

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: June 4, 2015

Released: June 4, 2015

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this order, the Consumer and Governmental Affairs Bureau (Bureau) grants Sprint Corporation (Sprint) a brief extension of 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. IP Relay providers are required to answer 85 percent of calls within 10 seconds, measured daily. This extension is effective April 15, 2015, the expiration date of the prior waiver, and will remain in effect through June 30, 2015.

II. BACKGROUND

2. IP Relay service is a form of telecommunications relay services (TRS) 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. From July 31, 2013, through November 14, 2014, two providers offered IP Relay service - Purple Communications, Inc. (Purple), and Sprint. 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. On November 12, 2014, Sprint filed a request for a 5-month waiver of the speed-of-answer requirement

1 47 C.F.R. § 64.604(b)(2)(ii).

2 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) (discussing how TRS works).

3 47 C.F.R. § 64.601(a)(17).

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

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).

for IP Relay service.⁶ Purple ceased providing IP Relay service, as announced, on November 15, 2014, leaving Sprint as the sole provider of IP Relay service.

3. On December 12, 2014, the Bureau granted Sprint a limited waiver of the IP Relay speed-of-answer requirements retroactive to November 14, 2014 and ending on April 15, 2015.⁷ The waiver was granted in order to allow Sprint time to adapt to the anticipated increase in usage of its service resulting from Purple's departure from the IP Relay service market and to enable Sprint to expeditiously commence service to legitimate former users of Purple's IP Relay service who had no alternative IP Relay provider as a result of Purple's exit.⁸

4. Noting that section 225(b)(1) of the Communications Act of 1934, as amended (Act), 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,⁹ the Bureau concluded that the overall policy of section 225 would be most effectively implemented by granting a limited waiver that would 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.¹⁰ To help the Commission monitor the number of unique users migrating from Purple, the Bureau required 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.¹¹

5. On April 3, 2015, Sprint requested an extension of its temporary limited waiver to include the period from April 15, 2015, through June 30, 2015.¹² Sprint supplemented its request on April 10 and 16, 2015.¹³

II. DISCUSSION

6. Sprint requests a waiver of section 64.604(b)(2)(ii) of the Commission's rules, which requires IP Relay providers to answer 85 percent of calls within 10 seconds, measured daily.¹⁴ Generally, the Commission's rules may be waived for good cause shown.¹⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public

⁶ Sprint, Request for Emergency Temporary Limited Waiver, CG Docket Nos. 10-51, 03-123 (filed Nov. 12, 2014) (Sprint Initial Waiver Request).

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 29 FCC Rcd 14882 (2014) (*Sprint Speed-of-Answer Waiver Order*). The Bureau also confirmed that before Sprint may provide IP Relay service to consumers who had been using the IP Relay service offered by Purple, Sprint was required to register and verify the eligibility of each consumer in conformance with all Commission requirements for registration and verification of IP Relay service users. *Id.* at 14882, ¶ 1, 14885-87, ¶¶ 8-11.

⁸ *Id.* at 14884, ¶ 5.

⁹ 47 U.S.C. § 225(b)(1).

¹⁰ *Sprint Speed-of-Answer Waiver Order*, 29 FCC Rcd at 14884-85, ¶ 6.

¹¹ *Id.* at 14885, ¶ 7.

¹² Sprint, Request for Extension of Temporary Limited Waiver, CG Docket Nos. 10-51, 03-123 (filed Apr. 3, 2015) (Sprint Extension Request).

¹³ Letter from Scott R. Freiermuth, Counsel to Sprint, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123 (filed Apr. 10, 2015) (Sprint First Supplement); Letter from Scott R. Freiermuth to Marlene H. Dortch, CG Docket Nos. 10-51, 03-123 (filed Apr. 16, 2015) (Sprint Second Supplement).

¹⁴ 47 C.F.R. § 64.604(b)(2)(ii). See Sprint Extension Request at 2-4.

¹⁵ 47 C.F.R. § 1.3.

interest.¹⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁷ 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.¹⁸

7. Sprint states that although it planned for an expected spike in demand for its IP Relay service after Purple exited the IP Relay business in November, Sprint did not anticipate that demand would continue to increase at a high rate many months later.¹⁹ As a result, the Sprint Initial Waiver Request sought a waiver that would terminate in mid-April.²⁰ Sprint maintains that the waiver has proven "absolutely essential, as Sprint could not have sustained its IP Relay business if it had been denied compensation" for those days of service when it did not meet the speed-of-answer requirement.²¹ Sprint adds that because many of its CAs are employed for both IP Relay and TTY-based relay service, the increase in demand for its IP Relay service has been exacerbated by new increased demand for TTY-based relay service resulting from AT&T exiting that business and Sprint having been awarded contracts in four states formerly served by AT&T.²² Lastly, Sprint reports that it is midway through the process of hiring and training CAs to meet the additional volume of IP Relay and TTY-based relay traffic, and expects to have new CAs on board in May and June.²³

8. In the *Sprint Speed-of-Answer Waiver Order*, we found that under the circumstances, a deviation from the general rule would ensure "effective implementation of overall policy" and advance the public interest.²⁴ Section 225(b)(1) of the Act 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.²⁵ This statutory mandate and the public interest thus require that individuals who rely upon IP Relay service to communicate by telephone receive such service.²⁶

9. We now conclude that these same considerations warrant a further, but relatively brief, extension of Sprint's speed-of-answer waiver. We are persuaded by Sprint's showing that there has been an unanticipated increase in IP Relay call volumes, months after Purple exited the IP Relay market, which outpaced its ability to hire and train qualified CAs, and that, accordingly, its predictions as to how long a waiver would be needed fell short.²⁷ Further, Sprint's need for a waiver extension appears to be due in

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *Id.*

¹⁹ Sprint First Supplement at 2; Sprint Extension Request at 1-2.

²⁰ Sprint Initial Waiver Request at 1; *see also* Sprint First Supplement at 2.

²¹ Sprint Extension Request at 2.

²² *Id.* at 3-5.

²³ Sprint Second Supplement at 2; *see also* Sprint Extension Request at 3-4.

²⁴ *Sprint Speed-of-Answer Waiver Order*, 29 FCC Rcd at 14884, ¶ 6 (*citing WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166).

²⁵ 47 U.S.C. § 225(b)(1).

²⁶ *Sprint Speed-of-Answer Waiver Order*, 29 FCC Rcd at 14884, ¶ 6.

²⁷ Sprint First Supplement at 3. We note that, prior to Purple's exit, Sprint reportedly had been preparing to terminate its own IP Relay operations. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 29 FCC Rcd 16273, 16274, ¶ 3 (2014) (noting Sprint's assertion that even before Purple's announced departure, it had been planning to terminate its IP Relay service and had begun winding down its business); *see also* Sprint, Request for Expedited Mid-Cycle Rate Adjustment, CG Docket Nos. 10-51, 03-123, at 8, n.10 (filed Nov. 17, 2014). The reported growth in Sprint's state relay service, however, does not factor into our consideration of whether to grant a speed-of-answer waiver for

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part to its having expeditiously commenced service to consumers who would otherwise remain unserved, enabling Sprint to serve more users at current capacity, but with reduced speed-of-answer performance. In granting Sprint the initial waiver, we placed a high priority on minimizing any interruption of service to IP Relay users who rely on this form of TRS as their sole or primary source of functionally equivalent telephone service.²⁸ Therefore, in these particular circumstances, we find that it is reasonable to allow Sprint additional time to continue to hire and train additional CAs, without incurring penalties or withheld compensation for missing the speed-of-answer requirements during this brief extension, so that IP Relay users will have uninterrupted access to this functionally equivalent service.

10. In summary, we find that the overall policy of section 225 will be most effectively implemented by extending Sprint's limited waiver of the speed-of-answer requirement through June 30, 2015. As provided by the *Sprint Speed-of-Answer Waiver Order*, the Commission will continue to monitor Sprint's 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.²⁹ We also continue to 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.³⁰

11. As Sprint has now had ample opportunity to assess and adapt to the current trend of IP Relay service growth, we do not anticipate granting any further extensions of this speed-of-answer waiver beyond June 30, 2015.

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), (j), 155, 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 Extension of Temporary Limited Waiver filed by Sprint Corporation on April 3, 2015, and supplemented on April 10 and 16, 2015, IS GRANTED to the extent specified herein.

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 beginning April 15, 2015 through June 30, 2015, subject to the conditions stated in this Order.

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Sprint's IP Relay service. It had been known for some time that AT&T was planning on exiting the TRS market, and Sprint does not show why it could not reasonably have prepared to accommodate the growth resulting from the award of additional state relay contracts.

²⁸ See *Sprint Speed-of-Answer Waiver Order*, 29 FCC Rcd at 14884, ¶ 6.

²⁹ 47 C.F.R. § 64.604(c)(5)(iii)(D). See also *Sprint Speed-of-Answer Waiver Order*, 29 FCC Rcd at 14885, ¶ 7.

³⁰ See *id.* These reports shall be submitted via email to TRSreports@fcc.gov, and Sprint may request confidential treatment of such information. Sprint shall continue to submit monthly reports on or before the 15th of each month to cover the period of the prior month. See *id.* at 14885, n.27.

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

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