

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Petition for Extension of Waiver of Rules) GN Docket No. 15-178
Requiring Support of TTY Technology)
TracFone Wireless, Inc.)

ORDER

Adopted: December 29, 2017

Released: December 29, 2017

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. By this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) extends, until June 30, 2021, a waiver previously granted to TracFone Wireless, Inc. (TracFone), of the Commission’s requirements to support text telephony (TTY) technology over Internet-protocol (IP)-based wireless services.

II. BACKGROUND

2. The Commission’s rules require defined classes of communications service providers and equipment manufacturers to support TTY technology for access to emergency services, telecommunications relay services (TRS), and telecommunications and advanced communications services. Presently, these obligations are waived for AT&T, Verizon, Cellular South, the Competitive Carriers Association (CCA), the Iowa Independent Telephone Companies (ITC), and TracFone. For waivers granted prior to adoption of the RTT Report and Order in 2016, each waiver’s expiration date

1 Petition for Waiver of Rules Requiring Support of TTY Technology, Order, 32 FCC Rcd 6675 (CGB 2017) (TracFone TTY-RTT Transition Waiver Order).

2 47 CFR § 20.18(c).

3 Id. § 64.603.

4 Id. §§ 6.3(b), 6.5, 7.3(b), 7.5, 14.20, 14.21(d).

5 See Petition for Waiver of Rules Requiring Support of TTY Technology, Order, 30 FCC Rcd 10855 (CGB PSHSB WTb WCB 2015) (AT&T TTY-RTT Transition Waiver Order); Order, 30 FCC Rcd 12755 (CGB PSHSB WTb WCB 2015); Order, 30 FCC Rcd 14404 (CGB PSHSB WTb WCB 2015), modified, Letter Order, 31 FCC Rcd 201 (CGB PSHSB WTb WCB 2016); Order, 31 FCC Rcd 3778 (CGB PSHSB WTC WCB 2016) (CCA TTY-RTT Transition Waiver Order); Order, 32 FCC Rcd 529 (CGB 2017) (Iowa ITC TTY-RTT Transition Waiver Order); TracFone TTY-RTT Transition Waiver Order.

6 Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission’s Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules

was set as the earlier of December 31, 2017, or the effective date of Commission rules providing for alternative IP-based accessibility solutions to support TTY technology.⁷

3. On December 16, 2016, the *RTT Report and Order* amended the TTY support rules to permit wireless service providers to fulfill their obligations under those rules by supporting real-time text (RTT) in lieu of TTY technology.⁸ In that order, the Commission set initial RTT implementation dates for wireless service providers and manufacturers, and extended the expiration dates for all previously granted waivers to the earliest RTT implementation date applicable to each affected provider.⁹

4. *Order Granting TracFone Petition.* On July 7, 2017, TracFone sought relief from the Commission's requirements to support TTY technology over IP-based wireless services provided by AT&T.¹⁰ TracFone stated that, as a reseller of commercial mobile radio service (CMRS) obtained through agreement with various licensed operators of wireless networks throughout the United States, its ability to support TTY technology is limited by the solutions implemented by its underlying facilities-based carrier.¹¹ On August 24, 2017, CGB granted TracFone a temporary, limited waiver of the Commission's TTY support requirements for all of TracFone's wireless IP offerings. As with the previously granted TTY transition waivers, CGB found that a waiver of the TTY support obligations is warranted because of the many technical difficulties associated with providing TTY support in a wireless IP environment and the declining use of TTY technology, and because a waiver may facilitate the deployment of IP-based services and IP-based accessibility solutions.¹² Because TracFone stated that it did not expect to need a waiver of the TTY support obligations with respect to its underlying AT&T services beyond December 31, 2017,¹³ CGB set an expiration date of December 31, 2017, for TracFone's waiver.¹⁴

5. *TracFone Petition for Extended Waiver.* In a supplemental petition filed November 14, 2017, TracFone requests that its waiver be extended until June 30, 2021.¹⁵ TracFone explains that, although its original waiver request focused solely on AT&T's network, TracFone "is concerned that additional of its underlying carriers will deploy IP-based services," and it "cannot be certain that its underlying carriers will all implement RTT by the time its current waiver expires." TracFone points out

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Requiring Support of TTY Technology, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568 (2016) (*RTT Report and Order*).

⁷ See, e.g., *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10865, para. 21; *CCA TTY-RTT Transition Waiver Order*; 31 FCC Rcd at 3785, para. 20.

⁸ See *RTT Report and Order*.

⁹ *RTT Report and Order*, 31 FCC Rcd at 13604, para. 71. The Commission established different implementation timelines for Tier I and non-Tier I providers.

¹⁰ TracFone Petition for Temporary Waiver, GN Docket No. 15-178, at 1 (filed July 7, 2017), <https://ecfsapi.fcc.gov/file/10707026853133/TracFone%20-%20Petition%20for%20Temporary%20Waiver.pdf> (TracFone Petition for Waiver).

¹¹ TracFone Petition for Waiver at 1-2. TracFone further describes itself as a mobile virtual network operator (MVNO) in its subsequent petition. TracFone Petition for Waiver Extension, GN Docket No. 15-178, at 1 (filed Nov. 14, 2017), https://ecfsapi.fcc.gov/file/1114148108140/as-filed%20TracFone_TTY_Waiver_Extension.pdf (TracFone Petition for Waiver Extension).

¹² *TracFone TTY-RTT Transition Waiver Order*, 32 FCC Rcd at 6677-78, para. 7.

¹³ TracFone Petition for Waiver at 6.

¹⁴ *TracFone TTY-RTT Transition Waiver Order*, 32 FCC Rcd at 6678, para. 8.

¹⁵ TracFone Petition for Waiver Extension at 1.

that June 30, 2021, is the initial RTT implementation date applicable to a reseller such as TracFone under the *RTT Report and Order*.¹⁶

III. DISCUSSION

6. A Commission rule may be waived for “good cause shown.”¹⁷ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.²⁰ Pursuant to the *AT&T TTY-RTT Transition Waiver Order*, applicants for waivers of the TTY support rules also must describe the wireless services they provide, explain the difficulties posed by supporting TTY technology over wireless IP networks, and state their expectations as to their deployment of accessible text alternatives to TTY technology, as well as a commitment to achieving compliance with the reporting requirements and other specified conditions.²¹

7. We find that, based on TracFone’s representations, good cause has been demonstrated to grant TracFone an extension of its waiver of the Commission’s TTY support rules for IP-based wireless services until June 30, 2021.²² As we determined in the *TracFone TTY-RTT Transition Waiver Order*, we continue to be persuaded that TracFone, as a reseller of IP-based wireless services, is similarly situated to the underlying facilities-based wireless carriers for which it resells service, and that its ability to provide either TTY or RTT over wireless IP networks is limited by the extent to which solutions implemented by such carriers can support these technologies.²³ We further continue to find that such waiver is in the public interest as it can help facilitate deployment of IP-based wireless services, as well as IP-based accessibility solutions, such as RTT, for people with disabilities.²⁴

8. *Waiver Duration.* Although TracFone previously requested an earlier expiration date in accordance with AT&T’s planned deployment of an RTT solution, we agree with TracFone that an expiration date of June 30, 2021, is appropriate. In the *RTT Report and Order*, the Commission set the initial RTT implementation date for all resellers of CMRS as June 30, 2021, regardless of whether the underlying carrier is a Tier I provider, noting that such entities “may not be able to support RTT . . . until after the technology has been implemented by both Tier I and non-Tier I facilities-based CMRS

¹⁶ TracFone Petition for Waiver Extension at 1, 4-5.

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *Northeast Cellular*, 897 F.2d at 1166.

²¹ *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10865-66, para. 22.

²² The rules subject to this waiver are sections 6.5, 7.5, 14.20, 20.18(c), and 64.603 of the Commission’s rules. 47 CFR §§ 6.5, 7.5, 14.20, 20.18(c), 64.603; *see also id.* §§ 6.3(b), 7.3(b), 14.21(d) (providing definitions and performance objectives regarding TTY support).

²³ *See* TracFone Petition for Waiver Extension at 5.

²⁴ *See, e.g., AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10858-62, paras. 9-16; *Iowa ITC TTY-RTT Transition Order*, 32 FCC Rcd at 529-30, para. 2. We refer readers to the comprehensive discussions contained in these prior waiver grants, as well as in the *RTT Report and Order*, on the declining use and limitations of TTY technology, as well as the benefits of having a reliable and interoperable real-time text-based solution for IP-based wireless voice networks, rather than reiterate these points here. *See, e.g., AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10858-62, paras. 8-16; *RTT Report and Order*, 31 FCC Rcd at 13574-76, paras. 8-10.

providers.”²⁵ Further, the Commission extended the expiration dates for all previously granted waivers to the earliest RTT implementation date applicable to each affected provider.²⁶ Thus, had TracFone received a waiver prior to release of the *RTT Report and Order*, the order would automatically have extended its waiver to June 30, 2021. We see no reason to treat TracFone differently merely because it did not seek a waiver until after the adoption of the *RTT Report and Order*. A June 30, 2021 expiration date for TracFone’s waiver conforms to the Commission’s policy on implementation timelines and waiver extensions set forth in the *RTT Report and Order* and also addresses its uncertainty about the implementation plans of underlying carriers that are subject to a later compliance date.²⁷ Accordingly, we grant TracFone an extension of the previously granted waiver of the TTY support obligations for CMRS that it resells for its underlying carriers, until June 30, 2021, subject to the conditions below.

9. *Waiver Conditions.* Because during the waiver period, individuals with disabilities are unable to access IP-based wireless technologies, TTY transition waivers granted to wireless providers generally have been conditioned on a commitment by the grantee to (1) provide notification to customers as to the absence of TTY capabilities for 911 calling over IP-based networks and information on alternative ways to make these calls; and (2) file periodic reports with the Commission describing the grantee’s progress toward implementing RTT.²⁸ CGB’s initial waiver to TracFone attached only the first of these two conditions because the waiver was set to expire in approximately four months from its effective date.²⁹ However, because we now extend TracFone’s waiver for an additional three and a half years, we apply both of the conditions that apply to TracFone’s underlying carriers for the remaining period of TracFone’s waiver. To meet the second condition, we require that TracFone file a report with the Commission every six months, and also inform its customers about its progress toward and the status of its implementation of RTT, using the same channels used for notification to customers about the limitations of TTY technology.³⁰ The first such report shall be filed on June 29, 2018, and shall include information on the availability to TracFone’s customers of an RTT solution developed by TracFone’s underlying carriers and the progress and status of TracFone’s embedded RTT solution.³¹

²⁵ *RTT Report and Order*, 31 FCC Rcd at 13602, paras. 66 n.249, 67.

²⁶ *RTT Report and Order*, 31 FCC Rcd at 13604, para. 71.

²⁷ However, given TracFone’s prior reassurances that it did not expect to need a waiver for its services routed on the AT&T network beyond December 31, 2017, *see* TracFone Petition for Waiver at 7, to the extent that TracFone can provide RTT capability over that network we encourage it to do so. In addition, to the extent that TracFone is capable of providing RTT using the facilities and technologies employed by other carriers on their communication networks prior to the 2021 deadline, we encourage it to do so as well.

²⁸ *See, e.g., AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10863-64, paras. 18-19.

²⁹ *TracFone TTY-RTT Transition Waiver Order*, 32 FCC Rcd at 6678-9, paras. 9-10. The required notification must be in plain language and prominently distributed through effective and accessible channels of communications, such as TracFone’s website, billing statements, promotional materials, communications with national consumer organizations, and other effective means of communications. It must further include a listing of text-based alternatives to 911, including, but not limited to, TTY capability over the PSTN, various forms of PSTN-based and IP-based TRS and text-to-911 (where available). *Id.* at 6678, para. 9. As part of meeting the first condition, TracFone also must ensure that all 911 calls made by persons seeking emergency assistance using this technology are delivered in accordance with the obligations of all telecommunications carriers, including wireless carriers, to transmit 911 calls to the appropriate PSAP or local emergency authority. *Id.*

³⁰ *See TracFone TTY-RTT Transition Waiver Order*, 32 FCC Rcd at 6678, para. 9; *see also supra* note 31 (indicating the channels of communications for such required notification).

³¹ TracFone’s progress reports should indicate the extent to which RTT solutions are available from its underlying carriers, in addition to providing information on its own progress toward implementing RTT solutions. Details on the progress of TracFone’s RTT solutions should address, among other things, achieving interoperability with RTT technologies deployed by other service providers, backward compatibility with TTYs, including any obstacles to achieving such interoperability and backward compatibility, as well as the steps being taken to overcome them, and

(continued....)

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 225, 255, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 225, 255, 617, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, this Order is ADOPTED.

11. IT IS FURTHER ORDERED that TracFone's Petition for Waiver Extension filed on November 14, 2017, IS GRANTED to the extent described herein.

12. IT IS FURTHER ORDERED that the temporary waiver of sections 6.5, 7.5, 14.20, 20.18(c), and 64.603 of the Commission's rules, 47 CFR §§ 6.5, 7.5, 14.20, 20.18, 64.603, SHALL BE EFFECTIVE upon release, and SHALL EXPIRE on June 30, 2021.

13. 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 & Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2275 (videophone), or (202) 418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

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efforts to ensure the delivery of 911 calls to the appropriate PSAP. *See e.g., AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10863-64, paras. 18-19; *CCA TTY-RTT Transition Waiver Order*, 31 FCC Rcd at 3784-85, para. 18.