



**REQUEST FOR CONFIDENTIAL TREATMENT
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

July 30, 2020

Via FedEx and Electronic Filing
Marlene H. Dortch, Secretary
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

Re: Sprint Relay Petition for Reconsideration
CG Docket Nos. 03-123 and 10-51

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”), on behalf of Sprint Communications Company L.P.¹ (“Sprint”) (collectively referred to herein as “Sprint Relay”), hereby submits the attached Petition for Reconsideration. Pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”) and the rules of the Federal Communications Commission (“FCC” or “Commission”), Sprint Relay requests confidential treatment for the information that has been marked confidential and redacted in the public version of the submission (“Sprint Relay Information”), which contains commercially sensitive information. The Sprint Relay Information relates to the provision of Telecommunications Relay Services (“TRS”) and includes company-specific, confidential commercial information, including information that is protected from disclosure by FOIA Exemption 4² and the Commission’s rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.³

1. *Identification of the specific information for which confidential treatment is sought.* Sprint Relay requests that the Sprint Relay Information be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission’s rules, which protect confidential commercial and other information not routinely available for public inspection. The Supreme Court recently reiterated that the term “confidential” in FOIA

¹ T-Mobile and Sprint are now one company operating under the name T-Mobile. The merger closed on April 1, 2020. Sprint Communications Company L.P. is the entity through which Sprint Accessibility provides state and federal relay services. Sprint Communications Company L.P. is now an indirect, wholly owned subsidiary of T-Mobile.

² 5 U.S.C. § 552(b)(4).

³ 47 C.F.R. §§ 0.457(d) and 0.459.



Exemption 4 should be accorded its “ordinary, contemporary, common meaning” of “private” or “secret.”⁴ The Sprint Relay Information concerns the company’s provision of IP Relay, a form of TRS, and includes information about the company’s operations and the costs of providing the service. This is company-specific, competitively sensitive, business confidential and/or proprietary commercial and financial information that would not routinely be made available to the public.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* Sprint Relay is filing a Petition for Reconsideration of the Order establishing the IP Relay compensation rate for the 2020-21 Fund Year.⁵

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Sprint Relay Information contains company-specific, competitively sensitive, confidential and/or proprietary, commercial and financial information.⁶ This information can be used to determine information about the company’s operations and finances that is sensitive for competitive and other reasons. This information would not customarily be made available to the public and would be guarded from all others.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates to the provision of IP Relay, which was once subject to vigorous competition from other TRS providers, and may again be subject to vigorous competition when the current regulatory and market forces are addressed. If the information is not protected, potential competitors will be able to use it to their competitive advantage.

⁴ *Food Marketing Institute v. Argus Leader Media*, 588 U.S. ____, at 5 (2019).

⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, DA 20-692 (rel. June 30, 2020).

⁶ The Commission has broadly defined commercial information, stating that “[c]ommercial’ is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business’s commercial operations.” *Southern Company Request for Waiver of Section 90.629 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

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5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since this type of information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The confidential detail in the Sprint Relay Information is not available to the public and has not otherwise been disclosed previously to the public. The company takes precautions to ensure that this type of information is not released to the general public or obtained by potential competitors through other means.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* Sprint Relay requests that the Sprint Relay Information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* Under applicable Commission and federal court precedent, the information provided on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. Notably, in establishing FOIA Exemption 4, "Congress has instructed that the disclosure requirements of the Freedom of Information Act do 'not apply' to 'confidential' private-sector 'commercial or financial information' in the government's possession."⁷ The commercial and financial information in question clearly meets this standard.

If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow Sprint Relay to pursue appropriate remedies to preserve the confidentiality of the information.

⁷ *Food Marketing Institute v. Argus Leader Media*, 588 U.S. ____, at 1 (2019).

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If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Sincerely,



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Enclosure

**REQUEST FOR CONFIDENTIAL TREATMENT
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

Sprint  | **T Mobile**

6450 Sprint Parkway
Overland Park, KS 66251

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

PETITION FOR RECONSIDERATION

Pursuant to the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ T-Mobile USA, Inc. (“T-Mobile”),² on behalf of Sprint Communications Company L.P. (“Sprint”) (collectively referred to herein as “Sprint Relay”), hereby seeks reconsideration of two aspects of the \$1.7146 per-minute compensation rate the Consumer and Governmental Affairs Bureau (“Bureau”) recently adopted for IP Relay for the 2020-21 Fund Year.³ As set forth below, Sprint Relay urges the Bureau to reconsider its decisions to: (1) set the efficiency factor for IP Relay service equal to inflation under its price cap-like methodology; and (2) deny Sprint Relay’s request for recovery of demonstrated exogenous cost increases, primarily expenses directly attributable to the COVID-19 pandemic. Grant of this limited petition for reconsideration would require a cost-based \$0.1187 per minute adjustment to the

¹ 47 C.F.R. § 1.106.

² T-Mobile and Sprint are now one company operating under the name T-Mobile. The merger closed on April 1, 2020. Sprint Communications Company L.P. is the entity through which Sprint Accessibility provides state and federal relay services. Sprint Communications Company L.P. is now an indirect, wholly owned subsidiary of T-Mobile.

³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, DA 20-692 (rel. June 30, 2020) (“2020 Rate Order”).

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\$1.67 per minute 2019 base compensation rate, resulting in a new compensation rate of \$1.7887 for the 2020-2021 Fund Year.

I. THE EFFICIENCY FACTOR SHOULD NOT BE SET EQUAL TO INFLATION FOR PURPOSES OF CALCULATING THE IP RELAY RATE

Last year, in establishing the base compensation rate for IP Relay, the Bureau adopted Rolka Loube’s recommendation to set the efficiency factor for this service equal to the nationwide inflation factor.⁴ Specifically, Rolka Loube argued that this approach is appropriate “because inflation is projected to remain at a relatively low level for the next several years and because of the difficulties related to projecting the efficiency factor.”⁵

Notwithstanding these asserted “difficulties,” Sprint Relay demonstrated in the record of this proceeding that proper application of the efficiency adjustment to its IP Relay rate for the 2020-21 Fund Year would result in an upward adjustment to the service’s base rate.⁶ As the Commission has recognized, IP Relay is a labor-intensive service that incurs “high labor costs involving the use of professional communications assistants” (“CAs”).⁷ CA costs are the largest single contributor to the overall cost of providing IP Relay service. More importantly, Sprint Relay has previously shown that tightening labor markets nationwide have created upward

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*, Order, 34 FCC Rcd 5171, ¶ 10 n.24 (2019) (“2019 Rate Order”).

⁵ Rolka Loube, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 and 10-51, at 25 (May 1, 2019).

⁶ Letter from Scott R. Freiermuth, T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123 and 10-51, RM-11820, at 3-4 (June 17, 2020) (“Price Cap Letter”).

⁷ *2019 Rate Order* ¶ 11 n.26.

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pressure on hourly wages, and these increases have exceeded the overall growth in inflation.⁸

The price cap “X factor” is a measure of the industrywide gain or loss in efficiency. In this case, Sprint Relay is the IP Relay “industry,” because it currently is the only provider of this service. As shown in Attachment A, Sprint Relay’s year-over-year cost per minute of providing IP Relay service from 2018 to 2019 *increased* by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] This cost per minute increase was driven by [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Further, this upward pressure on IP Relay costs is expected to continue, and Sprint Relay’s cost data for the first six months of 2020 confirm this ongoing increase. Thus, the actual increases in the 2019 costs of providing IP Relay service plainly and significantly exceeded the 1.8% rate of inflation as measured by the change in the nationwide GDP-PI for the same period.

Further, this comparison demonstrates that simply setting the efficiency adjustment (*i.e.*, X-Factor) equal to GDP-PI is an arbitrary and unjustified method of setting a compensable rate for the provision of IP Relay service. Basing the efficiency adjustment (or X-Factor) on the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in the industry’s (*i.e.*, Sprint Relay’s) cost per minute of service would result in a \$0.0768 upward adjustment to

⁸ Request for Interim Waivers and Rate Relief, Sprint Communications Company L.P., CG Docket No. 03-123 and RM-11820, at 14 (Apr. 30, 2020); Reply Comments of T-Mobile USA, Inc., CG Docket Nos. 03-123 and 10-51, RM-11820, at 4-6 (June 5, 2020) (“Reply Comments”); Price Cap Letter at 3-4.

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the 2019 base compensation rate for the 2020-21 Fund Year.⁹

II. THE COMPANY SHOULD BE COMPENSATED FOR EXOGENOUS COST INCREASES IT HAS INCURRED OR WILL INCUR AS THE SOLE REMAINING IP RELAY PROVIDER

The price cap-like methodology that the Bureau has employed in setting the IP Relay compensation rate permits adjustments to the base rate to account for exogenous cost changes – *i.e.*, unanticipated cost increases that are both beyond the provider’s control and not captured by the inflation and efficiency factors. In the *2020 Rate Order*, the Bureau denied Sprint Relay’s request for an exogenous cost adjustment to the IP Relay rate on the grounds that the company failed to supply “sufficient detail regarding the expenses that it claims have been or will be incurred, e.g., to compensate communications assistants, relying instead on general statistical information about national labor cost trends.”¹⁰ The Bureau, however, stated that its decision to deny Sprint Relay’s exogenous cost requests “does not preclude consideration of more detailed and complete information submitted at a later time.”¹¹

Attachment B to this petition shows the specific hardware, software, testing, and deployment costs the company has incurred or will incur in establishing at-home workstations for [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] as a result of the pandemic during 2020 (and additional costs could be incurred during the remainder of the

⁹ Note that Sprint Relay made the “inflation net of efficiency adjustment” to the 2019 IP Relay base rate in order to avoid any potential double counting issues that could arise if the adjustment were made to the 2020 rate.

¹⁰ *2020 Rate Order* ¶ 18.

¹¹ *Id.* ¶ 18 n.48.

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year).¹² Specifically, Sprint Relay is actively equipping [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] with at-home workstations in 2020. To do so, Sprint Relay already has purchased all equipment necessary to create these [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] at-home workstations. Each agent is provided with a computer (laptops for agents in Austin, desktops for CSD agents), a monitor, a USB headset, a 10-digit phone number, VPN access (which requires an MFA token to be set up for the agents), and network cabling. Sprint Relay also had to purchase PIKA cards for call center computers – this hardware essentially does the work to translate the computer language so the TTY can be read and transmitted over IP. In addition to the cost of purchasing this equipment, the company is paying for the associated testing and deployment of the equipment.

Overall, the costs incurred to accommodate the provision of IP Relay via work-at-home CAs due to the pandemic total [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2020. After applying an operating margin of 12.35%, these exogenous costs equate to a per-minute upward adjustment of \$0.0419 to the base rate.

III. GRANTING THE PETITION WOULD ADVANCE FUNCTIONAL EQUIVALENCE

Grant of the requested relief would not only be consistent with the rate-making methodology that the Bureau has employed to set the IP Relay compensation rate, but also would advance the Commission's TRS public interest goals. Above all, the requested rate adjustment would further the Commission's overriding commitment to ensuring that individuals with

¹² Reply Comments at 9; *see also* Price Cap Letter at 4.

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disabilities that rely on IP Relay have unfettered access to functionally equivalent communications services.¹³

Recent years have been marked by the exodus of every provider except Sprint Relay from the IP Relay marketplace. As a result, and as the Commission has expressly noted, the “consequences of Sprint’s termination of IP Relay service would be severe for consumers who are deaf, deaf-blind, hard-of-hearing, or have speech disabilities.”¹⁴ The relief requested herein would provide Sprint Relay with a reasonable opportunity to recover the costs it reasonably expects to incur in the 2020-21 Fund Year to provide the IP Relay service that continues to be valued by a significant segment of the disabled community.

IV. CONCLUSION

For the foregoing reasons, the Bureau should grant this limited request for reconsideration of its *2020 Rate Order*.

Respectfully submitted,

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¹³ See 47 U.S.C. § 225(a)(3) (requiring the Commission to ensure that disabled individuals have access to service “in a manner that is functionally equivalent to the ability of a hearing individual”).

¹⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 16273, ¶ 7 (2014).

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Attachment A *

Sprint/T-Mobile Accessibility
 July 2020 FCC Filing
 IP Relay

		July 2020 Filing			
		2018	2019	Jan-Jun 2020	Jul-Dec 2020
		Actuals	Actuals	Actuals	Projections
Conversation Minutes	[BC]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cost Breakdown					
Labor - Variable Agent Labor		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Capital		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other/Administrative Costs		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cost Per Minute					
Labor - Variable Agent Labor		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Capital		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other/Administrative Costs		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [EC]
Cost Per Minute - Percentage Change					
Labor - Variable Agent Labor			2.6%	6.7%	11.6%
Capital			2.1%	7.6%	38.3%
Other/Administrative Costs			11.3%	11.6%	10.2%
Total			4.6%	7.9%	11.8%
Price Including Operating Margin	[BC]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [EC]

* Confidentiality designations in this attachment are noted by [BC] for Begin Confidential and [EC] for End Confidential.

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Attachment B**

<u>Work At Home Set-Up Costs</u>		Austin	CSD Centers	2020
Agent Hardware/Software	[BC]	[REDACTED]	[REDACTED]	[REDACTED]
Agents At Home		[REDACTED]	[REDACTED]	[REDACTED]
Agent Hardware/Software		[REDACTED]	[REDACTED]	[REDACTED]
PIKA Cards - cost each		[REDACTED]	[REDACTED]	[REDACTED]
Testing and Deployment				[REDACTED]
Total Technical Costs				[REDACTED]
IP Relay Portion			[REDACTED]	[REDACTED]
Minute Projection			[REDACTED]	[REDACTED] [EC]
Cost Per Minute				\$ 0.0373
Including Markup				\$ 0.0419

*IP Relay allocation for 2020 is [BC] [REDACTED] [EC]

**Confidentiality designations in this attachment are noted by [BC] for Begin Confidential and [EC] for End Confidential.

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