

Declaratory Ruling did not address two-line captioned telephone service, and petitioners now seek clarification that this type of captioned telephone service is also a type of TRS eligible for compensation from the Interstate TRS Fund.

As noted in the Order, the record reflects that two-line captioned telephone service is simply a variation of captioned telephone service that offers the same functionality while also offering the user additional features. These additional features represent another step forward toward functional equivalency. Therefore, in the Order the Commission clarifies that two-line captioned telephone service, like one-line captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund.

The Commission does not believe this clarification will have a significant economic impact; however, in the event that it does, the Commission also notes that there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110 changed from 513310 in October 2002. According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 issued October 2000. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more". Currently, only three providers are providing captioned telephone service and being compensated from the Interstate TRS Fund: CapTel, Inc., Hamilton and Sprint. The Commission expects that only one of the providers noted above may be a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of two-line captioned telephone service the costs of providing interstate service. The Commission will send a copy of the Order, including a

copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. (5 U.S.C. 605(b)).

Congressional Review Act

The Commission will send a copy of the Order in a report to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, this Order is hereby *adopted*.

The Request for Clarification submitted by Ultratec, Inc, Sprint Corporation, and Hamilton Relay, Inc., is granted to the extent indicated herein.

The Petition for Declaratory Ruling filed by the National Exchange Carrier Association, Inc. (NECA), on behalf of the Interstate Telecommunications Relay Service Advisory Council, is granted to the extent indicated herein.

The Order shall be effective October 14, 2005.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center shall send a copy of the Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03-123; DA 05-2066]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau (the Bureau) clarifies under delegated authority, that telecommunications relay service (TRS) providers offering free or discount long distance service to TRS consumers as an incentive to use a particular TRS provider's relay service, or as an incentive for a consumer to make more or longer TRS calls, constitutes an

impermissible financial incentive in violation of the *Financial Incentives Declaratory Ruling*. TRS providers in violation of the *Financial Incentives Declaratory Ruling* will be ineligible for compensation from the Interstate TRS Fund.

DATES: Effective January 12, 2006.

FOR FURTHER INFORMATION CONTACT:
Thomas Chandler, Consumer & Governmental Affairs Bureau, (202) 418-1475 (voice), (202) 418-0597 (TTY), or e-mail Thomas.Chandler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of Commission document DA 05-2066, adopted July 27, 2005, released July 28, in CG Docket No. 03-123. This document does not contain new or modified information collections requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any New or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, sec 44 U.S.C. 3506(c)(4). Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 12th Street, SW., Room CY-B402, Washington, DC 20554.

Customers may contact BCPI at their Web site: <http://www.bcpipweb.com> or call 1-800-378-3160. 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 & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb.dro>.

Synopsis

On January 26, 2005, the Bureau, under delegated authority, issued the *Financial Incentives Declaratory Ruling* concluding that any program that offers any kind of financial incentive or reward for a consumer to place a TRS call, including minimum usage arrangements or programs (whether or not tied to the acceptance of equipment), violates section 225 of the Communications Act. See *Telecommunications Relay Services and*

Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466-1468, paragraph 4, released January 26, 2005, published at 70 FR 9239, February 25, 2005, (*Financial Incentives Declaratory Ruling*). The Bureau explained that “in view of the intent and nature of section 225 of the Communications Act, and the obligation placed on entities providing voice telephone services to also offer TRS as an accommodation to persons who, because of a disability, cannot meaningfully use the voice telephone system, the Bureau interprets section 225 of the Communications Act and the implementing regulations to prohibit a TRS provider’s use of any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, directed at a consumer’s use of their TRS service.” The Bureau further explained that because the Interstate TRS Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make. The Bureau therefore concluded that, effective March 1, 2005, any TRS provider offering such incentives for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund.

The *Financial Incentives Declaratory Ruling* was in response to a TRS provider’s customer loyalty program which offered the provider’s customers the opportunity to have their DSL or cable modem bill reimbursed by the provider through the accumulation of points based on minutes of use of the provider’s TRS service. Sprint Corporation (Sprint) sought clarification whether its free long distance service promotion violated the prohibition against TRS financial incentives set forth in the *Financial Incentives Declaratory Ruling*. See Letter from Spring to Thomas E. Chandler, Chief, Disability Rights Office, Consumer & Governmental Affairs, Federal Communications Commission, dated February 7, 2005, regarding *Declaratory Ruling* (DA 05-140) issued January 26, 2005 in CC Docket No. 98-67 and CG Docket No. 03-123 (*Ex Parte Communication*) (*Sprint Letter*).

As Sprint explained, it provides traditional TRS in a state (California) that has more than one provider of this service (*i.e.*, a “multi-vendor”) state. See *Sprint Letter* at 1-2. Therefore, a TRS consumer in that state can choose which available TRS provider he or she wants to handle his or her TRC call. To give

the consumers an incentive to use Sprint’s relay service, Sprint adopted a promotion whereby long distance calls would be free to consumers who select Sprint as their provider of both relay and long distance services. See *Sprint Letter* at 1. Providers of traditional TRS may not charge consumers for the cost of the TRS service; the may, however, charge the consumer for long distance service. The Commission’s rules require providers of traditional TRS to offer their consumers access to the consumer’s long distance carrier of choice. See 47 CFR 64.604(b)(3). In other words, TRS consumers must be afforded the same opportunity given to non-TRS consumers to use whichever long distance service they choose when making a long distance call. See *generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12375, 12412-12415, paragraphs 54-61, released June 17, 2003, published at 69 FR 53346, September 1, 2004, (*2004 TRS Report & Order*). (The Bureau notes that the carrier of choice rule is presently waived for the provision of Internet Protocol Relay Service (IP Relay) and Video Relay Service (VRS). See, e.g., *2004 TRS Report & Order*, 19 FCC Rcd 12594, Appendix E.) Sprint asserted that its free long distance program is distinguishable from the kind of financial incentive programs prohibited by the *Financial Incentives Declaratory Ruling*, and therefore should be permissible. Sprint asserted that, unlike customer loyalty programs, the free long distance program does not provide any benefits independent of the calls themselves, and therefore there is no incentive to make unnecessary TRS calls. Sprint also noted that discounts from standard rates have long been characteristic of the super-competitive long distance market. Finally, Sprint noted that even if the Bureau found that Sprint’s free long distance program violated the *Financial Incentives Declaratory Ruling*, the Bureau should make clear that the prohibition applies only to *interstate* long distance service, and not *intrastate* long distance service. See *Sprint Letter* at 2, note 1. On March 11, 2005, Nordia, Inc., another provider of traditional TRS in California, addressed by letter the provision of free long distance service along with traditional TRS service. See letter from Vinson & Elkins (Counsel for Nordia, Inc.) to Thomas E. Chandler, Chief, Disability Rights Office,

Consumer & Governmental Affairs, Federal Communications Commission, dated March 11, 2005, regarding *Declaratory Ruling Regarding Hands-On Video Relay Services, Inc.*, CC Docket No. 98-67 and CG Docket No. 03-123.

Discussion

The Bureau finds that offering free or discount long distance service (subject to the exceptions noted below) to TRS consumers as an incentive to use a particular TRS provider’s relay service, or as an incentive for a consumer to make more or longer TRS calls, constitutes an impermissible financial incentive in violation of the *Financial Incentive Declaratory Ruling*. When customers receive either free or heavily discounted long distance service, they have an incentive to make more or longer calls than they would make in the absence of such a program. Consequently, the Interstate TRS Fund, which compensates providers on a per-minute basis, is bill for minutes the customers might not have generated but for the incentive program. Although Sprint raises this issue in the context of a multi-vendor state, we note that our conclusion applies to TRS providers whether or not they are the only provider in a state. Free or discount long distance programs for traditional TRS consumers run afoul of the Commission’s financial incentives prohibition not because they might cause a consumer to select one provider’s service instead of another provider’s service, but because such programs may have the effect of causing a TRS consumer to make more or longer TRS calls than he or she would otherwise make.

This document shall be effective January 12, 2006. The record reflects that some providers may not be able to immediately change their automated billing system. See Letter from MCI to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 10, 2005, regarding CC Docket No. 98-67 and CG Docket No. 03-123 (indicating that MCI would need 45 days to comply with ruling proscribing free long distance); Letter from Vinson & Elkins (Counsel for Nordia, Inc.) to Thomas E. Chandler, Chief, Disability Rights Office, Consumer & Governmental Affairs, Federal Communications Commission, dated June 16, 2005, regarding Nordia Billing for Interstate Calls (indicating company would require 9 to 12 months to implement billing system). The Bureau believes that 120 days is a reasonable time for providers to come into compliance.

There are, however, two important limitations to the Bureau's conclusion with respect to free or discount long distance service to TRS consumers. First, the *Financial Incentives Declaratory Ruling* and this document apply only with respect to free or discount *interstate* long distance service, not *intrastate* long distance service. Second, the Bureau recognizes that providers have long offered discount long distance service to TRS consumers who use a TTY under the rationale that, given the nature of traditional TRS, it takes substantially longer for parties to a traditional TRS call to have a conversation than it would for two hearing parties to have the same conversation. Therefore, providers have been permitted to offer discount long distance service to TRS consumers so long as the discounts reasonably relate, under the functional equivalency principle, to equalizing the cost of the call based on the added length of a TRS call. The Bureau prohibits only those long distance discounts for TRS consumers that go beyond ensuring that the long distance service cost of the TRS call is equivalent to what that cost would have been for hearing parties. Programs directed at giving the consumer an incentive to make a TRS call in the first place, or to place a longer TRS call than consumer might otherwise make, are prohibited under this document.

Nothing in the *Financial Incentives Declaratory Ruling* or this document precludes interstate TRS providers that also offer long distance service from offering discounts to all of their consumer when the same discount applies to both voice and TRS calls. The Bureau addresses herein only the situation where TRS consumers, but not other consumers, are given free long distance service (or discount long distance service) as incentive for the consumer to use the particular TRS provider that also offers the long distance service, or to make more or longer TRS calls.

Ordering Clauses

Pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and §§ 0.141, 0.361, and 1.3 of the Communication Rules, 47 CFR 0.141, 0.361, 1.3, this document is hereby adopted.

Any TRS provider offering to TRS consumers financial incentives relating to free or discount long distance service, as set forth above, shall be eligible for compensation from the Interstate TRS Fund.

This document shall be effective January 12, 2006.

Federal Communications Commission.

Monica Desai,

Chief, Consumer & Governmental Affairs Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-386; FCC 05-29]

Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On June 2, 2005 (70 FR 32258), the Commission published a final rule in the **Federal Register**, which adopted new rules to facilitate the exchange of customer account information between Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs) and to establish carriers' responsibilities with respect to such exchanges. This document corrects the instances in the **Federal Register** which an IXC-initiated PIC Order is referred to as a *Report and Order*.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for these rules. Written comments by the public on the new and modified information collections are due October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Consumer & Governmental Affairs Bureau at (202) 418-2512 (voice), or e-mail Lisa.Boehley@fcc.gov.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document adopting new rules to facilitate the exchange of customer account information between Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs). In the **Federal Register** document 05-10974 published on June 2, 2005 (70 FR 32258) make the following corrections:

1. On page 32259, under the Supplementary Information in the first column on line 30, PIC Report and Order is corrected to read as PIC Order

and wherever it appears in the Supplementary Information.

2. In § 64.4002, the introductory text, paragraphs (a) introductory text, (b) introductory text, (b) (6), (c) introductory text; and (d) introductory text are corrected to read as follows:

§ 64.4002 Notification obligations of LECs.

To the extent that the information is reasonably available to a LEC, the LEC shall provide to an IXC the customer account information described in this section consistent with § 64.4004. Nothing in this section shall prevent a LEC from providing additional customer account information to an IXC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC Order.

(a) *Customer-submitted PIC Order.* Upon receiving and processing a PIC selection submitted by a customer and placing the customer on the network of the customer's preferred interexchange carrier at the LEC's local switch, the LEC must notify the IXC of this event. The notification provided by the LEC to the IXC must contain all of the customer account information necessary to allow for proper billing of the customer by the IXC including but not limited to:

* * * * *

(b) *Confirmation of IXC-submitted PIC Order.* When a LEC has placed a customer on an IXC's network at the local switch in response to an IXC-submitted PIC Order, the LEC must send a confirmation to the submitting IXC. The confirmation provided by the LEC to the IXC must include:

* * * * *

(6) The carrier identification code of the submitting LEC. If the PIC Order at issue originally was submitted by an underlying IXC on behalf of a toll reseller, the confirmation provided by the LEC to the IXC must indicate, to the extent that this information is known, a statement indicating that the customer's PIC is a toll reseller.

(c) *Rejection of IXC-submitted PIC Order.* When a LEC rejects or otherwise does not act upon a PIC Report and Order submitted to it by an IXC, the LEC must notify the IXC and provide the reason(s) why the PIC Order could not be processed. The notification provided by the LEC to the IXC must state that it has rejected the IXC-submitted PIC Order and specify the reason(s) for the rejection (e.g., due to a lack of information, incorrect information, or a PIC freeze on the customer's account). The notification must contain the identical data elements that were provided to the LEC in the original IXC-