

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 ) CG Docket No. 03-123
and Speech Disabilities )
Hamilton Relay, Inc., and Sprint Corporation )
Petitions for Interim Waiver of Sections )
64.604(b)(3) and 64.604(a)(3)(ii)

ORDER

Adopted: August 8, 2018

Released: August 8, 2018

By the 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 Commissions (FCC or Commission) extends the temporary waivers, previously granted to Sprint Corporation (Sprint) and Hamilton Relay Inc. (Hamilton), of two mandatory minimum standards applicable to certain telecommunications relay services (TRS) offered through state TRS programs. The waived standards require providers of traditional TRS, speech-to-speech relay service (STS), and non-Internet Protocol (IP) forms of captioned telephone service (CTS) to offer consumers (1) their choice of long distance carrier (equal access rule) and (2) multiple billing options for long distance

1 See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Hamilton Relay, Inc. and Sprint Corporation Petitions for Interim Waiver of Section 64.604(b)(3) and 64.604(a)(3)(ii), Order, 31 FCC Rcd 9511, 9511, para. 1 (2016) (Hamilton and Sprint Waiver Order).

2 TRS provides the ability for an individual who has a hearing or speech disability to engage in telephone communication with other individuals. 47 CFR § 64.601(35). In traditional TRS, one party to the call uses a text telephone (TTY) to communicate with other parties through a communications assistant (CA), who relays that person's typed message orally in real-time to the other person on the call and types back spoken responses to that TTY user. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12480, para. 3 n.18 (2004); see also 47 CFR § 64.601(a)(36) (definition of TTY). STS is a type of TRS that allows individuals with speech disabilities to communicate with voice telephone users through the use of CAs who are specially trained to understand and repeat the words spoken by persons with speech disabilities to other parties on a telephone call. 47 CFR § 64.601(a)(33). CTS is a type of TRS that enables the consumer to speak directly to the other party and, when the other party speaks, to simultaneously both listen to what the other party is saying (to the extent possible) and read captions of what the other party is saying. In current forms of CTS, the other party's speech is transcribed as captions, which are displayed on the user's device. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling, 18 FCC Rcd 16121, 16122-23, 16125, paras. 3-5, 11 (2003).

3 47 CFR § 64.604(b)(3).

calls.<sup>4</sup> We extend these waivers until the earlier of August 24, 2019, or the effective date of a Commission decision as to the continuing application of the waived standards to the affected relay services.<sup>5</sup>

## II. BACKGROUND

2. As required by section 225 of the Communications Act (the Act),<sup>6</sup> the Commission's rules contain mandatory minimum standards to ensure that TRS provides telephone service for people who are deaf, hard of hearing, deaf-blind or have a speech disability that is functionally equivalent to voice communications service.<sup>7</sup> The two standards at issue were adopted more than 25 years ago as a part of the Commission's first proceeding to implement the TRS program.<sup>8</sup> The equal access rule provides that "TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users."<sup>9</sup> The billing options requirement directs TRS providers to offer "the same billing options (*e.g.*, sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services."<sup>10</sup> Commission rules generally exempt providers of Internet-based forms of TRS—video relay service, IP Relay service, and IP CTS—from both of these requirements.<sup>11</sup>

3. In 2015 and 2016, Sprint and Hamilton separately petitioned for temporary waivers of the above requirements as they apply to the provision of traditional TRS, STS, and non-IP forms of CTS.<sup>12</sup> The providers also petitioned the Commission to initiate a rulemaking that would establish permanent exemptions from these requirements, similar to the exemptions adopted for Internet-based TRS.<sup>13</sup> On August 24, 2016, the Bureau granted the waiver requests, with an expiration date of August 24, 2018, subject to the condition that providers of these services not assess charges on TRS users for

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<sup>4</sup> 47 CFR § 64.604(a)(3)(ii).

<sup>5</sup> *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9511, para. 1.

<sup>6</sup> 47 U.S.C. § 225(a)(3), (d)(1).

<sup>7</sup> *See* 47 CFR § 64.604 *et seq.*

<sup>8</sup> *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act*, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4660-62, paras. 17-19, 22 (1991) (*First TRS Report and Order*).

<sup>9</sup> 47 CFR § 64.604(b)(3).

<sup>10</sup> *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10703-04, para. 11 (2014) (*iTRS Exemptions Order*). The billing options requirement is a subset of what has come to be known as the "types of calls" requirement, which directs TRS providers to handle any type of telephone call normally provided by carriers. *See* 47 CFR § 64.604(a)(3)(ii); *First TRS Report and Order*, 6 FCC Rcd at 4600, para. 17.

<sup>11</sup> 47 CFR § 64.604(a)(3)(ii), (c)(3); *iTRS Exemptions Order*, 29 FCC Rcd 10697. Specifically, providers of Internet-based forms of TRS are (1) exempt from the equal access requirement if they do not assess charges for long distance calling, and (2) exempt from the billing options requirement if they do not assess charges for long distance or if they allow for long distance calls to be placed using calling cards or credit cards. *iTRS Exemptions Order*, 29 FCC Rcd at 10705-06, paras. 14, 16.

<sup>12</sup> *See* Petition for Interim Waiver of Sprint Corporation, CG Docket No. 03-123 (filed Sept. 23, 2015); Petition for Interim Waiver of Hamilton Relay, Inc., CG Docket No. 03-123 (filed Mar. 14, 2016); Hamilton, Supplement to Petition for Interim Waiver, CG Docket No. 03-123 (filed Aug. 17, 2016) (Hamilton Supplement).

<sup>13</sup> Hamilton Relay, Inc. and Sprint Corporation Joint Petition for Rulemaking to Reform the Commission's Mandatory Minimum Requirements for Traditional TRS and CTS Providers, CG Docket No. 03-123 (filed Sept. 23, 2015); Hamilton Supplement.

long distance calls.<sup>14</sup> On July 25, 2018, Hamilton filed a petition requesting an extension of the *Hamilton and Sprint Waiver Order* for itself and all similarly situated providers (at present, Sprint) for two years or until the effective date of any permanent exception from these rules with respect to its TRS, CTS, and STS offerings, whichever is earlier.<sup>15</sup>

### III. DISCUSSION

4. A Commission rule may be waived for “good cause shown.”<sup>16</sup> In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>17</sup> In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>18</sup> Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>19</sup>

5. The Bureau previously concluded that it is in the public interest to waive, on a temporary basis, the equal access and billing options requirements for Sprint and Hamilton with respect to their provision of traditional TRS, STS, and CTS.<sup>20</sup> We find that good cause continues to exist to extend these temporary waivers because the providers’ petition for rulemaking to adopt a permanent exemption remains pending and the circumstances that led to these waiver grants have not changed. Specifically, as was the case when the waiver was first approved, current practices in the voice telephone communications marketplace, including the routine inclusion of long distance services as part of wireline and wireless telephone service plans offered at a bundled or flat rate, continue to virtually eliminate the need for equal interexchange access and billing options, both for mainstream users and to achieve functional equivalency for TRS users.<sup>21</sup> Thus, we find no reason to revisit our conclusion in the *Hamilton and Sprint Waiver Order* that, where providers of traditional TRS, STS, and non-IP forms of CTS do not separately charge for long distance, “any residual need for long distance billing options appears to be eliminated, rendering the requirement to offer this TRS feature a burden with no associated public interest benefit.”<sup>22</sup>

6. We therefore conclude that it is in the public interest to extend for one year Sprint’s and Hamilton’s waivers of these requirements as they apply to the provision of traditional TRS, STS, and non-IP forms of CTS. Although the current waiver was granted for a two-year period, a one-year extension of the waivers is consistent with the Commission’s past practice regarding comparable waivers of such requirements<sup>23</sup> and is likely to be sufficient time to allow the Commission to consider the pending petitions for rulemaking concerning the continued application of the equal access and billing options requirements to these forms of TRS. These temporary waivers will remain subject to the condition set forth in the current waiver, i.e., that covered providers not assess separate charges for long distance calls. Further, this waiver will expire on August 24, 2019, or on the effective date of a Commission decision as

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<sup>14</sup> *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515, 9516, paras. 12, 14.

<sup>15</sup> Hamilton Relay, Inc. Petition for Extension of Waiver, CG Docket No. 03-123, at 1-2 (filed July 25, 2018) (Hamilton Extension Petition).

<sup>16</sup> 47 CFR § 1.3.

<sup>17</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>18</sup> *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.

<sup>19</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515-16, paras. 11-14.

<sup>21</sup> *Id.* at 9514-16, paras. 10-14; Hamilton Extension Petition at 2-4.

<sup>22</sup> *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515-16, para. 13.

<sup>23</sup> See generally the decisions cited in *iTRS Exemptions Order*, 29 FCC Rcd at 10701, para. 5 n.33.

to the continuing application of the equal access and billing options requirements to these forms of TRS, whichever is earlier.<sup>24</sup>

#### IV. PROCEDURAL ISSUES

7. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2275 (videophone), or (202) 418-0432 (TTY).

#### V. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, the Petition for Extension of Waiver filed by Hamilton Relay, Inc. is GRANTED in part, and the temporary, limited waivers of sections 64.604(a)(3)(ii) and 64.604(b)(3) of the Commission's rules, 47 CFR §§ 64.604(a)(3)(ii) and 64.604(b)(3), previously granted to Sprint and Hamilton, are extended until August 24, 2019, or until the effective date of a Commission decision as to the continuing application of the waived provisions to traditional TRS, STS, and non-IP forms of CTS, whichever is earlier.

9. IT IS FURTHER ORDERED, that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief  
Consumer and Governmental Affairs Bureau

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<sup>24</sup> As with the initial grant of waivers, Sprint and Hamilton, as TRS providers, must continue to handle and complete inmate calls in a manner that is consistent with the applicable billing methods allowed by a correctional facility for any charges lawfully assessed by an ICS provider. *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9516, para. 15.