

WTO's GATS, the U.S. may also limit new satellite authorizations when incumbent operations face potential interference. Furthermore, we agree with WCA's assertion that the Commission's decision to delete the BSS allocation does not discriminate against foreign licensees, because the decision affects both domestic and foreign systems in a non-discriminatory fashion. This conforms to the WTO's GATS non-discrimination policies.

Conclusion

12. Having reexamined our allocation decision, we remain convinced that it was properly decided based on interference mitigation concerns. We continue to believe, that simultaneous operation of BSS and terrestrial systems at 2520–2670 MHz would require parties to address matters of technical compatibility in order to make use of the band. Thus, we continue to find that the public interest is served by our deletion of the unused BSS allocation, and that our decision will prevent terrestrial licensees from incurring the costs of evaluating and mitigating the interference that any proposed BSS deployment—including the AirTV system examined herein—would be expected to cause to terrestrial systems.

Procedural Matters

13. A Regulatory Flexibility Act analysis or certification, *see generally* 5 U.S.C 604–605, is not required because this order does not promulgate or revise any rules.

Ordering Clauses

14. Pursuant to sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, the Petition for Partial Reconsideration filed by AirTV Limited, is denied.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E6–9592 Filed 6–20–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; DA 06–1043]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petition.

SUMMARY: In this document, the Commission denies a petition for declaratory ruling (*Petition*) filed by Telco Group, Inc. (Telco Group) requesting that the Commission either exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate Telecommunications Relay Service (TRS) Fund (Fund), or in the alternative, waive the portion of Telco Group's contribution based on its international end-user revenues. Further, Telco Group requests a stay of its payment obligation pending the Commission's decision. The Commission finds that the inclusion of international end-user revenues in calculating carriers' obligations to the Interstate TRS Fund is appropriate. In addition, the Commission is unable to find good cause to waive the portion of Telco Group's Interstate TRS Fund assessment based on its international services revenue. Because the Commission addresses the merits of the *Petition*, the request for stay is dismissed as moot.

DATES: Effective May 16, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This document does not contain new or modified information collection requirements subject to the PRA of 1995, 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, *see* 44 U.S.C. 3506 (c)(4). This is a summary of the Commission's document DA 06–1043, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CG Docket No. 03–123, DA 06–1043, adopted May 16, 2006, released May 16, 2006, addressing issues raised in Telco Group's Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver (*Petition*), filed July 26, 2004.

The full text of document DA 06–1043 and 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. Document DA 06–1043 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site <http://www.bcpweb.com> or by calling 1–800–378–3160.

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Synopsis

Background

Title IV of the ADA directs the Commission to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to individuals with hearing and speech disabilities in the United States. *See generally* Public Law 101–336, 104 Statute 327, 366–69 (July 26, 1990), codified at 47 U.S.C. 225; *see also* 47 U.S.C. 225(b)(1). Section 225 of the Communications Act, requires the Commission to establish regulations to ensure the quality of relay service. 47 U.S.C. 225(b). The Commission initially implemented this mandate in three orders.

In *TRS I*, the Commission adopted rules identifying the relay services that carriers offering voice telephone transmission services must provide to persons with hearing and speech disabilities and the TRS mandatory minimum standards that govern the provision of service. *See Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (July 26, 1991) (*TRS I*), published at 56 FR 36729, August 1, 1991; *see* 47 CFR 64.604 of the Commission's rules (the TRS “mandatory minimum standards”). In *TRS II*, the Commission adopted a shared funding mechanism for interstate TRS cost recovery, spreading the cost of providing TRS to all subscribers of every interstate service. *See Telecommunications Services for Individuals with Hearing and Speech*

Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90–571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1805–1806, at paragraphs 19–27 (February 25, 1993) (*TRS II*), published at 58 FR 12204, March 3, 1993 and 58 FR 12175, March 3, 1993. Under section 225(d)(3) of the Communication’s Act, the Commission’s regulations governing the jurisdictional separation of costs shall generally provide that the costs caused by interstate TRS shall be recovered from all subscribers to every interstate service, and the costs caused by intrastate TRS shall be recovered by the states. 47 U.S.C. 225(d)(3). The Commission also proposed that under this mechanism a charge would be assessed on all common carriers that offer interstate telecommunications services to create the Interstate TRS Fund, and that the providers would be compensated from the Fund for providing TRS based on a national average TRS interstate minute of use rate. *TRS II*, 8 FCC Rcd at 1806, paragraphs 23–26. In *TRS III*, the Commission established the Interstate TRS Fund, currently administered by the National Exchange Carrier Association (NECA), to reimburse TRS providers for the costs of providing interstate TRS. See *Telecommunications Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, Third Report and Order, 8 FCC Rcd 5300 (July 20, 1993) (*TRS III*), published at 58 FR 39671, July 26, 1993. That order also finalized the contribution methodology for payments into the Fund and defined the interstate services subject to the contribution assessment. The Commission adopted a regulation providing that “[c]ontributions shall be made by all carriers who provide interstate services, including, but not limited to * * * international * * * services.” 47 CFR 64.604(c)(5)(iii)(A) of the Commission’s rules; see also *TRS III*, 8 FCC Rcd at 5306, paragraph 33 (ordering clause adopting rule amendments set forth in Appendix B); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines*, CC Docket No. 98–67, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948, 22949–22950, paragraph 2 (December 21, 2001), published at 67 FR 4203, January 29, 2002 and 67 FR 4227, January 29, 2002 (noting that *TRS III* required “that every carrier providing interstate telecommunications services

contribute to the TRS Fund on the basis of * * * interstate and international revenues”).

In its *Petition*, Telco Group requests that the Commission exclude international revenues from the revenue base used to calculate payments due to the Interstate TRS Fund, “at least for those carriers whose international revenues comprise a significant portion of their total interstate and international revenues,” or in the alternative, find good cause to waive Telco Group’s obligations to the Fund that are based on its international revenues. *Petition* at 1.

Telco Group maintains that such relief is warranted because, in what Telco Group argues is an analogous case involving the Universal Service Fund (USF), the United States Court of Appeals for the Fifth Circuit required the Commission to revisit the USF assessment on the international services revenue of a provider of primarily international services and *de minimis* interstate services. *Petition* at 3 (citing *Texas Office of the Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*TOPUC*)). The Court found that requiring a carrier to pay an assessment on its international services revenue that exceeded the carrier’s total interstate revenue violated the equitable and nondiscriminatory contribution requirement of the Universal Service statute, section 254 of the Communications Act of 1934, as amended. *TOPUC*, 183 F.3d at 434–435; see 47 U.S.C. 254(b)(4). Although the Interstate TRS Fund is governed by section 225 of the Communications Act, rather than section 254 of the Communications Act, Telco Group argues that the Interstate TRS Fund contribution rules also are “designed to be equitable and nondiscriminatory” and, therefore, the relief afforded in *TOPUC* should be extended to TRS. *Petition* at 4. Telco Group argues that its circumstance is comparable to the *TOPUC* plaintiff because the “vast majority” of Telco Group’s revenues—approximately 96 percent—are derived from international services. Moreover, Telco Group argues the public interest will be served by granting the requested relief because it will ensure Telco Group “remains as a viable competitor in the market for interstate services.” *Petition* at 9. Telco Group adds that the “high payment obligations also hinder Telco Group’s ability to compete outside the United States, and so contradict the Commission’s efforts to promote and encourage competition in the international and interstate markets.” *Petition* at 9–10 (citing *2000 Biennial Regulatory Review—Policies and*

Procedures Concerning the International, Interexchange Marketplace, IB Docket No. 02–202, Report and Order, 16 FCC Rcd 10647 (March 20, 2001)), published at 66 FR 16874, March 28, 2001.

On October 25, 2004, the Telco Group *Petition* was placed on Public Notice. *Telco Group, Inc. Files Petition for Declaratory Ruling or Waiver to Exclude International Revenues from the Revenue Base Used to Calculate Payment to the Interstate TRS Fund*, CC Docket No. 98–67, Public Notice, 19 FCC Rcd 20965 (October 25, 2004), published at 69 FR 64573, November 5, 2004. Two oppositions were filed, one from a carrier and one from an organization representing the deaf community. Comments were filed by MCI (MCI) (November 26, 2004) and Telecommunications for the Deaf, Inc. (TDI) (November 24, 2004). Late filed comments were filed by Globecomm Systems, Inc. (“GSI”) on February 14, 2006. On that same date, GSI also filed a petition for declaratory ruling that there is no obligation to pay into the Interstate TRS Fund based on revenues arising from traffic that does not originate or terminate in the United States. Globecomm Systems, Inc., *Petition for Declaratory Ruling* (filed February 14, 2006). Because the issue in the GSI petition—whether certain calls should be considered international calls—is distinct from the issue raised in Telco Group’s *Petition*, the Commission will address GSI’s petition in a separate order. Telco Group did not file any reply comments.

Discussion

Telco Group’s *Petition* is premised on the congruence between section 254 of the Communications Act, which establishes Universal Service requirements, and section 225 of the Communications Act, which establishes requirements for the provision of TRS. Sections 254 and 225 of the Communications Act, however, differ in fundamental and, in this case, dispositive ways. Unlike USF assessments, contributions to the Interstate TRS Fund are used, in part, to reimburse international relay calls. Therefore, in this case, the public interest lies in ensuring adequate funding for interstate TRS—including international TRS—by assessing contributions on as broad a revenue base as can be justified. Accordingly, Telco Group’s request that the Commission exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate TRS Fund is denied. Because Telco Group has not

demonstrated why individualized relief is appropriate, the company's request for waiver of the interstate TRS assessment on international services revenue is also denied.

Unlike the Universal Service Fund, which does not directly support international services but only may be used only to support domestic services, the Interstate TRS Fund is used to support *international TRS*. *TRS I Order*, 6 FCC Rcd at 4660–4661, paragraph 18 (discussing comments that relay services should relay international calls that originate or terminate in the United States provided that equipment of the foreign country is compatible with U.S. equipment); *TRS III Order*, 8 FCC Rcd at 5301, paragraph 9, note 14 (in adopting rule requiring contributions to the Fund to be based on, *inter alia*, international services, Commission notes Sprint's argument "that international services should be included because TRS providers will be compensated by the administrator for international TRS minutes of use"). IP Relay service is an exception to this rule. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 19 FCC Rcd 12224, 12242, at paragraph 48, note, 121 (June 30, 2004) (noting that the Fund "does not currently reimburse providers for the costs of providing international calls via IP Relay"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 18 FCC Rcd 12823, 12837, at paragraph 42 (June 30, 2003) (noting that in March 2003 NECA was directed to suspend payment to TRS providers for international IP Relay service minutes); *see also 2004 TRS Report and Order*, 19 FCC Rcd at 12525, paragraph 129, published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004 (noting that although Fund does not pay for international IP Relay service calls, it does pay for international Video Relay Service calls). Therefore, unlike the USF assessments at issue in *TOPUC*, excluding international revenues from the revenue base used for calculating TRS contributions would not serve the public interest. With the TRS Fund, it is not the case—as in *TOPUC*—that a provider of only *de minimis* interstate service may be required to bear a disproportionately heavy burden in subsidizing the provision of such services by other carriers. Contributions to the Interstate TRS Fund based on Telco Group's international services

revenue can, in turn, be used to subsidize international TRS. Moreover, Telco Group is required to contribute the same percentage of its interstate and international revenues to the Interstate TRS Fund as other carriers that provide both interstate and international services. This approach is both equitable and nondiscriminatory. Opposition of MCI at 3. As MCI notes, "it would be discriminatory if Telco Group, and other internationally-oriented carriers, were allowed to exclude international revenues from the TRS contribution base. Companies such as MCI, who also earn international revenues by providing international prepaid calling services, as well as other international services, would be required to compete against companies who would have been granted a discriminatory cost advantage were the Commission to grant Telco Group's request."

Moreover, *TOPUC* is specifically based on the equitable and nondiscriminatory contribution requirement of section 254 of the Communications Act. Section 254 of the Communications Act states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. 254(b)(4). The Court found that requiring COMSAT, a satellite provider of primarily international services along with *de minimis* interstate service offerings, to contribute to the Universal Service Fund based on its international services revenues was inequitable and discriminatory given that COMSAT's contribution based on international services revenue would exceed the company's total interstate revenues. The Court stated that "the agency's interpretation of 'equitable and nondiscriminatory,' allowing it to impose prohibitive costs on carriers such as COMSAT, is 'arbitrary and capricious' * * * [because] COMSAT and carriers like it will contribute more in universal service payments than they will generate from interstate service." *TOPUC*, 183 F.3d at 434–435. Section 225 of the Communications Act, however, contains no such express requirement. In the absence of such language, and particularly because international services are supported by the Interstate TRS Fund, the Commission is not bound by the *TOPUC* decision to reduce or eliminate Interstate TRS Fund assessments on international services for Telco Group or similarly situated providers. With respect to contributions, the only

limiting language of section 225 of the Communications Act is jurisdictional in nature. *See* 47 U.S.C. 225(d)(3) (addressing jurisdictional separation of costs). Accordingly, Telco Group's request for a declaratory ruling excluding international services revenue from the interstate contribution base is denied.

Telco Group's request for waiver of the interstate TRS assessment on its international services revenue is also denied. Although the Commission may waive a provision of its rules for "good cause shown," 47 CFR 1.3 of the Commission's rules; *see generally 2004 TRS Report and Order*, 19 FCC Rcd at 12520, paragraph 110 (discussing standard for waiving Commission rules). Telco Group's argument rests on the fact that a high percent of its revenues derive from international services and therefore its TRS payment is substantially higher than it would be if international revenues were not included and burdensome. *Petition* at 9–10. As noted above, however, because the Fund supports both international and interstate TRS, TRS assessments are based on both international and interstate revenues, and the fact that some contributors have relatively more international revenues, or more interstate revenues, is not relevant to ensuring adequate funding for these services.

Congressional Review Act

The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act because the adopted rules are rules of particular applicability. *See* 5 U.S.C. 801(a)(1)(A).

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 and 0.361 of the Commission's rules, 47 CFR 0.141 and 0.361, Telco Group's Petition for Declaratory Ruling or, in the Alternative, Petition for Waiver, is denied.

Having addressed the merits of the Petition for Declaratory Ruling or, in the Alternative, Petition for Waiver, Telco Group's Petition for Stay Pending Resolution of Petition for Declaratory Ruling or, in the Alternative, Petition for Waiver is moot.

Federal Communications Commission.

Monica S. Desai,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E6–9795 Filed 6–20–06; 8:45 am]

BILLING CODE 6712–01–P