

**47 CFR § 64.604 - Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Two-Line Captioned Telephone Order and IP Captioned Telephone Service Declaratory Ruling, CG Docket No. 03-123**

**SUPPORTING STATEMENT**

**A. Justification:**

1. The Americans with Disabilities Act of 1990 (ADA), Public Law 101-336, 104 Stat. 327, 366-69, was enacted on July 26, 1990.
  - (a) The purposes of the ADA are:
    - (i) to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life;
    - (ii) to provide enforceable standards addressing discrimination against individuals with disabilities; and
    - (iii) to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.
  - (b) Title IV of the ADA adds section 225 to the Communications Act of 1934 (Act). Section 225 directs the Commission to promulgate regulations that require all domestic telephone common carriers to provide telecommunications relay services (TRS).<sup>1</sup>
  - (c) 47 CFR Part 64, Subpart F implements certain provisions of the ADA pertaining to TRS. It contains the operational, technical, and functional standards required of all TRS providers and the procedures for state certification.
  - (d) Although section 225 of the ADA imposes on all common carriers providing interstate or intrastate telephone services an obligation to provide to hearing and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals, and charges the Commission with regulatory oversight, states may seek to establish intrastate relay services that satisfy federal requirements.
  - (e) Pursuant to 47 CFR § 64.602 of the Commission's rules, any violation of Subpart F by any common carrier engaged in intrastate communications will be subject to the same remedies, penalties, and procedures as are applicable to violation of the Communications Act by a common carrier engaged in interstate communications.

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<sup>1</sup> Telecommunications relay service is a telephone transmission service that allows persons with a hearing or speech disability to engage in communications by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. TRS facilities are staffed by communications assistants who relay conversations between people who use text telephone devices (TTYs) and people who communicate by voice. See 47 C.F.R. § 64.601(14).

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- (f) In enacting section 225, Congress did restrict its definition of TRS only to a specific category of services otherwise defined in the Communications Act, such as “telecommunications services.”<sup>2</sup>
- (g) Rather, Congress used the broad phrase “telephone transmission services” that is constrained only by the requirement that such service provide a specific functionality. The requisite functionality is that the service provides the ability for an individual who has a hearing or speech impairment to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of individuals without such impairment to do so.
- (h) The Commission has noted that section 225, consistent with section 7(a) of the Act, requires that the rules the Commission prescribes to implement section 225 encourage “the use of existing technology and not discourage or impair the development of improved technology.”
- (i) The Commission has also concluded that the functional equivalency standard requires that those technological services currently offered to non-disabled persons should also be available to persons with disabilities, if it is technologically feasible to do so.

**History:**

On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & Second Further Notice of Rulemaking*, In the Matter of Provision of Improved Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, FCC 02-121 (*IP Relay Declaratory Ruling*).<sup>3</sup>

- (a) The *IP Relay Declaratory Ruling* further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS.
- (b) Although the Commission did not require that TRS providers offer IP Relay, the Commission authorized, on an interim basis, recovery of the costs of providing both intrastate and interstate IP Relay from the Interstate TRS Fund.<sup>4</sup>
- (c) That declaratory ruling also temporarily or permanently waived the applicability of certain mandatory minimum standards because they either do not apply to IP Relay or IP Relay’s technology required further development to meet the standards.<sup>5</sup>

On August 1, 2003, the Commission released a *Declaratory Ruling*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing

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<sup>2</sup> Telecommunications service is defined as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. “47 U.S.C. § 153(46). Information service is defined as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications and includes electronic publishing, but does not include any use of any capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.”

<sup>3</sup> See 17 FCC Rcd 7779 (2002).

<sup>4</sup> See generally *IP Relay Declaratory Ruling* at ¶¶ 15-26.

<sup>5</sup> *IP Relay Declaratory Ruling* at ¶¶ 33-35.

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and Speech Disabilities, CC Docket No. 98-67, FCC 03-190 (*Captioned Telephone Declaratory Ruling*).

- (a) In the *Captioned Telephone Declaratory Ruling*, the Commission concluded that *one-line* captioned telephone service is a type of TRS, and that eligible providers of such services are eligible to receive compensation in accordance with section 225 of the Communications Act.<sup>6</sup>
- (b) In addition, the Commission clarified that certain TRS mandatory minimum standards did not apply to *one-line* captioned telephone service, and waived sections 64.604 (a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone providers.
- (c) The *Captioned Telephone Declaratory Ruling* also established reporting requirements associated with the waivers available for TRS providers who choose to provide *one-line* captioned telephone voice carry over (vco) service.
- (d) TRS providers are required to maintain a log of consumer complaints that must be submitted to the Commission annually. These logs will provide the Commission with a warning of possible service quality problems, as well as the manner in which captioned telephone providers are addressing their problems.

On June 30, 2004, the Commission released a *Report and Order*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Dockets No. 90-571 & 98-67, CG Docket No. 03-123, FCC 04-137 (*2004 Improved TRS Report & Order*).

- (a) In the *2004 Improved TRS Report & Order*, the Commission required IP Relay providers to file annual report with the Commission on April 16th of each year addressing the feasibility of meeting certain waived TRS mandatory minimum standards.
- (b) In addition, the Commission established January 1, 2008 as the expiration date of the waivers for IP Relay service.

On July 19, 2005, the Commission released an *Order*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, FCC 05-141 (*Two-Line Captioned Telephone Order*).

- (a) In the *Two-Line Captioned Telephone Order*, the Commission concluded that two-line captioned telephone service, like one-line captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund.
- (b) The record reflects that *two-line* captioned telephone service is simply a variation of captioned telephone service that offers the same functionality while also offering the user additional features, including E-911 functionality.
- (c) Because *two-line* captioned telephone service, like *one-line* captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund, the waivers and

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<sup>6</sup> *Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 1621, para. 1.

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reporting requirements applied to *one-line* captioned telephone service must be applied to providers of *two-line* captioned telephone service.

On October 31, 2005, a Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service was filed by 13 organizations generally representing consumer advocates and persons with hearing or speech disabilities. The petition asks the Commission to initiate a rulemaking for the purpose of making captioned telephone service a mandatory form of TRS and approving IP captioned telephone service as eligible for compensation from the Interstate TRS Fund.

On August 14, 2006, the Commission released an *Order*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, DA 06-1627 (*2006 Captioned Telephone Waivers Order*).

(a) In the *2006 Captioned Telephone Waivers Order*, the Commission clarified waivers of certain TRS mandatory minimum standards for captioned telephone relay service, a form of TRS. The *Captioned Telephone Declaratory Ruling* waived the following mandatory minimum standards for the provision of captioned telephone service:

- 1) CAs must be competent in interpreting typewritten American Sign Language (ASL);
- (2) TRS providers must give CAs oral-to-type tests; and
- (3) CAs may not refuse sequential calls.

(b) These waivers expired on August 1, 2006. The Commission clarifies that these requirements do not apply to captioned telephone services that use voice recognition technologies (instead of typing) to convey messages and that do not have the CA play a role in setting up the calls.

On January 11, 2007, the Commission released a *Declaratory Ruling*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, FCC 06-182 (*IP CTS Declaratory Ruling*).

- (a) In the *IP CTS Declaratory Ruling*, the Commission concluded that IP captioned telephone service is a type of TRS, and providers of such services are eligible to receive compensation when offered in compliance with the applicable TRS mandatory minimum standards.
- (b) In addition, the Commission clarified that certain mandatory minimum standards did not apply to IP captioned telephone service, and waived sections 64.604(a)(3)(iv), (a)(3)(v), (a)(3)(vi) and (a)(4).
- (c) The Commission concluded that an entity desiring to provide IP captioned telephone service, like an IP Relay provider, may choose to seek certification from the Commission under section 64.605.

The Commission is requesting OMB approval for a three year extension of this information collection.

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This information collection does not affect individuals or households; thus, there are no impact under the Privacy Act because it does not require the collection of personally identifiable information (PII) from individuals.

The statutory authority for the information collection requirements is found at Sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals; The Americans with Disabilities Act of 1990 (ADA), Public Law 101-336, 104 Stat. 327, 366-69, was enacted on July 26, 1990

2. The waivers and reporting requirements established in the *Captioned Telephone Declaratory Ruling* and the *Two-Line Captioned Telephone Order* for *one-line* and *two-line* captioned telephone service providers, also apply to IP captioned telephone services. The waivers are conditioned upon:
  - (1) providers filing annual waiver reports, for a period of three years, with the Commission detailing their compliance with the *Captioned Telephone Declaratory Ruling* and the *Two-Line Captioned Telephone Order*;
  - (2) providers detailing any technological advances that may enable *one-line* and *two-line* captioned telephone service providers to meet the waived mandatory minimum standards; and
  - (3) providers maintaining a consumer complaint log that must be submitted to the Commission annually.

The *2004 Improved TRS Order* established voluntary reporting requirements associated with certain waivers available for TRS providers who elected to provide IP Relay service.

- (a) The waivers set forth in the *2004 Improved TRS Order* for the voluntary reporting requirements were contingent on annual reports filed with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technological problems that prevent IP Relay from offering certain types of TRS features.
- (b) This requirement has very little economic impact on the TRS providers because it merely requires the annual submission of a report to the Commission only if TRS providers elect to offer the voluntary forms of TRS, and the reports are voluntary because IP Relay is not mandatory form of TRS under the Commission rules. Moreover, TRS providers are reimbursed for the reasonable costs of providing TRS including the reasonable costs of providing these reports.

The *2006 Captioned Telephone Waivers Order* clarified that the following mandatory minimum standards do not apply to captioned telephone services that use voice recognition technologies (instead of typing) to convey messages and that do not have the CA play a role in setting up the calls:

- (1) CAs must be competent in interpreting typewritten American Sign Language (ASL);
- (2) TRS providers must give CAs oral-to-type tests; and

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(3) CAs may not refuse sequential calls.

TRS providers who choose to provide IP captioned telephone service will be reimbursed for the reasonable cost of providing such services from the Interstate TRS Fund. This requirement has minimal, if any, economic impact on TRS providers because it merely requires the submission of an annual report to the Commission and TRS providers are permitted to include the costs of such reports in costs used to determine TRS reimbursement rates and to receive reimbursements from the Fund.

3. At this time, the Commission is not considering the use of improved information technology. The cost of implementing new information technology outweighs its benefits because there are 7 respondents that will be affected by this information collection. These respondents maintain complaint logs with their internal information technology. Further, these respondents file waiver reports with the Commission in electronic format via the Commission's existing ECFS docket and email.
4. The information is not duplicated elsewhere. No similar information is available.
5. The *IP CTS Declaratory Ruling* imposed a regulatory burden on the Interstate TRS Fund Administrator, currently the National Exchange Carrier Association, Inc. (NECA),<sup>7</sup> requiring it to pay to eligible providers of IP captioned telephone service for the costs of providing interstate service.
  - (a) The Interstate TRS Fund Administrator is a not-for-profit organization, and therefore is a “small organization.”
  - (b) The Interstate TRS Fund Administrator is also compensated by the Fund for the Administrator’s services and is the only entity affected by the *IP CTS Declaratory Ruling*.

The Commission concludes, therefore, that a “substantial number” of small entities will not be affected by the *IP CTS Declaratory Ruling*, and the Commission has certified that the requirements of the *IP CTS Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities.

6. These waivers of certain mandatory minimum standards are contingent on the filing of consumer complaint logs and the filing of annual waiver reports, for a period of three years, with the Commission.

The complaint logs and annual waiver reports must:

- (a) detail TRS provider compliance in the *IP CTS Declaratory Ruling*, and
- (b) describe any technological advances that may enable IP captioned telephone service providers to meet the waived mandatory minimum standards.

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<sup>7</sup> On July 20, 1993, NECA was appointed the Interstate TRS Fund Administrator. Currently, NECA’s contract as the Interstate TRS Fund Administrator has been extended on a month to month basis.

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For a provider to be eligible for reimbursement from the Interstate TRS Fund for the provision of TRS, the provider must either:

- (a) meet the mandatory minimum standards, or
- (b) request and receive waivers of the standards.

If such an information collection is not completed, IP captioned telephone service providers will not be eligible to receive compensation from the Interstate TRS Fund.

7. The collection is not being conducted in any manner inconsistent with the guideline of 5 CFR § 1320.5 (d)(1).
8. The Commission published a notice in the *Federal Register* pursuant to 5 CFR §1320.8(d) on February 4, 2010. *See* 75 FR 5794.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. The Commission sets annual interstate TRS compensation rates based on cost and demand data submitted by TRS providers.
  - (a) These data, particularly cost data, are:
    - (i) confidential, proprietary data of the individual submitting TRS providers, and
    - (2) protected from disclosure under the Freedom of Information Act (FOIA) and the Commission's rules implementing FOIA.
  - (b) Except as otherwise set out herein, the Commission is not requesting respondents to submit confidential information.
  - (c) If the Commission requests respondents submit information that the respondents believe is confidential, respondents may request confidential treatment of such information pursuant to § 0.459 of the Commission's rules.
  - (d) Moreover, the Commission requires the Interstate TRS Fund Administrator, to keep all data from contributor and TRS providers confidential.
  - (e) The Interstate TRS Fund Administrator shall not disclose such data in company specific form unless directed to do so by the Commission.<sup>8</sup>
11. There are no questions of a sensitive nature with respect to the information collected.
12. The following represents the estimates of hour burden of the collection of information affected by the *Two-Line Captioned Telephone Order*:

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***Reevaluation to Existing Information Collection Requirements***

***Two-Line Captioned Telephone Order***

In the *Two-Line Captioned Telephone Order*, the Commission concluded that *two-line* captioned telephone service, like *one-line* captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund.

- (a) Therefore, the same waivers and reporting requirements apply to providers of *two-line* captioned telephone service.

At present, 4 TRS providers are providing *one-line* and *two-line* captioned telephone service and are compensated from the Interstate TRS Fund.

The Commission therefore estimated approximately 4 providers (respondents) would maintain a consumer compliant log and file a waiver report with the Commission detailing their compliance with the *Two-Line Captioned Telephone Order*, and any technological advances that may enable them to provide *one-line* and *two-line* captioned telephone services.

This process would be done “annually” and would require approximately 8 hours to complete.

4 respondents x 1/complaint log submission = 4 responses

4 respondents x 8 hours/maintain complaint log = 32 hours

4 respondents x 1/wavier report filing = 4 responses

4 respondents x 8 hours/prepare waiver report filings = 32 hours

The Commission estimates that respondents will “in-house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-15/5, plus 30% overhead), to maintain consumer complaint log submissions. The Commission estimates respondents cost to be about \$87.37 per hour to complete.

4 respondents x 1/complaint log submission x 8 hours/maintain consumer complaint log submission x \$87.37 = \$2,795.84

The Commission estimates that respondents will use “in-house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-15/5, plus 30% overhead), to prepare and submit the annual waiver report. The Commission estimates respondents cost to be about \$87.37 per hour to complete.

4 respondents x 1/annual waiver report x 8 hours/prepare and submit annual waiver reports filings x \$87.37 = \$2,795.84

***Two-Line Captioned Telephone Order Totals are as Follows:***



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Total annual number of respondents: 4

Total number of responses: 8

Total annual hourly burden: 64 hours

Total “in house” costs: \$5,591.68

**IP CTS Declaratory Ruling**

In the *IP CTS Declaratory Ruling*, the Commission concludes that IP captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund. Although the Commission does mandate the provision of IP captioned telephone service but, to be eligible for compensation from the Interstate TRS Fund, providers must offer service in compliance with all applicable TRS mandatory minimum standards. The Commission has waived various mandatory minimum standards for the provision of captioned telephone service and IP Relay. The Commission finds that because IP captioned telephone service shares characteristics with captioned telephone service and IP Relay, waivers for captioned telephone service and IP Relay also apply to IP captioned telephone service.

The Commission estimates that the 3 providers of IP captioned telephone service will:

(a) maintain a log of consumer complaints, and

(b) prepare and file a waiver report with the Commission detailing their compliance with the *IP CTS Declaratory Ruling*, and any technological advances that may enable them in meeting waived requirements in the *IP CTS Declaratory Ruling*.

This process will be done “annually” and will require approximately 8 hours to complete.

3 respondents x 1/compliant log submission = 3 responses

3 respondents x 8 hours/maintain consumer complaint logs = 24 hours

3 respondents x 8 hours/waiver report filing = 3 responses

3 respondents x 8 hours/prepare and submit waiver reports = 24 hours

The Commission estimates that respondents will “in-house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-15/5, plus 30% overhead), to maintain consumer complaint log submissions. The Commission estimates respondents cost to be about \$87.37 per hour to complete.

3 respondents x 1/complaint log submission x 8 hours/maintain consumer complaint log submission x \$87.37 = \$2,096.88

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The Commission estimates that respondents will use “in-house” personnel whose pay is comparable to mid-to-senior level federal employee (GS-15/5, plus 30% overhead), to prepare and submit the annual waiver report. The Commission estimates respondents cost to be about \$87.37 per hour to complete.

3 respondents x 1/annual waiver report x 8 hours/prepare and submit annual waiver reports x \$87.37 = \$2,096.88

***IP CTS Declaratory Ruling Totals are as follows:***

Total annual number of respondents: 3

Total number of responses: 6

Total annual hourly burden: 48 hours

Total “in house” costs: \$4,193.76

Rulemakings	Number of Respondents	Number of Responses	Hourly Burdens		Total Hourly Burden	Staff Hourly Salary	“In House” Costs
			Complaint Logs	Waiver Reports			
Two-Line Captioned Telephone Order	4	8	32	32	64	\$87.37	\$5,591.68
IP CTS Declaratory Ruling	3	6	24	24	48	\$87.37	\$4,193.76
<b>CUMULATIVE TOTALS</b>	<b>7</b>	<b>14</b>			<b>112</b>		<b>\$9,785.44</b>

**Total Number of Respondents: 7**

**Total Number of Responses Annually: 14**

**Total Burden Hours: 112 Hours**

**Total “In House” Costs: \$9,785.44**

13. Some costs may include the filing of waiver reports, maintaining consumer complaint logs and providing IP captioned telephone service. Providers will be reimbursed indirectly when they receive compensation from the Interstate TRS Fund for providing such service. Thus:
- (a) Total annualized capital/start-up cost: \$0
  - (b) Total annual costs (operation and maintenance): \$0
  - (b) Total annualized cost requested: \$0

