



Federal Communications Commission
Washington, D.C. 20554

February 21, 2013

Stanley Schoenbach, M.D.
Managing Member and CEO
Healinc Telecom, LLC
3333 Henry Hudson Parkway
Suite 1A
Riverdale, NY 10463

Re: Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51; Healinc Telecom, LLC, Request for Reimbursement of September 2011 Video Relay Service Minutes

Dear Dr. Schoenbach:

Pursuant to Section 64.604(c)(5)(iii)(E) and (L) of the Federal Communications Commission's (FCC or Commission) rules,¹ the Consumer and Governmental Affairs Bureau (Bureau) permanently denies payment to Healinc Telecom, LLC (Healinc), of the amounts withheld by the Telecommunications Relay Service (TRS) Fund administrator, Rolka Loube Saltzer Associates (Administrator, or RLSA), from Healinc's video relay service (VRS) payment for the month of September 2011. We affirm RLSA's determination that the calls for which compensation was withheld were not compensable under the Commission's rules.

Payments from the TRS Fund may be made only to eligible TRS providers operating pursuant to the mandatory minimum standards of Section 64.604 of the rules.² Further, if the Administrator withholds payment pursuant to Section 64.604(c)(5)(iii)(L), the provider has the burden to establish that the minutes of use in question are compensable.³ We find that Healinc has failed to establish that the service for which payment was withheld was provided in compliance with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the Commission's rules, which regulates eligible VRS providers' use of names, brands, sub-brands and Uniform Resource Locator (URL) addresses.⁴ In addition, we find that Healinc failed to submit accurate call detail records (CDRs) to the Administrator in accordance with Section 64.604(c)(5)(iii)(D). Accordingly, Healinc is not entitled to payment of any of the compensation withheld by RLSA for September 2011.

¹ 47 C.F.R. §§ 64.604(c)(5)(iii)(E), (L).

² 47 C.F.R. § 64.604(c)(5)(iii)(E).

³ 47 C.F.R. §§ 64.604(c)(5)(iii)(L)(2), (4), (5).

⁴ 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(i), (ii).

Regulatory Background

On April 6, 2011, the Commission adopted rules to “detect and prevent fraud and abuse in the provision of [VRS],”⁵ some of which had been perpetrated by “white label” VRS providers operating without FCC certification or other authority and, thus, without effective regulatory oversight.⁶ Section 64.604(c)(5)(iii)(N)(I)(i) requires that only an eligible (*i.e.*, FCC-certified) entity may hold itself out to the public as a VRS provider.⁷ In addition, Section 64.604(c)(5)(iii)(N)(I)(ii) provides that: (1) VRS “must be offered under the name by which the eligible VRS provider offering such service became certified as eligible and in a manner that clearly identifies that provider of the service”; (2) “[w]here a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider”; and (3) “[p]roviders must route all VRS calls through a single URL address used for each name or sub-brand used.”⁸ In the *Anti-Fraud Order*, the Commission explained that these branding and URL rules were adopted in part because “the complex branding and commercial relationships that have existed between white labels and eligible providers” hindered consumers from making informed choices, and because “the use of multiple URLs facilitates fraud by enabling providers to track minutes of calls made by users assigned to specific URLs.”⁹

In addition to adopting the branding and URL rules, in the *Anti-Fraud Order*, the Commission adopted a rule requiring that VRS providers submit CDRs with their monthly requests for TRS Fund compensation.¹⁰ The CDRs must provide specified data, including the URL through which each call was handled, for each call for which compensation is sought.¹¹ Moreover, the CDRs must be accompanied by a certification by a senior executive of the provider, under penalty of perjury, that “all requested information has been provided and all statements of fact . . . are true and accurate.”¹²

⁵ *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, 5546, ¶ 1 (2011) (*Anti-Fraud Order*).

⁶ *Anti-Fraud Order*, 26 FCC Rcd at 5572-74, ¶¶ 54-56. The term “white label” refers to entities who, prior to the effective date of the *Anti-Fraud Order*, held themselves out as VRS providers, who were not themselves eligible to receive payments from the TRS Fund, and who made arrangements with eligible providers to submit payment claims to the TRS Fund on their behalf (or to receive a share of the TRS Fund payments to the eligible provider). *Anti-Fraud Order*, 26 FCC Rcd at 5571, ¶ 52 n.147. See also *Anti-Fraud Order*, 26 FCC Rcd at 5570, ¶¶ 48-49.

⁷ 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(i).

⁸ 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(ii). Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) became effective June 1, 2011. See *Structure and Practices of the Video Relay Service Program*, 76 Fed. Reg. 24393 (May 2, 2011).

⁹ *Anti-Fraud Order*, 26 FCC Rcd at 5574, ¶ 57.

¹⁰ *Anti-Fraud Order*, 26 FCC Rcd at 5579-80, ¶¶ 72-75. See 47 C.F.R. § 64.604(c)(5)(iii)(D)(2).

¹¹ 47 C.F.R. § 64.604(c)(5)(iii)(D)(2)(x).

¹² 47 C.F.R. § 64.604(c)(5)(iii)(D)(5)(i). Sections 64.604(c)(5)(iii)(D)(2) and (5) became effective September 26, 2011. See *Structure and Practices of the Video Relay Service Program*, 76 Fed. Reg. 59269 (Sept. 26, 2011).

Background of This Case

On September 20, 2011, RLSA withheld payment to Healinc for VRS minutes submitted for July 2011.¹³ The basis for withholding payment was that Healinc had failed to identify itself properly to callers and that its VRS calls were routed through multiple URL addresses not used for a Healinc brand or sub-brand, contrary to Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the Commission's rules.¹⁴ RLSA later released payment to Healinc for calls routed through the <llvrs.tv> URL, which was identified as the URL used for Healinc's brand,¹⁵ while continuing to deny payment for calls routed through other URLs.¹⁶ RLSA also withheld payment on the same basis for the bulk of the minutes submitted by Healinc in August 2011.¹⁷ The Bureau recently upheld RLSA's withholding of payments for July and August 2011.¹⁸

Shortly after RLSA's denial of payment for Healinc's July 2011 minutes, Healinc and several companies identified as subcontractors of Healinc individually petitioned for retroactive waivers of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the rules.¹⁹ In its own petition, Healinc sought a waiver of those provisions for the period from June 1, 2011, through September 23, 2011.²⁰ Healinc stated that September 23, 2011, was the date on which Healinc "made adjustments to the manner in which it complies with" Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii).²¹ As for Healinc's subcontractors, those who specified time periods for their waivers requested that their waivers be in place until September 29, 2011, or September 30, 2011.²²

¹³ See *Structure and Practices of the Video Relay Service Program; Healinc Telecom, LLC, Request for Reimbursement of July 2011 and August 2011 Video Relay Service Minutes*, CG Docket No. 10-51, Letter Order, DA 12-1318, at 2 (rel. Aug. 10, 2012) (*July-August 2011 Withholding Order*).

¹⁴ *July-August 2011 Withholding Order* at 2.

¹⁵ 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(ii).

¹⁶ *July-August 2011 Withholding Order* at 2-3.

¹⁷ *July-August 2011 Withholding Order* at 3.

¹⁸ *July-August 2011 Withholding Order*.

¹⁹ See *IWRelay, Inc., Petition for Waiver*, CG Docket No. 10-51 (Sept. 23, 2011) (*IWRelay Petition*); *PowerVRS, Petition for Waiver*, CG Docket No. 10-51 (Sept. 27, 2011) (*PowerVRS Petition*); *Healinc, Petition for Waiver*, CG Docket No. 10-51 (Sept. 28, 2011) (*Healinc Petition*); *Malka, Petition for Waiver*, CG Docket No. 10-51 (Sept. 29, 2011) (*Malka Petition*); *Say-Hey, Inc., Petition for Waiver*, CG Docket No. 10-51 (Sept. 29, 2011) (*Say-Hey Petition*); *CODAVRS Corporation, Petition for Waiver*, CG Docket No. 10-51 (Sept. 30, 2011) (*CODAVRS Petition*). These waiver requests were denied. See *Structure and Practices of the Video Relay Service Program; Petitions for Waiver filed by CODAVRS Corporation, Healinc Telecom, LLC, IWRelay, Inc., Malka Communications Group, Inc., PowerVRS, LLC, and Say-Hey, Inc.*, CG Docket No. 10-51, DA 12-1318 (rel. Aug. 10, 2012) (*Waiver Order*).

²⁰ *Healinc Petition* at 3.

²¹ *Healinc Petition* at 3.

²² See *Malka Petition* at 4; *CODAVRS Petition* at 5.

On September 29, 2011, the Commission's Enforcement Bureau issued citations against Healinc's subcontractors for violations of Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the Commission's rules.²³ In each case, the citation stated that the cited company: (1) "[h]eld itself out to the public as offering and providing VRS when the Company is not an Eligible Provider"; (2) "[d]id not clearly identify an Eligible Provider as the entity that a VRS user is using when the Company handled a VRS call initiated through the Company's URL"; and (3) "[r]outed a VRS call through the Company's URL, a URL not used by an Eligible Provider for its brand or sub-brand(s)."²⁴

On November 21, 2011, RLSA withheld payment for most of the VRS minutes submitted by Healinc for September 2011, finding that the CDRs submitted with Healinc's request for payment did not specify the appropriate URL associated with Healinc's service. On December 7, 2011, Healinc protested the withholding to the Commission.²⁵

Discussion

When the TRS Fund administrator in consultation with the Commission, after reviewing a request for compensation, determines that TRS payments should be withheld, the provider then bears the burden of establishing that the minutes in question are compensable.²⁶ In this case, Healinc has not provided sufficient justification for the release of payment for any of the minutes in dispute. Specifically, Healinc has not established that any of the minutes in dispute were processed in compliance with Sections 64.604(c)(5)(iii)(N)(I)(i) and (ii) of the rules.²⁷ In addition, Healinc falsely reported the URL for calls completed in September 2011, in violation of Section 64.604(c)(5)(iii)(D) of the rules.²⁸

First, the Bureau recently determined that Healinc was not entitled to compensation for many of the calls completed in July and August 2011.²⁹ Specifically, we determined that the subcontractors who processed those calls for Healinc held themselves out as VRS providers, failed to identify Healinc as the eligible provider, and routed the calls through various non-Healinc URLs, in violation of Sections

²³ See *CODAVRS Corporation*, EB-11-TC-097, Citation, 26 FCC Rcd 13406 (EB 2011) (*CODAVRS Citation*); *IWRelay, Inc.*, EB-11-TC-102, Citation, 26 FCC Rcd 13422 (EB 2011) (*IWRelay Citation*); *Malka Communications Group, Inc.*, EB-11-TC-079, Citation, 26 FCC Rcd 13427 (EB 2011) (*Malka Citation*); *PowerVRS, Inc.*, EB-11-TC-084, Citation, 26 FCC Rcd 13443 (EB 2011) (*PowerVRS Citation*); *Say-Hey, Inc.*, EB-11-TC-086, Citation, 26 FCC Rcd 13451 (EB 2011) (*Say-Hey Citation*).

²⁴ See *CODAVRS Citation*, 26 FCC Rcd at 13408; *IWRelay Citation*, 26 FCC Rcd at 13424; *Malka Citation*, 26 FCC Rcd at 13429; *PowerVRS Citation*, 26 FCC Rcd at 13445; *Say-Hey Citation*, 26 FCC Rcd at 13453.

²⁵ Healinc, Request for Expedited Reimbursement (Dec. 7, 2011) (Healinc Request). Healinc has requested confidential treatment for the entire text of this filing, a request that we do not address at this time. See Letter from Andrew O. Isar, Miller Isar Inc., to Marlene H. Dortch, Secretary, FCC (Dec. 7, 2011). Rather, we have prepared a public version of this order, in which information contained in or derived from the Healinc Request, and not otherwise obtainable from publicly available sources, is redacted.

²⁶ 47 C.F.R. § 64.604(c)(5)(iii)(L)(4) ("If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use"). See also 47 C.F.R. §§ 64.604(c)(5)(iii)(L)(2), (5) (also indicating that the burden is on the provider).

²⁷ 47 C.F.R. §§ 64.604(c)(5)(iii)(N)(I)(i), (ii).

²⁸ 47 C.F.R. § 64.604(c)(5)(iii)(D).

²⁹ *July-August 2011 Withholding Order*.

64.604(c)(5)(iii)(N)(I)(i) and (ii) of the rules.³⁰ By Healinc's own admission, it did not put an end to these practices, which we have found to be noncompliant, until September 23, 2011.³¹ Indeed, the waiver petitions of Healinc's subcontractors indicate that these noncompliant practices continued even longer.³² Consistent with our previous determination, we find that calls completed in September 2011 pursuant to such noncompliant practices also are not entitled to compensation from the TRS Fund.³³

Second, Healinc has failed to demonstrate that *any* of its September 2011 calls were processed in compliance with the TRS mandatory minimum standards. Healinc falsified the URLs in its September 2011 CDR submissions, in violation of Section 64.604(c)(5)(iii)(D) of the rules.³⁴ Specifically, Healinc's CDRs for September 2011 – in contrast to its CDRs for July and August 2011 – did not indicate that any of Healinc's VRS calls were handled through the non-Healinc URLs used by Healinc's subcontractors.³⁵ Instead, the September 2011 CDRs reported only a single URL, <healinctelecom.tv>, for all calls. As explained above, earlier filings by Healinc and its subcontractors indicate that, at least through September 23, 2011, VRS calls processed by Healinc's subcontractors were still routed through non-Healinc URLs. By falsely reporting the <healinctelecom.tv> URL for certain calls, including those routed through non-Healinc URLs, Healinc violated Section 64.604(c)(5)(iii)(D) of the rules.³⁶ Therefore, we conclude that Healinc is not entitled to compensation for any of the September 2011 calls for which payment was withheld.³⁷

To be compensable, TRS must be provided in accordance with the Commission's mandatory minimum TRS standards as required by Section 64.604.³⁸ For the reasons stated above, we conclude that

³⁰ *July-August 2011 Withholding Order* at 4-5. *See also* the citations against Healinc's subcontractors referenced in note 23, *supra*.

³¹ *See* Healinc Petition at 3 (requesting a waiver of noncompliance with the Commission's branding and URL rules through September 23, 2011, the date on which Healinc "made adjustments to the manner in which it complies with" the branding and URL rules).

³² *See* Malka Petition at 4 (seeking waiver of the branding and URL rules through September 30, 2011); CODAVRS Petition at 4-5 (seeking a waiver of the branding and URL rules through September 29, 2011, and stating, in a petition dated September 30, 2011, that "CODA VRS *now* answers all incoming calls as 'Healinc Telecom, LLC' and otherwise identifies itself exclusively in the same manner") (emphasis added); Say-Hey Petition at 6 (stating, in a petition dated September 29, 2011, that Say-Hey "has *now* disabled <say-hey.tv>," its non-Healinc URL) (emphasis added).

³³ 47 C.F.R. §§ 64.604(c)(5)(iii)(E), (L).

³⁴ 47 C.F.R. § 64.604(c)(5)(iii)(D).

³⁵ The September 2011 CDRs were submitted by Healinc on October 17, 2011. Thus, at that time, Healinc was aware that payment for July 2011 had been withheld for noncompliance with the branding and URL rules. *See* Healinc Petition at 3 (stating that it learned of the July 2011 withholding on September 20, 2011).

³⁶ *See* 47 C.F.R. § 64.604(c)(5)(iii)(D)(2)(x) (requiring providers to identify, in their CDRs, "the URL address through which [each] call is handled"). *See also* 47 C.F.R. § 64.604(c)(5)(iii)(D)(5)(i) (requiring a senior executive of the provider to swear under penalty of perjury that "all requested information has been provided and all statements of fact . . . are true and accurate").

³⁷ 47 C.F.R. §§ 64.604(c)(5)(iii)(E), (L).

³⁸ 47 C.F.R. § 64.604(c)(5)(iii)(E). *See also* *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order, DA 12-1130 (CGB, rel. Jul. 13, 2012) (denying payment to a provider for calls processed on days when the TRS provider violated the speed-of-answer requirements of Section 64.604).

Healinc has failed to meet its burden to establish that the minutes in question are compensable under the Commission's rules.³⁹

Accordingly, IT IS ORDERED that, pursuant to the authority granted by Sections 1, 4(i), 4(j), 5, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155 and 225, and pursuant to the authority delegated in Sections 0.141, 0.361, and 64.604 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 64.604, RLSA's partial withholding of payment to Healinc Telecom, LLC for the month of September 2011 is AFFIRMED and such withheld payment is permanently DENIED. RLSA is DIRECTED not to pay the amounts heretofore withheld. This Order shall be effective upon release, in accordance with Section 1.4(b)(2) of the Commission's rules, 47 C.F.R. § 1.4(b)(2).

If you have any questions, please contact Bob Aldrich, Consumer and Governmental Affairs Bureau, FCC, at (202) 418-0996 and robert.aldrich@fcc.gov.

Sincerely,

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau

³⁹ 47 C.F.R. § 64.604(c)(5)(iii)(L)(5).