

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Telecommunications Relay Services and |) | CG Docket No. 03-123 |
| Speech-to-Speech Services for Individuals with |) | |
| Hearing and Speech Disabilities |) | |
| |) | |
| Structure and Practices of the Video Relay |) | CG Docket No. 10-51 |
| Service Program |) | |

To: Chiefs, Wireline Competition Bureau, Consumer and Governmental Affairs Bureau

PETITION FOR WAIVER

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PETITION FOR WAIVER

I. INTRODUCTION AND SUMMARY

Pursuant to 47 C.F.R. § 1.3, Tidal Wave Telecom by its undersigned counsel respectfully requests that the Commission waive certain of its rules under 47 C.F.R. § 64.613 that prevent non-Video Relay Service (VRS) providers from accessing the Telecommunications Relay Service (TRS) Numbering Directory. Tidal Wave Telecom seeks access to the TRS Numbering Directory so that it can deploy technology solutions that among other purposes will enable jails and prisons to identify the incoming and outgoing VRS calls received and made by deaf or hard-of-hearing (HoH) inmates where such monitoring is permitted under applicable penal regulations and consistent with the inmates' rights under statutory and constitutional authority. This request, which is similar to a request submitted by VTCSecure LLC on July 6, 2016 and granted by the Commission in early 2017,¹ serves the public interest because grant of the present waiver will

¹ See *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Declaratory Ruling, 32 FCC Rcd 775, para. 9 (2017).

decrease costs and abuse of the TRS fund, increase security at correctional facilities, and promote lawful communications by inmates.

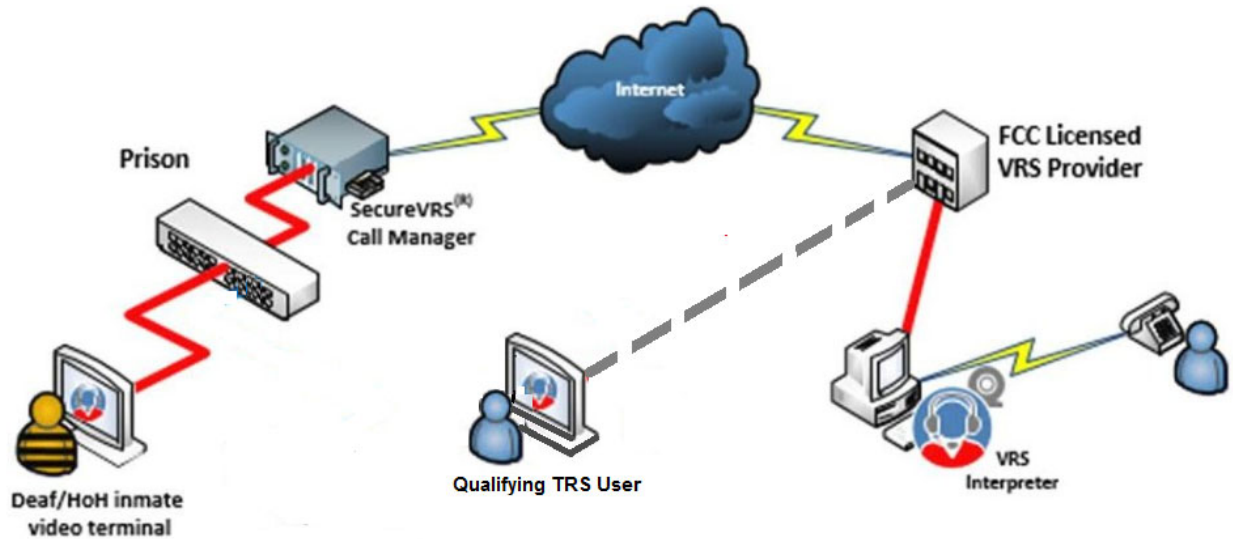
The Americans with Disabilities Act (ADA) requires the Commission to ensure that individuals with hearing and speech disabilities in the United States have access to TRS.² Under the ADA, correctional facilities must also take measures to make their programs and activities accessible to persons with disabilities, which may include the provision of auxiliary aids and services, such as “telecommunication devices for deaf persons (TDDs).”³ Courts have held that correctional facilities that do not provide VRS access to their deaf inmates are violating the rights of those inmates.⁴

Tidal Wave Telecom provides Secure Video Relay (SecureVRS®) to prisons and jails, allowing the institutions to securely meet the requirements mandated by the ADA and other nondiscrimination laws. The SecureVRS® system allows deaf or HoH inmates to connect to licensed video relay providers via their highly secure system, which prevents inmates from receiving or accessing numbers outside their personal list of authorized numbers. SecureVRS® then determines whether or not to record the call, based on the profile that is associated with the number. For example, the system may record a call to the inmate’s relatives but not record a call to the inmate’s attorney. SecureVRS® provides jails and prisons with a VRS system that allows for more security and personalization than a typical residential VRS solution. The following diagram illustrates how the SecureVRS® system currently facilitates calls.

² 47 U.S.C. § 225.

³ 42 U.S.C. § 12132; 42 U.S.C. 12141 et seq.; 28 C.F.R. 35.104; United States Department of Justice, Technical Assistance Manual, Title II, ADA, II-7.1100.

⁴ See, e.g., *McBride v. Michigan Dep't of Corr.*, 294 F. Supp. 3d 695 (E.D. Mich. 2018).

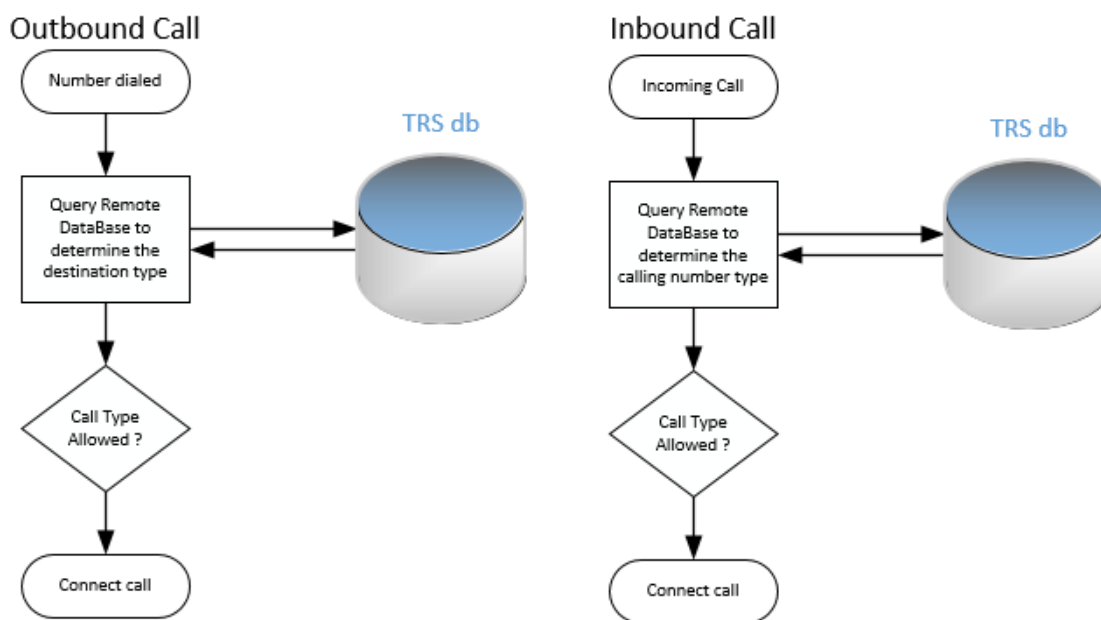


As depicted above, once an inmate places a call to an authorized number, using a special-purpose video terminal, the call is forwarded to a licensed VRS provider via the SecureVRS® Call Manager. The SecureVRS® call is connected to a licensed VRS provider, and when a VRS interpreter, or communications assistant (CA), answers the video call, an outbound telephone call is placed to the destination number. The CA interprets the signed conversation and relays the conversation between the inmate and the called party. Prior to adding a destination number to the inmate's approved dial plan, the correctional facility vets the number and either approves or denies the number, based on the facility's internal policies. For example, a facility may have a policy that prohibits inmates from making or receiving person-to-person (non-relay) video calls from terminals that are located in unsupervised "non-line-of-site" locations, in which case only numbers not in the TRS Numbering Directory would be allowed to be dialed or accepted at those terminals.

Tidal Wave Telecom seeks access to the TRS Numbering Directory since it is necessary to enable SecureVRS® and other secure VRS systems to determine at the time of the call

whether a number is part of the public switched telephone network (“PSTN”) or in the TRS Numbering Directory; if the number is in the TRS database, then the inmates’ attempts to communicate with those numbers from the specific terminal will be denied consistent with the prison’s requirements. Direct access to the Directory in this scenario will result in efficiency and increased security within correctional facilities. In addition, access to the TRS Numbering Directory will allow Tidal Wave Telecom to efficiently provide Direct Video Calling (DVC) services in prisons and other enterprise settings, facilitating direct communication between deaf individuals and service providers.

The proposed SecureVRS® solution that would involve access to the TRS Numbering Directory at the time the number is dialed or received is illustrated below.



II. THE EFFECT OF THE COMMISSION’S RULES IS TO PREVENT NON-VRS PROVIDERS FROM ENSURING VRS CALLS ARE MADE IN AN APPROPRIATE AND COST-EFFICIENT MANNER

A. Monitoring Video Visitation Calls

Currently, a correctional facility which utilizes VRS can only make a determination regarding the type of number being placed or received, whether it is a TRS call or not, well in

advance of the time the call is made; because SecureVRS® is not able to access the TRS Numbering Directory, it cannot query the database at the moment the call is being set up. Based on Tidal Wave Telecom’s extensive conversations with federal, State, and local prison officials, this gap creates a security vulnerability, since numbers that are not in the TRS Directory at the time they are authorized by the correctional facility may be ported into the Directory at a later date. Alternatively, a number that was part of the TRS Numbering Directory could be subsequently ported outside the Directory after the number was vetted by the correctional facility – thus enabling the inmate to access a number in violation of the facilities’ rules. After a number becomes part of the VRS system and is mapped to the VRS user’s Internet address, a call to this number becomes a person-to-person direct video call (which is categorized as “video visitation” by correctional facilities) between the inmate and the VRS user, even when such a video call from the specific terminal is inconsistent with the policies of the correctional institution.

Because the Commission’s rules prevent Tidal Wave Telecom, a non-VRS provider, from accessing the TRS Numbering Directory, a gap exists in the security measures that SecureVRS® is able to provide. Inmates may be prevented from placing or receiving calls that, if not for the lack of real-time access to the TRS Numbering Directory, would be permitted under the facility’s policies; moreover, they also could be placing or receiving calls that would not be permitted under the facility’s policies.

Section 64.613(a)(4) of the Commission’s rules provides that “[o]nly the TRS Numbering Administrator and Internet-based TRS providers may access the TRS Numbering Directory.”⁵ Tidal Wave Telecom does not appear to qualify as an “Internet-based TRS” (iTRS) provider, defined as a telecommunications relay service “in which an individual with a hearing or speech

⁵ 47 C.F.R. § 64.613(a)(4).

disability connects to a TRS communications assistant using an Internet Protocol-enabled device via the Internet.”⁶ When an inmate uses SecureVRS®, the call is forwarded to the VRS provider, who uses a CA to relay the conversation to the destination number. Tidal Wave Telecom provides a security system in the middle of the call hand-off and thus is not a TRS provider that directly routes calls. Without access to the TRS Numbering Directory, Tidal Wave Telecom is not able to offer correctional institutions and other entities the ability to monitor the incoming and outgoing calls from the correctional facility through SecureVRS® to ensure that the numbers satisfy the facility’s requirements. If these numbers can only be vetted prior to the time the call is placed or received, there exists an ongoing possibility that a number that should no longer be authorized will get through the SecureVRS® system.

B. Direct Video Calling (DVC) Services

A grant of a waiver would also allow Tidal Wave Telecom to efficiently offer direct video calling (DVC) in correctional facilities and other institutions that allow such services. In correctional facilities that permit video visitation, Tidal Wave Telecom can use SecureVRS® to facilitate incoming calls from and outbound calls to VRS users. Tidal Wave Telecom would also be able to provide DVC services in an enterprise setting, allowing businesses to provide direct customer support services to VRS users. In order to add DVC customer support numbers to the TRS Numbering Directory, allow VRS providers to properly route DVC calls, and make outbound calls to individual users, Tidal Wave Telecom requests a waiver of those sections that prevent it from accessing the TRS Numbering Directory.

⁶ 47 C.F.R. § 64.601(16).

Section 64.613(a)(4)⁷ restricts Tidal Wave Telecom’s access to the Directory in the DVC context because as a provider of DVC services, Tidal Wave Telecom would not be a VRS provider. As discussed above, the definition of an iTRS provider includes the use of a communications assistant. DVC eliminates the need for a CA because the user within in the prison or the customer service representative would be able to communicate directly with the deaf VRS user by signing; no translation would be needed. Because Tidal Wave Telecom is not a VRS provider with respect to DVC services, it would not have access to the TRS Numbering Directory and therefore could not provide the routing information necessary to accept DVC calls or obtain such information to place outbound calls to registered VRS users.

Section 64.613(a)(1)⁸ of the Commission’s rules may also prevent Tidal Wave Telecom from efficiently providing DVC services. This section establishes that the TRS Numbering Directory shall only contain the telephone number of each “Registered Internet based TRS User and hearing point-to-point video user.”⁹ Even though this provision was recently amended to include hearing point-to-point video users, these users are defined as “[a] hearing individual who has been assigned a ten-digit NANP number that is entered into the TRS Numbering Directory to access point-to-point service.”¹⁰ Because an institutional user of Tidal Wave Telecom’s DVC services, such as a bank providing customer support, may not be an “individual,” these users may

⁷ 47 C.F.R. § 64.613(a)(4).

⁸ 47 C.F.R. § 64.613(a)(1).

⁹ 47 C.F.R. § 64.613(a)(1); *see also In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Declaratory Ruling, 32 FCC Rcd 775, para. 9 (2017) (“[W]e consider DVC customer support services to be a subset of point-to-point service.”). “Point-to-point video service” is defined as “[a] service that enables a user to place a receive non-relay video calls without the assistance of a CA.” 47 C.F.R. § 64.601(27).

¹⁰ 47 C.F.R. § 64.601(14).

not qualify to be included in the TRS Numbering Directory. Moreover, “point-to-point service” still requires customers to place and receive calls “over the facilities of a VRS provider using VRS access technology” and “by means of ten-digit NANP numbers registered in the TRS Directory and assigned to VRS customers and hearing point-to-point customers by VRS providers.”¹¹ Tidal Wave Telecom therefore requests a waiver of section 64.613(a)(1) so that institutional DVC users can be added to the Directory without the facilitation of a VRS provider.

III. THE COMMISSION SHOULD GRANT A WAIVER TO ALLOW ACCESS TO THE TRS NUMBERING DIRECTORY

A. Standard of Review

Under 47 C.F.R. § 1.3, the Commission may waive its rules for good cause shown.¹² When deciding whether to grant a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ Waiver of the Commission’s rules is appropriate where (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹⁴

B. Good Cause

Special circumstances strongly support a waiver of the requirements of 47 C.F.R. §§ 64.613(a)(1) and (4). In the VTCSecure waiver decision from January 2017, the Commission found good cause for waiver of these provisions to allow DVC Customer Support Services to

¹¹ 47 C.F.R. § 64.5103(m).

¹² 47 C.F.R. § 1.3.

¹³ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁴ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125–28 (D.C. Cir. 2008); *Ne. Cellular*, 897 F.2d at 1166.

access the TRS Numbering Directory.¹⁵ The question presented by the instant petition is similar to VTCSecure's request. Like those DVC service providers, Tidal Wave Telecom needs access to the Directory to enable institutions to provide DVC services to VRS users. It also needs access to provide the unique SecureVRS® service to correctional facilities in a manner that is consistent with efficient use of the TRS system and with the institution's requirements, enabling the institutions, where appropriate, to monitor incoming and outgoing calls at the time the calls are made.

Granting Tidal Wave Telecom access to the TRS Numbering Directory will serve the public interest in multiple ways. First and most importantly, grant of the waiver will enable SecureVRS® to be part of the Commission's ongoing struggle to prevent unauthorized use of TRS services.¹⁶ Tidal Wave Telecom's access to the TRS Numbering Directory would prevent non-deaf or HoH individuals from inappropriately using the TRS Fund. The more accurately and efficiently SecureVRS® is able to monitor calls being received by and placed from a correctional facility, the less likely the VRS service is to be used to circumvent the facility's rules prohibiting video visitation, for example by a non-deaf inmate using a fellow inmate's credentials to reach a contact by video communication. Second, curbing unauthorized use of TRS also will reduce costs to the system, another important goal of the Commission.¹⁷ Third,

¹⁵ See *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Declaratory Ruling, 32 FCC Rcd 775, para. 9 (2017).

¹⁶ See, e.g., *Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order, CG Docket No. 13-24 (June 8, 2018).

¹⁷ See *id.* at 2 (explaining the need to "reduce waste of the TRS Fund"); See *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Declaratory Ruling, 32 FCC Rcd 775, para. 10 (2017) (finding that "granting VTCSecure access to the TRS Numbering Directory will likely reduce the TRS costs that would otherwise be borne by the TRS Fund").

deployment of this technology promotes the public interest by ensuring that correctional institutions' regulations, designed to thwart illegal activity by inmates communicating with outside persons, will not be violated. At the same time, this system will ensure that an inmate can effectively communicate with counsel since this system would allow a correctional institution to confirm in real-time that the destination is in fact the offices of an attorney. SecureVRS® already provides prisons and jails with the ability to monitor and record outgoing phone calls routed by a VRS provider where such monitoring is permitted by penal regulations and consistent with the inmates' rights. If SecureVRS® were able to access the TRS Numbering Directory at the time of the call, it could provide additional security by preventing video visitation calls at restricted-rights terminals with numbers that were previously vetted as PSTN numbers.¹⁸ Access to the TRS Numbering Directory would increase efficiency in these institutions and for other entities by removing the unnecessary process of vetting phone numbers before entering them into inmates' dial plans.

Finally, the provision of DVC services will “directly support the [purposes of section 225]” because these services “increase the utility of the Nation’s telephone system” by “provid[ing] direct communication – including all visual cues that are so important to persons with hearing and speech disabilities.”¹⁹ The ability to interact directly with a called party via video communication more closely resembles the functional equivalency required by Title IV of

¹⁸ Video visitation calls are often prohibited by correctional facilities as insecure methods of communication by inmates.

¹⁹ *Telecommunications Relay Services and Speech-to-Speech Service for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 821, para. 67 (2008); *see also See In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Declaratory Ruling, 32 FCC Rcd 775, para. 9 (2017).

the ADA.²⁰ It also supports the requirement that telecommunications relay services are available “in the most efficient manner.”²¹ Without the need for an interpreter, deaf and HoH individuals can communicate directly with called parties, whether lawyers or doctors or customer service providers, resulting in fewer miscommunications and increasing the speed with which services are furnished. Finally, grant of this waiver would not cause any public interest harm.²²

IV. CONCLUSION

For the reasons stated herein, compliance with certain requirements of 47 C.F.R. § 64.613 on Tidal Wave Telecom should be waived.

Respectfully submitted,

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²⁰ 47 U.S.C. § 225(a)(3); *see also In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Declaratory Ruling, 32 FCC Rcd 775, para. 9 (2017).

²¹ 47 U.S.C. § 225(b)(1).

²² *See In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Declaratory Ruling, 32 FCC Rcd 775, para. 11 (2017) (“[W]e find good cause for a waiver in light of the particular facts, the public interest, and considerations of hardship, equity, and more effective implementation of overall policy.”).