, the Commission extended the previously granted waivers for an additional year, through June 30, 2023. Noting that there continued to be a shortage of ASL interpreters willing to work as VRS CAs, the Commission found that extending the waivers was warranted to avoid imposing substantial costs and burdens on VRS providers’ ability to maintain a sufficient supply of CAs, pending action on the proposed amendments.⁷

4. *Waiver Standard.* A Commission rule may be waived for “good cause shown.”⁸ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹¹

5. *Discussion.* The record shows that the special circumstances prompting these waivers—a serious shortage of ASL interpreters available for work as VRS CAs—have not ended.¹² During the

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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 3018 (CGB 2020); *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); *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, 10893-94, paras. 54-55 (2020); *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 14634 (CGB 2020); *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 21-1653 (CGB 2021) (allowing certain waivers to expire); *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 22-324 (CGB 2022) (extending remaining waivers through June 30, 2022).

⁶ See *2022 VRS Improvements Notice*, paras. 25-50.

⁷ See *2022 VRS Waiver Order*, paras. 61-66.

⁸ 47 CFR § 1.3.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *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.

¹¹ *Northeast Cellular*, 897 F.2d at 1166.

¹² See *2022 VRS Waiver Order*, paras. 63-64; Comments of Convo Communications, LLC, CG Docket Nos. 03-123, 10-51, 13-24, at 4 (filed Jan. 9, 2023) (Convo NPRM Comments) (“Locating, hiring, and retaining local interpreters is a nationwide problem”); Comments of ASL Holdings Services, LLC d/b/a GlobalVRS, CG Docket Nos. 03-123, 10-51, and 13-24, at 3 (filed Jan. 9, 2023) (GlobalVRS NPRM Comments) (“Every VRS provider has provided the Commission with evidence underscoring ‘the challenges of in interpreter staffing due to pandemic labor shortages,’ as the Commission acknowledges.”). The Commission has previously noted that this shortage, while aggravated by

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pandemic, to cope with this shortage, the Bureau’s emergency waiver orders allowed VRS providers to greatly increase their reliance on CAs working at home and on a contract basis.¹³ More recent reports from VRS providers indicate that, despite the waiver extensions, the shortage of qualified ASL interpreters continues to present staffing challenges, compelling VRS providers to increase compensation for these highly skilled workers.¹⁴ In these circumstances, allowing the workforce-preserving waivers of these rules to expire would impose even greater costs and burdens on VRS providers, hindering their ability to meet Commission-mandated standards for functionally equivalent relay service.

6. Extending these waivers pending action on the proposed rule changes will alleviate the costs and burdens described above, enabling providers to retain more of their CAs and continue hiring from an expanded pool of ASL interpreters, many of whom would not otherwise be available and willing to work for a VRS provider. This in turn will help ensure that VRS providers can maintain a high quality of service and have more resources for responding to unexpected traffic surges. In addition, in the event that the Commission subsequently adopts the proposals in the *2022 VRS Improvements Notice*, extending the waivers of these rules in the interim will avoid unnecessarily imposing on VRS providers the significant costs and burdens involved in “winding down” their use of at-home and contract CAs and then “restarting” such hiring after the adoption of amended rules.¹⁵ Finally, waiving these rules since the start of the pandemic does not appear to have increased the risk of waste, fraud, and abuse of the TRS Fund.¹⁶

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the COVID-19 pandemic, appears likely to continue well beyond the end of the pandemic. *See 2022 VRS Improvements Waiver Order*, paras. 63-64.

¹³ *See 2022 VRS Improvements Waiver Order*, paras. 63-64. Substantial reliance on at-home CAs continues. *See* Convo NPRM Comments at 4 (“remote and limited contract interpreting offers a solution [to the interpreter shortage] by enabling VRS providers to draw from a nationwide interpreter pool”); Comments of Sorenson Communications, LLC, CG Docket Nos. 03-123, 10-51, and 13-24, at 3 (filed Jan. 9, 2023) (“At a time when it is already difficult to entice interpreters to commit time to VRS when community interpreting offers greater pay with more control over the work, the flexibility to offer video interpreters a work from home option has been important.”); GlobalVRS NPRM Comments at 14 (“The ability to attract specialized trilingual Spanish language interpreters and those who support DeafBlind users by offering work at home employment has been particularly well received and enabled GlobalVRS to enhance its specialized service offerings.”); Comments of Accessibility Advocates and Research Organizations, CG Docket Nos. 03-123, 10-51, and 13-24, at 3 (filed Jan. 9, 2023) (“The supply of CAs could increase with the additional remote flexibility that incentivizes the entry of interpreters who are unwilling or unable to work at a call center.”).

¹⁴ *See* Letter from Amanda Montgomery, Convo Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed June 2, 2023) (“The waiver of the . . . cap on the percentage of a VRS provider’s minutes of VRS calls per month for at-home interpreting in response to the pandemic has been proven to be very successful in not only providing health safeguards for our Video Interpreters (‘VIs’) during the pandemic, but has allowed greater staffing availability and flexibility for Convo.”); Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123, at 2 (filed May 18, 2023) (“current [VRS] rates do not allow for competitive wages for the highly skilled (and highly sought after) video interpreters needed for VRS, particularly in the age of interactive video conferencing”); Letter from Amanda Montgomery, Convo Communications, LLC, to Marlene H. Dortch, Secretary, FCC CG Docket 03-123 and 10-51, at 5 (filed May 9, 2023) (expressing “deep concern about the state of the pipeline for new interpreters. The pandemic adversely impacted many interpreter training programs, which have been slow to recover or shut down as a result. . . At the same time, the demand for interpreting services went up exponentially during the pandemic.”).

¹⁵ *See 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, 9882-84, paras. 6-7 (CGB 2019) (extending expiration date of pilot program for VRS at-home call-handling in part to avoid imposing wind-down and start-up costs on providers while the Commission considers adopting permanent program).

7. Therefore, to prevent the hardship to VRS providers and disruption of service to consumers that would result from termination of the waivers of these rules, we find good cause to extend the current waivers of these requirements through the earlier of December 31, 2023, or the effective date of amendments to these rules adopted by the Commission. These waivers are granted without prejudice to the Commission's final determinations on the proposals in the *2022 VRS Improvements Notice*.

8. *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 and Governmental Affairs Bureau at 202-418-0530.

9. *Additional Information*. For further information regarding this item, please contact Bill Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, 202-418-2716, or William.Wallace@fcc.gov.

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, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, the effectiveness of the currently effective waivers of TRS rule sections 64.604(b)(8)(i), 64.604(b)(8)(ii)(A), and 64.604(c)(5)(iii)(N)(I)(iii), 47 CFR §§ 64.604(b)(8)(i), 64.604(b)(8)(ii)(A), and 64.604(c)(5)(iii)(N)(I)(iii), as described herein, is extended through the earlier of December 31, 2023, or the effective date of amendments to these rules adopted by the Commission.

12. 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.

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

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¹⁶ See *2022 VRS Waiver Order*, para. 65; GlobalVRS NPRM Comments, at 2-3 (“Provider and Commission experience with the at-home program has demonstrated that at-home interpreting has not only enabled the uninterrupted provision VRS through the Pandemic but proven effective in attracting and retaining interpreters without compromising Program integrity or introducing fraud, waste, and abuse despite necessary rule waivers.”).