

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 13–13]

#### Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; interpretation.

**SUMMARY:** In this document, the Commission adopts a final interpretive rule modification to clarify its Telecommunications Relay Service (TRS) payment rule to explicitly provide that the Interstate TRS Fund (Fund or TRS Fund) administrator shall not be obligated to pay any request for compensation until it has been established as compensable. The Commission's action is intended preserve the integrity and viability of the TRS Fund by ensuring that obligations are not incurred prior to the Fund administrator or the Commission has determined that requests for payment are compensable. Because this is an interpretive rule modification, it is not subject to notice and comment procedures.

**DATES:** Effective March 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email [Eliot.Greenwald@fcc.gov](mailto:Eliot.Greenwald@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, document FCC 13–13, adopted on January 24, 2013 and released on January 25, 2013, in CG Docket Nos. 13–24 and 03–123. In document FCC 13–13, the Commission also adopted an Interim Rule and a Notice of Proposed Rulemaking, each of which is summarized in a separate **Federal Register** publication. The full text of document FCC 13–13 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: [www.bcpweb.com](http://www.bcpweb.com). Document

FCC 13–13 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>. 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), 202–418–0432 (TTY).

#### Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13–13, final rule, does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, 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).

#### Synopsis

1. In document FCC 13–13, the Commission reminds TRS providers that, under existing law, they are not entitled to collect payment from the TRS Fund for service that does not constitute compensable TRS under the statute and our rules. TRS is defined as “telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.” 47 U.S.C. 225(a)(3). Payments to TRS providers are based on total monthly TRS minutes of use. §§ 64.601(a)(21), 64.604(c)(5)(iii)(E) of the Commission's rules. *See also Publix Network Corp.; Customer Attendants, LLC; Revenue Controls Corp.; Revenue Controls Corp.; SignTel, Inc.; and Focus Group, LLC, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487, 11495, paragraph 19 (2002) (Publix).*

2. Thus, service to a user who is not “deaf, hard of hearing, deaf-blind, or who [does not have] a speech disability,” or service that otherwise does not meet the requirements in the Commission's rules and orders, does not qualify for reimbursement from the TRS Fund. Therefore, the Commission may, for example, request providers to submit to the Commission a description of the reasonable practices they are using to

ensure that they are not requesting payment from the TRS Fund for service that does not constitute compensable TRS. Providers whose submissions do not adequately establish that they are requesting compensation only for service to eligible users may be denied compensation for IP CTS minutes.

3. To address any possible ambiguity in the Commission's existing rules as to when TRS providers are entitled to compensation, the Commission amends § 64.604(c)(5)(iii)(E) of its rules (governing payments to TRS providers) to clarify that the Fund administrator shall not be obligated to pay any request for compensation until it has been established as compensable. A request will be established as compensable only after the administrator or the Commission determines that the provider has met its burden to demonstrate that the claim is properly compensable under these rules and the procedures established by the administrator in consultation with the Commission. The Commission clarifies that any request for compensation for which payment has been suspended or withheld in accordance with 47 CFR 64.604(c)(5)(iii)(L) will not be considered compensable until the administrator, in consultation with the Commission, or the Commission on its own makes a final determination that the request is compensable in accordance with that provision. Because this revision to § 64.604 of the Commission's rules does not impose new substantive rules but rather clarifies existing rules, it constitutes an interpretive rule for which the Commission need not provide prior notice and obtain public comment. *See 5 U.S.C. 553(b)(A). See also Syncor Intern. Corp. v. Shalala, 127 F.3d 90, 94 (DC Cir. 1997) (“an interpretive rule can construe an agency's substantive regulation as well as a statute”).*

#### Final Regulatory Flexibility Analysis

4. The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3).

A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

5. In document FCC 13–13, to preserve the integrity and viability of the TRS Fund by ensuring that obligations are not incurred prior to the Fund administrator or the Commission has determined that requests for payment are compensable, the Commission adopts a final rule amending § 64.604(c)(5)(iii)(E) of its rules (governing payments to TRS providers) to clarify that the TRS Fund administrator shall not be obligated to pay any request for compensation until it has been established as compensable. As a result, a request will be established as compensable only after the administrator or the Commission determines that the provider has met its burden to demonstrate that the claim is properly compensable under the rules and the procedures established by the administrator in consultation with the Commission. Because this revision to § 64.604 of the Commission’s rules does not impose new substantive rules but rather clarifies existing rules, it constitutes an interpretive rule for which the Commission need not provide prior notice and obtain public comment. See 5 U.S.C. 553(b)(A). See also *Syncor Intern. Corp. v. Shalala*, 127 F.3d 90, 94 (DC Cir. 1997) (“an interpretive rule can construe an agency’s substantive regulation as well as a statute”).

6. With regard to the criterion of the economic impact of document FCC 13–13, the Commission concludes that IP CTS providers fit within the business classification of Wired Telecommunications Carriers. See NAICS Code 517110 (2007). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110 (2007). Collectively, there are four IP CTS providers that are authorized by the Commission to offer these services. Only one of these entities is a small business under the SBA size standard. Therefore, the *interim rules* would not have a significant economic impact on a substantial number of small entities.

7. The Commission therefore certifies, pursuant to the RFA, that the interim rules adopted in document FCC 13–13 will not have a significant economic impact on a substantial number of small entities. The Commission will send a

copy of document FCC 13–13, including a copy of the RFA certification, to the Chief Counsel for Advocacy of the SBA.

#### Congressional Review Act

8. The Commission will send a copy of document FCC 13–13 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

9. Pursuant to sections 1, 2, 4(i) and (j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j) and 225, document FCC 13–13 is hereby *adopted*.

#### List of Subjects in 47 CFR Part 64

Individuals with disabilities,  
Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Final 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 to part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraph (c)(5)(iii)(E) to read as follows:

#### § 64.604 Mandatory minimum standards.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(E) *Payments to TRS providers.* (1) TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. The formulas should appropriately compensate interstate providers for the provision of TRS, whether intrastate or interstate.

(2) TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit.

(3) In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments.

(4) The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in this section, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with 47 CFR parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers.

(5) The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

(6) The administrator shall not be obligated to pay any request for compensation until it has been established as compensable. A request shall be established as compensable only after the administrator, in consultation with the Commission, or the Commission determines that the provider has met its burden to demonstrate that the claim is compensable under applicable Commission rules and the procedures established by the administrator. Any request for compensation for which payment has been suspended or withheld in accordance with paragraph (c)(5)(iii)(L) of this section shall not be established as compensable until the administrator, in consultation with the Commission, or the Commission determines that the request is

compensable in accordance with paragraph (c)(5)(iii)(L)(4) of this section.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 13-24 and 03-123; FCC 13-13]

#### Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim rule.

**SUMMARY:** In this document, the Commission adopts interim rules prohibiting all referrals for rewards programs (as described in the synopsis below) and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of, Internet Protocol Captioned Telephone Service (IP CTS); requiring each IP CTS provider, as a precondition to providing service to new IP CTS users, to register each new IP CTS user, to obtain from the user, as part of the registration process, self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and where the consumer accepts IP CTS equipment at a price below \$75 from any source other than a governmental program, to also obtain from the user a certification from an independent, third party professional attesting to the same; and requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS. The Commission's action is intended to address certain practices related to the provision and marketing of IP CTS that appear to be contributing to a recent and dramatic spike in reimbursement requests to the Interstate Telecommunications Relay Service Fund (TRS Fund or Fund), of sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed.

**DATES:** Effective February 5, 2013, except the amendments to § 64.604(c)(10) of the Commission's rules which is effective March 7, 2013, and 64.604(c)(9) of the Commission's rules which contain new information collection requirements that have not been approved by the Office of Management and Budget (OMB). This amendment will become effective upon publication in the **Federal Register** of a notice announcing the approval of such requirements by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The Commission will publish a separate document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2235 or email [Eliot.Greenwald@fcc.gov](mailto:Eliot.Greenwald@fcc.gov). For additional information concerning the PRA information collection requirements contained in document FCC 13-13, contact Cathy Williams at (202) 418-2918, or email: [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) and [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, document FCC 13-13, adopted on January 24, 2013 and released on January 25, 2013, in CG Docket Nos. 13-24 and 03-123. In document FCC 13-13, the Commission also adopted a Final Rule and a Notice of Proposed Rulemaking, each of which is summarized in a separate **Federal Register** publication. The full text of document FCC 13-13 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: [www.bcpweb.com](http://www.bcpweb.com). Document FCC 13-13 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>. 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), 202-418-0432 (TTY).

#### Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13-13 contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 13-13 as required by the PRA of 1995, Public Law 104-13 in a separate notice that will be published in the **Federal Register**. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, the Commission has assessed the effects of imposing various requirements on IP CTS providers and on consumers of IP CTS. The Commission recognizes that these requirements are necessary to detect and prevent abuse and waste in the IP CTS program. The Commission takes these actions to ensure the sustainability of the program upon which individuals with hearing disabilities have come to rely for their daily communication needs. In doing so, the Commission has balanced preserving the sustainability of the IP CTS program and minimizing the information collection burden for consumers and small business concerns, including those small businesses with fewer than 25 employees. For example, in adopting requirements for IP CTS providers, in order to be eligible for compensation from the TRS Fund for providing service to new IP CTS users, to register the users and obtain from the users certification of hearing loss necessitating use of IP CTS, the rule affords considerable flexibility by allowing those consumers who have purchased their IP CTS equipment for \$75 or more, or obtained equipment from a governmental program, to self-certify as to their hearing loss. Nevertheless, such procedures are necessary to limit use of IP CTS to those who actually have a hearing loss that necessitates use of the service.

#### Synopsis

1. In document FCC 13-13, the Commission takes immediate, interim steps to address certain practices related to the provision and marketing of IP CTS that appear to be contributing to a recent and dramatic spike in reimbursement requests to the TRS Fund, of sufficient magnitude to constitute a serious threat to the Fund