

Proposed Rulemaking (*Further Notice*), published at 64 FR 7763, February 16, 1999. In the *Third Report and Order*, the Commission adopted a number of rules proposed in the *Further Notice*, and addressed most issues raised on reconsideration of the *Second Report and Order*. In addition, in the *First Reconsideration Order*, published at 65 FR 47678, August 3, 2000, the Commission amended portions of the rules regarding liability for slamming that had been stayed by the DC Circuit Court. Finally, in the *Third Reconsideration Order*, we addressed remaining petitions for reconsideration of the previous orders, and modified certain rules concerning, amongst other things, verifications of carrier change requests and liability for slamming.

In the *Reconsideration Order*, we addressed petitions filed by a coalition of independent local exchange carriers (LEC Petitioners) seeking reconsideration of the Commission's verification requirement for in-bound carrier change request calls. Additionally, we addressed a petition filed by AT&T seeking clarification of the decision to apply our slamming rules to newly-installed lines. Finally, we addressed a petition filed by WorldCom (MCI) seeking a finding that credits made to the consumer before a slamming complaint has been filed will be considered "unpaid" when calculating liability under the slamming rules, or will be deducted from the amount owed to the authorized carrier by a carrier found liable for a slam.

#### Regulatory Flexibility Act Analysis

In the *Reconsideration Order*, the Commission promulgates no additional final rules, and our present action is, therefore, not subject to the Regulatory Flexibility Act of 1980, as amended.

#### Report to Congress

The Commission will not send a copy of this *Fifth Order on Reconsideration* pursuant to the Congressional Review Act because the *Fifth Order on Reconsideration* neither adopts nor modifies a rule.

#### Ordering Clauses

Pursuant to sections 1, 4(i), 4(j), 201, 206–208, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 206–208, and 258, and §§ 1.421 and 1.429 of the Commission's rules, 47 CFR 1.421 and 1.429, that this *Fifth Order on Reconsideration* in CC Docket No. 94–129 is adopted.

Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C 151, 154(i), and

154(j), and §§ 1.3, 1.43, and 1.429 of the Commission's rules, 47 CFR 1.3, 1.43, and 1.429, that the petitions for waiver, emergency partial stay, and reconsideration filed by the LEC Petitioners, LEC Commenters, TDS Telecom and the Nebraska LECs are denied.

Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), and § 1.429 of the Commission's rules, 47 CFR 1.429, that AT&T's petition for reconsideration or clarification is granted to the extent indicated herein.

Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), and § 1.429 of the Commission's rules, 47 CFR 1.429, that MCI's petition for reconsideration is denied.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Order on Reconsideration* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. 05–5737 Filed 3–22–05; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 98–67, CG Docket No. 03–123; DA 05–447]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Clarification.

**SUMMARY:** In this document, the Commission addresses the current waiver of the telecommunications relay services (TRS) requirement that TRS providers (including providers of captioned telephone service) offer three-way calling functionality as a TRS mandatory standard. Also in this document, the Commission clarifies the manner in which TRS providers may comply with this rule; as a result, a waiver of this requirement is no longer necessary.

**DATES:** Effective February 18, 2005.

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

#### FOR FURTHER INFORMATION CONTACT:

Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail at [Dana.Jackson@fcc.gov](mailto:Dana.Jackson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On June 17, 2003, the Commission released a *Second Report and Order, Order on Reconsideration (Second Improved TRS Order)*, published at 68 FR 50973, August 25, 2003, CC Docket No. 98–67 and CG Docket No. 03–123; FCC 03–112. In the *Second Improved TRS Order*, the Commission required that TRS providers offer three-way calling as a standard feature of TRS. On February 24, 2004, the Commission released an order waiving the requirement that TRS providers offer three-way calling functionality for one year until February 25, 2005. On November 30, 2004, the Commission released a *Public Notice*, published at 70 FR 2360, January 13, 2005, CC Docket No. 98–67 and CG Docket No. 03–123; DA 04–3709, seeking comment on whether TRS providers (including providers of captioned telephone service) will be able to offer the three-way calling functionality as a TRS mandatory minimum standard as of the February 24, 2005, waiver expiration date, or whether it is necessary to extend this waiver. Also, in that document, the Commission sought comment on whether, instead of a waiver, the requirement might be modified or clarified, and, if so, how. This is a summary of the Commission's document DA 05–447, released February 18, 2005. This document does not contain new or modified information collection 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, see 44 U.S.C. 3506(c)(4). The Commission will not send a copy of this document pursuant to the Congressional Review Act because the document neither adopts nor modifies a rule, but clarifies an existing rule. See 5 U.S.C. 801(a)(1)(A).

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Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

### Synopsis

In the *Second Improved TRS Order & NPRM*, the Commission required that TRS providers offer three-way calling as a standard feature of TRS. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67 and CG Docket No. 03-123, FCC 03-112; published at 68 FR 50973 and 68 FR 50993, August 25, 2003, (*Second Improved TRS Order & NPRM*). We defined three-way calling to be a TRS feature that allows more than two parties to be on the telephone line at the same time with the communications assistant (CA). We stated that three-way calling could be arranged in one of two ways: first, the TRS consumer may request that the TRS facility and the CA set up the call with two other parties, or, second, one of the parties to the call may set up the call.

In the August 1, 2003, *Captioned Telephone Order*, we recognized captioned telephone service as a type of TRS. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, FCC 03-190; published at 68 FR 55898, September 29, 2003, (*Captioned Telephone Order*). Captioned telephone service is an enhanced Voice Carry Over (VCO) service that allows a user, on one standard telephone line, to both listen to what the other party is saying and simultaneously read captions of what the other party is saying. This way, a typical user of this service, who has the ability to speak and some residual hearing, can both listen to what is said over the telephone and read captions for clarification. A CA using specially developed voice recognition technology generates the captions. That order did not waive the requirement that providers of captioned telephone service offer three-way calling.

On September 24, 2003, AT&T Corp. (AT&T) filed a petition seeking waiver of the deadline for providing three-way calling, asserting it was not possible for the TRS facility to set up a three-way call, subject to clarification regarding how three-way calling may be provided in compliance with the Commission's regulations. See *AT&T Petition for Limited Reconsideration and for Waiver at 7-10* (filed Sept. 24, 2003) (*AT&T Waiver Request*). The *AT&T Waiver Request* was placed on *Public Notice*

and comments and reply comments were received in response. All of the commenters stated that they interpreted the three-way calling requirement to be fully satisfied if a TRS facility processes such a call initiated by an end user using a LEC's customer calling service (CCS) feature. See *Three-Way Calling Waiver Order* at paragraph 4 & n.9; 19 FCC Rcd 2993, February 24, 2004.

On December 11, 2003, Ultratec, Inc. (Ultratec) and Sprint Corporation (Sprint) filed a joint petition, (*see Petition for Clarification by Ultratec, Inc. and Sprint Corporation*) (filed Dec. 11, 2003) (*Joint Petition*), seeking clarification that the three-way calling requirement either does not apply to captioned telephone service, such as CapTel, or, in the alternative, that a TRS provider complies with this rule regardless of the actual method used to set up these calls. CapTel is a proprietary technology of Ultratec. See *Captioned Telephone Order* at paragraph 4 n. 11.

On February 24, 2004, in response to these petitions, the Consumer & Governmental Affairs Bureau (Bureau) released an order waiving the requirement that TRS providers offer three-way calling functionality for one year, *i.e.*, until February 24, 2005. See *Three-Way Calling Waiver Order* at paragraph 5. The Bureau noted that it was not technologically possible for a TRS facility to set up a three-way call.

On November 30, 2004, in anticipation of the February 24, 2005 expiration date of the three-way calling waiver as set forth in the *Three-Way Calling Waiver Order*, the Commission released a *Public Notice* seeking comment on whether TRS providers would be able to offer three-way calling as of the waiver expiration date, or whether it is necessary to extend the waiver. See *Federal Communications Commission Seeks Comment on Expiration of Waiver of Three-Way Calling Requirement for Providers of Telecommunications Relay Services (TRS)*, in CC Docket No. 98-67, CG Docket No. 03-123, DA 04-3709; published at 70 FR 2360, January 13, 2005. The Commission also sought comment on whether, instead of a waiver, the requirement might be modified or clarified and, if so, how.

In response to the November 30, 2004, *Public Notice*, four comments and two reply comments were filed. Comments were filed by AT&T (Dec. 17, 2004); MCI (Dec. 17, 2004); SBC Communications, Inc. (SBC) (Dec. 17, 2004); and Ultratec, Sprint, & Hamilton Relay, Inc. (Hamilton) (as Joint Commenters) (Dec. 17, 2004). Reply Comments were filed by Hamilton (Dec. 30, 2004) and by

Telecommunications for the Deaf, Inc. (TDI) & National Association of the Deaf (NAD) (as Joint Commenters) (Dec. 30, 2004). All commenters generally agree that it is still not technologically possible for a TRS facility to originate or set up a three-way call. See AT&T Comments at 3-4; SBC Comments at 2; Ultratec, Sprint, & Hamilton Joint Comments at 3-6; Hamilton Reply Comments at 2; and TDI & NAD Joint Reply Comments at 2. MCI, however, suggests that it can establish a three-way call, and that the waiver for three-way calling should be allowed to expire. MCI Comments at 2.

All parties also generally agree that the three-way calling requirement should be deemed satisfied if the provider handles or facilitates a three-way call when arranged by one of the parties to the call. See, *e.g.*, AT&T Comments at 3; Ultratec, Sprint, & Hamilton Joint Comments at 4-6. AT&T states, for example, that it "processes three-way TRS calls established by the end user through LEC-provided CCS [custom calling features] or through bridging via the user's own premises equipment," and that "the most reasonable interpretation of the *Second Improved TRS Order* is that the Commission requirement is fully satisfied if a TRS center processes such three-way calling initiated in that manner."

Ultratec, Sprint, and Hamilton assert that a captioned telephone provider or CA is not capable of initiating or setting up a three-way call. See Ultratec, Sprint, & Hamilton Joint Comments at 3-4. They further note that the "CapTel technology does not permit CapTel users to set up three-way calling from their captioned telephone devices." They assert that the three-way calling requirement should be interpreted to mean that the provider must be capable of handling a three-way call if *any* of the parties to the call sets up the call; *i.e.*, that the three-way calling requirement is met if the "parties to a relay call are able to *participate* in a [three-way call], even if the TRS providers handling these calls are not able to set up these calls themselves." They add that "CapTel services, as well as other TRS services provided by Hamilton and Sprint, are already in compliance with this interpretation of the \* \* \* three-way calling standard." See also TDI & NAD Joint Reply Comments at 2 (agreeing with Ultratec, Sprint and Hamilton's view that the three-way calling obligation is met when parties to a relay call are able to participate in a three-way call, even if the TRS provider is not able to set up the call).

Based upon our review of the prior orders addressing this issue, and the comments, we clarify that TRS providers (including providers of captioned telephone service) will satisfy the three-way calling requirement set forth in the *Second Improved TRS Order & NPRM* if they ensure that the TRS facility or CA facilitates or handles a three-way call, as the CA would handle any TRS call, where and to the extent the three-way call has been arranged by any one of the parties to the call, *e.g.*, using a party's LEC-provided custom calling service (CCS), by bridging two telephone lines via customer terminal equipment, or by some other means. Therefore, we clarify that TRS providers are not required to be able to arrange, initiate, or set up a three-way call (but they may do so).

In addition, because providers may meet the three-way calling requirement in various ways, we will not further specify any particular method(s) of handling such calls, so long as the provider is able to handle or facilitate a three-way call, in some manner, whether initiated by one of the parties to the call or set up by the provider. We therefore agree with Sprint that there is no requirement that a captioned telephone provider be able to set up a three-way call, or that the captioned telephone user be able to initiate a three-way call, so long as the captioned telephone provider provides for three-way calling in some manner. See Ultratec, Sprint, & Hamilton Joint Comments at 3–6.

We believe that permitting flexibility in the manner in which a provider handles or facilitates three-way calling is consistent with the ultimate objective of ensuring that TRS users have access to this feature. AT&T requests that we clarify the “appropriate basis for billing end users that are parties to the conference call.” AT&T Comments at 4 n.10. In the *Second Improved TRS Order & NPRM* we addressed how the costs of three-way TRS calls may be recovered from the Interstate TRS Fund. *Second Improved TRS Order & NPRM* at paragraphs 74–75. To the extent AT&T seeks guidance on how a provider may recover the costs of providing three-way calling service generally (*i.e.*, not the costs of providing the relay service), we note only that a provider may not impose charges on a TRS user that are different than those that would be charged to a hearing person using voice telephone service and the three-way calling feature.

Because we have clarified that a TRS provider meets the three-way calling requirement set forth in the *Second Improved TRS Order & NPRM* by

handling such calls when initiated or set up by one of the parties to the call (or by the provider setting up the call), the record reflects that waiver of this requirement is no longer necessary. Accordingly, the one-year waiver of this requirement set forth in the *Three-Way Calling Waiver Order* will expire, pursuant to that order, on February 24, 2005.

The expiration of this waiver will not affect the current three-way calling waiver for IP Relay and VRS. See *Second Improved TRS Order & NPRM* at paragraph 76.

Federal Communications Commission.

**Jay Keithley,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. 05–5736 Filed 3–22–05; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 05–556; MB Docket No. 04–301, RM–10969; MB Docket No. 04–302, RM–11020; MB Docket No. 04–303, RM–11025; MB Docket No. 04–304, RM–11021; MB Docket No. 04–306, RM–10754; MB Docket No. 04–307, RM–10982; MB Docket No. 04–308, RM–10973; MB Docket No. 04–309, RM–10974]**

**Radio Broadcasting Services; Kerman, CA, Lockney, TX, Lone Wolf, OK, Quanah, TX, Orchard Mesa, CO, Rising Star, TX, Twentynine Palms, CA, Waterford, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adds eight new allotments in Kerman, California, Lockney, Texas, Lone Wolf, Oklahoma, Quanah, Texas, Orchard Mesa, Colorado, Rising Star, Texas, Twentynine Palms, California, and Waterford, California. The Audio Division, at the request of Linda A. Davidson, allots Channel 224A at Kerman, California, as the community's third local aural transmission service. Channel 224A can be allotted to Kerman in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.8 kilometers (8.6 miles) west to avoid a short-spacing to the license sites of FM Station KZFO, Channel 224B, Clovis, California and FM Station KMJO, Channel 224B1, Marina, California. The reference coordinates for Channel 224A at Kerman are 36–40–37 North Latitude

and 120–12–08 West Longitude. Supplementary Information, *infra*.

**DATES:** Effective April 18, 2005. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 04–301, 04–302, 04–303, 04–304, 04–306, 04–307, 04–308, 04–309, adopted March 2, 2005 and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. The Commission will send a copy of this *Report and Order* 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).

The Audio Division, at the request of Charles Crawford, allots Channel 271C3 at Lockney, Texas, as the community's first local aural transmission service. Channel 271C3 can be allotted to Lockney in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.2 miles) southeast to avoid a short-spacing to the vacant allotment site of Channel 269A at Turkey, Texas and the license site of FM Station KATP, Channel 270C1, Amarillo, Texas and Station KZII–FM, Channel 273C3, Clovis, New Mexico. The reference coordinates for Channel 271C3 at Lockney are 34–05–00 North Latitude and 101–23–15 West Longitude.

The Audio Division, at the request of Charles Crawford, allots Channel 224A at Lone Wolf, Oklahoma, as the community's first local aural transmission service. Channel 224A can be allotted to Lone Wolf in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.8 kilometers (4.8