

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 29, 2014

Released: December 29, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this order, the Consumer and Governmental Affairs Bureau (Bureau) adopts, based on emergency circumstances, a mid-year adjustment of the per-minute rate of compensation from the Interstate Telecommunications Relay Service Fund (TRS Fund) for the provision of Internet Protocol Relay (IP Relay) service.

II. BACKGROUND

2. Section 225 requires the Commission to ensure that telecommunications relay services (TRS) "are available to the extent possible and in the most efficient manner" to individuals in the United States who are deaf, hard of hearing, or deaf-blind or have speech disabilities.

1 47 U.S.C. § 225(b)(1).

2 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, CG Docket No. 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).

telephone network.³

3. In 2013, three IP Relay service providers – AT&T Services, Inc., Hamilton Relay, Inc., and Sorenson Communications, Inc. (Sorenson) – terminated their provision of the service.⁴ As a result, from July 31, 2013, through November 14, 2014, only two providers offered IP Relay service – Sprint Corporation (Sprint) and Purple Communications, Inc. (Purple). On October 15, 2014, Purple notified the Commission that it would cease providing IP Relay service, effective November 15, 2014.⁵ On November 17, 2014, Sprint filed a request seeking a temporary adjustment of the per-minute compensation rate for IP Relay service.⁶ Sprint states that the current compensation rate does not reflect Sprint’s allowable costs and that its costs will increase as a result of Purple’s exit.⁷ In addition, Sprint asserts that even before Purple’s announced departure, it had been planning to terminate its IP Relay service and had begun winding down its business.⁸ Sprint adds, however, that a sufficient upward adjustment of the rate would enable it to stay in business, and thereby enable it to serve both its current customers and any new users migrating from Purple.⁹ Sprint requests that the Bureau adopt a two-tiered IP Relay rate increase.¹⁰ First, Sprint seeks an adjusted per-minute IP Relay compensation rate so that it can continue to serve its current customers.¹¹ Second, Sprint requests that the Commission establish a higher per-minute rate applicable to minutes in excess of Sprint’s pre-November 14, 2014 traffic volume to enable Sprint to recover the additional costs incurred to serve new customers migrating from Purple.¹²

4. Sprint identifies a number of specific factors in its justification for a rate increase. First, Sprint states that, in its submission of costs last year, it made some errors that resulted in underestimating the allocation of overhead to IP Relay services and significantly underestimating its call center costs attributable to IP Relay.¹³ Second, Sprint reports that it has experienced higher than expected call volume, as well as per-minute costs, at a call center operated by a subcontractor.¹⁴ Third, as noted above, Sprint asserts that it had been contemplating the termination of its IP Relay well before Purple announced its departure plans¹⁵ and, in light of declining demand for its IP Relay service, had avoided making capital

³ 47 C.F.R. § 64.601(a)(17).

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 29 FCC Rcd 8044, 8048-49, ¶ 13 (2014) (*2014 TRS Rate Order*).

⁵ 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).

⁶ Sprint, Request for Expedited Mid-Cycle Rate Adjustment, CG Docket Nos. 10-51, 03-123 (filed Nov. 17, 2014) (Sprint Request).

⁷ *Id.* at 3.

⁸ *See id.* at 8 n.10 (“Even before Purple announced its plans [to leave the IP Relay services market], Sprint had been contemplating its own exit from the IP Relay business because it was providing services below its costs....”); *see id.* at 6 n.5.

⁹ *Id.* at 6 (“Purple’s departure from the IP Relay business also will require Sprint to incur certain short-term costs that it could not reasonably have anticipated [earlier.]”).

¹⁰ *See id.* at 2. Sprint states that it “is willing to maintain its IP Relay service on an interim basis at the rates proposed herein, in large part because of the public interest benefits of maintaining this critical service.”

¹¹ *Id.* at 2. This rate would stay in effect until the Commission adopts a new IP Relay rate. *See id.*

¹² *Id.* at 2.

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 8, n.10.

investments in the service in recent years.¹⁶ To continue to provide IP Relay services as the sole provider, Sprint states that it must incur new capital investments.¹⁷ Fourth, according to Sprint, providing service to former Purple customers will unexpectedly increase its short-term costs.¹⁸ Sprint explains that this is because Sprint's subcontractor has informed Sprint that it will impose a higher rate going forward to accommodate the expected increase in traffic volume¹⁹ and because Sprint will be required to hire and train more communications assistants (CAs), hire more people to enroll and verify new consumers, and purchase additional workstations and equipment.²⁰

III. DISCUSSION

5. Ordinarily, TRS Fund compensation rates and revenue requirements are established before the commencement of the July 1 – June 30 Fund Year and remain effective throughout the Fund Year.²¹ In the case of IP Relay, moreover, rates are determined pursuant to a price cap methodology, which contemplates a three year rate cycle with predictable adjustments of the rate in the second and third years, in accordance with specific adjustment factors.²² On occasion, however, situational changes occurring during a Fund year, such as fluctuations in relay demand, have required the Bureau to make mid-term adjustments in TRS Fund compensation rates or contribution factors.²³ In this instance, we find that exigent circumstances exist to justify a mid-cycle rate adjustment. We make this adjustment in order to serve the public interest and ensure that the objective of section 225 of the Communications Act of 1934, as amended, requiring the availability of functionally equivalent telephone access to people with hearing or speech disabilities, is fulfilled.

6. As noted above, four of five IP Relay providers have terminated their provision of service over the past two years. Given this trend, we have no reason to doubt Sprint's representation that it, too, had been preparing to terminate its IP Relay service prior to Purple's departure. We also acknowledge Sprint's concerns as to whether the current IP Relay compensation rate will provide sufficient revenue for it to continue to provide IP Relay service, especially given that Sprint will be the sole remaining provider and must take steps to prepare for and handle an unknown volume of minutes resulting from Purple's exit. In this context, we further have no reason to doubt Sprint's assertions that without a significant mid-year rate increase, it will not continue to provide IP Relay service.

¹⁶ *Id.* at 6 n.7.

¹⁷ *See id.* at 5-6. *See also id.* at 7 (“Absent adequate compensation . . . , Sprint will have no option but to discontinue IP Relay service. Sprint simply cannot be expected to *make the investments required* to remain in the IP Relay business and meet the increased demand it will face without an assurance that it will receive sufficient compensation.”) (emphasis added); *see id.* at 3 (same).

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6 (stating that all of these expenses are due to Purple's departure).

²¹ *See* 47 C.F.R. § 64.604(c)(5)(iii)(H).

²² *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 22 FCC Rcd 20140, 20159-60, ¶¶ 25-60 (2007) (*2007 TRS Rate Methodology Order*). The 2014-15 Fund Year is the second year of a three-year price cap rate period for IP Relay compensation. *2014 TRS Rate Order*, 29 FCC Rcd at 8048, ¶ 11.

²³ *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 2993 (CGB 2004) (*2004 Contribution Factor Adjustment Order*) (adjusting contribution factor to ensure that the TRS Fund has adequate funds to compensate TRS providers) (*2004 Contribution Factor Adjustment Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 24981 (CGB 2004) (*2004 Compensation Rate Adjustment Order*) (modifying TRS compensation rates based on anticipated adjustments in the underlying cost data).

7. If permitted to occur, the consequences of Sprint's termination of IP Relay service would be severe for consumers who are deaf, deaf-blind, hard-of-hearing, or have speech disabilities. According to numerous filings by individuals and consumer groups following Purple's announcement of its intent to exit the IP Relay market, certain categories of consumers currently rely upon IP Relay service as their sole or primary means of communicating by telephone,²⁴ including consumers who are deaf-blind²⁵ or have speech disabilities,²⁶ as well as deaf or severely hard-of-hearing consumers who do not know or are not comfortable with the use of American Sign Language (ASL).²⁷ Without IP Relay services, these consumers would lose access to the functional equivalent of voice telephone service. In these present and unusual circumstances, therefore, we find that a limited, short-term modification of the IP Relay compensation rate is necessary to achieve the overall policy of section 225 – that is, to ensure the continued availability of IP Relay service to consumers with a legitimate need for this form of TRS.

8. To the extent that a waiver of the Commission's requirements regarding the annual establishment of TRS compensation rates and the price cap methodology for setting IP Relay rates is necessary to take this action,²⁸ we note that the Commission's rules may be waived for good cause shown.²⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.³¹ 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.³²

9. Applying the above standards to this unusual situation, we find that the departure of four of five IP Relay providers and the planned departure of the fifth constitutes "special circumstances" justifying a mid-year, mid-cycle modification of the IP Relay compensation rate. Strict observance of the annual compensation rate process, in the current circumstances, would be inconsistent with the public interest because it would likely result in depriving eligible consumers of the functionally equivalent service mandated by section 225 if Sprint were to exit the IP Relay market. Conversely, we conclude that a mid-year, mid-cycle adjustment of the IP Relay compensation rate is necessary to achieve the effective

²⁴ 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).

²⁵ See *Joint Statement of American Association of Deaf-Blind (AADB) and DeafBlind Citizens Action (DBCA)*, CG Docket Nos. 03-123, 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).

²⁶ See *Christina Dombkowski Ex Parte*, CG Docket No. 03-123 (filed Nov. 14, 2014).

²⁷ 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).

²⁸ See *2004 Contribution Factor Adjustment Order*, 19 FCC Rcd at 2996 (finding good cause to waive the Commission's rules "to the extent they require that the carrier contribution factor be determined on an annual basis").

²⁹ 47 C.F.R. § 1.3.

³⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

³² *Northeast Cellular*, 897 F.2d at 1166.

implementation of the overall policy of section 225.³³

10. Therefore, we adopt an interim increase in the per-minute IP Relay compensation rate to ensure that Sprint is willing and able to continue providing service through the end of the current Fund Year. We also grant Sprint's second request to set a higher interim rate applicable to all monthly minutes in excess of Sprint's current traffic levels, to provide Sprint with sufficient incentive to extend service to an influx of additional customers on short notice, an influx for which it was not prepared.

11. For purposes of setting an interim rate, the special circumstances before us will not afford us sufficient time to pinpoint the exact amount of Sprint's current costs, which is partly dependent on future events – such as how many IP Relay users ultimately migrate to Sprint and the cost of enrolling and serving such users. Moreover, there is no single “right answer” to determining an appropriate interim rate; the 10th Circuit has explained that “agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise.”³⁴ Indeed, on a number of occasions the Commission has consciously set TRS compensation rates in excess of cost-based levels in order to take account of other compelling considerations.³⁵

12. Given the present exigent circumstances, where Sprint is likely to cease to provide IP Relay without a rate adjustment, we find that it would be contrary to the public interest for consumers to be left without any IP Relay service, and thus find it necessary to adopt this mid-year rate adjustment. Sprint has argued that its costs of providing service under current conditions, in which it is now the sole IP Relay provider accommodating users who are migrating over from Purple,³⁶ are in excess of what is recoverable under the current compensation rate.³⁷ While a more searching investigation might enable us

³³ In further justification of a mid-price-cap-cycle modification of the IP Relay compensation rate, we observe that some of the assumptions previously used in applying the price cap methodology to determine the IP Relay rates for this rate cycle have been put into question by subsequent developments. For example, earlier this year, after three of the five providers whose costs were considered in establishing the base IP Relay rate ceased providing the service and after especially dramatic declines in IP Relay usage, the Bureau found it necessary both to increase the base IP Relay rate and to eliminate the 6 percent downward adjustment factor established in the *2013 TRS Rate Order*. *2014 TRS Rate Order*, 29 FCC Rcd at 8048-49, ¶ 13, 8051-52, ¶¶ 18-19. The removal of yet another provider from the IP Relay cost pool, leaving only Sprint, represents one more change that has further eroded the practical value of the price cap methodology in these particular circumstances.

³⁴ See *Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035, 1046 (10th Cir. 2011), quoting *Qwest Corp. v. FCC*, 258 F.3d 1191, 1206 (10th Cir. 2001) and *Sw. Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999), and noting that “the FCC is entitled to substantial deference when adopting interim rates.” Further, “[t]he relevant question is whether the agency’s numbers are within a zone of reasonableness, not whether its numbers are precisely right.” *Sorenson Communications, Inc. v. FCC*, No. 13-1215, D.C. Cir., Sept. 2, 2014, at 25, quoting *WorldCom, Inc. v. FCC*, 238 F.3d 449, 462 (D.C. Cir. 2001) (quotation marks omitted).

³⁵ See also *2010 TRS Rate Order*, 25 FCC Rcd at 8695, ¶ 12 (setting VRS rates above cost in order to spare providers from a precipitous rate drop and enable them to continue providing high quality service pending structural reform). *VRS Reform Order*, 28 FCC Rcd at 8703-04 ¶¶ 212-13 (establishing a “glide path” from existing VRS compensation rates toward cost-based levels, in order to improve the predictability of reimbursements and assist providers in planning efficiently for the transition to structural reforms and cost-based rates); *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, 10-51, Order, 28 FCC Rcd 9219, 9222, ¶ 12 (CGB 2013) (*2013 TRS Rate Order*), (noting that the IP Relay rate is higher than average provider costs and was developed in an effort to “take[] account of cost differentials among providers, allow[] efficient providers to earn positive profits on a prospective basis, and give[] inefficient providers an incentive to reduce their costs”).

³⁶ Such migration may be reflected in both new registrations and increased Sprint minutes. Prior to Purple's departure, individuals may have registered with both Purple and Sprint, but now such individuals must exclusively use Sprint's IP Relay services.

³⁷ Sprint reports that its costs will cover, among other things, the hiring and training of additional communications assistants (CAs) to handle potential increases in traffic and hiring and training additional customer service

(continued....)

to make a more confident determination of underlying costs, in the current exigent circumstances, our primary objective must be to expeditiously reset the IP Relay compensation rate with confidence that it will be at a level sufficient to provide Sprint with an adequate incentive for it to continue serving IP Relay customers for the remainder of the Fund Year.³⁸ Based on these considerations, we find that it is appropriate to increase the IP Relay compensation rate to \$1.37 per minute for the remainder of the 2014-15 Fund Year.³⁹ Because the exigent circumstances that compel us to modify the rate came into being on November 15, 2014, the date that Purple terminated service, we make this \$1.37 per minute rate retroactive to that date. In addition, to ensure that Sprint has sufficient revenue to provide it with the incentive to ramp up its service to serve an influx of new customers migrating from Purple, we establish a separate rate of \$1.67 per minute, applicable to any monthly minutes in excess of 300,000. This rate, which is also effective retroactively to November 15, 2014, will remain in effect until May 15, 2015, *i.e.*, for a total period of six months. Sprint estimates that it will take six months for it to complete its capital investments, purchases, hiring, and training in order to meet the needs of what may be a substantially larger customer base.⁴⁰ We find that a six-month period is reasonable for this purpose.

13. 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 Sprint Request for Expedited Mid-Cycle Rate Adjustment filed by Sprint Corporation on November 17, 2014 IS GRANTED to the extent specified herein; and

14. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP Relay service: (1) for the period from November 15, 2014, through May 15, 2015 at the rates of \$1.37 per completed conversation minute for a provider's first 300,000 monthly minutes and \$1.67 per completed conversation minute for monthly minutes above 300,000; and (2) for the period from May 15, 2015, through June 30, 2015, at the rate of \$1.37 per completed conversation minute.

15. 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

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representatives to handle registration and verification of an influx of new users. *See* Sprint Request at 6-7; *Sprint SOA Waiver Order* at ¶¶ 9-10.

³⁸ *Cf. VRS Reform Order*, 28 FCC Rcd at 8700-01, ¶¶ 204-05 (in setting rate tier boundaries for VRS compensation rates, the Commission chooses to err, if at all, in the direction that will minimize harm to the public interest).

³⁹ This Order addresses the compensation rate on an interim basis only for the remainder of the current Fund Year. The compensation rate for the 2015-16 Fund Year will be addressed in the Commission's annual rate-setting process. The interim rate levels set herein do not establish any presumption and do not warrant any future expectation as to the compensation rate that will be effective for the 2015-16 Fund Year.

⁴⁰ Sprint Request at 7; *see id.* at 2-3 (stating that, after six months, Sprint should have finished paying for the one-time costs associated with accommodating the influx of customers from Purple).