

the only measure of value of an auction;<sup>11</sup> society benefits when spectrum available for flexible use for next-generation wireless services and assigned to those who are most likely to use it themselves to deploy. The Commission therefore finds that making the remaining unassigned spectrum available via competitive bidding is in the public interest and is more likely to expeditiously put this spectrum to its highest and best use for the benefit of all Americans.

31. *Sixth*, the Commission previously stated its reasons for establishing the Tribal Priority Window but not a broad window for educational institutions. Specifically, the Commission concluded that Tribes have an interest in obtaining access to 2.5 GHz spectrum to serve their rural Tribal lands that is greater than and distinct from that of educational institutions, based on: (1) The unique status of federally recognized Tribes and the nature of the Commission's federal trust responsibility, (2) the right of Tribes to set their own communications policies in the lands they govern, (3) the unique and significant obstacles to offering service in Tribal areas, and (4) the fact that Tribes have not previously had access to this spectrum. The SHLB et al. fail to address these distinctions.<sup>12</sup>

32. In turn, the Commission finds that SHLB et al.'s advocacy for a narrower educational priority window analogous to the Tribal Priority Window, or an educational priority window limited to New Channel Group 3 (old Channels G1, G2, and G3), would not address the Commission stated deployment

"primarily" determines price as claimed by the petitioners.

<sup>11</sup> The Petitioners also argue any resulting lower price would still not match the price educational institutions could provide, but this is based on the \$15/month price the Commission discounts for rural areas. In general, based on the historic success of spectrum auctions at the FCC and the ability of the overlay auction format to rationalize the irregular patchwork of EBS license areas with often complicated licensing arrangements, the Commission believes that auctioning the fallow 2.5 GHz spectrum will provide the most benefit to the American consumers.

<sup>12</sup> The SHLB et al. acknowledge that the Commission "attempt[ed] to distinguish the reasons for the Tribal priority window from the more general educational priority windows." *Id.* at 16. Rather than address the reasons for distinguishing Tribal entities, the SHLB et al. cite a handful of submissions in the record to contend that the Commission's "conclusion that many educators might not be positioned to provide broadband is unsupported in fact and in the record." As discussed above and in the *2.5 GHz Report and Order*, however, the Commission's experience with the EBS service and its review of the record indicate that only "a small fraction of educational institutions" have expressed an interest in providing broadband service in rural areas, which does not provide a sufficient basis for establishing an educational priority window.

objectives. The Tribal Priority Window is readily distinguishable from any form of educator window. Moreover, their suggestion of creating an educational priority window limited to New Channel Group 3, comprised of 17.5 megahertz of spectrum, would not only suffer from the same concerns the Commission has previously identified, but also would result in inefficient allocation of mid-band spectrum. Under that proposal, only the 17.5 megahertz of non-contiguous spectrum in New Channel Group 3 would be assigned and licensed differently than the adjacent commercial Broadband Radio Service spectrum. The result would be that educators would end up only with a narrow spectrum band that they might not be able to use fully because of the need to protect adjacent channel commercial operations. In contrast, in the auction context, potential bidders can take into consideration the availability of and ability to aggregate spectrum to make the best use of this smaller Channel Group.

33. For these reasons, the Commission affirms its conclusion in the *2.5 GHz Report and Order* that, "[g]iven the time and effort and delay that would be involved in establishing and running [an educational] priority window, and the likelihood that such a window for all educational institutions would result in having to auction the spectrum anyway, the Commission finds that moving directly to flexible use and open eligibility would be the most expeditious method of making spectrum available to provide broadband service in rural and underserved areas, consistent with the Commission's statutory objective to ensure 'the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.'" The Commission therefore denies the SHLB et al. Petition.

#### IV. Ordering Clauses

34. Accordingly, *it is ordered* pursuant to sections 4(i), 4(j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 309(j), as well as § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petitions for Reconsideration filed by the National Congress of American Indians and jointly by the Schools, Health & Libraries Broadband Coalition; Consortium for School Networking; State Educational Technology Directors Association; American Library Association; National Digital Inclusion Alliance; Nebraska Department of

Education; Utah Education and Telehealth Network; Council of Chief State School Officers; A Better Wireless; and Access Humboldt on November 25, 2019, *are dismissed* to the extent specified in this Order on Reconsideration and, alternatively and independently, *denied* as specified herein.

35. *It is further ordered*, pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Request for Withdrawal of Petition for Reconsideration filed by the Hawaii Broadband Initiative on March 30, 2020, *is granted*, and the Petition for Reconsideration by the Hawaii Broadband Initiative on November 25, 2019, *is dismissed*.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on January 4, 2021.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 03-123, FCC 20-105; FRS 17377]

### Telecommunications Relay Service Rules Modernization

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) eliminates two Telecommunications Relay Service (TRS) mandatory minimum standards because they are no longer necessary to provide functional equivalence with voice services, and ceases **Federal Register** publication of applications for certification of state TRS programs in favor of providing notice on the Commission's website and in its Electronic Document Management System (EDOCS).

**DATES:** *Effective Date:* These rules are effective March 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** William Wallace, Consumer and Governmental Affairs Bureau, at (202) 418-2716, or email [William.Wallace@fcc.gov](mailto:William.Wallace@fcc.gov).

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

and Order, document FCC 20–105, adopted on August 4, 2020, released on August 5, 2020, in CG Docket No. 03–123. The Commission previously sought comment on these issues in a Further Notice of Proposed Rulemaking (*2019 TRS Rules Modernization FNPRM*), published at 85 FR 1134, January 9, 2020. The full text of document FCC 20–105 will be available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS). 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.

### Congressional Review Act

The Commission sent a copy of document FCC 20–105 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

### Final Paperwork Reduction Act of 1995 Analysis

Document FCC 20–105 does not contain new or modified proposed information collection requirements subject to the Paperwork Reduction Act of 1995, 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. The Commission updates certain rules governing telecommunications relay services (TRS) to improve the efficiency and cost-effectiveness of TRS for both TRS providers and users. In keeping with current technology and prevailing offerings in the voice communications market, the Commission repeals the “equal access” and “billing options” requirements for TRS providers. The Commission also ceases **Federal Register** publication of state requests for TRS program certifications, relying instead on publication of these applications in the Commission’s electronic document management system and on its website.

2. *Equal Access and Billing Options Requirements.* As required by section 225 of the Communications Act (the Act), as amended, 47 U.S.C. 225, the Commission’s rules prescribe mandatory minimum standards to ensure that TRS providers offer telephone services for persons with hearing and speech disabilities that are

functionally equivalent to voice communication services. The “equal access” rule provides that “TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users,” and the “billing options” requirement directs TRS providers to offer “the same billing options (e.g., sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services.”

3. In 2014, the Commission revisited these rules in part. The Commission recognized that the voice communications marketplace had undergone major changes since the rules were adopted in 1991. As a result, consumers of Voice over internet Protocol and mobile telephone services routinely received long distance service as a bundled feature of their service plans, with no separate time- or distance-sensitive fees, eliminating the need for equal access and alternative billing options. The Commission concluded that these features had become unnecessary to ensure functional equivalence for internet-based forms of TRS in cases where the internet-based TRS provider is not charging users for long distance service. As a result, the equal access and billing options requirements currently only apply to the three non-internet-based forms of TRS, which are provided through state programs.

4. *Federal Register Publication.* Section 225 of the Act provides that states choosing to establish state TRS programs for intrastate service must request and receive certification for such programs from the Commission. Since 1991, the Commission’s TRS rules have required that, upon the filing of *state* certification applications, a notice seeking public comment on such applications shall be published in the **Federal Register**. In 2000, the Commission established EDOCS, and decided that notice of applications for certification of *internet-based* forms on TRS would be published in EDOCS and on the Commission’s website, with no requirement to publish such notice in the **Federal Register**.

5. *Further Notice of Proposed Rulemaking.* In the *2019 TRS Rules Modernization FNPRM*, the Commission proposed (1) to repeal the equal access and billing options rules for all TRS providers and (2) to cease **Federal Register** publication of state TRS certification applications in favor of publication on its website and in EDOCS.

6. *Repeal of Equal Access Rule.* The Commission repeals the equal access requirement in its entirety. This rule is no longer needed to ensure the functional equivalence of TRS. Because voice customers today typically obtain telephone service by paying a bundled or flat rate without time or distance differentials for long distance calls, the ability to select a long distance provider is no longer an essential aspect of telephone service, and the Commission has terminated equal access requirements for voice service. Further, section 225 of the Act only requires TRS to include equal access “to the same extent that such access is provided to voice users,” and there are few situations in which a TRS provider would be obligated to provide equal access under the current rule, even if a consumer were to request such access.

7. This unnecessary rule also burdens TRS providers with the cost of maintaining an equal access infrastructure, hindering the efficient provision of TRS. Deleting the equal access rule will allow TRS providers to modernize their TRS facilities and discontinue what can be a confusing and time-consuming call setup process.

8. *Clarification Regarding Financial Incentives.* The Commission clarifies that, when TRS providers allow consumers to make long distance calls without incurring per-minute charges, such offerings do not constitute an impermissible financial incentive for TRS use. In today’s marketplace, the widespread bundling of long distance and local calling negates any risk that offering free long distance to TRS users would create an impermissible incentive to make long distance calls. This clarification is limited to the specific issue regarding per-minute charges for long distance service and does not, for example, authorize a TRS provider to reimburse or otherwise assume payment for charges currently assessed on TRS users for internet access or telephone service.

9. *Repeal of Billing Options Requirement.* The Commission repeals the billing options requirement in its entirety. Alternative billing options are disappearing from the world of voice services, and thus options such as sent-paid long distance and collect, calling card, and third-party billing are no longer essential to ensure that TRS is functionally equivalent to voice service.

10. Eliminating this obligation will relieve TRS providers from any need to maintain obsolete features of circuit-switched networks at a time when they and others within the communications industry have been transitioning to IP-based platforms. In addition to

functional equivalence and efficiency, allowing TRS users access to improvements in technology is another one of the Commission's mandates under section 225 of the Act. Repealing the billing options rule will benefit TRS providers and users by allowing technological improvements with no consequential costs or harms to the functional equivalence and efficiency of TRS.

**11. Ceasing Federal Register Publication.** The Commission deletes the requirement that public notices of applications for certification of state TRS programs be published in the **Federal Register**. This action will improve the efficiency of the Commission's TRS certification process and conserve administrative resources, and will not conflict with statutory requirements or the Commission's ability to make informed certification decisions. **Federal Register** publication of state certification applications is not required by section 225 of the Act or the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Such certifications do not involve rulemaking, and the Commission's review is conducted based on the documentation submitted by a state, with no adjudicatory hearing ordinarily needed to determine whether a state program merits certification. Moreover, for comparable Commission authorization processes, such as certifications for internet-based TRS providers and common-carrier applications for certificates of "public convenience and necessity," **Federal Register** publication is not required unless special circumstances apply.

**12. Ceasing Federal Register publication** will not prevent or deter public input on state TRS certification proposals. Since this rule was adopted, the Commission has introduced an internet-based document management system, which makes public notices requesting comment on applications (as well as the applications themselves) readily accessible through the Commission's EDOCS and ECFS on the Commission's website. Posting electronic notices of state TRS certification applications via EDOCS and the Commission's website will provide sufficient notice to enable interested members of the public to comment on an application.

#### Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980 as amended, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Further Notice of Proposed Rulemaking. The Commission sought written public comment on the

proposals in the *2019 TRS Rules Modernization FNPRM*, including comment on the IRFA.

#### Need For, and Objectives of, the Rules

13. Document FCC 20–105 eliminates the outdated equal access and multiple billing options requirements from the TRS mandatory minimum standards and streamlines Commission processes by ceasing **Federal Register** publications of state requests for TRS program certification, while continuing to publish notice of certification applications in the Commission's electronic document management system and on the Commission's website.

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

14. No comments were filed in response to the IRFA.

#### Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

15. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

#### Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

16. The amendments to rules adopted in the Report and Order will affect the obligations of non-internet based TRS providers. These services can be included within the broad economic category of All Other Telecommunications.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. Elimination of the equal access and billing options for TRS providers and ceasing **Federal Register** publication for state TRS program certification applications do not create direct reporting, recordkeeping, or other compliance requirements on TRS providers.

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

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

19. Eliminating the requirement for the Commission to publish in the **Federal Register** notice of applications for certification of state TRS programs will have no impact on small entities because only the Commission is burdened by this obligation.

#### Ordering Clauses

20. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, document FCC 20–105 is adopted, and the Commission's rules are amended.

21. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

Individuals with disabilities, Telecommunications, Telecommunications relay services, Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the 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. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 276, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

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

#### § 64.604 Mandatory Minimum Standards.

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

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

**§ 64.606 internet-based TRS provider and TRS program certification.****(a) \* \* \* (1) *Certified state program.***

Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer and Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned “TRS State Certification Application.” All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of state applications for certification.

\* \* \* \* \*

[FR Doc. 2021-00792 Filed 2-22-21; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73****[MB Docket No. 20-145; FCC 20-181; FRS 17327]****Promoting Broadcast Internet Innovation Through ATSC 3.0****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** Through this final rule, the Commission fosters the efficient and robust use of broadcast spectrum capacity for the provision of Broadcast internet services consistent with statutory directives. In this document, the Commission concludes that ancillary and supplementary (A&S) fees should be calculated based on the gross revenue received by the broadcaster, without regard to the gross revenue of an unaffiliated third party, such as a spectrum lessee; should retain the existing standard of derogation of broadcast service, but amend the wording of the rules to eliminate the outdated reference to analog television; and should reaffirm that noncommercial educational television broadcast stations (NCEs) may offer Broadcast internet services. The Commission also reinterprets the application to permit noncommercial educational stations (NCEs) to devote the substantial majority of their spectrum not just to free over-the-air television but also ancillary and supplementary services;

lowers the ancillary and supplementary service fee for certain NCE services; and clarifies that NCEs may offer limited Broadcast internet services to donors without transforming those donations into feeable ancillary and supplementary service revenue.

**DATES:** Effective March 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120. Direct press inquiries to Janice Wise at (202) 418-8165.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order, FCC 20-181, adopted and released on December 10, 2020. The full text of this document is available electronically via the FCC’s Electronic Document Management System (EDOCS) website at <https://www.fcc.gov/edocs> or via the FCC’s Electronic Comment Filing System (ECFS) website at <https://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Synopsis**

1. Earlier last year, the Commission initiated a proceeding to encourage the provision of new and innovative Broadcast internet services enabled by ATSC 3.0—the “Next Generation” broadcast television standard often referred to as Next Gen TV—that can complement the nation’s 5G wireless networks.<sup>1</sup> In so doing, the Commission sought to eliminate uncertainty cast on such services by legacy regulations and to consider whether, and if so how, to update the Commission’s rules regarding ancillary and supplementary services, adopted over 20 years ago. With this item, we take additional steps to clarify and update the regulatory landscape in order to foster the efficient and robust use of broadcast spectrum

<sup>1</sup> *Promoting Broadcast Internet Innovation Through ATSC 3.0*, MB Docket No. 20-145, Declaratory Ruling and notice of proposed rulemaking, 85 FR 43142 and 85 FR 43195 (July 16, 2020) (*Declaratory Ruling and NPRM*). The Commission referred to these new ancillary offerings over broadcast spectrum as “Broadcast internet” services to distinguish them from traditional over-the-air video services. We note that the rule changes we adopt herein will apply equally to all ancillary and supplementary services provided using either the ATSC 1.0 or 3.0 transmission standards.

capacity for the provision of Broadcast internet services consistent with statutory directives.

2. In this Report and Order (Order), we adopt, with only minor changes, four of the tentative conclusions set forth in the *NPRM*. Specifically, we clarify the basis on which to calculate ancillary and supplementary service fees. We retain the existing standard of derogation of broadcast service. We also, however, amend the derogation rule to eliminate an outdated reference to analog television. We reaffirm the freedom of noncommercial educational television stations (NCEs) to provide ancillary and supplementary services. And while we generally decline at this time to adjust the fee imposed on ancillary and supplementary services, we intend to revisit this issue at a future date to determine whether we should adjust the fee or the basis of the fee once the market for Broadcast internet services develops.

3. Recognizing the unique educational public service mission of NCEs seeking to provide Broadcast internet services, we also adopt a number of additional proposals designed to preserve and expand this essential mission. Notably, we find that an NCE television broadcast station may use its 6 MHz channel capacity primarily not only for its free, over-the-air nonprofit, noncommercial, educational, television broadcast service, as under our current interpretation of the rule, but also for any nonprofit, noncommercial, educational (“primary”) ancillary and supplementary services. We also adopt a reduced fee of 2.5% on gross revenue generated by such “primary” ancillary and supplementary services, as opposed to the 5% fee applied to ancillary and supplementary services generally. With these actions, this Order continues to lay the groundwork for broadcasters, and thereby the general public, to explore and benefit from the possibilities and opportunities that Broadcast internet provides.

4. *Background.* As the Commission explained in the *NPRM*, the ATSC 3.0 IP-based standard offers greater effective spectral capacity than ATSC 1.0, the current digital broadcast television standard. The additional capacity will allow broadcasters to expand their traditional television offerings, including by offering higher quality video and audio and a wider range of programming choices. Broadcasters may also provide innovative non-traditional services, and the *NPRM* asked about the “types of Broadcast internet services that are likely to be provided in the future.” Commenters describe a wide array of exciting possibilities. APTS/