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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

#### CG Docket No. 10-51; FCC 11-118]

#### Structure and Practices of the Video Relay Service Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts modifications to its certification process for all Internet-based telecommunications relay service (iTRS) providers to ensure that all entities seeking certification in the future—or currently certified entities seeking re-certification—are fully qualified to provide iTRS in compliance with its rules and requirements, to reduce waste, fraud and abuse, and to improve the Commission's oversight of these providers once they have been certified.

**DATES:** Effective September 6, 2011, except 47 CFR 64.606(a) (2), (g), (h) (2) and (3) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the Paperwork Reduction Act (PRA) modified information collection requirements must be submitted by the public, OMB and other interested parties on or before September 6, 2011.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, via e-mail at [PRA@fcc.gov](mailto:PRA@fcc.gov) and [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559-5158 (VP), or e-mail: [Gregory.Hlibok@fcc.gov](mailto: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](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Structure*

*and Practices of the Video Relay Service Program*, Second Report and Order (*Second Report and Order*), document FCC 11-118 adopted July 28, 2011, and released July 28, 2011, in CG Docket No. 10-51, adopting modifications to its certification process for all iTRS providers. The full text of FCC 11-118 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. FCC 11-118 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its Web site, <http://www.bcpweb.com>, or by calling 202-488-5300. FCC 11-118 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 e-mail 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 11-118 contains modified information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

In document FCC 11-118, the Commission has assessed the effects of imposing various requirements on iTRS providers to obtain certification from the Commission in order to be eligible for compensation from the Interstate TRS Fund (Fund). The Commission has determined that any additional data filing requirements imposed by document FCC 11-118 on iTRS providers are reasonable and necessary in order to ensure compliance with the

Commission's rules. The Commission has taken steps to address the concerns of commenters stating that some of the Commission's proposed rules were overly burdensome. For example, the Commission initially proposed to require that a provider file a deed or lease for every service center operated. The Commission has modified this requirement in its final rule to allow for providers with more than five centers to submit a representative sampling of deeds and leases. In addition, the Commission has declined to adopt its proposed requirement for providers to submit documentation of all financing arrangements pertaining to the provision of iTRS. The Commission has also declined to adopt the requirement that providers submit copies of all subcontracting agreements for services not directly essential for the provision of iTRS. The Commission concludes that it has taken steps to further reduce the burdens on affected entities to apply for certification to receive compensation from the Fund for the provision of iTRS, and that the remaining filing requirements are not overly burdensome.

#### Congressional Review Act

The Commission will send a copy of document FCC 11-118 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).

#### Synopsis

1. In document FCC 11-118, the Commission modifies its process for certifying iTRS providers as eligible for payment from the Fund for their provision of iTRS, as proposed in the Commission's *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking (*VRS Practices Report and Order and Certification FNPRM*), document FCC 11-54, published at 76 FR 24393, May 2, 2011 and 76 FR 24437, May 2, 2011. In the *Certification FNPRM*, the Commission sought comment on ways to modify the current certification process to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers.

#### Eligibility for Compensation From the TRS Fund

2. Under the Commission's current rules, an iTRS provider is eligible to provide relay services and receive compensation from the Fund if it is: (1)

Operated under contract with and/or by a certified state TRS program; (2) owned or operated under contract with an interstate common carrier; (3) an interstate common carrier offering TRS under the Commission's rules; or (4) certified by the Commission pursuant to § 64.606 of the Commission's rules.

3. The Commission now adopts a requirement for all iTRS providers to receive certification from the Commission to be eligible to receive compensation from the Fund. As the Commission stated in the *Certification FNPRM*, the current alternative eligibility methods have failed to ensure that all providers are qualified to provide service that complies with the Commission's rules, or to facilitate Commission oversight of all entities eligible under these criteria. Because the Commission bears the responsibility for managing the Fund and ensuring the integrity of its iTRS programs, it should have the exclusive authority to ensure that iTRS is provided by qualified providers and to exercise effective oversight over the operations of these providers. The Commission finds that requiring all iTRS providers to become Commission-certified is a reasonable and appropriate way to achieve these objectives and further the Commission's goals of promoting effective, efficient, and sustainable iTRS services, and reducing fraud and abuse in the VRS program. The Commission further finds that applying this requirement to all iTRS will help to ensure that the difficulties the Commission has encountered in the VRS program will less likely be repeated for other iTRS programs.

4. Accordingly, an iTRS provider will no longer be permitted to receive compensation from the Fund unless it is certified by the Commission. The requirement for Commission certification will apply to new applicants, and to existing providers who have been eligible to provide iTRS under one of the previous alternative methods for eligibility. It likewise will apply to all forms of iTRS, and to all iTRS providers seeking recertification after their certifications expire, including those providers currently eligible under an existing Commission certification.

#### **Requirements to Operate Call Center and Employ Communications Assistants (CAs)**

5. The Commission will require that entities wishing to be eligible for compensation from the Fund for the provision of VRS be certified by the Commission, operate the core facilities necessary to provide VRS service and

employ their own communications assistants (CAs). The requirements adopted in the *VRS Practices Report and Order*, including those requiring VRS providers to lease, license or acquire and operate their own facilities and employ their own CAs, emanated from the Commission's goals of establishing better oversight of the VRS program, in order to ensure compliance with the Commission's rules and reduce fraud. Requiring VRS providers to operate their own call centers and to employ their own CAs will ensure that certified providers exercise necessary oversight of their own operations and compliance with Commission rules, and enable the Commission to better oversee the core operations of these providers.

6. *ACD Platforms*. By the term "ACD platform," the Commission means the hardware and/or software that comprise the essential call center function of call distribution, and that are a necessary core component of iTRS. The Commission will require that any VRS provider that is leasing an automatic call distribution (ACD) platform from an eligible provider or from a third-party non-provider must have a written lease for such ACD platform and must include a copy of such written lease with its application for certification. The terms of the lease may not include (i) Compensation of the lessor by the lessee related to minutes of use or (ii) revenue sharing agreements between the lessor and the lessee. All references to leasing, leases, lessors, and lessees in this discussion of ACD platforms shall be construed to refer correspondingly to licensing, licenses, licensors, and licensees.

7. In addition, a VRS provider leasing an ACD platform from an eligible provider must locate the ACD platform on its own premises and must use its own employees to manage the ACD platform. In other words, an eligible VRS provider may lease the ACD platform from an eligible provider on a stand-alone basis, but may not lease capacity on another provider's ACD. The Commission will deny any application for certification that does not comply with the ACD platform requirements. In addition, if the Commission later discovers that a certified VRS provider is leasing from an eligible provider an ACD platform subject to an arrangement (whether in writing or verbal) that does not comply with the ACD platform requirements, the Fund Administrator shall immediately suspend all payments to both the lessor and the lessee.

8. The Commission finds that ACD leases with eligible providers calling for revenue sharing, compensation related

to minutes of use, sharing of the ACD platform, or sharing the management of the ACD platform may give providers an increased incentive and ability to generate illegitimate minutes to bill to the Fund, and thus could result in continuation of the types of unlawful activities that the Commission has already seen on the part of many white label providers, undermining the Commission's efforts to reduce waste, fraud and abuse. In order to prevent fraud and ensure that only providers certified by the Commission provide the core components of VRS and exercise oversight of, and are accountable for, their own operations, the Commission prohibits these practices.

9. For VRS providers that lease their ACD platforms from manufacturers or equipment distributors not affiliated with VRS providers, the Commission requires a written lease for such ACD platform that conforms to the same restrictions on lease terms discussed above (*i.e.*, no compensation related to minutes of use and no revenue sharing between lessor and lessee), and that the applicant include a copy with its application for certification. The ban on revenue sharing and compensation based upon minutes of use should remove any incentive on the part of the non-provider lessor to facilitate any scheme by a provider to generate illegitimate minutes.

10. *IP Relay and IP CTS Providers*. In the *VRS Practices Report and Order*, the Commission adopted requirements that VRS providers own and operate their own facilities and employ their own CAs as part of a package of rules designed to reduce fraud, establish better oversight of the VRS program, and address the unauthorized revenue sharing arrangements that have escalated in the VRS program. Though IP Relay and IP CTS providers frequently use subcontractors to operate call centers, to date there has been no public record of significant waste, fraud and abuse in those programs from the use of subcontractors as there is in the VRS program, where there have been dozens of indictments related to fraud. The Commission therefore finds that to apply these requirements to IP Relay and IP CTS providers at this time could force such providers to expend significant sums to restructure their businesses to own and operate their own facilities, and thereby result in disproportionate industry disruption as compared to regulatory benefit. Nevertheless, the Commission will monitor the provision of IP Relay and IP CTS services and revisit this issue should the need arise.

### Evidentiary Documentation for Submission for Certification Application

11. The Commission has modified some of the documentation requirements originally proposed in the *Certification FNPRM* to minimize the burden on applicants to the extent consistent with the Commission's responsibility to ensure that only qualified providers are certified and that the Commission is able to exercise adequate oversight of providers. All of the requirements adopted in document FCC 11-118 are adopted pursuant to one or more of the Commission's objectives to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers.

12. *Deeds or Leases for Call Centers.* The Commission modifies its proposal that a certification applicant file a copy of "each" deed or lease for "each" of its call centers. Instead, the Commission will require VRS providers that maintain five or fewer domestic call centers to submit the deeds or leases for all of those call centers, while requiring providers with more than five domestic call centers to submit a representative sampling of the deeds or leases for five of their centers, together with a list of all other call centers that they operate. The Commission notes that the *VRS Practices Report and Order* already requires that providers, twice per year, submit a list to the Commission and the TRS Fund administrator of the locations of all of their call centers that handle VRS calls. Specifically, the list must contain the street address of each call center, the number of individual CAs and CA managers employed at each call center, and the name and contact information (phone number and e-mail address) for the managers at each call center. The Commission directs that the list we require here contain the same information. In addition, all providers must submit copies of deeds or leases for all international call centers that they operate, regardless of the number of such centers; these supplement the five (or fewer, if applicable) domestic deeds or leases. Because the Commission does not require at this juncture that IP Relay or IP CTS providers actually own or operate call centers, the Commission does not apply this documentation requirement to them.

13. *Entities with Financial Interest in Applicant.* The Commission requires that all iTRS applicants for certification or renewal submit a list of individuals

or entities that hold at least a 10 percent equity interest in the provider, have the power to vote 10 percent or more of the securities of the provider, or exercise *de jure* or *de facto* control over the provider. In addition, the Commission requires applicants to submit a description of its organizational structure, and the names of its executives, officers, general partners (if the applicant is structured as a partnership), and members of its board of directors. The Commission declines to adopt its proposal in the *Certification FNPRM* that certification applicants submit a list of all financing arrangements pertaining to the provision of iTRS, including documentation on loans for equipment, inventory, property, promissory notes, and liens.

14. *List of Employees and Copies of Employment Agreements.* The Commission adopts substantially modified versions of its proposals in the *Certification FNPRM* that certification applicants provide a list of names of all their employees, and that applicants furnish copies of employment agreements for all of their executives and CAs. With respect to employee lists, the Commission requires only that providers submit a list of numbers of full-time and part-time employees involved in TRS operations, that includes, divided by the following positions: the executives and officers; video phone installers; CAs; and persons involved in marketing and sponsorship activities. In response to several comments objecting to the scope of the Commission's original proposal, Commission is not requiring the submission of information on employees, such as janitorial staff, who do not have any direct involvement with relay services. Nevertheless, the Commission will require applicants to retain the more comprehensive documentation that the Commission originally asked for regarding employees, including names and copies of employment agreements—to the extent they are involved in TRS operations—and to furnish it to the Commission upon the Commission's request. Likewise, instead of submitting agreements for all of its executives and CAs, iTRS certification applicants must retain employment agreements for its executives responsible for the provision of iTRS, including senior operations and marketing personnel, and copies of CA employment contracts. Consistent with record retention requirements that the Commission adopted in the *VRS Practices Report and Order*, the Commission likewise adopts a five-year

duration period for the employment agreements and other employee records that it requires providers to retain in this *Second Report and Order*.

15. *Proofs of Purchase or Lease for Use of All Equipment and/or Technologies.* The Commission adopts a slightly modified version of the Commission's proposal to require applicants for certification to submit proofs of purchase or license agreements for all equipment and/or technologies, including hardware and software, used for the applicant's VRS call center functions. The Commission will require applicants, in their submissions, to describe the technology and equipment used to support their call center functions—including, but not limited to, ACD, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration—and for each core call center function, state whether it is owned or leased (and from whom if leased or licensed), and provide proofs of purchase, license agreements, or leases. This requirement's scope is limited to equipment and/or technologies to be used by the applicant for its call center functions, *i.e.*, to provide the core components (other than CAs) of VRS. Because the Commission does not require at this juncture that IP Relay or IP CTS providers actually own or operate their own facilities, the Commission does not apply this documentation requirement to them.

16. *List of Sponsorship Arrangements.* The Commission adopts a slightly modified version of its proposal to require that applicants submit a list of all sponsorship or marketing arrangements and associated agreements. Now the Commission requires only those related to iTRS.

17. *Copies of Subcontracting Agreements for Non-Essential Services.* The Commission now believes that the scope of such documentation would be overly broad and only marginally useful, and declines to adopt this requirement.

18. *Copies of All Other Agreements Related to Provision of iTRS.* In the *Certification FNPRM*, the Commission proposed to require applicants for certification to submit copies of "all other agreements" associated with the provision of iTRS. Although the Commission declines to adopt a requirement that applicants submit copies of all other such agreements that are not included in any of the above categories, the Commission may seek additional relevant information from individual applicants that the Commission deems to be directly relevant to the applicant's ability to

comply with the Commission's rules, on an as-needed basis.

19. *Common Carrier Status.* The Commission will eliminate the requirement that iTRS providers demonstrate their status as common carriers in order to receive certification. The Commission notes, however, that all providers, regardless of whether they are common carriers, are required to provide service in a manner that is both compliant with the Communications Act of 1934, as amended (Communications Act) and the Commission's rules and orders, and consistent with the Commission's policies and goals to prevent fraud and abusive practices. To that end, the Commission will seek comment in a forthcoming Notice of Proposed Rulemaking on whether it is necessary to adopt a rule to make non-common carrier iTRS providers subject to the same prohibitions against unjust or unreasonable practices that common carriers are subject to under the Communications Act. *See* 47 U.S.C. 201(b), 202(a).

#### **On-Site Visits**

20. The Commission finds that on-site visits may uncover deficiencies in an application or noncompliance in a provider's operations, which will decrease opportunities for and may, in turn, prevent, waste, fraud and abuse. Accordingly, the Commission reserves the right to include, as part of the iTRS certification process, an on-site visit to the applicant's headquarters, offices or call centers. The Commission also reserves the right to make subsequent, unannounced on-site visits of iTRS providers once they receive certification, for the purpose of ensuring continued compliance with certification requirements.

21. In order to avoid an interruption of service by those VRS providers who are already providing service via subcontracting, but who seek to become eligible providers through Commission certification, the Commission reserves the right to conditionally grant certification, subject to a subsequent optional on-site visit of any applicant where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but that the Commission needs to verify some of the information contained in the application. Such grant of conditional certification will be without prejudice to the Commission's final determination of the applicant's qualifications, and will be dependent on the Commission verifying the information provided in the application for certification.

Ultimate conversion to a full certification will occur when the Commission finds, based on review of the application, that the conditional grantee is in compliance with the Commission's rules and is qualified to receive compensation from the Fund for the provision of iTRS services. In other words, the Commission will complete its review of the applicant's qualifications subsequent to the on-site visit, and if the Commission finds the applicant to be qualified based on the complete review, then the Commission will issue full certification. If the Commission finds the applicant not to be qualified based on the complete review, the application will be denied and the conditional certification will automatically terminate 35 days after the denial. In such a case, the provider must give at least 30 days notice to its customers that the provider will no longer provide service.

#### **Annual Reports and Certification Renewals**

22. Due to the evolving nature of the technologies and market for iTRS services, it is essential for the Commission to be informed on an annual basis of any updates to the information provided in the certification application. Therefore, the Commission will now require certified iTRS providers to append to their annual reports any documentary evidence required for certification that has changed since the date that certification was granted, and that has not been included in annual reports filed since the date of certification, and to provide a summary of such changes. If all documents that a provider supplied to the Commission at the time of its certification application and with subsequent annual reports remain accurate and current, a provider is instead required to append to its annual report an attestation that it has no updates to its certification documentation and subsequent annual reports. The Commission also declines to eliminate the current rule requiring iTRS providers to apply for recertification every five years.

#### **Notification of Substantive Change**

23. In order to ensure that the Commission has complete and up-to-date information about the types of technologies and equipment used by VRS and IP Relay providers, the Commission amends its rules to require that each provider notify the Commission within 60 days of its launch of any new equipment or technology, including hardware and software, that it offers to consumers to

the extent that such equipment or technology changes the way in which consumers access the provider's VRS or IP Relay services or has a bearing on the provider's compliance with the Commission's mandatory minimum standards.

24. The Commission determines that providing services from a new facility not previously identified to the Commission or the Fund administrator and discontinuation of service from any facility are types of substantive changes warranting notification to the Commission. In order to ensure that all VRS and IP Relay providers comply with the Commission's rules, the Commission must have in its records the existence and location of all VRS and IP Relay facilities established by the providers. Without such information, it will be more difficult to monitor compliance with the Commission's rules and to reduce waste, fraud and abuse.

25. The Commission takes this opportunity to reiterate that if a Commission-certified provider purchases, acquires, or merges with another iTRS provider, such transaction constitutes a substantive change under § 64.606(f)(2) of the Commission's rules, and therefore requires notice to the Commission within 60 days of its consummation. The Commission further notes that a Commission certification is not transferable to an entity not already certified by the Commission as eligible for compensation from the Fund.

26. The Commission finds that this 60-day notification requirement should be limited to those changes that likely impact a provider's ability to provide service in compliance with the Commission's rules. At this time, the Commission does not find it necessary to apply this 60-day notification requirement to changes in a provider's management, name branding of its product, or marketing and outreach activities to ensure compliance with the Commission's rules, but will revisit the issue if the need arises. Moreover, the rule changes the Commission adopts, including the substance of the annual reporting requirements, will enable the Commission to better monitor compliance with its rules and help reduce waste, fraud and abuse.

#### **Temporary Cessation of Service**

27. The Commission will adopt its proposal to require Commission approval in advance of planned service outages by VRS providers and to require notification to consumers in advance of such outages. Because Commission requirements that service be provided 24 hours a day, seven days a week,

currently apply to VRS but not to IP Relay and IP CTS, the Commission adopts these requirements for VRS and not for the other iTRS services. As proposed in the *Certification FNPRM*, applications for temporary cessation of service must be filed at least 60 days in advance of such planned outage, and the Commission will act on any such application at least 35 days in advance of the planned service interruption date to afford providers a sufficient opportunity to notify consumers.

28. The Commission adopts a *de minimis* exception to its initial proposal to require prior Commission consent for all planned service outages. Planned outages of less than 30 minutes will not require prior consent of the Commission or prior notification to consumers, but the Commission must be notified of such outages within two business days after the outage. The Commission clarifies that it will not construe load-shifting among call centers as an interruption in service if service is not affected by such load shifting.

29. The Commission will require that unforeseen service interruptions of any iTRS service beyond the control of the provider be reported to the Consumer and Governmental Affairs Bureau (CGB) within two business days of the start of such service interruption. The Commission also requires that notification of service outages be provided to consumers on an accessible Web site, and that the Web site also include timely updates of service status.

#### **Timeframe for Existing Providers To Apply for New Certification**

30. In order to ensure the seamless delivery of iTRS during the transition period following Commission establishment of the new eligibility requirements and certification procedures, any provider currently eligible to receive compensation from the TRS Fund via a means other than Commission certification is required to apply for certification within 30 days after publication in the **Federal Register** of notice of OMB approval of the rules in document FCC 11–118 containing information collections, if it wishes to continue receiving compensation from the Fund without interruption pending review of its certification application. The Commission hereby grants interim eligibility to any iTRS provider currently eligible to receive compensation directly from the TRS Fund to continue to be eligible to receive compensation from the Fund. Such interim eligibility shall expire (1) 35 days after this application deadline, in the event no application is timely filed; (2) 35 days after Commission

dismissal or denial of the application for certification in the event of Commission dismissal or denial; or (3) upon Commission grant of the application for certification in the event of Commission grant. Where interim eligibility expires under (1) or (2), the Commission requires the provider to give its customers at least 30 days notice that the provider will no longer provide service.

31. For those providers with Commission certifications that would have expired before the new certification requirements adopted in document FCC 11–118 go into effect had they not been extended to November 4, 2011, the Commission requires that they submit applications for recertification under the new requirements adopted in document FCC 11–118 after the requirements become effective but at least 30 days prior to the expiration of their currently extended certifications—that is, no later than October 5, 2011, provided that the rules are effective by that date.

32. The current stay of the Commission's rule which prohibits revenue sharing arrangements expires on October 1, 2011. For those iTRS providers who are not currently eligible to receive compensation directly from the TRS Fund but are currently providing service under a revenue sharing arrangement, and are interested in seeking a seamless transition to certified iTRS provider, the Commission urges that they file their certification applications on, or as soon as possible after, the day the rules adopted in this *Second Report and Order* become effective, so that review of their applications can commence as soon as possible.

#### **Final Regulatory Flexibility Certification**

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for 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.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” See 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. 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). Small Business Act, 15 U.S.C. 632.

In document FCC 11–118, the Commission amends its process for certifying iTRS providers as eligible for payment from the Fund for their provision of iTRS, as proposed in the Commission's *Certification FNPRM*. In the *Certification FNPRM*, the Commission sought comment on ways to revise the current certification process to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers. Specifically, in document FCC 11–118, the Commission requires all iTRS providers to obtain certification from the Commission in order to be eligible to receive compensation from the Fund; requires all VRS applicants for Commission certification to lease, license or own, as well as operate, essential facilities associated with TRS call centers and to employ interpreters to staff those centers at the date of the application; and requires each iTRS applicant for certification to submit specific types of documentary evidence of its ability to comply with all of the Commission's rules, including those adopted in the *VRS Practices Report and Order*. In addition, the Commission adopts rules governing on-site visits by Commission staff to the premises of applicants for certification, as well as to iTRS providers' premises after they are certified. The Commission also revises its rules governing annual compliance reports filed by certified providers, and substantive TRS program changes that must be reported to the Commission. Finally, the Commission requires prior approval for planned cessations of VRS service of 30 minutes or longer.

The Commission has assessed the effects of imposing various requirements on iTRS providers to obtain certification from the Commission in order to be eligible for compensation from the TRS Fund. The Commission has determined that any additional data filing requirements imposed by document FCC 11–118 on iTRS providers are reasonable and necessary in order to ensure compliance with the Commission's rules, particularly in light of the widespread fraud currently being investigated in the VRS industry. VRS is a form of iTRS. The Commission has taken steps to address the concerns of commenters stating that some of the Commission's proposed rules were overly burdensome. For example, the Commission initially proposed to require that a provider file a deed or

lease for every service center operated. The Commission has modified this requirement in its final rule to allow for providers with more than five centers to submit a representative sampling of deeds and leases. In addition, the Commission has declined to adopt its proposed requirement for providers to submit documentation of all financing arrangements pertaining to the provision of iTRS. The Commission has also declined to adopt the proposed requirement that providers submit copies of all subcontracting agreements for services not directly essential for the provision of iTRS. The Commission concludes that it has taken steps to further reduce the burdens on affected entities to apply for certification to receive compensation from the TRS Fund for the provision of iTRS services, and that the remaining filing requirements are not overly economically burdensome.

In order to be compensated, TRS providers are already required to comply with all of the Commission's rules governing the provision of TRS. All reasonable costs of providing service in compliance with document FCC 11-118 are compensable from the Fund. Thus, because certified providers will recoup the costs of compliance within a reasonable period, the Commission asserts that such providers will not be detrimentally burdened. This applies to currently eligible iTRS providers, as well as potential future applicants to provide iTRS.

Applications to become a certified iTRS provider are voluntarily submitted. Therefore, the Commission is not imposing an expense on a potential applicant that it cannot avoid by either declining to apply for certification, or by complying with the Commission's rules. If a small entity, as defined by the SBA, makes the latter business decision and applies for certification by showing that it can comply with all of the Commission's rules, its expenses will be indirectly reimbursed from the Fund once it becomes a certified provider. Therefore, for the small business entities receiving certification there is no adverse economic impact, and the question of whether there is a negative impact on a significant number of small entities is moot.

Therefore, the Commission certifies that the requirements of document FCC 11-118 will not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of document FCC 11-118, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress

pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

Pursuant to sections 1, 4(i), (j) and (o), 225, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), document FCC 11-118 *is adopted*.

Pursuant to § 1.427(a) of the Commission's rules, 47 CFR 1.427(a), document FCC 11-118 and the rules adopted herein shall be effective September 6, 2011, except 47 CFR 64.606(a)(2), (g), (h)(2), and (h)(3) of the Commission's rules, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 11-118 including the Final Regulatory Flexibility Certification, 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.*

#### Final Rules

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), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, 254(k), and 620, unless otherwise noted.

#### SUBPART F—TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES

- 2. Section 64.604 is amended by adding new paragraph (b)(4)(iv) and by revising paragraph (c)(5)(iii)(F) to read as follows:

#### § 64.604 Mandatory minimum standards.

- (b) \* \* \*
- (4) \* \* \*

(iv) A VRS provider leasing or licensing an automatic call distribution (ACD) platform must have a written lease or license agreement. Such lease or license agreement may not include any revenue sharing agreement or compensation based upon minutes of use. In addition, if any such lease is between two eligible VRS providers, the lessee or licensee must locate the ACD platform on its own premises and must utilize its own employees to manage the ACD platform.

\* \* \* \* \*

- (c) \* \* \*
- (5) \* \* \*
- (iii) \* \* \*

(F) *Eligibility for payment from the TRS Fund.* (1) TRS providers, except Internet-based TRS providers, eligible for receiving payments from the TRS Fund must be:

- (i) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.606; or
- (ii) TRS facilities owned or operated under contract with a common carrier providing interstate services operated pursuant to this section; or

(iii) Interstate common carriers offering TRS pursuant to this section.

(2) Internet-based TRS providers eligible for receiving payments from the TRS fund must be certified by the Commission pursuant to § 64.606.

\* \* \* \* \*

■ 3. Section 64.606 is amended by revising the section heading and paragraph (a)(2), by adding new paragraph (a)(3), by revising paragraphs (b)(2), (c)(2), (e)(2), (f)(2) and (g), and by adding new paragraph (h) to read as follows:

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

(a) \* \* \*

(2) Internet-based TRS provider. Any entity desiring to provide Internet-based TRS and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer and Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "Internet-based TRS Certification Application." The documentation shall include, in narrative form:

- (i) A description of the forms of Internet-based TRS to be provided (*i.e.*, VRS, IP Relay, and/or IP captioned telephone relay service);
- (ii) A detailed description of how the applicant will meet all non-waived mandatory minimum standards applicable to each form of TRS offered,

including documentary and other evidence, and in the case of VRS, such documentary and other evidence shall demonstrate that the applicant leases, licenses or has acquired its own facilities and operates such facilities associated with TRS call centers and employs communications assistants, on a full or part-time basis, to staff such call centers at the date of the application. Such evidence shall include, but not be limited to:

(A) In the case of VRS applicants or providers,

(1) Operating five or fewer call centers within the United States, a copy of each deed or lease for each call center operated by the applicant within the United States;

(2) Operating more than five call centers within the United States, a copy of each deed or lease for a representative sampling (taking into account size (by number of communications assistants) and location) of five call centers operated by the applicant within the United States, together with a list of all other call centers that they operate that includes the information required under § 64.604(c)(5)(iii)(N)(2);

(3) Operating call centers outside of the United States, a copy of each deed or lease for each call center operated by the applicant outside of the United States;

(4) A description of the technology and equipment used to support their call center functions—including, but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration—and for each core call center function, a statement whether such technology and equipment is owned, leased or licensed (and from whom if leased or licensed); and

(5) Proofs of purchase, leases or license agreements for all technology and equipment used to support their call center functions, including a complete copy of any lease or license agreement for automatic call distribution.

(B) For all applicants, a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, members of its board of directors, general partners (in the case of a partnership), and managing members (in the case of a limited liability company);

(C) For all applicants, a list of the number of applicant's full-time and part-time employees involved in TRS operations, including and divided by the following positions: executives and officers; video phone installers (in the case of VRS), communications assistants, and persons involved in marketing and sponsorship activities;

(D) For all applicants, copies of employment agreements for all of the provider's employees directly involved in TRS operations, executives, and communications assistants, and a list of names of employees directly involved in TRS operations, need not be submitted with the application, but must be retained by the applicant for five years from the date of application, and submitted to the Commission upon request; and

(E) For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including any associated written agreements;

(iii) A description of the provider's complaint procedures; and

(iv) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(3) *Assessment of Internet-based TRS Provider Certification Application.* In order to assess the merits of a certification application submitted by an Internet-based TRS provider, the Commission may conduct one or more on-site visits of the applicant's premises, to which the applicant must consent.

(b) \* \* \*

(2) *Requirements for Internet-based TRS Provider FCC certification.* After review of certification documentation, the Commission shall certify, by Public Notice, that the Internet-based TRS provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) Establishes that the provision of Internet-based TRS will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the Internet-based TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints.

(c) \* \* \*

(2) *Internet-based TRS Provider FCC certification period.* Certification

granted under this section shall remain in effect for five years. An Internet-based TRS provider applying for renewal of its certification must file documentation with the Commission containing the information described in paragraph (a)(2) of this section at least 90 days prior to expiration of its certification.

\* \* \* \* \*

(e) \* \* \*

(2) *Suspension or revocation of Internet-based TRS Provider FCC certification.* The Commission may suspend or revoke the certification of an Internet-based TRS provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified Internet-based TRS provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified Internet-based TRS provider may not be in compliance with the minimum standards.

(f) \* \* \*

(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet Federal minimum standards after implementing the substantive change. Substantive changes shall include, but not be limited to:

(i) The use of new equipment or technologies to facilitate the manner in which relay services are provided;

(ii) Providing services from a new facility not previously identified to the Commission or the Fund administrator; and

(iii) Discontinuation of service from any facility.

(g) Internet-based TRS providers certified under this section shall file with the Commission, on an annual basis, a report demonstrating that they are in compliance with § 64.604. Such reports must update the information required in paragraph (a)(2) of this section and include updated documentation and a summary of the updates, or certify that there are no changes to the information and documentation submitted with the application for certification, application for renewal of certification, or the most recent annual report, as applicable.

(h) *Unauthorized service interruptions.* (1) Each certified VRS provider must provide Internet-based TRS without unauthorized voluntary service interruptions.



(2) A VRS provider seeking to voluntarily interrupt service for a period of 30 minutes or more in duration must first obtain Commission authorization by submitting a written request to the Commission's Consumer and Governmental Affairs Bureau (CGB) at least 60 days prior to any planned service interruption, with detailed information of:

- (i) Its justification for such interruption;
- (ii) Its plan to notify customers about the impending interruption; and
- (iii) Its plans for resuming service, so as to minimize the impact of such disruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption. CGB will grant or deny such a request and provide a response to the provider at least 35 days prior to the proposed interruption, in order to afford an adequate period of notification to consumers. In evaluating such a request, CGB will consider such factors as the length of time of the proposed interruption, the reason for such interruption, the frequency with which such requests have been made by the provider in the past, the potential impact of the interruption on consumers, and the provider's plans for a smooth service restoration.

(3) In the event of an unforeseen service interruption due to circumstances beyond an Internet-based TRS service provider's control, or in the event of a VRS provider's voluntary service interruption of less than 30 minutes in duration, the provider must submit a written notification to CGB within two business days of the commencement of the service interruption, with an explanation of when and how the provider has restored service or the provider's plan to do so imminently. In the event the provider has not restored service at the time such report is filed, the provider must submit a second report within two business days of the restoration of service with an explanation of when and how the provider has restored service. The provider also must provide notification of service outages covered by this paragraph to consumers on an accessible Web site, and that notification of service status must be updated in a timely manner.

(4) A VRS provider that fails to obtain prior Commission authorization for a voluntary service interruption or fails to provide written notification after a voluntary service interruption of less than 30 minutes in duration, or an Internet-based TRS provider that fails to provide written notification after the

commencement of an unforeseen service interruption due to circumstances beyond the provider's control in accordance with this subsection, may be subject to revocation of certification, suspension of payment from the TRS Fund, or other enforcement action by the Commission, as appropriate.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 10-51; FCC 11-118]

### Structure and Practices of the Video Relay Service Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim rule.

**SUMMARY:** In this document, the Commission adopts interim rules requiring that Internet-based Telecommunications Relay Service (iTRS) providers certify, under penalty of perjury, that their certification applications and annual compliance filings are truthful, accurate, and complete. These rules are necessary to help ensure that the Commission has true and complete information, thereby ensuring that only qualified providers are eligible for compensation from the Interstate TRS Fund (Fund).

**DATES:** Effective September 6, 2011, except 47 CFR 64.606 (a)(2)(v) and (g)(2) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the Paperwork Reduction Act (PRA) new information collection requirements must be submitted by the public, OMB and other interested parties on or before August 30, 2011.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, via e-mail at [PRA@fcc.gov](mailto:PRA@fcc.gov) and [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559-5158 (VP), or e-mail: [Gregory.Hlibok@fcc.gov](mailto: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](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program*, Order (Order), document FCC 11-118 adopted July 28, 2011, and released July 28, 2011, in CG Docket No. 10-51, adopting interim rules related to the Commission certification process for iTRS providers. The full text of FCC 11-118 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. FCC 11-118 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its Web site, <http://www.bcpweb.com>, or by calling 202-488-5300. FCC 11-118 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 e-mail 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).

### Congressional Review Act

The Commission will send a copy of document FCC 11-118 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).

### Final Paperwork Reduction Act of 1995 Analysis

The interim rules adopted in document FCC 11-118 contain new information collection requirements subject to the PRA. Document FCC 11-118 will be submitted to OMB for review under section 3507(d) 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. While the interim rules in document FCC 11-118 are being adopted without notice and comment, and therefore are not subject to Regulatory Flexibility Act analysis