

Strategies Law Group, PLLC

September 23, 2011

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

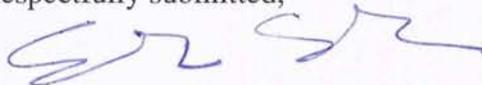
RE: **IWRelay, Inc. Petition for Waiver**
In the Matter of Structure and Practices of the Video Relay Service Program
CG Docket No. 10-51

Dear Secretary Dortch:

IWRelay, Inc. ("IWRelay"), by and through undersigned counsel, hereby submits the attached Petition for Waiver of Commission Rules 64.604(c)(5)(iii)(N)(i) & (ii). The attached Petition also renews, to the extent necessary, IWRelay's previously filed Petition for Waiver of Commission Rule 64.604(c)(5)(iii)(N)(iii).

Questions regarding this filing may be addressed to the undersigned.

Respectfully submitted,



Edward S. Quill, Jr.
Brian McDermott

Counsel for IWRelay, Inc.

Enclosure

cc: Mr. Greg Hlibok (via electronic delivery, Gregory.Hlibok@fcc.gov)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

PETITION FOR WAIVER

IWRelay, Inc. (“IWRelay”), by and through undersigned counsel and pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3 and Paragraphs 62 and 63 of the Commission’s *VRS Practices Order*,¹ respectfully petitions the Commission to grant IWRelay a temporary waiver of Commission Rules 64.604(c)(5)(iii)(N)(i) & (ii), 47 C.F.R. §§ 64.604(c)(5)(iii)(N)(i) & (ii), to the extent necessary to permit IWRelay to continue to operate in the manner in which it currently operates as set forth below. IWRelay respectfully requests that if such a waiver is found by the Commission to be necessary that that waiver be deemed effective as of June 1, 2011.² IWRelay further renews its previously filed petition for waiver of Commission Rules 64.604(c)(5)(iii)(N)(iii), 47 C.F.R. § 64.604(c)(5)(iii)(N)(iii).³

Commission Rules 64.604(c)(5)(iii)(N)((i)-(iii), were adopted by the Commission in its *VRS Practices Order* released on April 6, 2011. In adopting that Order, the Commission afforded

¹ *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 at ¶¶ 62 & 63 (2011) (“*VRS Practices Order*”)

² In the *VRS Practices Order*, the Commission required carriers to seek prompt certification for eligibility to recover from the TRS Fund. To date however, the rules governing the certification process have not yet become effective. IWRelay respectfully submits that the delay in the certification process has resulted in additional uncertainty within the VRS industry and that the Commission should therefore afford VRS providers additional leeway to come into compliance.

³ See IWRelay, Inc., *Petition for Waiver*, CG Docket No. 10-51 (filed May 23, 2011)

VRS providers with the opportunity to request a temporary waiver of the newly promulgated rules to make adjustments to their operations in order to come into compliance with the new requirements adopted. IWRelay's request for temporary waiver is necessary to enable the company to continue serving customers until the Commission rules on IWRelay's pending application for certification as a fund eligible provider, a revised version of which was filed with the Commission by filing dated September 9, 2011.

In support of this Petition, IWRelay states as follows:

I. Background

IWRelay is the VRS arm of InterWest Interpreting, Inc. ("InterWest"). InterWest has been providing quality Sign Language interpreting services in Utah and neighboring states for more than twenty-five years. The company is fortunate to have an exceptional reputation providing highly skilled, certified interpreters to accommodate Deaf and hearing impaired people in a variety of interpreting settings. InterWest interpreters provided some of the first VRS interpreters when the industry was in its infancy.

In 2008, InterWest gave rise to a separate company, IWRelay, with the belief that it could extend its exceptional interpreting services to include offering its own customer-driven view of VRS and IP Relay Services. IWRelay's ownership is comprised of talented, experienced, Deaf and Hearing individuals. By assembling a group consisting of experienced management, innovative technology experts, and superb interpreting talent, IWRelay forged a team that strives to offer the best VRS experience possible. In opening its first call center, IWRelay created an environment where interpreters could thrive and enjoy the flexibility afforded by working in both the community interpreting and video relay fields, sharing their commitment and talents with the

Deaf consumers they serve.

IWRelay is a well-established leader in support of the VRS industry which provides key technologies to the Deaf. IWRelay maintains its own platform employing a combination of owned and licensed technology. Unlike many other VRS subcontractors that offer only a single dial-around option using other Consumer-Premised Equipment (CPE) such as videophones, IWRelay has brought cutting edge options for access to communications to Deaf people by developing its own iPhone, iPod, iPad, Android and Web-based VRS accesses. IWRelay, soon to be in its fourth year of operations, is relied upon by tens of thousands of its customers and the public.

II. Request for Waiver of Rule 64.604(c)(5)(iii)(N)(i).

Rule 64.604(c)(5)(iii)(N)(i) requires that only an eligible VRS provider, as defined in subsection (c)(5)(iii)(F), may hold itself out to the general public as providing VRS. Every IWRelay call screen expressly identifies that the service IWRelay is providing is being provided through Healinc Telecom, LLC (“Healinc”), a certified eligible provider of VRS services. Screen captures demonstrating this information are provided in Exhibit A. Furthermore, IWRelay states on its website that “IWRelay does not hold itself out as a provider of VRS, but is a subcontractor of eligible VRS provider Healinc Telecom, LLC.” IWRelay has not currently, nor has it ever, held itself out as an authorized VRS provider to any customers that use its services. Moreover, the information on opening splash screens unequivocally identifies the name of the authorized VRS provider.

IWRelay recognizes (and indeed specifically discloses to every customer) that it is a subcontractor of Healinc. IWRelay understands that operation as a subcontractor is prohibited

by Rule 64.604(c)(5)(iii)(N)(iii). That rule has, however been stayed and, as discussed below, IWRelay has specifically sought a temporary waiver of that section while its application for eligibility is pending.

In light of the foregoing, IWRelay believes that its operations are in compliance with Rule 64.604(c)(5)(iii)(N)(i) and, to date, has not received any communication from the Commission to the contrary. As a result, IWRelay has not previously sought a waiver of Rule 64.604(c)(5)(iii)(N)(i). Upon information and belief however, IWRelay understands that the Commission may have directed the TRS Fund administrator to withhold recovery payments to some VRS providers. In the event and to the extent that the Commission has determined that IWRelay's operations do not comply with Rule 64.604(c)(5)(iii)(N)(i), IWRelay respectfully requests a temporary waiver of that rule pending Commission consideration and disposition of IWRelay's application for certification.⁴

III. Request for Waiver of Rule 64.604(c)(5)(iii)(N)(ii).

Commission Rule 64.604(c)(5)(iii)(N)(ii) contains three requirements. The first requirement is that:

VRS service must be offered under the name by which the eligible VRS provider offering such service became certified and in a manner that clearly identifies that provider of the service.

As noted above, in every instance, IWRelay's service identifies the name of the eligible VRS provider and clearly shows that service is being provided as a subcontractor of Healinc. The screen shots clearly identify "Healinc" – the name by which Healinc was certified. Furthermore,

⁴ *VRS Practices Order* ¶ 63 requires that entities that seek a waiver detail the steps that such entity is prepared to complete to come into compliance and its capability to take such measures. IWRelay owns and operates its own facilities and platform for the provision of service. Therefore, to the extent that a waiver is required, IWRelay has significant flexibility to modify its operations and is committed to making any changes required by the Commission.

IWRelay has recently added its name to all of its VRS screens so that there can be no confusion about IWRelay's operation.

Second, the rule requires that:

Where a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider.

IWRelay operates as a sub-brand of Healinc. IWRelay provides service through a small number of sub-brands, each of which clearly identifies the eligible VRS provider, Healinc, on its opening screen. Thus, the name of the certified provider is, in each instance, displayed to customers.

Third, the rule states that:

Providers must route all VRS calls through a single URL address used for each name or sub-brand used.

As required by the rule, each of the names and sub-brands used by IWRelay uses its own unique URL.

In the *VRS Practices Order*, the Commission recognizes that the use of certain sub-brands may be appropriate, where dedicated to particular states, communities or regions.⁵ IWRelay operates through a total of five (5) sub-brand URLs – each of which addresses a legitimate and distinct bona fide functional need for members of the VRS market.⁶ Those five sub-brand URLs and the reasons for their use are as follows:

1) IWRelay.tv: IWRelay.tv is the main URL used for and by most of IWRelay's customers. This URL includes IWRelay's name and is meant to disclose IWRelay's name.

2) DBVRS.tv: The DBVRS.tv URL is specifically designed for use by low vision individuals/Deaf who might have difficulty with the main IWRelay URL. IWRelay has

⁵ See *VRS Practices Order* at ¶ 57.

⁶ IWRelay also permits users to access its platform via telephone number.

specifically altered the interpreter stations by offering the option to change background color and adjust screen contrast. Deaf/Blind callers needs are more effectively addressed through interpreter interaction such as clothing color and slower signing, etc. in order to provide better access to low vision individuals who might not otherwise be able to easily use VRS services.

3) LDSVRS.tv: LDSVRS is an access used by and specifically dedicated to and for use by Deaf people who are members of the Church of Jesus Christ of Latter-Day Saints. LDSVRS.tv was specifically designed to address the needs of such users who have found that certain language and terms particular to their religion is not commonly known to most VRS interpreters.

4 and 5) Goiw.tv and Mylds.tv: Service provided through these two URLs serve as a short-cuts to the IWRelay.tv and LDSVRS.tv URLs respectively. The use of these accesses provides a streamlined approach for video callers that result in reducing call setup time an average of 70%. This is a Public Interest benefit with customers being able to initiate their calls more accurately and to proceed with their call more efficiently which is the essence and reason they make the call in the first place. The Commission and the Fund Administrator can readily see the advantages that such streamlining of call setup offers. The benefit affords efficiencies of scale in reducing the cost of providing VRS thus preserving Fund resources.

IWRelay emphasizes that it owns and operates all of the operations described above. Other than Healinc, IWRelay does not have any affiliations or revenue sharing arrangement with respect to VRS services provided via those URLs or any other VRS access. Furthermore, each of the URLs serves an important functional need for customers who use them. IWRelay respectfully submits that if the Commission were to interpret Rule 64.604(c)(5)(iii)(N)(ii) so as

to prohibit the use of these sub-brands, the Commission will essentially remove an important tool for a specific subset of the Deaf community, essentially forcing those Deaf users to use products and services far less suited to their needs. Such a determination would be contrary to the public interest.

In light of the foregoing, IWRelay believes that its operations are in compliance with Rule 64.604(c)(5)(iii)(N)(ii) and, to date, has not received any communication from the Commission to the contrary. As a result, IWRelay has not previously sought a waiver of Rule 64.604(c)(5)(iii)(N)(ii). Upon information and belief, however, IWRelay understands that the Commission may have directed the TRS Fund administrator to withhold recovery payments to some VRS providers. In the event and to the extent that the Commission has determined that IWRelay's operations do not comply with Rule 64.604(c)(5)(iii)(N)(ii), IWRelay respectfully requests a temporary waiver of that rule pending Commission consideration and disposition of IWRelay's application for certification.⁷

Our belief is that the public interest purpose of the rule pertaining to multiple URL is to ensure transparency, accountability and prevent fraud. The granting of a waiver, if necessary, in these circumstances will not interfere with any of these goals. IWRelay is clearly stated on the welcome screen and the company is not attempting to confuse customers. IWRelay has never been associated with any accusation of fraud and has a long association with other services for the Deaf and Hard of Hearing. The separate URLs are designed to serve Deaf consumers who

⁷ *VRS Practices Order* ¶ 63 requires that entities that seek a waiver detail the steps that such entity is prepared to complete to come into compliance and its capability to take such measures. As stated above, IWRelay owns and operates its own facilities and platform for the provision of service. Therefore, to the extent that a waiver is required, IWRelay has significant flexibility to modify its operations and is committed to making any changes required by the Commission.

need services that are beyond the scope of basic VRS product offerings in order to fully participate in the experience. We believe that disallowing these types of arrangements would in fact be contrary to the public interest and would create a situation where the Deaf consumers would be without service innovations or add-ons that are necessary for them to utilize the VRS system fully.

IV. Renewal of Request for Waiver of Rule 64.604(c)(5)(iii)(N)(iii).

By filing dated May 23, 2011, IWRelay previously sought a temporary waiver of Rule 64.604(c)(5)(iii)(N)(iii) which provides that eligible TRS providers may not “contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is a[n] [Telecommunications Relay Service Fund (“Fund”)] eligible provider.”

By Order issued on May 31, 2011, the Commission stayed the effective date of the Rule, until October 1, 2011, dismissing, as moot, the waiver requests relating to Rule 64.604(c)(5)(iii)(N)(iii).⁸ In its Stay Order, the Commission noted that the processes needed for entities to seek certification for eligibility to recover from the TRS Fund were well under way, so that entities would have ample time to seek such certification prior to the October 1, 2011 deadline.

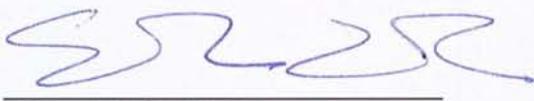
On July 28, 2011, the Commission released its VRS Second Report and Order which set forth the process for certifying companies as eligible providers of VRS services. In adopting that Order, the Commission afforded VRS providers the opportunity to request a temporary

⁸ *Structure and Practices of the Video Relay Service Program*, Order Suspending Effective Date, FCC 11-86 (rel. May 31, 2011) (“*Stay Order*”).

waiver of the newly promulgated rules to make adjustments to their operations in order to come into compliance with the new requirements adopted.⁹ IWRelay's request for temporary waiver is necessary to enable the company to continue serving customers until the Commission rules on IWRelay's pending application for certification as a fund eligible provider, a revised version of which was filed with the Commission by filing dated September 9, 2011.

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Please direct any questions regarding this filing to the undersigned.

By: 

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Counsel for IWRelay, Inc.

Dated: September 23, 2011

⁹ *VRS Practices Order at ¶ 62.*

Exhibit A

Entry Screens



Thanks for calling!
An Interpreter will be with you soon.

A Healine Telecom, LLC Subcontractor.

DB VRS
⠠ ⠢ ⠠ ⠨ ⠠ ⠠ ⠠ ⠠ ⠠ ⠠

**Request Dark
Background
If Desired**

Brought to you by IWRelay, a Healine Telecom, LLC Subcontractor.



An Interpreter will be with you soon.
Thanks for calling!

Brought to you by IWRelay, a Healine Telecom, LLC Subcontractor.

VERIFICATION

STATE OF UTAH

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) ss.

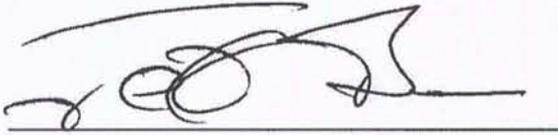
COUNTY OF UTAH

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I swear under penalty of perjury that I am Jeff Born, President and Chief Executive Officer IWRelay, Inc. and that I have examined the foregoing submission, and that all information contained therein are true and accurate to the best of my knowledge, information and belief.

IWRelay, Inc.

By:



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