

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03–123; DA 06–1100]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** In this document, the Commission, on its own motion, reconsiders a petition for declaratory ruling (*Petition*) filed by Telco Group, Inc. (Telco Group) requesting that the Commission either exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate Telecommunications Relay Service (TRS) Fund (Fund), or in the alternative, waive the portion of Telco Group's contribution based on its international end-user revenues. This action is necessary because the May 2006 Declaratory Ruling addressing Telco Group's *Petition* did not contain an analysis of the complete record.

**DATES:** Effective May 25, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at [Thomas.Chandler@fcc.gov](mailto:Thomas.Chandler@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This document does not contain new or modified information collection requirements subject to the PRA of 1995, 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). This is a summary of the Commission's document DA 06–1100, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling on Reconsideration, CG Docket No. 03–123, DA 06–1100, adopted May 25, 2006, released May 25, 2006, reconsidering issues raised in Telco Group's *Petition* for Declaratory Ruling, or in the Alternative, *Petition* for Waiver (*Petition*), filed July 26, 2004.

The full text of document DA 06–1100 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 06–1100 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site <http://www.bcpweb.com> or by calling 1–800–378–3160.

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#### Synopsis

##### Background

In its *Petition*, Telco Group requests that the Commission exclude international revenues from the revenue base used to calculate payments due to the Interstate TRS Fund, “at least for those carriers whose international revenues comprise a significant portion of their total interstate and international revenues,” or in the alternative, find good cause to waive Telco Group's obligations to the Fund that are based on its international revenues. *Petition* at 1.

Telco Group maintains that such relief is warranted because, in what Telco Group argues is an analogous case involving the Universal Service Fund (USF), the United States Court of Appeals for the Fifth Circuit required the Commission to revisit the USF assessment on the international services revenue of a provider of primarily international services and *de minimis* interstate services. *Petition* at 3 (citing *Texas Office of the Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*TOPUC*)). The Court found that requiring a carrier to pay an assessment on its international services revenue that exceeded the carrier's total interstate revenue violated the equitable and nondiscriminatory contribution requirement of the Universal Service statute, Section 254 of the Communications Act, as amended. *TOPUC*, 183 F.3d at 434–435; *see* 47

U.S.C. 254(b)(4). Although the Interstate TRS Fund is governed by Section 225 of the Communications Act, rather than Section 254 of the Communications Act, Telco Group argues that the Interstate TRS Fund contribution rules also are “designed to be equitable and nondiscriminatory” and, therefore, the relief afforded in *TOPUC* should be extended to TRS. *Petition* at 4. Telco Group argues that its circumstance is comparable to the *TOPUC* plaintiff because the “vast majority” of Telco Group's revenues “approximately 96 percent” are derived from international services. *Petition* at 3. Moreover, Telco Group argues the public interest will be served by granting the requested relief because it will ensure Telco Group “remains as a viable competitor in the market for interstate services.” *Petition* at 9. Telco Group adds that the “high payment obligations also hinder Telco Group's ability to compete outside the United States, and so contradict the Commission's efforts to promote and encourage competition in the international and interstate markets.” *Petition* at 9–10 (citing *2000 Biennial Regulatory Review—Policies and Procedures Concerning the International, Interexchange Marketplace*, IB Docket No. 02–202, Report and Order, 16 FCC Rcd 10647 (March 20, 2001)), published at 66 FR 16874, March 28, 2001.

On October 25, 2004, the Telco Group *Petition* was placed on Public Notice. *Telco Group, Inc. Files Petition for Declaratory Ruling or Waiver to Exclude International Revenues from the Revenue Base Used to Calculate Payment to the Interstate TRS Fund*, CC Docket No. 98–67, Public Notice, 19 FCC Rcd 20965 (October 25, 2004); published at 69 FR 64573, November 5, 2004. Two oppositions were filed, one from a carrier and one from an organization representing the deaf community. Comments were filed by MCI (MCI) (November 26, 2004) and Telecommunications for the Deaf, Inc. (TDI) (November 24, 2004). Late filed comments were filed by Globecom Systems, Inc. (“GSI”) on February 14, 2006. On that same date, GSI also filed a petition for declaratory ruling that there is no obligation to pay into the Interstate TRS Fund based on revenues arising from traffic that does not originate or terminate in the United States. Globecom Systems, Inc., *Petition for Declaratory Ruling* (filed February 14, 2006). Because the issue in the GSI petition—whether certain calls should be considered international calls—is distinct from the issue raised in Telco Group's *Petition*, the

Commission will address GSI's petition in a separate order. Telco Group filed reply comments. Reply of Telco Group, Inc. to Oppositions to Telco Group's Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver (filed December 10, 2004, in CC Docket No. 98-67).

### Discussion

Telco Group's *Petition* is premised on the congruence between Section 254 of the Communications Act, which establishes Universal Service requirements, and Section 225 of the Communications Act, which establishes requirements for the provision of TRS. Sections 254 and 225 of the Communications Act, however, differ in fundamental and, in this case, dispositive ways. Unlike USF assessments, contributions to the Interstate TRS Fund are used, in part, to reimburse international relay calls.

Therefore, in this case, the public interest lies in ensuring adequate funding for interstate TRS—including international TRS—by assessing contributions on as broad a revenue base as can be justified. Accordingly, Telco Group's request that the Commission exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate TRS Fund is denied. Because Telco Group has not demonstrated why individualized relief is appropriate, the company's request for waiver of the interstate TRS assessment on international services revenue is also denied.

Unlike the Universal Service Fund, which does not directly support international services but only may be used only to support domestic services, the Interstate TRS Fund is used to support international TRS. See *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, (*TRS I Order*), 6 FCC Rcd at 4660-4661, paragraph 18, published at 56 FR 36729, August 1, 1991 (discussing comments that relay services should relay international calls that originate or terminate in the United States provided that equipment of the foreign country is compatible with U.S. equipment); See *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, (*TRS III Order*), 8 FCC Rcd at 5301, paragraph 9, note 14, published at 58 FR 12204, March 3,

1993 and 58 FR 12175, March 3, 1993 (in adopting rule requiring contributions to the Fund to be based on, *inter alia*, international services, Commission notes Sprint's argument "that international services should be included because TRS providers will be compensated by the administrator for international TRS minutes of use"). IP Relay service is an exception to this rule. See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 12224, 12242, at paragraph 48, note 121 (June 30, 2004) (noting that the Fund "does not currently reimburse providers for the costs of providing international calls via IP Relay"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 18 FCC Rcd 12823, 12837, at paragraph 42 (June 30, 2003) (noting that in March 2003 NECA was directed to suspend payment to TRS providers for international IP Relay service minutes); see also *2004 TRS Report and Order*, 19 FCC Rcd at 12525, paragraph 129, published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004 (noting that although Fund does not pay for international IP Relay service calls, it does pay for international Video Relay Service calls).

Therefore, unlike the USF assessments at issue in *TOPUC*, excluding international revenues from the revenue base used for calculating TRS contributions would not serve the public interest. With the TRS Fund, it is not the case—as in *TOPUC*—that a provider of only *de minimis* interstate service may be required to bear a disproportionately heavy burden in subsidizing the provision of such services by other carriers. Contributions to the Interstate TRS Fund based on Telco Group's international services revenue can, in turn, be used to subsidize international TRS. Moreover, Telco Group is required to contribute the same percentage of its interstate and international revenues to the Interstate TRS Fund as other carriers that provide both interstate and international services. Therefore, this approach is both equitable and nondiscriminatory, even as applied to an entity like Telco Group that may largely have international revenues. As MCI notes, "it would be discriminatory if Telco Group, and other internationally-oriented carriers, were allowed to exclude international revenues from the TRS contribution base. Companies such as MCI, who also earn international

revenues by providing international prepaid calling services, as well as other international services, would be required to compete against companies who would have been granted a discriminatory cost advantage were the Commission to grant Telco Group's request." Opposition of MCI at 3. See also Telco Reply Comments at 2-3 (arguing that the TRS funding mechanism is not equitable and nondiscriminatory as applied to Telco Group because it must pay a high proportion of its "U.S. interstate revenues into the TRS Fund").

In any event, *TOPUC* is specifically based on the equitable and nondiscriminatory contribution requirement of Section 254 of the Communications Act. Section 254 of the Communications Act states that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. 254(b)(4). The Court found that requiring COMSAT, a satellite provider of primarily international services along with *de minimis* interstate service offerings, to contribute to the Universal Service Fund based on its international services revenues was inequitable and discriminatory given that COMSAT's contribution based on international services revenue would exceed the company's total interstate revenues. The Court stated that "the agency's interpretation of 'equitable and nondiscriminatory,' allowing it to impose prohibitive costs on carriers such as COMSAT, is 'arbitrary and capricious' \* \* \* [because] COMSAT and carriers like it will contribute more in universal service payments than they will generate from interstate service." *TOPUC*, 183 F.3d at 434-435. Section 225 of the Communications Act, however, contains no such express requirement. In the absence of such language, and particularly because international services are supported by the Interstate TRS Fund, the Commission is not bound by the *TOPUC* decision to reduce or eliminate Interstate TRS Fund assessments on international services for Telco Group or similarly situated providers. With respect to contributions, the only limiting language of Section 225 is jurisdictional in nature. See 47 U.S.C. 225(d)(3) (addressing jurisdictional separation of costs). Telco Group also suggests that even if *TOPUC* does not apply in the TRS context, the Commission has the discretion to apply a similar rule for TRS. Telco Reply Comments at 4. The issue presented is

not, however, whether the Commission *could* apply the *TOPUC* principle to TRS, but whether the rule the Commission did adopt for TRS (requiring payments into the Fund based on international revenues) is reasonable and in the public interest. Accordingly, Telco Group's request for a declaratory ruling excluding international services revenue from the interstate contribution base is denied. Telco Group also asserts that because it does not *receive* any TRS funds, and does minimal business in the United States, it should not have to pay into the Fund based on international revenues "in return for 'benefits' largely and primarily enjoyed by other carriers." Telco Reply Comments at 3–4. The obligation to pay into the Fund, however, is not tied to particular benefits contributors may receive from the Fund. Under the rules, a broad range of interstate telecommunications carriers are required to pay into the Fund, regardless of whether they also provide relay services paid for by the Fund or otherwise "benefit" directly from the provision of relay service. *See* 47 CFR 64.604(c)(5)(iii)(A) of the Commission's rules.

Telco Group's request for waiver of the interstate TRS assessment on its international services revenue is also denied. Although the Commission may waive a provision of its rules for "good cause shown," 47 CFR 1.3 of the Commission's rules; *see generally* 2004 TRS Report and Order, 19 FCC Rcd at 12520, paragraph 110 (discussing standard for waiving Commission rules), Telco Group's argument rests on the fact that a high percent of its revenues derive from international services and therefore its TRS payment is substantially higher than it would be if international revenues were not included and burdensome. *See also* *Petition* at 9–10. As noted above, however, because the Fund supports both international and interstate TRS, TRS assessments are based on both international and interstate revenues, and the fact that some contributors have

relatively more international revenues, or more interstate revenues, is not relevant to ensuring adequate funding for these services.

#### Congressional Review Act

The Commission will not send a copy of the *Declaratory Ruling on Reconsideration* pursuant to the Congressional Review Act because the adopted rules are rules of particular applicability. *See* 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

Pursuant to the authority contained in Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and §§ 0.141, 0.361, and 1.108 of the Commission's rules, 47 CFR 0.141, 0.361, and 1.108, the *Declaratory Ruling on Reconsideration* is hereby denied.

Federal Communications Commission.

Monica S. Desai,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 06–6012 Filed 6–30–06; 12:30 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[I.D. No. 060204C]

#### Endangered and Threatened Species: Final Listing Determinations for Elkhorn Coral and Staghorn Coral; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** We, the National Marine Fisheries Service, are correcting a previously published **Federal Register** rule that contained incorrect data. On June 2, 2006, a correction was published in the **Federal Register** to add citations

for elkhorn and staghorn corals to the published table of threatened species. The effective date for this correction was inadvertently set for a date prior to the effective date of the final rule to list these corals as threatened under the Endangered Species Act. In addition, the citation for the North American green sturgeon was inadvertently omitted from the table. This rule therefore serves to correct the effective date of the June 2, 2006 rule and to add the citation for green sturgeon to the table of threatened species.

**DATES:** This correction is effective on July 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Marta Nammack or Lisa Manning, (301)713–1401.

**SUPPLEMENTARY INFORMATION:** In the May 9, 2006, issue of the **Federal Register**, we published a final rule to implement our determination to list elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals as threatened species under the Endangered Species Act (ESA) of 1973. The table printed in this rule contained inadequate data and was subsequently corrected in a June 2, 2006 **Federal Register** Notice. The effective date of this correction, however, was June 2, 2006, which was prior to the effective date for the final rule to list elkhorn and staghorn corals. In addition, the June 2, 2006, correction omitted the citation for the Southern distinct population segment (DPS) of the North American green sturgeon from the table. Therefore in this rule, we seek to correct the effective date of the June 2, 2006 correction and revise the table of threatened species.

In rule document 06–4988 beginning on page 31965 in the issue of Friday, June 2, 2006, make the following corrections:

- 1. On page 31965, in the third column, under the **DATES** heading, "June 2, 2006" should read "July 7, 2006".  
**§ 223.102 [Corrected]**
- 2. On pages 31966 through 31977, correct the table in § 223.102 to read as follows:

Species <sup>1</sup>		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(a) <i>Marine Mammals</i> (1) Guadalupe fur seal	<i>Arctocephalus townsendi</i>	Wherever found U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo)	50 FR 51252; Dec 16, 1985	NA
(2) Steller sea lion	<i>Eumetopias jubatus</i>	Eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude	55 FR 13488; Apr 10, 1990 55 FR 50006; Dec 4, 1990 62 FR 30772; Jun 5, 1997	58 FR 45278; Aug 27, 1993 64 FR 14067; Mar 23, 1999