

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Structure and Practices of the Video Relay Service Program) CG Docket No. 10-51
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Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities) CG Docket No. 03-123
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To: Secretary, FCC
For: Chief, Consumer & Governmental Affairs Bureau

PETITION FOR INTERIM WAIVER

Hamilton Relay, Inc. (“Hamilton”) and Sprint Communications Company, L.P. (“Sprint”) and, collectively with Hamilton, the “Petitioners”), hereby petition the Consumer and Governmental Affairs Bureau (“Bureau”) for an interim waiver of the requirements in Sections 64.604(c)(5)(iii)(C)(2)(v) and 64.604(c)(5)(iii)(C)(2)(vi) of the Commission’s rules,¹ in connection with their provision of Internet Protocol Captioned Telephone Service (“IP CTS”), an approved form of Telecommunications Relay Services (“TRS”) for hard of hearing individuals. As explained in further detail below, the Petitioners² are technically incapable of complying with a rule which appears to require IP CTS providers to provide an *incoming* telephone number in their Call Detail Records (“CDRs”) for calls originating from IP-based caption telephone devices (“IP CapTel phones”).³ Rather, for calls originating from an IP CapTel phone, the Petitioners

¹ 47 C.F.R. §§ 64.604(c)(5)(iii)(C)(2)(v), (vi).

² Both Hamilton and Sprint offer IP CTS to users on a nationwide basis. Each Petitioner has filed an application for federal IP CTS certification which remains pending.

³ This interim waiver request is specifically limited to IP CapTel phones, and not to other forms of IP CTS such as WebCapTel (which requires users to enter their telephone number before placing an IP CTS call).

can (and do) report in their CDRs the IP address of the IP CapTel phone as well as the *outbound* telephone number dialed by the IP CTS user.

In recognition of this technical incapability, the Petitioners respectfully request an interim waiver of the incoming telephone number CDR requirement, thus allowing the Petitioners to report only the IP address and dialed number in their CDRs for outbound IP CTS calls, until such time as the Petitioners have developed a workaround solution approved by the Commission.⁴

I. Introduction

At the outset, it is important to understand the technological differences between IP CTS and other forms of Internet-based relay. Below we provide the steps for making an outbound and inbound IP CapTel phone call.

A. Outbound Call from IP CapTel Phone

1. The IP CapTel phone user lifts the handset and dials the telephone number they wish to call. The IP CapTel phone uses the Public Switched Telephone Network (“PSTN”) telephone line to dial the called party.⁵ At the same time, the IP CapTel phone uses the Internet to connect to the IP CTS service.
2. The IP CapTel phone reports the digits that were dialed on the telephone line. (This information is reported in the IP CTS provider’s CDRs.)⁶
3. The IP CTS provider also captures the IP address of the IP CapTel phone used to originate the call. This information is also used to determine if Commission rules permit the call.⁷
4. If the call is permitted, a Communications Assistant (“CA”) is assigned and the call continues.

⁴ The Petitioners request that the interim waiver requested herein be granted to all similarly situated IP CTS providers.

⁵ Voice over IP services such as Vonage are also supported.

⁶ If the IP CapTel phone is connected to an office PBX, the dialed telephone numbers may not look like typical North American Numbering Plan Authority telephone numbers. For example, the number may be a four-digit extension or have special digits like a preceding “9”.

⁷ IP CTS calls are checked to ensure that the IP address is a US IP address. Methods are employed to deter proxy server address use.

B. Inbound Call to IP CapTel Phone

1. The hearing party dials the telephone number for an IP CapTel phone user. The call is carried by the PSTN directly to the IP CapTel phone and it rings.
2. When the CapTel user answers the call, the IP CapTel phone uses the Internet to connect to the IP CTS service.
3. The IP CTS provider captures the IP Address of the IP CapTel phone that was dialed. This information is used to determine if Commission rules permit the call.
4. If the call is permitted, a CA is assigned and the call continues.

It is important to note that the connection between the IP CapTel phone and the IP CTS provider is via IP over the Internet and is not via the PSTN. Thus, there is no telephone line connection between the IP CapTel phone and the IP CTS provider, so there is no PSTN telephone network information available for the call.⁸

There is one other important attribute for IP CTS calls. When an IP CapTel phone user dials a telephone number, the call is completed via that user's voice telephone service. If the number is long distance, then the user's normal telephone charges will apply to the call. In other words, there is no free long distance, and no free telephone service when using an IP CapTel phone. This is also true when an IP CapTel phone user receives a call. The hearing party dials directly to the IP CapTel phone using the caller's voice telephone service; regular service charges apply. Because the telephone call is not free for IP CapTel phone users, there is no incentive to misuse the CapTel service to get a free telephone call, as may be the case with other forms of Internet-based relay. Similarly, because an IP CTS call is placed directly to the called party without CA intervention, both parties to the IP CTS call may have access to any enhanced features such as caller ID, allowing the parties to decide whether to accept or reject the call.

⁸ As discussed below in Section II, the Commission's rules clearly recognize that an IP CTS provider is unable to capture an outbound PSTN telephone number in all cases, and thus the rule specifies that the provider should report the outbound telephone number "if the call terminates to a telephone," and should report the IP address "if the call terminates to an IP device." See 47 C.F.R. § 64.604(c)(5)(iii)(C)(2)(vi).

Finally, because of the unique architecture of IP CTS, the CDR reporting requirements are not technically feasible, as explained below.

II. A Waiver is Justified in this Instance Until an Ambiguity in the Commission's Rules Can Be Clarified

As recently amended, Section 64.604(c)(5)(iii)(c)(2) requires Telecommunications Relay Service (“TRS”) providers to collect specific CDR data associated with each TRS call for which compensation is sought.⁹ The information required to be collected includes “[i]ncoming telephone number and IP address (if call originates with an IP-based device) at the time of the call” and “[o]utbound telephone number (if call terminates to a telephone) and IP address (if call terminates to an IP-based device) at the time of call.”¹⁰

The above language in the rule appears to be in conflict with the language set forth in the Commission's order implementing the rule. Specifically, Paragraph 79 of the *Report and Order* provides that TRS providers must capture “incoming telephone number (*if call originates with a telephone*) and IP address (if call originates with an IP-based device)” and “outbound telephone number and IP address (if call terminates to an IP-based device).”¹¹

It is this crucial language in the parenthetical “(if call originates with a telephone)” that is missing from the rule and which has a substantial impact on the Petitioners. If this parenthetical had been included in the rule, it would have been clear that only incoming telephone numbers from calls that *originate with a PSTN telephone* were required to be included in CDRs, and that

⁹ See *id.* § 64.604(c)(5)(iii)(C)(2).

¹⁰ *Id.* §§ 64.604(c)(5)(iii)(C)(2)(v), (vi).

¹¹ *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5582 ¶ 79 (2011) (emphasis added).

calls originating from an IP-based device merely required an IP address which the Petitioners readily can supply with their CDRs.¹²

In addition, the Petitioners note that the 10-digit telephone number typically captured in the telephone number field in the CDR is a number that has been issued by an IP Relay or Video Relay Service (“VRS”) provider. Importantly, the 10-digit numbering rules for IP Relay and VRS do not apply to IP CTS, and in fact such numbers are not appropriate for IP CapTel phones.¹³

For these reasons, the Petitioners submit that a grant of the requested interim waiver will help clarify an ambiguity between the language adopted in the order and the language ultimately included in the rule section. Additionally, a waiver would acknowledge the technical incapability of IP CTS providers to provide such information in their CDRs.

III. Petitioners Have Satisfied Their Burden Under the Waiver Standard

The Bureau, acting under delegated authority, may waive a rule when “good cause” is demonstrated.¹⁴ Under the good cause standard, the Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In considering a waiver request, the Bureau may take into account considerations of hardship,

¹² See Notice of Ex Parte Presentation of Ultratec, Inc. et al., CG Docket No. 10-51, at 2 (filed May 18, 2012) (“The specifications highlighted ... are not possible for some IP CTS (the Model 800i and Model 840i) calls.”).

¹³ In 2008, the Commission recognized that “distinct technical and regulatory issues” are raised by IP CTS, and that the 10-digit numbering and registration requirements therefore would not apply to IP CTS. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11593 ¶ 1 n.5 (2008).

¹⁴ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

¹⁵ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

equity, or the more effective implementation of overall policy on an individual basis.¹⁶ Thus, waiver of the Commission's rules is appropriate when special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁷ Further, courts have held that it is arbitrary and capricious to enforce requirements that cannot be satisfied.¹⁸

A limited waiver of the rule is appropriate here on an interim basis. As noted above, compliance with the requirements is not possible due to the hybrid nature of IP CapTel phones that use both the PSTN (that carries the voice portion of the call) and IP (which carries the captions), meaning that the Petitioners are unable to capture in their CDRs any "incoming" telephone numbers made from an IP CapTel phone.¹⁹ In addition, unlike other forms of Internet-based TRS, IP CTS providers do not issue 10-digit telephone numbers to their IP CapTel phone users, and thus are unable to capture telephone numbers from users in a way that providers of IP Relay and VRS can readily capture and provide in their CDRs.

Further, an interim waiver is consistent with the public interest. The Commission has acknowledged that IP CTS is qualitatively different from IP Relay and VRS, and that certain

¹⁶ *Id.*; *WAIT Radio*, 418 F.2d at 1159.

¹⁷ *See Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *See Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991); *D.C. Transit Sys., Inc. v. Washington Metropolitan Area Transit Comm'n*, 466 F.2d 394, 402 (D.C. Cir. 1972), *cert. denied* 409 U.S. 1086 (1972).

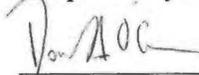
¹⁹ Petitioners note that a clarification request on similar grounds has been filed by Sorenson. *See* Request for Clarification of Sorenson Communications, Inc., CG Docket No. 10-51 (filed Nov. 18, 2011) (requesting clarification that TRS providers may be compensated from the interstate TRS Fund without submitting the data required by Section 64.604(c)(5)(iii)(C)(2) when that data is not provided to them). The Petitioners agree that any data provided to the TRS provider should be passed through, but data that is simply unavailable to the TRS provider need not be passed through. *See also* Request for Clarification of Sorenson Communications, Inc., CG Docket No. 10-51 (filed Aug. 31, 2010) (seeking a waiver in certain circumstances of the requirement in 47 C.F.R. § 64.604(c)(5)(iii)(C)(2) to collect and submit IP addresses). The Petitioners request that any relief afforded to Sorenson in connection with the above-referenced pleadings be extended to the Petitioners due to their similarly-situated circumstances.

rules may not apply to IP CTS.²⁰ The Commission has not yet formulated rules that are specific to IP CTS. The Petitioners look forward to working with Commission staff to develop best practices that are equivalent to the rules applicable to IP Relay and VRS but which recognize the unique aspects of IP CTS, including its reliance on the existing telephone numbers of users. An interim waiver until those practices have been formulated would serve the public interest by allowing IP CTS providers to receive reasonable compensation from the Fund in order to keep the service operational pending the adoption of new IP CTS-specific guidelines.

IV. Conclusion

For the reasons described above, the Bureau should waive the requirements in Sections 64.604(c)(5)(iii)(C)(2)(v) and (vi) with respect to IP CTS calls on an interim basis until such time as new IP CTS best practice procedures have been adopted by the Commission.

Respectfully submitted,



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²⁰ See *supra* note 13.