

Dated: June 22, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10-51; FCC 10-88]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Interim rule.

SUMMARY: In this document, the Commission adopts an interim rule addressing the certification of provider information for Telecommunications Relay Services (TRS) calls. By requiring providers to be more accountable for their submissions, the Commission takes necessary, affirmative steps to preserve the Interstate TRS Fund (Fund).

DATES: Effective July 13, 2010, except for the amendment to 47 CFR 64.604 (c)(5)(iii)(I), which contains new information collection requirements subject to the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget (OMB). Written comments by the public on the new information collections are due September 13, 2010. The Commission will publish a document in the **Federal Register** announcing the effective date of these requirements.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission via e-mail at PRA@fcc.gov and Cathy.Williams@fcc.gov, and to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395-5167, or via e-mail to Nicholas_A_Fraser@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559-5158 (VP), or e-mail: Gregory.Hlibok@fcc.gov. For additional information concerning the information collection requirements contained in this document, contact Cathy Williams

at (202) 418-2918, or e-mail: Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program*, Order, document FCC 10-88, adopted May 24, 2010, and released May 27, 2010, in CG Docket No. 10-51. Simultaneously with the Order, the Commission also issued a Declaratory Ruling and Notice of Proposed Rulemaking in CG Docket No. 10-51.

The full text of document FCC 10-88 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 FCC 10-88 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.bcpiweb.com> or by calling 1-800-378-3160. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Document FCC 10-88 can be also downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

Paperwork Reduction Act of 1995 Analysis

Document FCC 10-88 contains new information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. Public and agency comments are due September 13, 2010. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis

The rapid growth of the Fund within a five year span requires the Commission to take immediate steps in preserving the Fund to ensure the

continued availability of TRS. Indeed, the Commission has a fiduciary duty to ensure that the Fund operates efficiently, and to guard against waste, fraud, and abuse. The Commission takes steps in document FCC 10-88 to uphold that duty.

Section 553 of the Administrative Procedure Act requires that agencies provide notice of, and an opportunity for public comment on, their proposed rules except, *inter alia*, "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Notice and comment have been excused in emergency situations or where delay could result in serious harm. Additionally, agencies, including this Commission, have been afforded "substantial deference" when imposing interim regulations with or without prior notice and comment, particularly where such regulations have been shown to be necessary to prevent irreparable harm and the agency is seeking comment on the matter in a rulemaking proceeding.

In this case, the Commission finds good cause to adopt the interim rule below to make providers more accountable by requiring senior executives to certify compliance with the Commission's regulations under penalty of perjury. By requiring providers to be more accountable for their submissions, the Commission takes necessary, affirmative steps to preserve the TRS Fund. The Commission adopts an interim rule to require the Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a relay service provider to certify, under penalty of perjury, that: (1) Minutes submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives, or payments or kickbacks, to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates or methodologies are true and correct. In the accompanying *NPRM* section of document FCC 10-88, the Commission seeks additional comment on whether it should make this rule permanent.

The TRS rules currently require providers to "submit reports of * * * TRS minutes of use to the [Fund] administrator in order to receive payments." The rules further require

providers to submit minutes on a form fashioned by the Fund administrator and the administrator to “establish procedures to verify payment claims.” Additionally, providers are required to certify on their monthly minutes of use submissions that the data being reported are “true and accurate.” Therefore, providers are already required to certify as to the truth and accuracy of the monthly data they submit to the administrator. Accurate call data are essential to ensuring the integrity of the Fund; thus, to ensure that the Commission can adequately detect fraud against the Fund, the Commission concludes that additional safeguards are necessary to ensure that minutes billed to the Fund are legitimate. Although both the Commission and the Fund administrator have the authority to audit providers, greater accountability can be ensured by requiring CEOs, CFOs, or other senior executives of providers to submit minutes of use for payment and to certify under penalty of perjury the legitimacy of the minutes. The Commission also expects that this interim rule will lead to greater scrutiny by providers of their minutes before they submit them to the Fund administrator for payment.

The TRS rules also require providers to “provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested by the administrator, necessary to determine TRS Fund revenue requirements and payments.” Providers are also required to certify on their yearly submission forms as to the truth and accuracy of the data being submitted. The Commission similarly believes that to ensure the accuracy of this information, including the information requested on the Relay Services Data Request Form submitted annually, the TRS rules should require CEOs, CFOs, or other senior executives of providers to certify under penalty of perjury that this information is true and correct.

The Commission adopts this interim rule without notice and comment, pursuant to 5 U.S.C. 553(b)(3)(B). In light of the explosive growth in the TRS Fund in recent years and evidence of fraud against the Fund, as evidenced by the recent indictments and guilty pleas from call center managers and employees admitting to defrauding the Fund of tens of millions of dollars, the fact that minutes are submitted for payment on a monthly basis, and the expectation that providers seeking compensation from the Fund are doing so in compliance with the TRS rules, the Commission finds that it is unnecessary and contrary to the public

interest to delay adoption of this interim rule. The Commission finds that an immediate interim rule is necessary and consistent with the public interest. In this case, the Commission finds good cause to adopt an interim rule to make providers more accountable by requiring senior executives to certify compliance with the Commission’s regulations under penalty of perjury. By requiring providers to be more accountable for their submissions, the Commission takes necessary, affirmative steps to preserve the TRS Fund.

Congressional Review Act

The Commission will send a copy of document FCC 10–88 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, document FCC 10–88 is adopted.

Document FCC 10–88 shall be effective July 13, 2010, pursuant to 5 U.S.C. 553(d)(3) and § 1.427(b) of the Commission’s rules, 47 CFR 1.427(b), subject to OMB approval for new information collection requirements.

The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document FCC 10–88 to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements; Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Revise § 64.604(c)(5)(iii)(I) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(I) *Information filed with the administrator.* The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a provider submitting minutes to the Fund for compensation must, in each instance, certify, under penalty of perjury, that the minutes were handled in compliance with section 225 and the Commission’s rules and orders, and are not the result of impermissible financial incentives or payments to generate calls. The CEO, CFO, or other senior executive of a provider submitting cost and demand data to the TRS Fund administrator shall certify under penalty of perjury that such information is true and correct. The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer and Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*see* § 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*see* § 52.16 of this chapter), and the long-term local number portability cost recovery (*see* § 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

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