

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
Implementation of Sections 255 and 251(a)(2))	
of The Communications Act of 1934, as)	WT Docket No. 96-198
Enacted by The Telecommunications Act of)	
1996: Access to Telecommunications)	
Service, Telecommunications Equipment and)	
Customer Premises Equipment by Persons)	
with Disabilities)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	
)	
The Use of N11 Codes and Other Abbreviated)	CC Docket No. 92-105
Dialing Arrangements)	

**MOTION FOR STAY OR WAIVER
OF
THE VOICE ON THE NET (VON) COALITION**

SUMMARY

The Voice on the Net (“VON”) Coalition respectfully requests that the Commission enter a stay of the effectiveness of certain provisions of the Disability Access Order for Interconnected VoIP providers released on June 15, 2007 (Order).¹ Specifically, the Commission should stay the TRS requirements set forth in Subpart F of the Commission’s Part 64 Rules, with the exception of 47 C.F.R. 64.604(5)(iii) requiring Interconnected VoIP providers to contribute to the TRS fund, to the extent that the rules demand Interconnected VoIP provider compliance by October 5, 2007. In the alternative, the VON Coalition requests a waiver of these requirements.

The Commission should grant the stay for the following reasons:

1. The VON Coalition would likely prevail on the merits because the Order imposes an unreasonable and arbitrary compliance deadline established without apparent consideration of the technical complexities, resource, and economic implications associated with meeting the Order’s requirements – a deadline that many Interconnected VoIP providers cannot reasonably meet.
2. If allowed to remain effective, the Order could cause Interconnected VoIP providers and consumers serious and irreparable harm in that the providers who are unable to comply with the deadline would potentially be subject to fines for such noncompliance and consumers could experience rate increases or, worse, unavailability of the very services that have heretofore enabled tremendous and robust features for consumers with disabilities.

¹ *IP-Enabled Services*, WC Docket No. 04-36; *Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Report and Order, FCC 97-110, at ¶1 (released June 15, 2007) (“*Disability Access for IVoIP Order*”).

3. Further, in an effort to hasten compliance, some Interconnected VoIP providers would be forced to consider redeploying staff currently allocated to other projects such as E9-1-1 and CALEA compliance, thereby causing interference with and potentially delaying deployment of other new and innovative life saving and national security related products and services.
4. Others will not be harmed by the grant of stay. Granting a stay of the Order's effective date would not harm competitors of Interconnected VoIP providers or customers; in fact, customers utilizing various telecommunications relay services (TRS) may benefit by the Commission allowing sufficient time for implementation and testing to ensure effective delivery of TRS services rather than suffering from hastily deployed services intended to meet an unreasonable and arbitrary deadline. Moreover, VoIP providers would continue to contribute to the TRS fund, thereby causing no harm to the funding mechanisms.
5. The stay will serve the public interest in that it would allow enough time for Interconnected VoIP providers, states, and TRS providers to fully develop and test TRS and 711 abbreviated dialing services prior to introduction to the public, thereby facilitating a one-time change that provides customers with complete and accurate dialing, and accommodating the Commission's stated goal of ensuring that these advanced communications systems are made available to and promote the safety and welfare of all Americans.
6. Finally, an administrative stay will not result in any appreciable harm to the public interest and will the serious consequences that would follow from the enforcement of the rules.

For these reasons, and in the interest of fairness and efficiency, the Commission's TRS rules should be stayed pending review of the implementation requirements necessary to meet the disability access obligations. If the Commission chooses not to grant a stay, the VON Coalition requests a waiver of the October 5, 2007 deadline. A waiver is justified because, despite the

good faith efforts of the Interconnected VoIP industry, Interconnected VoIP providers will be unable to meet that deadline and a waiver will be in the public interest. Indeed, the Commission has previously issued waivers of TRS implementation rules for good cause in circumstances where petitioners were unable to effectuate standards by a Commission mandated deadline.²

² See, e.g. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, DA 01-492, CC Docket No. 98-67 (rel. Feb. 23, 2001) (waivers granted to Sprint Communications company L.P. to comply with Section 64.604).

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The Use of N11 Codes and Other Abbreviated)	CC Docket No. 92-105
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**PETITION FOR ADMINISTRATIVE STAY OR WAIVER
OF THE
VOICE ON THE NET (VON) COALITION**

The Voice on the Net (“VON”) Coalition respectfully requests that the Commission issue a stay of the effectiveness of certain provisions of the Disability Access Order for Interconnected VoIP providers released on June 15, 2007. Specifically, the Commission should stay its TRS requirements set forth in Subpart F of the Commission’s Part 64 rules, with the exception of 47 C.F.R. 64.604(5)(iii) requiring Interconnected VoIP providers to contribute to the TRS fund, to the extent that it demands Interconnected VoIP provider compliance by October 5, 2007. In the alternative, the VON Coalition requests a waiver of these requirements.

I. THE VON COALITION SATISFIES THE CRITERIA REQUIRING A STAY OF THE DISABILITY ACCESS REQUIREMENTS, OR IN THE ALTERNATIVE, WAIVER OF THE COMMISSION’S RULES

Under the Communications Act of 1934 and the APA, the FCC may stay its decisions “when ... justice so requires.”³ In deciding whether to grant a stay, it is well-established that the Commission looks to the same four factors as federal courts: (1) the likelihood of success on the merits; (2) the likelihood of irreparable injury; (3) harm to other parties; and (4) the public interest.⁴ Although the VON Coalition offers compelling legal and practical objections to the imposition of the full panoply of disabilities access requirements by October 5, 2007, when a serious legal question is involved or a substantial irreparable injury is alleged, a movant need only present a substantial case on the merits and show that the balance of the equities weighs in favor of granting a stay to succeed.⁵ As explained below, the VON Coalition’s motion amply satisfies each aspect of the Commission’s requirements for a stay.

A. Interconnected VoIP Providers Are Expending Significant Effort to Comply With The FCC’s Implementation Deadline

The VON Coalition, generally, commends the Commission for its recognition that VoIP technology has the potential to radically improve communications for the 54 million Americans with disabilities and for its efforts to bring the tremendous flexibility and benefits of Interconnected VoIP services to all Americans. As the Coalition described previously, VoIP

³ 5 U.S.C. § 705.

⁴ See *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921 (D.C. Cir. 1958), as revised by *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc. (Assignor) and Clear Channel Broad. Licenses, Inc. (Assignee), for Consent to Assignment*, 559 F.2d 841, 842-43 (D.C. Cir. 1977); see also *Applications of Cumulus Licensing Corp.*, 16 FCC Rcd 1052, 1054 (¶ 5) (2001); *Applications of Shareholders of CBS Corp. and Viacom, Inc. for Transfer of Control of CBS Corp. and Certain Subs.*, 16 FCC Rcd 5831, 5832 (¶ 3) (2001).

⁵ See *Cuomo v. United States Nuclear Regulatory Comm’n*, 772 F.2d 972, 974 (D.C. Cir. 1985) (“To justify the granting of a stay, a movant need not always establish a high probability of success on the merits. Probability of success is inversely proportional to the degree of irreparable injury evidenced.”); *Providence Journal Co. v. Fed. Bureau of Investigation*, 602 F.2d 1010 (1st Cir. 1979).

providers have a strong history of being proactive with regard to disability access issues. They have sought to be leaders in addressing disability access issues as a forethought, and not an afterthought. Furthermore, as explained by the VON Coalition in its May 24, 2007 *ex parte* in this proceeding, application of the Commission's TRS existing rules, which were designed for a different era in communications, and which do not address the unique issues surrounding broadband and computer-enabled communication, could easily stifle some of the very applications and services that are currently deemed priceless by many in the disabled community. To ensure that the pace of innovation and therefore the availability of accessible communications tools are not hindered, the Commission should stay the application of the TRS rules to Interconnected VoIP providers until it is able to carefully evaluate the technical feasibility, cost, and benefits of applying the various TRS accessibility standards to services such as combined voice, video, and text.

In 1991, the Commission adopted rules implementing Section 225 to ensure that TRS is available to the extent possible and in the most efficient manner, to persons with hearing or speech disabilities.⁶ Covered providers were given two years to deploy required TRS capabilities, thus ensuring a uniform, nationwide system. Since then, the Commission has adopted multiple orders improving on the original rules, all the while recognizing that technology continues to evolve and "new forms of TRS. . . offer consumers access to the nation's telephone system in different ways depending on the nature of a consumer's disability

6 47 U.S.C. § 225(b)(1). *Telecommunications Services for Individuals with Hearings and Speech Disabilities and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991).

and their communications preferences.”⁷ The new services added to the original TRS requirements, such as video relay services (VRS), IP relay services, and IP-captioned telephone service (IP CTS), have brought our nation closer to the goal of providing deaf and hard of hearing persons functionally equivalent access to the nation’s communications systems. However, such deployments of transformative IP-enabled technologies have not been easy and the Commission has recognized the differences in deploying IP and TDM enabled TRS services by waiving many of the mandatory minimum standards for IP-enabled TRS services.⁸

B. The VON Coalition Would Likely Prevail on the Merits

The VON Coalition would likely prevail on the merits because the Order imposes unreasonable and arbitrary deadlines on Interconnected VoIP providers. The Order unreasonably established a compliance deadline without apparent consideration of the technical and operational complexities of compliance, time, and impact on consumers associated with meeting the Order’s requirements – a deadline that many Interconnected VoIP providers subject to the Order will be unable to reasonably meet.

As discussed above, although the VoIP industry has already invested significant time and resources toward developing and implementing technologies that transcend some of the discriminatory effects of the telephone system that TRS was designed to overcome, the IP

⁷ See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, ¶¶ 2-13 (2004)(overview of past TRS orders) (“*2004 TRS Report & Order*”).

⁸ As the Commission recognized following its initial adoption of the IP Relay Order, “as new technologies develop and are applied to relay, it is not always easy to fit them into the pre-existing regulatory regime, especially a regime developed when relay calls were made entirely over the PSTN. Therefore, there may be more uncertainty as to what pre-existing requirements mean when applied to new technology.” *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, 20 FCC Rcd 13140 ¶ 29 (2005).

industry projects significant additional resources will be required to complete the network modifications necessary to come into compliance with the TRS rules by October 5, 2007.

Because Interconnected VoIP services, as well as many of the available TRS services, can often be provided over an array of different devices, VoIP providers, TRS providers, and consumers must have an adequate understanding of the technical, operational and economic issues associated with the extension of TRS rules to VoIP providers. Although the Commission's IP-Enabled Services rulemaking sought comment on the reasonableness of applying TRS rules to VoIP, the record in that proceeding was compiled over three years ago and only reflects technologies available at the time. The Commission has not adequately examined the technical feasibility, cost, and benefits of applying the various mandatory minimum accessibility standards to services such as combined voice, video, and text.

The Commission's failure to establish a reasonable time frame by which Interconnected VoIP providers are to comply with Subpart F of Part 64 of the Commission's rules, in addition to its failure to fully evaluate the burden of those rules on Interconnected VoIP providers in relation to the benefits to consumers are reasonable grounds to expect that the VON Coalition would prevail on the merits.

C. Failure to grant a stay would cause Interconnected VoIP providers serious and irreparable harm

If allowed to remain effective, the Order would cause Interconnected VoIP providers serious and irreparable harm in that Interconnected VoIP providers would be unable to comply with the deadline and would be subject to fines for noncompliance. Further, in an effort to

hasten compliance, Interconnected VoIP providers would be forced to redeploy scarce technical and operational staff currently allocated to projects supporting the myriad of regulatory compliance obligations imposed by the Commission in an unprecedented abbreviated time period with which Interconnected VoIP providers already are working diligently to comply. These obligations now include: continued E9-1-1 negotiation, interconnection, and testing, CALEA compliance, USF filings and payments, modifications necessary to meet the recently imposed CPNI obligations, Section 255 disability access obligations, and the imposition of regulatory fees.

D. Others will not be harmed by the grant of stay

Granting the stay will not harm competitors of Interconnected VoIP providers or their customers; in fact it will benefit both. Today, VoIP protocols (SIP, H.323 and others) allow services to combine voice and video to allow people with disabilities to communicate using video and sign language. Some Interconnected VoIP providers deliver high-quality, full-motion video and clear, delay-free audio over broadband. Internet connections also allow parties using American Sign Language to converse without operators. Likewise, video relay services have surfaced across the nation, allowing hard-of-hearing, deaf, or speech impaired people to call anyone they want and communicate naturally. Some VoIP providers make their VoIP-enabled video calling software available for download for free on the Internet; the only end-user cost may be an inexpensive video camera. Despite the tremendous potential offered by IP services, the Commission has now imposed an unreasonable and arbitrary abbreviated deadline to require Interconnected VoIP providers to come into compliance with the TRS rules, which were designed for a different era in communications, and which do not address the unique issues surrounding broadband and computer-enabled communication. This brief compliance period

could easily stifle and raise significantly the price of some of the very applications and services that are currently deemed essential by many in the disabled community. To ensure that the pace of innovation, reasonable cost, and availability of accessible communications tools are not hindered, the Commission must grant the stay to enable Interconnected VoIP providers to implement the rules and requirements in the manner that is most beneficial to consumers.

E. The stay will serve the public interest

The stay would serve the public interest in that it would allow enough time for Interconnected VoIP providers to fully develop and test the various TRS services and well as 711 abbreviated dialing arrangements for each of these services prior to introduction to the public, thereby facilitating a one-time change that provides customers with complete and accurate products and services and accommodates that goals of the Section 225.

Furthermore, the stay will serve the public interest by enabling Interconnected VoIP providers to deploy emergency services and begin marketing and selling VoIP services in areas of the country that currently do not have the benefit of Interconnected VoIP, thus improving our nation's safety and security.

As an alternative to a stay, the VON Coalition requests that the Commission grant a waiver of the October 5, 2007 deadline. A waiver is justified because, despite the good faith efforts to expeditiously develop services that are compliant with the Commission's TRS rules, for the reasons described above, many Interconnected VoIP providers find it difficult if not impossible to meet the deadline. As explained, the public interest will be served by extending the deadline, whether through a waiver or stay, in that it will enable Interconnected VoIP providers to fully develop and test the services prior to introduction to the public and will also

ensure that emergency access, national security, and customer privacy resources are not compromised in an effort to hasten deployment of TRS services and 7-1-1 dialing.

CONCLUSION

The issues described above affect Interconnected VoIP providers and the Commission should therefore grant a stay of Part 64, Subpart F of the Commission's rules, with the exception of 47 C.F.R. 64.604(5)(iii) requiring Interconnected VoIP providers to contribute to the TRS fund, to the extent it requires Interconnected VoIP providers to implement Part 64, Subpart F rules before October 5, 2007. , In the alternative, it should grant the VON Coalition's request for a waiver of the October 5, 2007 deadline because despite the best good faith efforts of the industry, many Interconnected VoIP providers will be unable to meet that deadline and a waiver will be in the public interest.

Respectfully submitted,

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