

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

ORDER

Adopted: December 12, 2014

Released: December 12, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this order, the Consumer and Governmental Affairs Bureau (Bureau) (1) grants Sprint Corporation (Sprint) a limited and temporary waiver of the Federal Communication Commission's (FCC's or Commission's) speed-of-answer requirements for Internet Protocol Relay (IP Relay) Service retroactive to November 14, 2014 and ending on April 15, 2015; and (2) confirms that before Sprint may provide IP Relay service to consumers who had been using the IP Relay service offered by Purple Communications, Inc. (Purple), Sprint shall register and verify the eligibility of each consumer in conformance with all Commission requirements for registration and verification of IP Relay service users.

2. IP Relay service is a form of telecommunications relay service (TRS)1 that enables an individual who is deaf, hard of hearing, deaf-blind, or has a speech disability to communicate in text using an Internet Protocol-enabled device via a communications assistant (CA) contacted via the Internet, rather than using a text telephone (TTY) and the public switched telephone network.2 From July 31, 2013 through November 14, 2014, two providers offered IP Relay service – Sprint and Purple.3 On October 15, 2014, Purple notified the Commission that it would cease providing IP Relay service to its existing users, effective 5:00 p.m. eastern standard time on November 15, 2014.4 On November 12, 2014, Sprint filed a

1 TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to communicate by telephone or other device through the telephone system with another person. See 47 U.S.C. § 225(a)(3) (defining TRS); see generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket Nos. 90-571, 98-67, 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479-80, ¶ 3 n.18 (2004) (2004 TRS Report and Order & FNPRM) (discussing how TRS works).

2 47 C.F.R. § 64.601(a)(17).

3 Three other service providers – AT&T Services, Inc., Hamilton Relay, Inc., and Sorenson Communications, Inc. (Sorenson) – previously had left the IP Relay market.

4 Letter from John F. Cannon, Counsel to Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Oct. 15, 2014). Purple's letter to the Commission also indicated that it would immediately stop enrolling new IP Relay customers. However, it was not until October 31, 2014, that Purple reported having

(continued...)

request for a 5-month waiver of the speed-of-answer requirement for IP Relay service and for confirmation that Sprint is not required to provide service to a consumer until after the verification process has been completed successfully.⁵ Purple ceased providing IP Relay service, as announced, on November 15, 2014, leaving Sprint as the sole provider of IP Relay service.

II. DISCUSSION

A. Speed of Answer

3. Sprint requests a waiver of section 64.604(b)(2)(ii) of the Commission's rules,⁶ which requires IP Relay providers to answer 85 percent of calls within 10 seconds, measured daily.⁷ Generally, the Commission's rules may be waived for good cause shown.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and if such a deviation will serve the public interest.¹¹

4. Sprint argues that a sudden increase in call volumes caused by Purple's departure from the IP Relay service market is a special circumstance that will compromise its ability to comply with the speed-of-answer requirement.¹² Sprint adds that, because its IP Relay service currently lacks the capacity to handle the call volumes that are likely to occur as a result of Purple's departure from the market, Sprint "will need time to expand its capacity to handle the sudden increase in demand for its services."¹³ Sprint contends that if it is denied compensation for violating the speed-of-answer requirement as a result of taking on Purple's former IP Relay service users, Sprint would effectively be penalized for permitting this influx of users, contrary to the public interest.¹⁴ Sprint therefore requests a waiver from November 14, 2014 until April 15, 2015.¹⁵

(Continued from previous page) _____

ceased such enrollments. E-mail from Monica Desai, Purple, to Karen Peltz Strauss, Consumer and Governmental Affairs Bureau, FCC (Oct. 31, 2014). Similarly, although the October 15, 2014 letter indicated that Purple was "immediately informing all of its IP Relay customers of its decision to exit the IP Relay service so that customers can begin the process of moving their accounts to the last remaining IP Relay service provider," Purple did not post a notice of such termination on its website until on or around October 31, 2014. *Id.*

⁵ Sprint, Request for Emergency Temporary Limited Waiver, CG Docket Nos. 10-51, 03-123 (filed Nov. 12, 2014) (Sprint Request).

⁶ Sprint Request at 2-4.

⁷ 47 C.F.R. § 64.604(b)(2)(ii).

⁸ 47 C.F.R. § 1.3.

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

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

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

¹² Sprint Request at 2-3.

¹³ Sprint Request at 3.

¹⁴ Sprint Request at 2-4. An IP Relay service provider that does not meet the speed-of-answer requirements is not compensated from the TRS Fund for service for each day for which the speed-of-answer requirement is not met. *Structure and Practices of the Video Relay Service Program; Purple Communications, Inc.; Request for Review of the Decision of the TRS Administrator to Withhold TRS Payment*, CG Docket No. 10-51, Order, 27 FCC Rcd 8014, 8024, ¶¶ 1, 27 (CGB 2012).

¹⁵ Sprint Request at 1.

5. We find that the departure of Purple, which handled a high volume of IP Relay traffic, and the consequent migration of Purple's customers to Sprint on short notice¹⁶ constitute "special circumstances" that warrant deviation from the general rule governing the speed of answer for IP Relay service.¹⁷ We are concerned about the potential consequences of Purple's departure from the IP Relay service market and its effect on the ability of Sprint to quickly accommodate the increase in usage that may result from Sprint's absorption of Purple's users. More specifically, because all remaining users of IP Relay service are shifting to Sprint as the sole remaining provider, we find reason to proceed cautiously to avoid inadvertently leaving users without IP Relay service. For example, as the sole remaining provider of IP Relay service, Sprint may need an adjustment period to accommodate an influx of new users that seek to transition over from Purple's IP Relay service.¹⁸ Further, we agree with Sprint that strict enforcement of the speed-of-answer requirements during this transitional period could serve as a disincentive for Sprint to expeditiously commence service to new users who now have no alternative IP Relay provider.¹⁹

6. We therefore find that under the circumstances, a deviation from the general rule will ensure "effective implementation of overall policy" and advance the public interest.²⁰ Section 225(b)(1) of the Communications Act of 1934, as amended, requires the Commission to ensure that TRS "are available to the extent possible and in the most efficient manner" to individuals with hearing and speech disabilities in the United States.²¹ This statutory mandate and the public interest thus require that individuals who rely upon IP Relay service to communicate by telephone receive such service. According to numerous filings by individuals and consumer groups, certain categories of consumers currently rely upon IP Relay service as their primary means of communicating by telephone,²² including

¹⁶ As noted above, although Purple gave actual notice to the Commission on October 15, 2014, of its intent to cease IP Relay service, its notice to consumers via its website did not come until the end of October, and during the interim period, it continued to enroll IP Relay users.

¹⁷ See *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ See Sprint Request at 3-4.

¹⁹ See Sprint Request at 2-4.

²⁰ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166. This is not the first time that waivers of the speed-of-answer or other TRS rules have been found to be in the public interest and therefore granted for good cause. In 2013, the Bureau granted Purple a temporary waiver of the IP Relay speed-of-answer requirement because it appeared that Sorenson's departure from the IP Relay service market would result in the inability of Purple to satisfy the speed-of-answer requirements in the short term. *Telecommunications Relay Services and Speech-To-Speech Services For Individuals With Hearing and Speech Disabilities; Purple Communications, Inc. Emergency Petition for Limited Waiver*, CG Docket No. 03-123, Order, 28 FCC Rcd 12218 (CGB 2013) (*Purple Waiver Order*), modified in part 28 FCC Rcd 16509 (CGB 2013) (*Modified Purple Waiver Order*). Similarly, the Commission granted a temporary waiver of the speed-of-answer requirement when levels of demand were unusually unpredictable, given the relationship between projected call volumes and compliance with those requirements. *Telecommunications Relay Services and Speech-To-Speech Services For Individuals With Hearing and Speech Disabilities*, CG Docket No. 98-67, Order, 17 FCC Rcd 157, 162-63, ¶¶ 15-16 (CCB 2001). Likewise, temporary waivers of other TRS rules have been granted where necessary to avoid depriving consumers of service, as the evidence persuades us could occur here, if Sprint were fully constrained by the speed-of-answer requirements and thus limited in its ability to take on IP Relay service users that previously relied on Purple's service for their communication needs. See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Order, 24 FCC Rcd 14342, ¶ 2 (WCB/CGB 2009).

²¹ 47 U.S.C. § 225(b)(1).

²² See generally *Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) Ex Parte*, CG Docket No. 03-123, at 1 (filed Oct. 31, 2014); *Douglas G. Danforth Ex Parte*, CG Docket No. 03-123 (filed Nov. 12, 2014); *Brett Hermance Ex Parte*, CG Docket No. 03-123 (filed Nov. 12, 2014); *Sarah Kalmar Ex Parte*, CG Docket No. 03-123 (filed Nov. 17, 2014); *Michelle Wallace Ex Parte*, CG Docket No. 03-123 (filed Nov. 17, 2014).

consumers who are deaf-blind,²³ consumers with speech disabilities,²⁴ and consumers who are deaf – or have severe hearing loss – and who do not know or are not comfortable with the use of American Sign Language (ASL).²⁵ In the present circumstances, the overall policy of section 225 will be most effectively implemented by granting a limited waiver that will permit Sprint to focus its efforts on ensuring that service is provided with little or no interruption to those consumers with a legitimate need for IP Relay, especially those who rely on this form of TRS as their sole or primary source of functionally equivalent telephone service.²⁶ We therefore grant Sprint’s request for a limited waiver of the speed-of-answer rule, effective retroactively to November 14, 2014, and ending on April 15, 2015.

7. The Commission will monitor the effects of Purple’s departure and the grant of this waiver on speed-of-answer performance by reviewing Sprint’s speed-of-answer compliance data and reports, which must be submitted to the TRS Fund administrator during the waiver period, pursuant to section 64.604(c)(5)(iii)(D) of the Commission’s rules. To help the Commission monitor the number of unique users who port from Purple, we require Sprint to report the total telephone numbers ported or newly assigned per month, as well as the number of unique registered users served per month during the waiver period.²⁷

B. Consumer Registration

8. Section 64.611(b) of the Commission’s rules requires IP Relay service providers to register each new user before providing service to that user.²⁸ As part of the registration process, the

²³ See Joint Statement of American Association of Deaf-Blind (AADB) and DeafBlind Citizens Action (DBCA), CG Docket Nos. 03-123 and 12-38 (filed Nov. 3, 2014); National Association of the Deaf (NAD) *Ex Parte*, CG Docket No. 03-123 (filed Nov. 10, 2014); Helen Keller National Center (HKNC) and AADB *Ex Parte*, CG Docket No. 03-123 (filed Nov. 13, 2014); Martha Timms *Ex Parte*, CG Docket No. 03-123 (filed Nov. 12, 2014); Judy Jonas *Ex Parte*, CG Docket No. 03-123 (filed Nov. 17, 2014).

²⁴ See Christina Dombkowski *Ex Parte*, CG Docket No. 03-123 (filed Nov. 14, 2014).

²⁵ See Alfred Bennett *Ex Parte*, CG Docket No. 03-123 (filed Nov. 12, 2014); John Garvin *Ex Parte*, CG Docket No. 03-123 (filed Nov. 12, 2014); Rebecca Brodie *Ex Parte*, CG Docket No. 03-123 (filed Nov. 13, 2014); Susan Pfeuffer *Ex Parte*, CG Docket No. 03-123 (filed Nov. 13, 2014).

²⁶ 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; Video Relay Service Provider Requests for Temporary Waiver of the Speed-of-Answer Rule*, CG Docket Nos. 10-51, 03-123, Order, 29 FCC Rcd 7971 (CGB 2014) (in granting all providers a temporary 6-month waiver of the increased speed-of-answer standard for video relay service (VRS), the Bureau found that, despite the delay in implementing a quicker speed of answer, a limited waiver would serve the public interest, on balance, by ensuring that quality of service is maintained, avoiding undue disruption in the supply of interpreters, and allowing providers more predictability and stability in their operations during the transition to faster speed-of-answer requirements).

²⁷ 47 C.F.R. § 64.604(c)(5)(iii)(D). These reports shall be submitted via email to TRSreports@fcc.gov, and Sprint may request confidential treatment of such information. Sprint shall submit the first report on or before January 5, 2015, and ensure that it covers the period from November 14, 2014 through November 30, 2014. Thereafter, Sprint shall submit monthly reports on or before the 15th of each month to cover the period of the prior month. Sprint shall submit the last report, covering the period from April 1, 2015 through April 15, 2015, on or before April 30, 2015. We note that in a prior speed of answer waiver order, the Commission applied a formula to ensure that speed-of-answer violations unrelated to the migration of consumers from Sorenson to Purple would not be excused. *Purple Waiver Order*, 28 FCC Rcd at 12220-21, ¶¶ 7-9; *Modified Purple Waiver Order*, 28 FCC Rcd at 16511-12, ¶¶ 8-11. We do not impose the same condition here because unlike the situation presented in the *Purple Waiver Order*, Sprint is now the sole remaining provider of IP Relay service, and thus, we believe this waiver is necessary to ensure that this service is maintained during a transitional period with little or no interruption, for legitimate users who rely on IP Relay to obtain functionally equivalent telephone service. In these limited and unusual circumstances, we find that the public interest need to ensure continuity of service for those who need it outweighs the need for strict enforcement of speed-of-answer requirements during the narrow period of time for which this waiver is granted.

²⁸ 47 C.F.R. § 64.611(b).

provider must either facilitate the user's valid number portability request, or, if the user does not wish to port a number, assign the user a geographically appropriate North American Numbering Plan telephone number.²⁹ In addition, all Internet-based TRS (iTRS) providers, including IP Relay service providers, must verify the accuracy of each user's registration information, including the consumer's name and mailing address, before issuing the consumer a ten-digit telephone number.³⁰ Although the Commission has not mandated every detail of the verification procedures needed to accomplish this, it has been clear that iTRS providers must "implement a reasonable means of verifying registration and eligibility information that is not unduly burdensome."³¹ The Commission mentioned three possible means of verification, including (1) sending a postcard to the mailing address provided by the consumer for return to the iTRS provider; (2) in-person or on camera ID checks; or (3) "other verification processes similar to those performed by voice telephone providers and other institutions (such as banks and credit card companies)."³²

9. Sprint explains that absorbing Purple's customer base will require Sprint to process an influx of requests from consumers seeking to make Sprint their default IP Relay service provider.³³ Sprint affirms that it verifies the eligibility of each consumer migrating to it from Purple using the same procedures that Sprint has adopted for registering and verifying other new users, and that Sprint completes the verification process for each consumer before the consumer is permitted to place IP Relay service calls using Sprint's service.³⁴ Sprint adds that because the verification process will take time, and given the anticipated large number of new registrations requiring verification, Sprint intends to adopt a reasonable limit on the number of requests for service that it will process at any one time.³⁵ Because consumers may experience some delay in registering, Sprint "seeks the Commission's confirmation that these plans, which are intended to avoid waste, fraud, and abuse in Sprint's provision of IP Relay service, comply with all relevant Commission rules and policies."³⁶

10. We confirm that, to ensure the eligibility of each IP Relay service user, Sprint is required to register and verify each user before the user may commence service. In adopting the *iTRS Second Numbering Order*, the Commission expressed its expectation that the registration and verification procedures would "reduce the misuse of Internet-based TRS by those who may take advantage of the anonymity currently afforded users, particularly IP Relay users, without unduly burdening legitimate Internet-based TRS consumers seeking to obtain ten-digit telephone numbers."³⁷ In that 2008 decision, the Commission also stated that "to the extent technically feasible, Internet-based TRS providers must allow newly registered users to place calls immediately," even before completing the verification of such individuals.³⁸ However, the Commission later reversed this policy, finding that "a prohibition against

²⁹ 47 C.F.R. § 64.611(a)(1).

³⁰ *Telecommunications Relay Services and Speech-To-Speech Services For Individuals With Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 809, ¶ 37 (2008) (*iTRS Second Numbering Order*). In addition, the verification procedures must include a self-certification by each consumer verifying that the consumer has "a medically recognized hearing or speech disability necessitating their use of TRS." *iTRS Second Numbering Order*, 24 FCC Rcd at 809, ¶ 37.

³¹ *iTRS Second Numbering Order*, 24 FCC Rcd at 809, ¶ 38.

³² *iTRS Second Numbering Order*, 24 FCC Rcd at 809, ¶ 38.

³³ Sprint Request at 4.

³⁴ Sprint Request at 4.

³⁵ Sprint Request at 2, 5.

³⁶ Sprint Request at 5; *see also* Sprint Request at 2.

³⁷ *iTRS Second Numbering Order*, 24 FCC Rcd at 809-10, ¶ 38.

³⁸ *iTRS Second Numbering Order*, 24 FCC Rcd at 803, ¶ 25.

temporary authorization of IP Relay users is now necessary in order to curb the fraud and abuse that has resulted from provider misuse of this procedure.”³⁹ In that 2012 decision, the Commission expressed its particular concern that “reliance on the guest user procedure has resulted in abuse of the IP Relay program by unauthorized IP Relay users.”⁴⁰ The Commission also rejected a proposal to require completion of the verification process within 72 hours, finding that “on balance, ensuring that users are fully and effectively verified is more critical to restoring the integrity of the IP Relay program than is placing a time limit on the verification process.”⁴¹ Given the Commission’s ongoing and clearly articulated directive that all new registrants be properly verified before being allowed to use IP Relay service, we reaffirm that Sprint must verify the eligibility of each new or migrating user before Sprint can provide service to the user.

11. We are also sensitive to the concerns expressed by Sprint that in order to register and verify a large number of IP Relay users, Sprint may need to limit the number of users it registers per week, which would result in some registration delays. Provided Sprint makes good faith efforts to register and verify users without unreasonable delay and is in compliance with the Commission’s requirement to verify the eligibility of each individual to receive service, we find that that it would not be unreasonable for Sprint to limit the number of users it registers each week.⁴²

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 5, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 155, and 225, and sections 0.141, 0.361, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, the Request for Emergency Temporary Limited Waiver filed by Sprint Corporation on November 12, 2014 IS GRANTED to the extent specified herein, and Sprint Corporation’s request for alternative relief IS DISMISSED as moot.⁴³

13. IT IS FURTHER ORDERED that the Internet Protocol Relay Service speed-of-answer requirement, section 64.604(b)(2)(ii) of the Commission’s rules, 47 C.F.R. § 64.604(b)(2)(ii), IS WAIVED for Sprint Corporation retroactive to November 14, 2014, and ending on April 15, 2015, subject to the conditions stated in this Order.

³⁹ *Misuse of Internet Protocol (IP) Relay Service; Telecommunications Relay Services and Speech-To-Speech Services For Individuals With Hearing and Speech Disabilities*, CG Docket Nos. 12-38, 03-123, First Report and Order, 27 FCC Rcd 7866, 7871, ¶ 11 (2012) (*IP Relay Misuse Order*). The Commission adopted an exception, which required IP Relay service providers to handle emergency calls by unverified users calling 911. *IP Relay Misuse Order*, 27 FCC Rcd at 7872, ¶ 13, n.53. However, after concerns were raised regarding abusive 911 calls placed by unverified users, the Consumer and Governmental Affairs Bureau granted an interim waiver of the requirement to handle such calls. *Misuse of Internet Protocol (IP) Relay Service; Telecommunications Relay Services and Speech-To-Speech Services For Individuals With Hearing and Speech Disabilities*, CG Docket Nos. 12-38, 03-123, Order, 29 FCC Rcd 4807 (CGB 2014).

⁴⁰ *IP Relay Misuse Order*, 27 FCC Rcd at 7871, ¶ 11.

⁴¹ *IP Relay Misuse Order*, 27 FCC Rcd at 7872, ¶ 12.

⁴² See Sprint Request at 2, 5. In the alternative, in the event Sprint is required to accept IP Relay users based on Purple’s prior registration and verification findings, Sprint asks that it not be held accountable for any calls made by individuals who are later found to be ineligible. *Id.* at 5-6. Because, as discussed above, we are requiring Sprint to complete the registration and verification process in conformance with the Commission’s requirements prior to Sprint providing service to consumers, we dismiss Sprint’s alternative request as moot.

⁴³ See note 42, *supra*.

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 and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This Order may be downloaded from <http://www.fcc.gov/encyclopedia/telecommunications-relay-services-trs>.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau