

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
Sprint Communications, Inc.
Request for Review of the Decision of the TRS Administrator to Withhold TRS Payments
CG Docket No. 03-123

ORDER

Adopted: March 11, 2014

Released: March 11, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (FCC or Commission), acting on delegated authority, grants in part and denies in part Sprint Nextel Communications' (Sprint) request for review of the withholding of compensation payments for Sprint's Internet Protocol Relay Service (IP Relay) service. The Telecommunications Relay Services (TRS) Fund (TRS Fund, or Fund) administrator, Rolka Loube Saltzer Associates, Inc. (RLSA), withheld payment to Sprint from the TRS Fund for the provision of IP Relay from January 2012 through September 2012, based on its determination that Sprint did not comply with RLSA's filing instructions implementing the Commission's data submission rule for that period. We affirm RLSA's finding that Sprint failed to comply with the Commission's data submission rule during that period.

2. However, we find good cause to waive the application of the data submission rule with respect to the submission of individual call detail for abandoned calls for service provided during the

1 See generally 47 C.F.R. §§ 0.141, 0.361.

2 Letter from Michael B. Fingerhut, Senior Counsel, Government Affairs, Sprint, to Karen Peltz Strauss, Deputy Chief, CGB (filed Feb. 11, 2013) (Sprint February 11, 2013 Letter). See also Letter from Michael B. Fingerhut, Senior Counsel, Government Affairs, Sprint, to Sean Lev, General Counsel, FCC (filed September 24, 2012) (Sprint September 24, 2012 Letter); Letter from Charles W. McKee, Vice President - Government Affairs, Sprint, to Karen Peltz Strauss, Deputy Chief, CGB, (filed May 20, 2013) (Sprint May 20, 2013 Letter).

3 IP Relay is a text-based relay service that permits an individual with a hearing and/or speech disabilities to communicate in text using an IP-enabled device via the Internet. 47 C.F.R. § 64.601(a)(17). In an IP Relay call, the communications assistant (CA) relays a conversation between the parties by conveying verbally what the person with a hearing loss types and by typing responses from the other party, which are then sent back over an Internet connection.

4 47 C.F.R. § 64.604(c)(5)(iii)(D) (the data submission rule).

5 See id. § 64.604(c)(5)(iii)(E), (L).

period from January through July 2012. A waiver of the application of the data submission rule is justified for the months of January through May 2012 based on Sprint's practical inability, given the systems it was using at the time, to comply with the rule in that respect. Application of the data submission rule for June through September 2012 is a more complicated question. We find that Sprint failed to take timely measures to comply with RLSA's revised filing instructions for service provided from June through September 2012. On the other hand, the information Sprint did submit for that period appears to be in accordance with RLSA's previous instructions that were in effect prior to February 2012, and we are unable to find that Sprint's submission misrepresented Sprint's speed-of-answer performance or that Sprint committed any substantive violations of the SOA rule.<sup>6</sup> Based on considerations of hardship, equity, and effective implementation of overall policy, we allow payment to Sprint of the amounts otherwise due for service provided from June and July 2012, while denying payment of the amounts otherwise due for August and September 2012.

## II. BACKGROUND

3. In 2011, the Commission amended its rules to formally require TRS providers to submit certain kinds of data to the TRS Fund administrator on a monthly basis regarding the calls processed by the provider.<sup>7</sup> Two types of call data were specified in the amendments. First, under section 64.604(c)(5)(iii)(D)(2), TRS providers must submit data regarding each call that is completed using a relay service and for which the provider claims compensation from the TRS Fund.<sup>8</sup> Second, under section 64.604(c)(5)(iii)(D)(3), Internet-based TRS providers must submit data regarding their compliance with the SOA standards specified in the Commission's rules.<sup>9</sup> At issue in this order is Sprint's compliance with instructions issued by the Fund Administrator for the submission of data supporting SOA compliance.

4. The data submission rule, as amended, requires that both kinds of data be submitted electronically and in a standardized format.<sup>10</sup> The TRS Fund administrator has phased in the formulation and implementation of such standardized formats over time, successively issuing instructions to providers on call data submissions for each type of Internet-based relay service.

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<sup>6</sup> 47 C.F.R. § 64.604(b)(2).

<sup>7</sup> *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5579-80, ¶¶ 72-75 (2011) (*VRS Call Practices R&O*). Previously, providers were subject to a generally worded requirement to submit information reasonably requested by the Administrator. 47 C.F.R. § 64.604(c)(5)(iii)(D)(1). Effective September 26, 2011, the Commission amended its rules to provide a more formal and specific requirement for the submission of certain data. *VRS Call Practices R&O*, 26 FCC Rcd at 5579-80, ¶¶ 72-75. See also 76 FR 59269 (Sept. 26, 2011) (establishing effective date). These new requirements were added to, and did not replace, the pre-existing general requirement to "provide the administrator with true and adequate data . . . reasonably requested to determine the TRS Fund revenue requirements and payments." 47 C.F.R. § 64.604(c)(5)(iii)(D)(1).

<sup>8</sup> *Id.* § 64.604(c)(5)(iii)(D)(2).

<sup>9</sup> *Id.* § 64.604(c)(5)(iii)(D)(3). Under the Commission's SOA rule, IP Relay providers must answer at least 85% of all calls within 10 seconds, with compliance measured on a daily basis. 47 C.F.R. § 64.604(b)(2)(ii). A different SOA standard applies to video relay service (VRS) providers. See *id.* § 64.604(b)(2)(iii). A provider's compliance with the SOA rule is a condition precedent for disbursement of TRS Fund payments. See *id.* § 64.604(c)(5)(iii)(E) ("The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604"). See also *id.* § 64.604(c)(5)(iii)(L).

<sup>10</sup> *Id.* § 64.604(c)(5)(iii)(D)(4)(ii).

5. On February 13, 2012, RLSA modified its filing instructions to specify the format and categories for call data submitted by IP Relay providers.<sup>11</sup> The instructions stated that IP Relay providers must submit individual call detail records (CDRs), not only for calls submitted for compensation, but also for “abandoned calls,” which are not compensable but are relevant to the determination of speed of answer compliance.<sup>12</sup> For such calls, which are not eligible for compensation, the instructions had previously required only the submission of daily totals.<sup>13</sup> On the same day, RLSA notified all providers, including Sprint, of the changed filing instructions for IP Relay.<sup>14</sup> Starting with the calls placed in January 2012, RLSA explained, “any requests for reimbursement from the Interstate TRS fund for IP Relay services must now be accompanied by an upload of the IP Relay CDR data as specified within the filing instructions.”<sup>15</sup>

6. In response to the new instructions for IP Relay, Sprint’s submission for January 2012 included CDRs for the calls for which it requested compensation, but Sprint acknowledges that it did not include CDRs for abandoned calls.<sup>16</sup>

7. After reviewing providers’ submissions, RLSA determined that the CDR categories and format specified in the *February 2012 Filing Instructions* were not eliciting the information needed to validate IP Relay calls, due to differences in the ways that VRS and IP Relay calls are processed. On April 12, 2012, RLSA revised the instructions regarding the format and categories for CDR submissions for IP Relay.<sup>17</sup> RLSA notified providers of the change and requested that, in addition to following the new format on a going-forward basis, providers should revise the CDRs they had previously submitted

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<sup>11</sup> RLSA, *Interstate TRS Fund: Provider Forms and Filing Instructions* at 4, 7, 19-22, 25 (Version 6, Feb. 13, 2012) (*February 2012 Filing Instructions*) (requiring that IP Relay CDRs include Call Center ID, Call Record ID Sequence, Communications Assistant ID, Incoming Telephone Number, Incoming IP Address, URL, Outbound Telephone Number, Outbound IP Address, Session Start Time, Conversation Start Time, Conversation End Time, Session End Time, Conversation Duration in Minutes, and Session Duration in Minutes). Previously, on October 4, 2011, RLSA had issued similar instructions for the submission of monthly CDRs by providers of video relay service (VRS), a different form of TRS. See RLSA, *Interstate TRS Fund: Provider Forms and Filing Instructions* (Version 1, Oct. 4, 2011).

<sup>12</sup> *February 2012 Filing Instructions* at 19-22 (requiring reporting of certain details for each abandoned call). The Commission’s rules require that “abandoned” calls, *i.e.*, calls where the caller hangs up before the call reaches a CA, must be included in the call totals used to calculate SOA compliance. 47 C.F.R. §§ 64.604(b)(2)(ii)(B), (iii). Speed of answer is calculated by dividing the number of calls answered within the specified maximum number of seconds by the total number of calls answered. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5167, ¶ 64 (2000). All abandoned calls are to be included in the denominator of this fraction, *i.e.*, in the number of calls answered. *Id.* Abandoned calls are included in the numerator of this fraction, *i.e.*, in the number of calls answered within the specified maximum number of seconds, if they were abandoned within the maximum number of seconds. See, *e.g.*, *February 2012 Filing Instructions* at 14-16. VRS providers are also required to include abandoned calls in CDRs. *Id.* at 19-22.

<sup>13</sup> *February 2012 Filing Instructions* at 14-16, 25.

<sup>14</sup> See, *e.g.*, Email from Matt Saltzer, RLSA, to Kris Z. Owara and Toni T. McEnaney, Sprint (Feb. 13, 2012).

<sup>15</sup> *Id.*

<sup>16</sup> See Email from Michael B. Fingerhut, Senior Counsel, Government Affairs, Sprint, to Karen Peltz Strauss, Deputy Chief, CGB, (Dec. 18, 2012) (Sprint December 18, 2012 Email).

<sup>17</sup> RLSA, *Interstate TRS Fund: Provider Forms and Filing Instructions* (Version 7, Apr. 12, 2012) (*April 2012 Filing Instructions*).

for IP Relay calls in order to conform to the new format.<sup>18</sup> IP Relay payments were withheld from all providers pending RLSA's analysis of the resubmitted CDRs.

8. Sprint used the new CDR format in revised data submissions for its January, February, and March 2012 IP Relay calls and in subsequent data submissions going forward. Again, however, neither Sprint's resubmitted CDRs nor its subsequently submitted CDRs included data on abandoned calls.<sup>19</sup> As a result, the CDRs submitted by Sprint did not validate its speed-of-answer reports for January through April 2012. On June 11, 2012, RLSA notified Sprint of the inconsistency and requested that the CDRs be corrected and replaced.<sup>20</sup>

9. On July 5, 2012, a conference call with Sprint personnel and RLSA took place to explain further the deficiency of Sprint's CDRs.<sup>21</sup> According to Sprint, after this conference call it requested its switch provider to make call detail for abandoned calls available on a going-forward basis. The supplier was able to make the necessary upgrades, conduct testing, and install the upgraded system enabling Sprint to produce abandoned call data on an ongoing basis beginning in October 2012.<sup>22</sup> Sprint states, however, that its supplier was not able to provide CDR data retrospectively for abandoned calls, because the supplier's data service that Sprint utilized during the January-September 2012 period did not include the provision of individual call detail for abandoned calls.<sup>23</sup>

10. On September 24, 2012, Sprint sent a letter to the FCC General Counsel protesting the withholding of payments.<sup>24</sup> We deem Sprint's letter to the General Counsel to be a request for review of the administrator's decision, although such requests are ordinarily directed to the Bureau.<sup>25</sup> Sprint provided additional information and arguments in support of its position in various emails and in letters to the Bureau dated February 11, 2013, and May 20, 2013.<sup>26</sup>

11. Subsequently, the Bureau directed RLSA that payment should not be withheld from Sprint for the months of January, February, March, April, and May 2012 on the basis of noncompliance with SOA call data instructions. The Bureau continued to review the issue of whether, and to what extent, payment should be withheld on that basis for the months of June, July, August, and September 2012.

### III. SPRINT'S REQUEST FOR REVIEW

12. Sprint claims that payment was wrongfully withheld because: (1) it was not notified of the abandoned call CDR requirement until June 11, 2012; (2) due to the nature of the call data processing

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<sup>18</sup> See, e.g., Email from Matt Saltzer, RLSA, to Kris Z. Owara and Toni T. McEnaney, Sprint (Apr. 12, 2012).

<sup>19</sup> See Sprint December 18, 2012 Email.

<sup>20</sup> Email from Matt Saltzer, RLSA, to Kris Z. Owara, Sprint (June 11, 2012).

<sup>21</sup> See Email from Matt Saltzer, RLSA, to Kris Z. Owara and Toni T. McEnaney, Sprint (July 5, 2012).

<sup>22</sup> Sprint states that it tested the system for a week in September to ensure that it provided the format RLSA needed.

<sup>23</sup> Email from Mike B. Fingerhut, Senior Counsel – Government Affairs, Sprint, to Karen Peltz Strauss, Deputy Chief, CGB (Feb. 19, 2013).

<sup>24</sup> Sprint September 24, 2012 Letter. At that time, in addition to withholding payments for IP Relay minutes beginning with January 2012 minutes, RLSA was withholding compensation payments for Sprint's other relay services, beginning with April 2012 minutes. Subsequently, the Commission directed RLSA to release the withheld payments for non-IP Relay services.

<sup>25</sup> See 47 C.F.R. §§ 0.141, 0.361.

<sup>26</sup> Sprint February 11, 2013 Letter; Sprint May 20, 2013 Letter.

service to which Sprint subscribed, it was not possible for Sprint to provide the data on a retrospective basis; and (3) once it understood what RLSA required, it acted to ensure reporting of the required CDR information on a going-forward basis.<sup>27</sup>

13. Sprint further contends that, all along, abandoned calls have been accurately counted by its system and are included in the daily totals shown in Sprint's SOA reports.<sup>28</sup> In addition, Sprint points out that an audit report for the year ending June 30, 2012, concluded that Sprint's call processing and data recording system accurately captured speed of answer data as well as call data required by the Commission's rules for compensable calls.<sup>29</sup> This finding, Sprint suggests, undermines RLSA's conclusion that Sprint's call reporting was noncompliant.

14. Finally, Sprint urges us to consider that non-payment for the relay services it has rendered has a negative impact on its ability to provide high quality relay services and that a number of IP Relay providers have exited the business, leaving Sprint as one of only two current IP Relay providers.<sup>30</sup>

#### IV. DISCUSSION

##### A. Sprint's Failure to Comply with the Data Submission Rule

15. We find that, in failing to include abandoned call data in its CDRs in accordance with RLSA's instructions, Sprint failed to comply with the Commission's data submission rule. At the outset, we note that, contrary to Sprint's suggestion, the Fund administrator is authorized by that rule to require the submission of monthly call detail on abandoned calls. The rule states: "Internet-based Relay Providers seeking compensation from the Fund shall submit speed of answer compliance data."<sup>31</sup>

16. Although the rule does not specify the exact type of "speed of answer compliance data" that TRS providers are to submit to the Fund administrator,<sup>32</sup> neither does it limit the Fund administrator to the collection of only aggregate data. We conclude that the Commission intended to allow the Fund

<sup>27</sup> Sprint also suggests that, in any event, RLSA may not be authorized to require the submission of individual call detail (in addition to call counts) for abandoned calls. Sprint September 24, 2012 Letter at 3, n.6. Sprint has not made this argument explicitly, but, rather, has sought to reserve the right to do so. *Id.* at 3, n.8.

<sup>28</sup> Thus, according to Sprint, the call management system used by Sprint prior to October 2012 was able to record and aggregate call data to produce an accurate total count for abandoned calls in each category relevant to computing speed of answer compliance (*i.e.*, calls abandoned within 10 seconds and calls abandoned after more than 10 seconds), even though the system did not make any permanent record of the underlying individual call detail. RLSA has not expressed any substantive concerns regarding the accuracy of Sprint's SOA call counts, other than that Sprint's failure to produce CDR data for abandoned calls prevented RLSA from verifying the accuracy of the call counts.

<sup>29</sup> The audit report, prepared by McKonly & Asbury, LLP, under contract with RLSA, stated that, with respect to the period between July 1, 2011, and June 30, 2012, among other things, (a) Sprint's call processing system records speed of answer "automatically and appropriately" for reporting purposes, (b) Sprint's system "automatically records and retains call data according to the requirements of [section 64.604(c)(5)(iii)(D)(2)]," and (c) "the company submits the required call data." McKonly & Asbury, LLP, *Rolka Loube Saltzer Associates, Inc. – Sprint; Interstate Telephone Relay Service Provider Performance Audit Report for the Year Ended June 30, 2012* at 12, 14 (Oct. 11, 2012) (*Sprint Audit Report*).

<sup>30</sup> Sprint May 20, 2013 Letter.

<sup>31</sup> 47 C.F.R. § 64.604(c)(5)(iii)(D)(3).

<sup>32</sup> With respect to the submission of data on compensable calls, by contrast, the rule specifies in detail the minimum information that must be submitted by all TRS providers regarding each completed call submitted for compensation. 47 C.F.R. § 64.604(c)(5)(iii)(D)(2). The information collection requirements of both rules were approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act. 76 FR 59269 (Sept. 26, 2011).

administrator to determine the minimum data set needed for effective review of speed-of-answer compliance.<sup>33</sup> In this regard, we find it significant that, in amending the data submission rule, the Commission left undisturbed the pre-existing, more general provision requiring providers to “provide the administrator with true and adequate data . . . reasonably requested to determine the TRS Fund revenue requirements and payments,” under which the administrator had previously collected call data to verify SOA compliance.<sup>34</sup>

17. In summary, RLSA’s instructions requiring providers to include individual detail for abandoned calls in their monthly CDR submissions are a reasonable implementation of section 64.604(c)(5)(iii)(D)(3)’s requirement that providers submit “speed of answer compliance data.”<sup>35</sup> We therefore conclude further that, in failing to submit call detail for abandoned calls in accordance with RLSA’s filing instructions for the period from January through September 2012, Sprint failed to comply with section 64.604(c)(5)(iii)(D).

**B. The Data Submission Rule Is Waived for the Months of January Through May 2012 Due to Sprint’s Excusable Inability to Comply**

18. Notwithstanding our conclusions above, we recognize that the Commission’s rules may be waived, in whole or in part, for good cause shown, on petition or on the Commission’s own motion.<sup>36</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>37</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>38</sup> Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>39</sup> The Commission

<sup>33</sup> The purpose of such review is to ensure that the administrator “make[s] payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604.” 47 C.F.R. § 64.604(c)(5)(iii)(E).

<sup>34</sup> 47 C.F.R. § 64.604(c)(5)(iii)(D)(1). Pursuant to this provision, “providers ha[d] been submitting [SOA compliance] data at the request of the Fund administrator for . . . several years” prior to the adoption of paragraph (3). *VRS Call Practices R&O*, 26 FCC Rcd at 5580, ¶ 74. As the rule already gave the administrator broad authority to require the submission of information by providers, and was not altered by the Commission in the *VRS Call Practices R&O*, we conclude that the Commission’s intent was not to limit the administrator’s ability to collect SOA data, but rather to clarify “that such data must be submitted to be compensated from the Fund.” *Id.* Although not at issue in this case, we note that the 2011 amendment of the data collection rule also does not limit the administrator’s authority to require the submission of other data on compensable calls. In amending the rule, the Commission approved the administrator’s prior collection of compensable call data pursuant to its general authority under section 64.604(c)(5)(iii)(D)(1) as “essential to detecting and deterring fraud and the billing of illegitimate calls.” *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012, 6029, ¶ 39 (2010). In codifying the data categories previously collected, plus certain others suggested in the comments, the Commission established the *minimum* data set to be submitted in support of compensable calls, but in no way precluded the administrator from “reasonably requesting,” pursuant to 47 C.F.R. § 64.604(c)(5)(iii)(D)(1), additional data reasonably found necessary to verify the compensability of calls or a provider’s compliance with minimum standards. *VRS Call Practices R&O*, 26 FCC Rcd at 5579, ¶¶ 72-73 & n. 190.

<sup>35</sup> 47 C.F.R. § 64.604(c)(5)(iii)(D)(3). *See also* 47 C.F.R. § 64.604(c)(5)(iii)(D)(1) (“TRS providers. . . shall provide the administrator with true and adequate data . . . reasonably requested to determine the TRS Fund revenue requirements and payments”).

<sup>36</sup> 47 C.F.R. § 1.3.

<sup>37</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>38</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

<sup>39</sup> *Id.*

must take a “hard look” at applications for waiver<sup>40</sup> and must consider all relevant factors when determining if good cause exists.<sup>41</sup>

19. In considering whether to waive the data submission rule in these circumstances, we find, based on evidence submitted by Sprint, that it is reasonable to conclude that some lead time was necessary for Sprint to address the new requirements with its supplier and to obtain an upgrade to its call processing system. Further, we find no evidence on which to dispute Sprint’s claim that, due to the nature of the call data service to which Sprint subscribed, it was not feasible for Sprint to provide the requested call detail for abandoned calls on a retrospective basis.

20. Based on these considerations, Sprint’s noncompliance was excusable with respect to the period from January through May 2012 and, based on considerations of hardship, equity, and more effective implementation of the Commission’s rules, the circumstances of such noncompliance gave rise to good cause justifying waiver of the data submission rule with respect to the submission of individual call detail on abandoned calls for the months of January through May 2012. As noted, the Bureau previously directed RLSA not to continue withholding amounts due for the January-May 2012 period on that basis.

**C. Based on Other Considerations, a Waiver of the Data Submission Rule Is Granted for the Months of June and July and Denied for the Months of August and September 2012**

21. Our remaining task is to determine to what extent, if any, waiver of the data submission rule for the months of June 2012 through September 2012 should be granted based on other considerations. We reject Sprint’s claim that it did not receive notice of the abandoned call CDR requirement until Sprint’s conference call with RLSA on June 11, 2012. RLSA notified Sprint on February 13, 2012, regarding its revised filing instructions, which clearly stated that providers must submit call detail on abandoned calls.<sup>42</sup> On April 12, 2012, RLSA notified Sprint of the further revisions to the instructions, which provided a corrected format for the submission of such call detail.<sup>43</sup> Thus, Sprint was on notice by February 13, 2012, that it must provide call detail for abandoned IP Relay calls, and by April 12, 2012, Sprint was fully informed of what RLSA required with respect to the submission of call detail for abandoned IP Relay calls.

22. Had it taken timely measures to comply, it is reasonable to conclude that Sprint could have generated CDRs for abandoned calls beginning with calls placed as early as June 1, 2012. We note that less than three months (88 days) elapsed from the date (July 5, 2012) when Sprint says it actually understood the content of the abandoned call CDR requirement until the date (October 1, 2012) when Sprint was able to begin generating the required data. If Sprint had acted promptly upon receiving RLSA’s initial instructions on February 13, 2012, it is reasonable to conclude that Sprint’s call processing system should have been able to record call detail for abandoned calls by June 1, 2012.<sup>44</sup> Therefore, with respect to the months of June, July, August, and September 2012, we cannot justify grant of a waiver of the data submission rule on the basis of clear inability to comply.

<sup>40</sup> *WAIT Radio*, 418 F.2d at 1157; *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1224-25 (D.C. Cir. 1999).

<sup>41</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

<sup>42</sup> Email from Matt Saltzer, RLSA, to Kris Z. Owara and Toni T. McEnaney, Sprint (Feb. 13, 2012).

<sup>43</sup> Email from Matt Saltzer, RLSA, to Kris Z. Owara and Toni T. McEnaney, Sprint (Apr. 12, 2012).

<sup>44</sup> This determination takes account of the fact that, had Sprint begun adjusting its system after receiving the *February 13, 2012 Instructions*, it might have taken somewhat more than three months to complete arrangements for an upgrade by its supplier, given that the instructions were altered on April 12, 2012.

23. There are a number of other factors to be weighed in these circumstances, however, including the traditional waiver considerations of hardship, equity, and the more effective implementation of overall policy on an individual basis. In this regard, each waiver case must be evaluated on its individual merits. In this instance, the relevant factors include, on the one hand, the need to ensure that providers are not dilatory in complying with TRS regulations and instructions and that the administrator has all the data it needs to verify compliance with TRS minimum standards, and, on the other hand, the hardship imposed by nonpayment, Sprint's apparent inability to cure its reporting violation by providing the missing data, the recent issuance of the instructions at issue, Sprint's apparent diligence in modifying its call processing systems to become compliant once it became aware of the abandoned call CDR requirement, and the apparent absence in this case of any violation of the substantive SOA standard.

24. After weighing all the relevant factors, we conclude that, in the particular circumstances of this case, Sprint should be denied payment of some but not all of the compensation it would otherwise receive for the June-September 2012 period.

25. On the one hand, we do not excuse Sprint's failure to monitor and respond to the Fund administrator's amended filing instructions, which in turn resulted in a failure to comply with such instructions. Further, we stress that providers have the burden of demonstrating that their calls are compensable and that they have fully complied with all minimum TRS standards. The Fund administrator must not be denied the information necessary to verify compliance with such standards. To grant a full waiver allowing full payment for all amounts due for the June-September period would inappropriately disregard these factors.

26. On the other hand, we consider it significant that, as far as it can be determined, there is no indication that Sprint committed a substantive violation of the SOA rule during the period in question, and there was no apparent inaccuracy in the aggregate SOA data reported by Sprint for that period. While we do not conclude, as Sprint asserts, that the *Sprint Audit Report* findings undermine RLSA's finding that Sprint's call reporting was noncompliant, we do agree that the findings support Sprint's assertions that it did not commit a substantive violation of the SOA rule.<sup>45</sup> Although the submission of complete and accurate data by providers is an essential tool for verifying the integrity of SOA compliance, in this instance Sprint's failure to report certain data (which apparently could not be cured because the data was not recorded) does not appear to have masked noncompliance with the underlying substantive TRS rules or caused other harms to the TRS program or the payment process.

27. We also consider the facts that the requirement to include abandoned calls in CDRs had only recently been announced to IP Relay providers and that, once Sprint understood what data was required, it acted with apparent diligence to bring its call processing system into compliance to generate the required data on a going-forward basis. Finally, we consider the hardship imposed by nonpayment.<sup>46</sup>

28. As noted above, each waiver case must be evaluated on its own individual merits. The balance of these equities is not an exact science. However, we find that Sprint's dilatory response to RLSA's instructions takes on greater weight the longer Sprint delayed its compliance. For example, even

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<sup>45</sup> As noted above, the *Sprint Audit Report* found, among other things, that (a) Sprint's call processing system records speed of answer "automatically and appropriately" for reporting purposes, (b) Sprint's system "automatically records and retains call data according to the requirements of [section 64.604(c)(5)(iii)(D)(2)]," and (c) "the company submits the required call data." *Sprint Audit Report* at 12, 14. We do not read this audit report as finding that Sprint recorded and retained individual call detail on abandoned calls, as required by RLSA's instructions, during the months at issue.

<sup>46</sup> In addition, in light of the recent exit of several IP Relay providers, the grant of a partial waiver may help maintain the quality and continuity of service to the deaf and hard of hearing community. See Sprint May 20, 2013 Letter.



if it would have been reasonable for Sprint to delay beginning its preparations to comply until it received RLSA's revised *April 2012 Filing Instructions*, which finalized the CDR format standard on April 12, 2012, Sprint presumptively could have been in a position to comply fully with those instructions as early as July 9, 2012, 88 days later.<sup>47</sup> Allowing Sprint an additional three weeks cushion for possible unforeseen delays, we conclude that Sprint's noncompliance during the months of August and September was substantially more culpable than its noncompliance during the months of June and July. After balancing the equities, we conclude in this instance that, for the months of June and July, the factors favoring grant of a waiver – *i.e.*, the degree of hardship imposed by nonpayment, the recent issuance of the instructions at issue, Sprint's apparent diligence in complying once it became aware of the abandoned call CDR requirement, and the apparent absence in this case of any violation of the substantive SOA standard – outweigh the factors supporting denial of a waiver. Conversely, for the months of August and September, the factors supporting denial of a waiver – *i.e.*, the need to ensure that providers are not dilatory in complying with TRS regulations and that the administrator can obtain the data necessary to verify compliance with TRS minimum standards – outweigh those favoring grant of a waiver. In sum, on our own motion, we grant Sprint a waiver of the data submission rule with respect to the submission of individual call detail on CDRs with respect to service provided in June and July 2012, and we deny such waiver with respect to service provided in August and September 2012.

29. Accordingly, we direct RLSA to cease withholding from Sprint based on the violations of the filing requirements the amount that is otherwise owed for all minutes of service in June and July 2012 that RLSA determines are otherwise compensable under our rules.

30. We reemphasize, however, that absent a waiver, providers must comply with the data submission rule, like any other mandatory minimum standard, in order to be compensated from the Fund.<sup>48</sup> We further admonish Sprint that compliance with the Fund administrator's filing instructions implementing the data submission rule is thus a necessary condition for payment of compensation. The Bureau expects all TRS providers to promptly review and respond to the administrator's instructions and to communicate with the administrator in a timely manner should there be any uncertainty or difficulty regarding execution of such instructions. No provider should expect that compliance with such instructions is optional or that they can be ignored without consequences, such as denial of compensation payment.

## V. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED, pursuant to 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, 225, and sections 0.141, 0.361, and 64.604 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 64.604, that the request for review of Sprint Communications, Inc. IS GRANTED, as provided above, and is otherwise DENIED.

32. IT IS FURTHER ORDERED that, pursuant to 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, 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, 64.604, Rolka Loube Saltzer Associates, the TRS Fund administrator, SHALL REMIT the amount that the TRS Fund administrator finds is otherwise due to Sprint Communications, Inc., for the months of June and July 2012, as provided in this Order.

<sup>47</sup> As noted *supra*, ¶ 22, 88 days elapsed between the date (July 5, 2012) when Sprint says it actually understood the content of the abandoned call CDR requirement and the date (October 1, 2012) when Sprint was able to begin generating the required data.

<sup>48</sup> *VRS Call Practices R&O*, 26 FCC Rcd at 5580, ¶ 74.

33. IT IS FURTHER ORDERED that, aside from the amounts that we order Rolka Loube Saltzer Associates, the TRS Fund administrator, to remit to Sprint Communications, Inc., out of amounts heretofore withheld from reimbursement from the TRS Fund due to violations of 47 C.F.R. § 64.604(c)(5)(iii)(D), Sprint Communications, Inc.'s request for remittance by Rolka Loube Saltzer Associates of any other amounts heretofore withheld from reimbursement from the TRS Fund due to violations of 47 C.F.R. § 64.604(c)(5)(iii)(D) IS DENIED.

34. This Order shall be effective upon release, in accordance with section 1.102(b) of the Commission's rules, 47 C.F.R. § 1.102(b).

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Acting Chief  
Consumer and Governmental Affairs Bureau