

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03–123; FCC 19–90; FRS 16385]

### Telecommunications Relay Service Modernization

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) proposes to: Eliminate the outdated equal access and multiple billing options requirements from the TRS mandatory minimum standards and to streamline Commission processes by ceasing **Federal Register** publication of state requests for TRS program certification, while continuing to publish these certification applications in the Commission's electronic document management system and on the Commission's website.

**DATES:** Comments are due January 30, 2020. Reply comments are due February 13, 2020.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 03–123, by either of the following methods:

- *Federal Communications Commission's Website:* <https://www.fcc.gov/ecfs/filings>. Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see document FCC 19–90 at: <https://docs.fcc.gov/public/attachments/FCC-19-90A1.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or email [Michael.Scott@fcc.gov](mailto:Michael.Scott@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), document FCC 19–90, adopted on

September 18, 2019, released on September 20, 2019, in CG Docket No. 03–123. The Report and Order in document FCC 19–90 will be published elsewhere in the **Federal Register**. The full text of document FCC 19–90 is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must

be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

### Initial Paperwork Reduction Act of 1995 Analysis

The NPRM in document FCC 19–90 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

### Synopsis

1. As required by section 225 of the Communications Act, as Amended (the Act), 47 U.S.C. 225, the Commission's rules prescribe mandatory minimum standards to ensure that TRS provides telephone service for people with hearing or speech disabilities that is functionally equivalent to voice communication service.

2. *Equal Access Requirement.* The Commission proposes to repeal the equal access requirement, which provides that “TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users.” The rule, which was adopted in 1991, reflects the prevailing telephone service practices at that time, when providers of telephone service generally assessed per-minute rates for long distance based on the distance and duration of the call, and long distance services were provided on an unbundled basis by competing interexchange carriers.

3. Today, voice telephone subscribers typically pay a bundled or flat rate for telephone service, without time or distance differentials for long distance calls, and the Commission has ceased to apply an equal access requirement to voice telephone service. Because the rule only requires equal access “to the same extent that such access is provided to voice users” and because the Commission has eliminated the equal access rule for non-legacy voice users, there are few, and ever-decreasing,

situations in which a TRS provider would actually be obligated to provide equal access under the current rule.

4. In this changed environment, the Commission believes special mandates regarding long distance carriage are no longer necessary in order to have parity with voice telephone users when making long distance calls. Additionally, the Commission finds credible that implementing this requirement can be confusing for consumers and cause delays in call set-up, and that it hinders the providers' ability to transition their platforms to more efficient IP-based networks—in accordance with the Act's mandate for the TRS program to take advantage of evolving technologies. Given changes in how consumers now acquire and pay for long distance services, the costs and burdens associated with this rule now appear to outweigh any remaining benefits. The Commission seeks comment on this proposal.

5. The Commission also proposes to clarify that, when TRS providers allow consumers to make long distance calls without incurring per-minute charges, such offerings do not constitute an impermissible financial incentive for TRS use. Although the Commission previously found that long distance discounts offered by TRS providers could constitute an impermissible financial incentive, that ruling was based on the premise that such discounts would cause the charges for long distance calls by TRS users to be lower than those for voice service users. In today's marketplace, the Commission believes the widespread bundling of long distance and local calling eliminates any risk that offering free long distance to TRS users would create an impermissible incentive to make long distance calls. The Commission seeks comment on this proposed clarification.

6. *Billing Options Requirement.* The Commission proposes to repeal the billing options requirement, which directs TRS providers to offer "the same billing options (e.g., sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services." As is the case with the equal access requirement, this TRS feature, which was also adopted in 1991, has become a burden with no associated public interest benefit. Given the widespread bundling of local and long distance calling and the disappearance of per-minute long distance charges, the Commission believes the future likelihood of any TRS provider assessing per-minute charges for wireline calls (and thereby triggering a possible need for billing options) is *de minimis*. Accordingly,

alternative billing options no longer appear necessary for TRS users to achieve functionally equivalent service. Eliminating this obligation should make the provision of TRS more efficient because it will relieve TRS providers from the need to maintain obsolete features of circuit-switched networks at a time when they and others within the communications industry have been transitioning to IP-based platforms. The Commission seeks comment on this proposal.

7. *Federal Register Notice of State Requests for Certification.* The Commission proposes to cease **Federal Register** publication of the Commission's public notices of applications for certification of state TRS programs. The purpose of the Commission's certification process is to review the details of a state's TRS program to determine whether the state program makes intrastate TRS available in a manner that meets or exceeds the Commission's minimum standards, makes available adequate procedures and remedies for enforcing program requirements, and does not conflict with Federal law. In this certification process, the Commission does not make rules prescribing how state programs should operate; rather, it determines whether a state program meets the standards of the Commission's existing TRS rules. The Commission's review is ordinarily conducted based on the documentation submitted by a state, and no adjudicatory hearing is ordinarily needed to determine whether a state program merits certification.

8. **Federal Register** publication of state TRS program certification applications is not required by the Administrative Procedure Act. Moreover, for comparable Commission authorization processes, such as determinations on internet-based TRS certification applications and common-carrier applications for certificates of "public convenience and necessity," **Federal Register** publication is not required by the Commission's rules. Nor is publication necessary for consistency with Commission practice in other areas.

9. In addition, while the Commission continues to believe that public input is important in assisting the Commission in its state certification determinations, providing electronic notice of such certification requests via public notice releases that are posted in the Commission's electronic documents system (EDOCS) and on the Commission's website should provide sufficient notice to enable interested members of the public to comment on an application, while at the same time

preserving Commission resources associated with **Federal Register** publication. The Commission seeks comment on this proposal. In particular, the Commission seeks comment on whether use of the Commission's own public notice process would be sufficient to enable an informed Commission decision on state program authorization given the Commission's longstanding reliance on this public notice process for comparable types of applications.

#### Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in document FCC 19–90. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments specified in the **DATES** section. The Commission will send a copy of document FCC 19–90 to the Chief Counsel for Advocacy of the Small Business Administration.

#### *Need for, and Objectives of, the Proposed Rules*

11. In document FCC 19–90, the Commission proposes to repeal the equal access requirement so that it is no longer applicable to any form of TRS. The Commission believes it is no longer necessary to provide TRS users with the ability to select their long distance carrier to get certain rates on their toll calls to achieve functional equivalency. The Commission also proposes to repeal the billing options requirement so that it is no longer applicable to any form of TRS. Given the increasing migration to telephone service bundles for local and long distance calls, the ability for TRS users to employ various billing options for toll calls no longer appears necessary to achieve functionally equivalent service. Eliminating this obligation will make the provision of TRS more efficient because it will relieve TRS providers of the need to maintain obsolete network features at a time when they and others within the communications industry are transitioning to IP-based platforms. In addition, the Commission proposes to eliminate the requirement for the Commission to publish in the **Federal Register** notice of applications for certification of state TRS programs and instead rely on the Commission's public notice release process.

Legal Basis

12. The authority for this proposed rulemaking is contained in sections 1, 2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225.

Small Entities Impacted

13. The rule changes proposed in document FCC 19-90 will affect obligations of non-internet based TRS providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The Commission’s proposals to delete the equal access and billing options requirements and to eliminate the requirement for the Commission to publish in the Federal Register notice of applications for certification of state TRS programs would not impose any additional reporting, record keeping, or other compliance requirements.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

15. The proposals to eliminate the equal access and billing options requirements will reduce the burden on small entities subject to the rule. Such entities would no longer need to provide TRS users with the ability to select their long distance carrier or offer billing options, and the providers would no longer be required to configure their networks for such functionalities. Other small entities would not be affected.

16. The proposal to eliminate the requirement for the Commission to publish in the Federal Register notice of applications for certification of state TRS programs would have no impact on

small entities because only the Commission is burdened by this obligation.

17. The Commission seeks comment from all interested parties. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in document FCC 19-90. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to document FCC 19-90, in reaching its final conclusions and taking action in this proceeding.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission’s Proposals

18. None.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services. Federal Communications Commission. Marlene Dortch, Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 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, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, and 1401-1473, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraph (a)(3)(ii) and by removing and reserving paragraph (b)(3) to read as follows:

§ 64.604 Mandatory Minimum Standards.

(a) \* \* \*

(3) \* \* \*

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

\* \* \* \* \*

(b) \* \* \*

(3) [Remove and Reserve]

\* \* \* \* \*

■ 3. Amend § 64.606 by revising paragraph (a)(1) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) Documentation—(1) Certified state program. Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer and Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned “TRS State Certification Application.” All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification.

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