

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
CC Docket No. 98-67
CG Docket No. 03-123

ORDER

Adopted: February 17, 2005

Released: February 18, 2005

By the Chief, Consumer & Governmental Affairs Bureau:

1. This Order addresses the current waiver of the telecommunications relay services (TRS) requirement that TRS providers (including providers of captioned telephone service) offer three-way calling functionality as a TRS mandatory minimum standard. On February 24, 2005, the one-year waiver of this requirement will expire. This Order clarifies the manner in which TRS providers may comply with this rule; as a result, a waiver of this requirement is no longer necessary.

I. BACKGROUND

2. In the Second Improved TRS Order & NPRM, the Commission required that TRS providers offer three-way calling as a standard feature of TRS. We defined three-way calling to be a TRS feature that allows more than two parties to be on the telephone line at the same time with the communications assistant (CA). We stated that three-way calling could be arranged in one of two ways: first, the TRS consumer may request that the TRS facility and the CA set up the call with two other

1 The term telecommunications relay service (TRS) means "telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication service by wire or radio." 47 U.S.C. § 225(a)(3).

2 47 C.F.R. §§ 64.601(16) (defining three-way calling) & 64.604(a)(3)(vi) (requiring three-way calling as a TRS mandatory minimum standard).

3 See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order, CC Docket 98-67, DA 04-465, 19 FCC Rcd 2993 at ¶ 5 (Feb. 24, 2004) (Three-Way Calling Waiver Order).

4 See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 at ¶¶ 72-75 (June 17, 2003) (Second Improved TRS Order & NPRM). We note that this requirement has been waived for IP Relay and VRS until January 1, 2008. Id. at ¶ 76.

5 Id. at ¶ 72.

parties, or, second, one of the parties to the call may set up the call.⁶ In the August 1, 2003, *Captioned Telephone Order*, we recognized captioned telephone service as a type of TRS.⁷ That order did not waive the requirement that providers of captioned telephone service offer three-way calling.

3. On September 24, 2003, AT&T Corp. (AT&T) filed a petition seeking waiver of the deadline for providing three-way calling, asserting it was not possible for the TRS facility to set up a three-way call, subject to clarification regarding how three-way calling may be provided in compliance with the Commission's regulations.⁸ On December 11, 2003, Ultratec, Inc. (Ultratec) and Sprint Corporation (Sprint) filed a joint petition⁹ seeking clarification that the three-way calling requirement either does not apply to captioned telephone service, such as CapTel,¹⁰ or, in the alternative, that a TRS provider complies with this rule regardless of the actual method used to set up these calls.

4. On February 24, 2004, in response to these petitions, the Consumer & Governmental Affairs Bureau (Bureau) released an order waiving the requirement that TRS providers offer three-way calling functionality for one year, *i.e.*, until February 24, 2005.¹¹ The Bureau noted that it was not technologically possible for a TRS facility to set up a three-way call.¹²

5. On November 30, 2004, in anticipation of the February 24, 2005 expiration date of the three-way calling waiver as set forth in the *Three-Way Calling Waiver Order*, the Commission released a Public Notice seeking comment on whether TRS providers would be able to offer three-way calling as of the waiver expiration date, or whether it is necessary to extend the waiver.¹³ The Commission also sought comment on whether, instead of a waiver, the requirement might be modified or clarified and, if so, how.¹⁴

6. In response to the November 30, 2004, Public Notice, four comments and two reply comments were filed.¹⁵ All commenters generally agree that it is still not technologically possible for a

⁶ *Id.* at ¶ 73.

⁷ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, FCC 03-190, 18 FCC Rcd 16121 (August 1, 2003) (*Captioned Telephone Order*). Captioned telephone service is an enhanced Voice Carry Over (VCO) service that allows a user, on one standard telephone line, to both listen to what the other party is saying and simultaneously read captions of what the other party is saying. This way, a typical user of this service, who has the ability to speak and some residual hearing, can both listen to what is said over the telephone and read captions for clarification. A CA using specially developed voice recognition technology generates the captions

⁸ *AT&T Petition for Limited Reconsideration and for Waiver at 7-10* (filed Sept. 24, 2003) (*AT&T Waiver Request*). The *AT&T Waiver Request* was placed on Public Notice and comments and reply comments were received in response. All of the commenters stated that they interpreted the three-way calling requirement to be fully satisfied if a TRS facility processes such a call initiated by an end user using a LEC's customer calling service (CCS) feature. See *Three-Way Calling Waiver Order* at ¶ 4 & n.9.

⁹ *Petition for Clarification by Ultratec, Inc. and Sprint Corporation* (filed Dec. 11, 2003) (*Joint Petition*).

¹⁰ CapTel is a proprietary technology of Ultratec. See *Captioned Telephone Order* at ¶ 4 n.11.

¹¹ See *Three-Way Calling Waiver Order* at ¶ 5.

¹² *Id.*

¹³ *Federal Communications Commission Seeks Comment on Expiration of Waiver of Three-Way Calling Requirement for Providers of Telecommunications Relay Services (TRS)*, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, DA 04-3709 (Nov. 30, 2004).

¹⁴ *Id.*

¹⁵ Comments were filed by AT&T (Dec. 17, 2004); MCI (Dec. 17, 2004); SBC Communications, Inc. (SBC) (Dec. 17, 2004); and Ultratec, Sprint, & Hamilton Relay, Inc. (Hamilton) (as Joint Commenters) (Dec. 17, 2004). Reply

(continued....)

TRS facility to originate or set up a three-way call.¹⁶ All parties also generally agree that the three-way calling requirement should be deemed satisfied if the provider handles or facilitates a three-way call when arranged by one of the parties to the call.¹⁷ AT&T states, for example, that it “processes three-way TRS calls established by the end user through LEC-provided CCS [custom calling features] or through bridging via the user’s own premises equipment,” and that “the most reasonable interpretation of the *Second Improved TRS Order* is that the Commission requirement is fully satisfied if a TRS center processes such three-way calling initiated in that manner.”¹⁸

7. Ultratec, Sprint, and Hamilton assert that a captioned telephone provider or CA is not capable of initiating or setting up a three-way call.¹⁹ They further note that the “CapTel technology does not permit CapTel users to set up three-way calling from their captioned telephone devices.”²⁰ They assert that the three-way calling requirement should be interpreted to mean that the provider must be capable of handling a three-way call if *any* of the parties to the call sets up the call; *i.e.*, that the three-way calling requirement is met if the “parties to a relay call are able to *participate* in a [three-way call], even if the TRS providers handling these calls are not able to set up these calls themselves.”²¹ They add that “CapTel services, as well as other TRS services provided by Hamilton and Sprint, are already in compliance with this interpretation of the ... three-way calling standard.”²²

II. DISCUSSION

8. Based upon our review of the prior orders addressing this issue, and the comments, we clarify that TRS providers (including providers of captioned telephone service) will satisfy the three-way calling requirement set forth in the *Second Improved TRS Order & NPRM* if they ensure that the TRS facility or CA facilitates or handles a three-way call, as the CA would handle any TRS call, where and to the extent the three-way call has been arranged by any one of the parties to the call, *e.g.*, using a party’s LEC-provided custom calling service (CCS), by bridging two telephone lines via customer terminal equipment, or by some other means. Therefore, we clarify that TRS providers are not required to be able to arrange, initiate, or set up a three-way call (but they may do so). In addition, because providers may meet the three-way calling requirement in various ways, we will not further specify any particular method(s) of handling such calls, so long as the provider is able to handle or facilitate a three-way call, in some manner, whether initiated by one of the parties to the call *or* set up by the provider.²³ We believe

(...continued from previous page)

Comments were filed by Hamilton (Dec. 30, 2004) and by Telecommunications for the Deaf, Inc. (TDI) & National Association of the Deaf (NAD) (as Joint Commenters) (Dec. 30, 2004).

¹⁶ See AT&T Comments at 3-4; SBC Comments at 2; Ultratec, Sprint, & Hamilton Joint Comments at 3-6; Hamilton Reply Comments at 2; and TDI & NAD Joint Reply Comments at 2. MCI, however, suggests that it can establish a three-way call, and that the waiver for three-way calling should be allowed to expire. MCI Comments at 2.

¹⁷ See, *e.g.*, AT&T Comments at 3; Ultratec, Sprint, & Hamilton Joint Comments at 4-6.

¹⁸ AT&T Comments at 3.

¹⁹ See Ultratec, Sprint, & Hamilton Joint Comments at 3-4.

²⁰ See *Id.*

²¹ See *Id.* at 2 (emphasis in original).

²² *Id.*; see also TDI & NAD Joint Reply Comments at 2 (agreeing with Ultratec, Sprint and Hamilton’s view that the three-way calling obligation is met when parties to a relay call are able to participate in a three-way call, even if the TRS provider is not able to set up the call).

²³ We therefore agree with Sprint that there is no requirement that a captioned telephone provider be able to set up a three-way call, or that the captioned telephone user be able to initiate a three-way call, so long as the captioned telephone provider provides for three-way calling in some manner. See Ultratec, Sprint, & Hamilton Joint Comments at 3-6.

that permitting flexibility in the manner in which a provider handles or facilitates three-way calling is consistent with the ultimate objective of ensuring that TRS users have access to this feature.²⁴

9. Because we have clarified that a TRS provider meets the three-way calling requirement set forth in the *Second Improved TRS Order & NPRM* by handling such calls when initiated or set up by one of the parties to the call (or by the provider setting up the call), the record reflects that waiver of this requirement is no longer necessary. Accordingly, the one-year waiver of this requirement set forth in the *Three-Way Calling Waiver Order* will expire, pursuant to that order, on February 24, 2005.²⁵

10. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.²⁶

11. *Congressional Review Act.* The Commission will not send a copy of this *Order* pursuant to the Congressional Review Act²⁷ because the *Order* neither adopts nor modifies a rule, but clarifies an existing rule.

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 0.141, 0.361, and 1.3 of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, and 1.3, this *Order* IS ADOPTED.

13. IT IS FURTHER ORDERED that the three-way calling requirement set forth in 47 C.F.R. § 64.604(a)(3)(vi) is clarified as indicated herein.

14. 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

²⁴ AT&T requests that we clarify the "appropriate basis for billing end users that are parties to the conference call." AT&T Comments at 4 n.10. In the *Second Improved TRS Order & NPRM* we addressed how the costs of three-way TRS calls may be recovered from the Interstate TRS Fund. *Second Improved TRS Order & NPRM* at ¶¶ 74-75. To the extent AT&T seeks guidance on how a provider may recover the costs of providing three-way calling service generally (*i.e.*, not the costs of providing the relay service), we note only that a provider may not impose charges on a TRS user that are different than those that would be charged to a hearing person using voice telephone service and the three-way calling feature.

²⁵ The expiration of this waiver will not affect the current three-way calling waiver for IP Relay and VRS. *See Second Improved TRS Order & NPRM* at ¶ 76.

²⁶ *See* 44 U.S.C. § 3506(c)(4).

²⁷ *See* 5 U.S.C. § 801(a)(1)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

K. Dane Snowden, Chief
Consumer & Governmental Affairs Bureau