

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)
Structure and Practices of the Video Relay Service Program)
CG Docket No. 03-123
CG Docket No. 10-51

ORDER

Adopted: May 29, 2020

Released: May 29, 2020

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission), on its own motion, grants a limited waiver of the June 30, 2020 expiration of the current TRS Fund compensation rate for Internet Protocol Captioned Telephone Service (IP CTS).1 The interim rate of \$1.58 per minute is extended through September 30, 2020 (unless the Commission takes action with an earlier effective date). This action will allow additional time for the TRS Fund administrator to collect updated data from IP CTS providers to take account of the effects of the COVID-19 pandemic on IP CTS costs and demand, and for the Commission to consider such data in adopting a new compensation rate for IP CTS.

II. BACKGROUND

2. In June 2018, the Commission adopted a notice of proposed rulemaking to establish a new TRS Fund compensation methodology for IP CTS providers.2 To allow time for completion of that rulemaking, the Commission set interim compensation rates for Fund Years 2018-19 and 2019-20, which moved the compensation rate closer to the average reasonable cost of providing IP CTS.3 The second-year interim compensation rate of \$1.58 per minute ends June 30, 2020,4 and the Commission has not yet issued a determination regarding the rate that should apply after that date.

1 IP CTS is a form of Internet-based telecommunications relay service (TRS) that allows individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation. See 47 CFR § 64.601(a)(19) (defining IP CTS).

2 Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5836-47, paras. 68-100 (2018) (2018 IP CTS FNPRM).

3 Id. at 5813-16, paras. 23-26.

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, CG Docket Nos. 03-123 and 10-51, Order, 34 FCC Rcd 5171, 5183, para. 33 (CGB 2019).

3. While the issue of IP CTS compensation awaits Commission action, the outbreak of the coronavirus (COVID-19) pandemic has substantially affected how IP CTS is provided and used.⁵ As a result of the outbreak and efforts to slow its spread (including measures to promote “social distancing”), there has been an unanticipated increase in IP CTS traffic levels as well as, simultaneously, a sharp reduction in the number of communications assistants (CAs) able to work at call centers (which can require CAs to work in close quarters without social distancing).⁶ IP CTS providers and the TRS Fund administrator have raised concerns about whether pre-COVID-19 cost and demand data reported to the TRS Fund administrator provide a sufficient basis to determine a new compensation methodology and rate for this service.⁷

III. WAIVER OF EXPIRATION DATE FOR IP CTS COMPENSATION

4. *Waiver standard.* A Commission rule may be waived for “good cause shown.”⁸ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹¹

5. *Discussion.* We find good cause to waive the June 30, 2020 expiration of the current IP

⁵ See Centers for Disease Control and Prevention, Coronavirus (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited May 4, 2020).

⁶ See *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 and 10-51, Order, DA 20-281, at 1-2, para. 2 (CGB Mar. 16, 2020); *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 and 10-51, Order, DA 20-517 at 1, para. 2 (CGB May 14, 2020).

⁷ See Rolka Loube, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51, at 7-8 (filed May 1, 2020) <https://ecfsapi.fcc.gov/file/105013048227177/2020%20Annual%20TRS%20Fund%20Report.pdf> (2020 Annual TRS Report); Letter from Scott R. Freiermuth, Sprint Communications Company, L.P. (Sprint), to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 13-24, at 1-3 (filed Apr. 15, 2020) (Sprint April 15 *Ex Parte*); Letter from Scott R. Freiermuth, Sprint, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 13-24, at 1-2 (filed Apr. 22, 2020) (Sprint April 22 *Ex Parte*); Letter from David A. O’Connor, Hamilton Relay, Inc. (Hamilton), to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 13-24, at 1 (filed May 7, 2020) (Hamilton May 7 *Ex Parte*).

⁸ 47 CFR § 1.3.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁰ *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.

¹¹ *Northeast Cellular*, 897 F.2d at 1166.

CTS compensation rate.¹² While waivers of Commission-set deadlines are subject to a high bar, the COVID-19 pandemic is an unprecedented crisis that was unforeseen when the Commission adopted the interim rate plan in 2018. This crisis has substantially increased the demand for IP CTS and has likely affected costs as well. According to IP CTS providers, they have made substantial expenditures on interim measures to keep IP CTS operational, including enabling CAs to work from home, temporarily closing call centers, providing overtime compensation and hazard pay, purchasing new technology, hiring and training new CAs on an expedited basis, and addressing other pandemic-related staffing challenges.¹³ Providers also report significant increases in both the volume of calls and the average length of calls.¹⁴ However, these recent changes are not reflected in the annual provider reports on which the TRS Fund administrator ordinarily relies to estimate average cost and demand for IP CTS.¹⁵

6. In light of these unanticipated developments, the TRS Fund administrator cautions that the annual cost and demand projections submitted by the IP CTS providers in early February are likely unreliable.¹⁶ The administrator has invited TRS providers to report any material changes to costs and demand for the service.¹⁷ However, as the pandemic is an ongoing event, providers may continue to experience fluctuations in costs and demand. Therefore, we anticipate that a few more months may be needed before reasonably reliable COVID-19 related cost and demand data are available as a basis to

¹² The Bureau has previously acted on delegated authority to extend the applicable period of compensation for TRS providers. *See 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 and 10-51, Order, 32 FCC Rcd 5142, 5147, para. 15 (CGB 2017) (*2017 TRS Rate Order*) (extending the compensation period for video relay service (VRS) pending further action by Commission to establish a new compensation methodology); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 18 FCC Rcd 12823, 12832-33, paras. 24, 26, 28 (CGB 2003) (adopting interim cost recovery rates for TRS providers subject to modification pending further analysis of relevant cost data), *aff'd on reconsideration, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Dockets Nos. 90-571 and 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12539-40, paras. 169-70 (2004) (affirming the Bureau's authority to adopt cost recovery methods); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 21 FCC Rcd 7018, 7027, paras. 28-29 (CGB 2006) (extending the VRS compensation rate for one year or until the Commission adopts new VRS rates pursuant to new cost recovery rules).

¹³ *See* Letter from Michael Strecker, ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 13-24, at 1 (filed April 6, 2020) (providing notice of the establishment of a virtual call center due to the pandemic); Letter from Angela E. Giancarlo, Sorenson Communications LLC and CaptionCall LLC (Sorenson and CaptionCall), to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 13-24, at 1-2 (filed Apr. 10, 2020) (Sorenson and CaptionCall April 10 *Ex Parte*); Sprint April 15 *Ex Parte* at 1-3; Sprint April 22 *Ex Parte* at 1-2; Hamilton May 7 *Ex Parte* at 1.

¹⁴ 2020 Annual TRS Report at 7 (describing increases in TRS demand ranging from 25% to 33% above expected levels); Sorenson and CaptionCall April 10 *Ex Parte*; Sprint April 15 *Ex Parte* at 2; Sprint April 22 *Ex Parte* at 1-2; Hamilton May 7 *Ex Parte* at 1.

¹⁵ TRS providers seeking compensation from the TRS Fund must provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments. *See* 47 CFR § 64.604(c)(5)(iii)(D)(I). The administrator requires TRS providers to file this information annually in February, so that the administrator may prepare and file its annual report on TRS payment formulas and revenue requirements with the Commission by May 1 of each year. *Id.* § 64.604(c)(5)(iii)(H).

¹⁶ 2020 Annual TRS Report at 7-8.

¹⁷ *Id.* at 7-8; *see also* 47 CFR § 64.604(c)(5)(iii)(D)(I) (requiring TRS providers to submit to the TRS Fund administrator "other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements").

estimate average current costs and demand.¹⁸ We further conclude that these data uncertainties will complicate the Commission's task of adopting a compensation methodology and rate that aligns with the reasonable costs of providing IP CTS.¹⁹ Temporarily suspending the June 30 expiration of the current rate helps alleviate these concerns by allowing the compensation methodology to be established with a better understanding of how the pandemic has and will continue to impact the costs of providing IP CTS and the demand for service.

7. Therefore, we find good cause to waive, for a three-month period, the June 30 expiration date of the current IP CTS compensation rate. By this action, whereby we provide for continuing payment of compensation to the IP CTS providers based on the \$1.58 rate in effect on June 30, we allow additional time for the TRS Fund administrator to obtain more reliable cost and demand data from IP CTS providers, and thereby to provide the Commission a more reliable basis for setting IP CTS compensation rates for the 2020-21 Fund Year and beyond. Although cost projections inherently involve some degree of uncertainty, collecting cost data for this additional period will provide a reasonable opportunity for the Fund administrator to determine more reliable estimates of actual and projected costs and demand for the current report periods, including COVID-19 related effects.

8. Our action will also provide additional certainty to IP CTS providers as to the near term availability of compensation for the provision of IP CTS during this emergency period.²⁰ Further, because the \$1.58 rate was set as a transitional rate that substantially exceeds average IP CTS provider costs (including a reasonable operating margin),²¹ we believe a three-month extension of this rate will prevent any adverse short-term cost impact from the pandemic, pending Commission action to set the compensation rate going forward.

9. We decline to extend the current IP CTS rate for a longer period.²² We take this Bureau-level action because it is necessary, in extraordinary circumstances, to enable the Commission to reach a more informed rate-setting decision. A three-month delay will provide the Commission with historical data on the cost and demand impacts of the COVID-19 crisis during the final four months of the current Fund year, as well as updated projections regarding costs and demand for 2020-21 and beyond. We are not aware of any evidence showing that additional time or data will be needed to allow the Commission to reach an informed decision.

10. We direct the TRS Fund administrator to request the five currently operating IP CTS providers to submit: (1) historical cost and demand data for each month from January 2020 through June 2020, to be submitted on a monthly timetable or otherwise, as directed by the administrator, but in any event no later than August 1, 2020; and (2) updated cost and demand projections for the periods July 1 - December 31, 2020, and January 1 - December 31, 2021, to be submitted on date(s) designated by the administrator, but in any event no later than August 1, 2020.²³ The administrator is authorized to

¹⁸ See Hamilton May 7 *Ex Parte* at 2.

¹⁹ Although the 2018 IP CTS FNPRM sought comment on a number of possible rate methodologies, they have in common the "goal to ensure that IP CTS rates align with costs." 2018 IP CTS FNPRM, 33 FCC Rcd at 5842, para. 85; see also *id.* at 5845, para. 95 (seeking comment on alternative approaches "that can successfully align the rates for this service with actual provider costs and enable the Commission to provide IP CTS in the most efficient manner").

²⁰ Without compensation rates in place, IP CTS providers would be unable to receive compensation payments, resulting in potential disruption of service to consumers with disabilities who have come to rely on IP CTS as their primary means of making telephone calls. See 2017 TRS Rate Order, 32 FCC Rcd at 5147, para. 15.

²¹ See 2018 IP CTS FNPRM, 33 FCC Rcd at 5813-14, para. 23 & n.81.

²² See Sprint April 15 *Ex Parte* at 3 (requesting postponement of any new compensation methodology until the 2021-22 Fund Year); Hamilton May 7 *Ex Parte* at 2 (suggesting a rate freeze until at least December 31, 2020, if not through June 30, 2021).

determine appropriate formats for the submission of such information, and to request such additional and back-up data as the administrator deems necessary.²⁴ We also direct the administrator to file an update to the IP CTS data contained in the exhibits to the 2020 TRS annual report no later than September 1, 2020.

11. This action by the Bureau to temporarily waive the June 30 expiration date does not predetermine the compensation methodology or rate that will ultimately apply to any particular time period, and does not preclude a true-up of compensation, should the Commission deem that to be necessary after adopting an IP CTS compensation methodology and rate.²⁵ The waiver we issue today simply suspends the June 30 expiration date for the current IP CTS compensation rate, thereby ensuring that compensation will be paid for IP CTS provided after that date. The Commission retains discretion to adopt a compensation methodology and corresponding rate for IP CTS and to specify when such rate shall be deemed applicable. Therefore, we direct the TRS Fund administrator to continue compensating IP CTS providers for the provision of IP CTS at the \$1.58 per minute rate level in effect on June 30, 2020, through September 30, 2020.²⁶

IV. PROCEDURAL MATTERS

12. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY).

13. *Additional Information.* For further information regarding this item, please contact Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-1264 or by e-mail to Michael.Scott@fcc.gov.

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²³ We exclude from this request the recently certified IP CTS provider MachineGenius, Inc., as it was only recently certified to receive compensation from the TRS Fund for providing IP CTS and would not yet have relevant data to submit. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, DA 20-485 (CGB May 5, 2020).

²⁴ See 47 CFR § 64.604(c)(5)(iii)(D)(1) (TRS providers shall provide the administrator with historical and projected information reasonably requested to determine the TRS Fund revenue requirements and payments); *id.* § 64.604(c)(5)(iii)(D)(6) (authorizing the administrator to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments; subjecting TRS providers to automatic suspension of payment for failing to provide documentation necessary for verification upon reasonable request; and requiring IP CTS providers, in the course of an audit or otherwise upon demand, to make available to the administrator any relevant documentation related to the provision of IP CTS); *id.* § 64.604(c)(5)(iii)(E)(4) (requiring the administrator, for TRS provider payment purposes, to fashion a form, and for TRS providers to submit such form that is consistent with 47 CFR parts 32 and 36 procedures); *2018 IP CTS FNPRM*, 33 FCC Rcd at 5822-23, paras. 36-37 (in the accompanying Report and Order, explicitly requiring IP CTS providers to file annual cost and demand data reports with the TRS Fund administrator, as reasonably requested by the administrator).

²⁵ See *2017 TRS Rate Order*, 32 FCC Rcd at 5147, para. 15.

²⁶ This order does not apply to any other TRS compensation rates. We note that the compensation rates for VRS for the 2020-21 TRS Fund year were previously set by the Commission. See *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Service Fund for the 2020-2021 Fund Year; Consumer and Governmental Affairs Bureau Seeks Comment on Sprint's Request for Interim IP Relay Waivers and Rate Relief*, CG Docket Nos. 03-123 and 10-51, RM-11820, Public Notice, DA 20-522, at 3 (CGB May 15, 2020) (2020 TRS Rates PN); 2020 Annual TRS Report at 19-20. The rates for traditional (TTY-based) TRS, Captioned Telephone Service, and Speech-to-Speech Relay are determined by applying the Multi-State Average Rate Structure methodology, which does not require calculation of costs or demand. See 2020 TRS Rates PN at 1-2.; 2020 Annual TRS Report at 13-14; see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20150-58, paras. 16-38 (2007). For IP Relay, the 2020-21 Fund year is the second year of a three-year price-cap cycle. 2020 TRS Rates PN at 2; 2020 Annual TRS Report at 17-18.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, and sections 0.141, 0.361, 1.3, and 64.604(c)(5)(iii) of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, 64.604(c)(5)(iii), this Order IS ADOPTED.

15. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP CTS, through September 30, 2020, at the rate of \$1.58 per completed conversation minute.

16. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE immediately upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre, Chief
Consumer and Governmental Affairs Bureau