

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

ORDER

Adopted: November 12, 2021

Released: November 12, 2021

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 December 31, 2021 expiration of the current Interstate Telecommunication Relay Services Fund (TRS Fund) compensation levels for video relay service (VRS).1 The current tiered compensation levels are extended through June 30, 2022, unless the Commission takes action with an earlier effective date.

II. BACKGROUND

2. In March 2021, the Commission adopted a Notice of Proposed Rulemaking and Order (2021 VRS Compensation Notice) seeking comment on the adoption of TRS Fund compensation for VRS providers for a new compensation period beginning January 1, 2022.2 To allow time for the completion of this rulemaking, the Commission waived the June 30, 2021 expiration date for the current VRS compensation plan, extending the plan through December 31, 2021.3 The Commission found good cause for this extension due to the inherent complexity of establishing a VRS compensation methodology and compensation levels, compounded in this instance by the need to consider how changes in cost and

1 VRS is a type of telecommunications relay service (TRS) that "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment" over a broadband connection. 47 CFR § 64.601(a)(50). VRS is supported entirely by the TRS Fund. 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, 5153-54, para. 24 (2000); see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol Relay Service, CG Docket Nos. 03-123, 10-51, and 12-38, Notice of Proposed Rulemaking, 35 FCC Rcd 13370 (2020) (proposing to continue supporting VRS entirely from the TRS Fund, while expanding the contribution base for support of VRS to include intrastate as well as interstate end-user revenues).

2 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, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021) (2021 VRS Compensation Notice).

3 Id. at 8817, para. 40.

demand during the COVID-19 pandemic should factor into determining reasonable compensation formulas.⁴

3. Under the comment cycle established by the *2021 VRS Compensation Notice*, comments were due July 15 and reply comments were due July 30.⁵ Subsequently, to ensure a fully developed record in response to the *2021 VRS Compensation Notice*, the Bureau extended those deadlines to July 29 and August 13, allowing interested parties additional time to review VRS provider cost and demand data placed in the record by the Bureau.⁶ Since the close of the comment period, the record has been further developed through *ex parte* communications.⁷ Commission action on the *2021 VRS Compensation Notice* remains pending.

III. WAIVER OF EXPIRATION DATE FOR VRS 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 expiration date of the current VRS compensation plan. As the Commission has stated, establishing VRS compensation is inherently complex, and in this instance, additional complexity has been generated by the recent, potentially short-term changes in cost and demand related to the COVID-19 pandemic.¹² Additional time is needed for Commission staff to complete an analysis of cost and demand data, as well as other information submitted in the record, and for the Commission to consider and resolve the factual, legal, and policy issues involved. Therefore, we do not anticipate that a Commission determination on prospective VRS compensation levels can become effective before the December 31, 2021 expiration date. Accordingly, to provide certainty for VRS providers and to ensure continuity of service,¹³ we extend the current compensation plan through June 30, 2022, or the effective date of Commission action setting prospective

⁴ *Id.* at 8818, para. 42.

⁵ FCC, Video Relay Service Compensation Correction, 86 Fed. Reg. 31668 (June 15, 2021).

⁶ *Consumer and Governmental Affairs Bureau Extends Deadlines for Comment on VRS Compensation NPRM*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 21-828 (CGB July 13, 2021).

⁷ See e.g., Letter from Gregory Hlibok, ZP to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Nov. 2, 2021); Letter from Esther Rimer, National Cued Speech Association to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Nov. 1, 2021); Letter from Gabrielle Joseph, GlobalVRS to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Oct. 28, 2021); Letter from Jeff Rosen, Convo, Bruce Peterson, Sorenson, and Gregory Hlibok, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Oct. 27, 2021).

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.

¹² *2021 VRS Compensation Notice*, 36 FCC Rcd at 8818, para. 42.

¹³ See *id.* at 8818-19, para. 43 (“Continuing the current VRS compensation methodology and rates provides certainty and stability to VRS providers pending final Commission action,” and “[w]ithout compensation rates in place . . . , VRS providers would not be able to receive compensation payments, resulting in potential disruption of service to consumers with disabilities who use sign language and have come to rely on VRS as their primary means of making telephone calls”).

VRS compensation levels, whichever occurs first.¹⁴ We believe that extending the current compensation levels will ensure that providers are compensated for the actual costs of providing VRS pending further Commission action on VRS compensation,¹⁵ and does not require any change in the applicable TRS Fund contribution factor.¹⁶

6. Subject to the above time limitation, we direct the TRS Fund administrator to continue compensating VRS providers for the provision of VRS at the same compensation levels in effect on December 31, 2021: (1) \$5.29 per minute for monthly minutes up to 500,000, for those VRS providers whose monthly minutes did not exceed 500,000 as of July 1, 2017; (2) \$4.82 for minutes that fall within Tier I (applicable to a provider's first 1,000,000 monthly minutes); (3) \$3.97 for Tier II (applicable to a provider's monthly minutes between 1,000,001 and 2,500,000); and (4) \$2.63 for Tier III (applicable to monthly minutes in excess of 2,500,000).

7. This action to temporarily waive the expiration date for VRS compensation does not predetermine the compensation levels 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 a VRS compensation plan.¹⁷ The waiver we issue today simply suspends the expiration date for the current VRS compensation levels, thereby ensuring that compensation will be paid for VRS provided after that date. The Commission retains discretion to adopt a compensation plan for VRS providers and to specify when such compensation shall be deemed applicable.

IV. PROCEDURAL MATTERS

8. *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 and Governmental Affairs Bureau at 202-418-0530.

9. *Additional Information.* For further information about the Order, contact Michael Scott, Attorney Advisor, Disability Rights Office, Consumer and Governmental Affairs Bureau, at Michael.Scott@fcc.gov or (202) 418-1264.

¹⁴ Similar extensions have been granted in the past. *See, e.g., 2021 VRS Compensation Notice; 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, 35 FCC Rcd 5469 (CGB 2020) (*2020 IP CTS Waiver Order*) (extending IP CTS compensation plan for three months to allow the submission of additional data for the Commission to reach an informed decision on IP CTS compensation); *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 Compensation Order*) (extending the compensation period for VRS pending further action by the Commission to establish a new compensation methodology); *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, 26 FCC Rcd 9972, 9980-81, paras. 22-23 (2011) (adopting interim VRS compensation pending Commission completion of a proceeding addressing VRS market structure and compensation method issues); *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 plan for up to one year pending a Commission decision pursuant to new cost recovery rules).

¹⁵ *See 2021 VRS Compensation Notice*, 36 FCC Rcd at 8818-19, para. 43.

¹⁶ In determining the TRS Fund budget and calculating carrier contribution factors for the 2021-22 TRS Fund Year, the TRS Fund administrator relied on the current VRS compensation levels. *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 21-779, at 7-8, paras. 16-18 (CGB June 30, 2021).

¹⁷ *Cf. 2021 VRS Compensation Notice*, 36 FCC Rcd at 8816, para. 35; *2020 IP CTS Waiver Order*, 35 FCC Rcd at 5473, para. 11; *2017 TRS Compensation Order*, 32 FCC Rcd at 5147, para. 15.

V. ORDERING CLAUSES

10. 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.

11. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of VRS, through June 30, 2022, or the effective date of further action by the Commission adopting VRS compensation rates, whichever is earlier, at the compensation rates in effect on December 31, 2021.

12. 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