

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

In the Matter of)
)
Petition for Waiver of Rules Requiring Support of) GN Docket No. 15-178
TTY Technology)
)
TracFone Wireless, Inc.)
)
)
)

ORDER

Adopted: August 24, 2017

Released: August 24, 2017

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. By this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) grants a temporary, limited waiver to TracFone Wireless, Inc. (TracFone) of the Commission’s requirements to support text telephony (TTY) technology over Internet-protocol (IP)-based wireless services.1 This waiver expires on December 31, 2017.

II. BACKGROUND

2. The Commission’s rules require defined classes of communications service providers and manufacturers to support TTY technology to call 911 emergency services,2 utilize telecommunications relay services (TRS),3 and access telecommunications and advanced communications services.4 Presently, these obligations are waived for AT&T, Verizon, Cellular South, the Competitive Carriers Association (CCA), and the Iowa Independent Telephone Companies (ITC).5 Because, during the waiver period, individuals with disabilities are unable to access IP-based wireless technologies, each waiver is conditioned on a commitment by the grantee to (1) provide notification to customers as to the absence of TTY capabilities for 911 calling over IP-based networks and information on alternative ways to make

1 TracFone Wireless, Inc., Petition for Temporary Waiver, GN Docket No. 15-178 (filed July 7, 2017), https://ecfsapi.fcc.gov/file/10707026853133/TracFone%20-%20Petition%20for%20Temporary%20Waiver.pdf (TracFone Petition for Waiver).

2 47 CFR § 20.18(c).

3 Id. § 64.603.

4 Id. §§ 6.3(b), 6.5, 7.3(b), 7.5, 14.20, 14.21(d).

5 See Petition for Waiver of Rules Requiring Support of TTY Technology, Order, 30 FCC Rcd 10855 (CGB PSHSB WTb WCB 2015) (AT&T TTY-RTT Transition Waiver Order); Order, 30 FCC Rcd 12755 (CGB PSHSB WTb WCB 2015); Order, 30 FCC Rcd 14404 (CGB PSHSB WTb WCB 2015), modified, Letter Order, 31 FCC Rcd 201 (CGB PSHSB WTb WCB 2016); Order, 31 FCC Rcd 3778 (CGB PSHSB WTC WCB 2016) (CCA TTY-RTT Transition Waiver Order); Order, 32 FCC Rcd 529 (CGB 2017) (Iowa ITC TTY-RTT Transition Waiver Order).

these calls; and (2) file periodic reports with the Commission describing the grantee's progress toward implementing RTT.⁶ For each service provider receiving a waiver, the waiver's expiration date originally was set as the sooner of December 31, 2017, or the effective date of Commission rules providing for alternative IP-based accessibility solutions.⁷

3. On December 16, 2016, the Commission released the *RTT Report and Order* amending the TTY support rules to permit wireless service providers to fulfill their obligations under those rules by supporting RTT in lieu of TTY technology.⁸ In the order, the Commission set initial RTT implementation dates for wireless service providers and manufacturers, and extended the expiration dates for all previously granted waivers to the earliest RTT implementation date applicable to each affected provider.⁹

4. *TracFone Petition*. TracFone states that it is a reseller of commercial mobile radio service (CMRS) obtained through agreement with various licensed operators of wireless networks throughout the United States.¹⁰ As a reseller, TracFone explains, it does not own or operate any facilities used to provide service and has no control over the carriers' facilities or the technologies used by those carriers on their networks.¹¹

5. TracFone seeks relief from the TTY requirements consistent with the relief previously granted to AT&T, one of TracFone's underlying providers.¹² AT&T recently advised TracFone, that it is making IP-based voice services, also known as Wi-Fi calling, available to end users who receive service from AT&T's resellers as of June 2017.¹³ TracFone asserts that its requested waiver is to enable it to provide its customers access to Wi-Fi calling.¹⁴ TracFone points out that from a technical prospective, it provides the same wireless service, over the same communications network provided by AT&T.¹⁵ As such, TracFone notes, it is only able to comply with Commission rules requiring support for TTY to the extent its underlying carrier complies with those rules.¹⁶ Accordingly, TracFone seeks a temporary waiver until AT&T provides an IP-based accessibility solution that is available to CMRS resellers.¹⁷ TracFone confirms its intention to comply with the AT&T waiver conditions¹⁸ and notes that it will host

⁶ See, e.g., *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10863-64, paras. 18-19. In some cases, petitioners also have had to file an initial report describing their plans to implement RTT. See, e.g., *CCA TTY-RTT Transition Waiver Order*, 31 FCC Rcd at 3784, paras. 17-18.

⁷ See, e.g., *CCA TTY-RTT Transition Waiver Order*; 31 FCC Rcd at 3785, para. 20.

⁸ See *Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission's Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568 (2016) (*RTT Report and Order*).

⁹ *Id.* at 13604, para. 71. The Commission established different implementation timelines for Tier I and non-Tier I providers.

¹⁰ TracFone Petition for Waiver at 1.

¹¹ *Id.* at 1-2.

¹² *Id.* at 4.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 6. Specifically, TracFone states that "[d]uring the waiver period TracFone will apprise its customers that: (1) TTY technology will not be supported for calls to 911 services over IP-based wireless services and (2) there are available alternative PSTN-based and IP-based accessibility solutions for such calls for persons with

(continued....)

on its website the AT&T RTT application available for customers to download by the end of 2017,¹⁹ and will implement its own embedded RTT solution by 2021, which is the compliance deadline established for resellers.²⁰

III. DISCUSSION

6. A Commission rule may be waived for “good cause shown.”²¹ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.²² In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³ Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.²⁴ Pursuant to the *AT&T TTY-RTT Transition Waiver Order*, applicants for waivers of the TTY support rules also must describe the wireless services they provide, explain the difficulties posed by supporting TTY technology over wireless IP networks, and state their expectations as to their deployment of accessible text alternatives to TTY technology, as well as a commitment to achieving compliance with the reporting requirements and other specified conditions.²⁵

7. We find that, based on TracFone’s representations, good cause has been demonstrated to grant TracFone a temporary waiver of the Commission’s rules requiring that TTY technology be supported for IP-based wireless services.²⁶ Specifically, we are persuaded that TracFone, as a reseller of AT&T’s IP-based wireless services, is similarly situated to AT&T with respect to its need for a waiver. As TracFone states, its current ability to provide support for TTY technology—as a CMRS reseller of IP wireless services—as well as its future ability to provide real-time text over wireless IP networks, is limited by the extent to which solutions implemented by its underlying facilities-based carrier, in this instance, AT&T, can support these technologies.²⁷ In the *AT&T TTY-RTT Transition Waiver Order* and subsequent waiver orders, we explained that a waiver of the TTY support obligations was warranted on the one hand, because of the many technical difficulties associated with providing TTY support in a wireless IP environment and the declining use of TTY technology both generally and more specifically for wireless services, and on the other, because of the likely benefits that a waiver would have, by facilitating the deployment of IP-based services using wireless technologies for the public at large, as well

(Continued from previous page) _____

communications disabilities. The foregoing notice will be prominently placed and in plain language on TracFone’s website, promotional materials, communications with national consumer organizations, and in other communications with customers as appropriate. The notice will also identify other text-based alternatives to 911, including TTY capability over [the] PSTN, various forms of PSTN-based and IP-based TRS, and text-to-911 where available. TracFone also will post on its website instructions to dial 711 from TTY devices anywhere in the United States to be connected with a specially-trained communications assistant.” *Id.*

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ 47 CFR § 1.3.

²² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

²⁴ *Northeast Cellular*, 897 F.2d at 1166.

²⁵ *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10865-66, para. 22.

²⁶ The rules subject to this waiver include sections 6.5, 7.5, 14.20, 20.18(c), and 64.603 of the Commission’s rules. 47 CFR §§ 6.5, 7.5, 14.20, 20.18(c), 64.603; *see also id.* §§ 6.3(b), 7.3(b), 14.21(d) (providing definitions and performance objectives regarding TTY support).

²⁷ TracFone Petition for Waiver at 5.

as IP-based accessibility solutions, such as real-time text, for people with disabilities.²⁸ These same justifications apply here to TracFone, as AT&T's reseller, and lead us to conclude that the Commission's goals of ensuring access to communications services, specifically for individuals with disabilities and more broadly for the general public, will best be served by granting a temporary limited waiver of the Commission's TTY requirements for TracFone's wireless IP offerings, subject to the conditions set forth in this Order.²⁹

8. *Waiver Duration.* TracFone notes that because "AT&T remains on schedule for launch of its Over the Top RTT apps by the end of 2017 and to launch an embedded RTT solution by year-end 2018," it does not expect to need a waiver of the TTY support obligations beyond December 31, 2017.³⁰ Accordingly, we grant TracFone a waiver of these obligations until December 31, 2017.

9. We impose one of the two conditions on TracFone that were initially applied to AT&T in the *AT&T TTY-RTT Transition Waiver Order*.³¹ Specifically, within thirty days of the effective date of this waiver order and throughout the waiver period, TracFone must apprise its customers, through effective and accessible channels of communication, including via TracFone's website, billing statements, promotional materials, communications with national consumer organizations, and other effective means of communications, that (1) TTY technology will not be supported for calls to 911 services over IP-based wireless services; and (2) there are alternative public switched telecommunications network (PSTN)-based and IP-based accessibility solutions for people with communication disabilities for such calls. As part of meeting clause (2) of this condition, further, TracFone must ensure that all 911 calls made by persons seeking emergency assistance using this technology are delivered in accordance with the obligations of all telecommunications carriers, including wireless carriers, to transmit 911 calls to the appropriate PSAP or local emergency authority.³² The required notice must be prominently placed and in plain language on TracFone's website and in the materials described above. It must further include a listing of text-based alternatives to 911, including, but not limited to, TTY capability over the PSTN, various forms of PSTN-based and IP-based TRS,³³ and text-to-911 (where available). The provision of this information is necessary to ensure that, during the waiver period, there is no expectation on the part of consumers with disabilities that TTY technology will be supported by TracFone's IP-based wireless services, and to ensure that these consumers know that alternative accessible telecommunications options exist.

²⁸ See, e.g., *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10858-62, paras. 9-16; *Iowa ITC TTY-RTT Transition Order*, 32 FCC Rcd at 529-30, para. 2. We refer readers to the comprehensive discussions contained in these prior waiver grants, as well as in the *RTT Report and Order*, on the declining use and limitations of TTY technology, as well as the benefits of having a reliable and interoperable real-time text-based solution for IP-based wireless voice networks, rather than reiterate these points here. See, e.g., *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10858-62, paras. 8-16; *RTT Report and Order*, 31 FCC Rcd at 13574-76, paras. 8-10.

²⁹ See *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10858-62, paras. 8-16.

³⁰ TracFone Petition for Waiver at 6.

³¹ See *id.* at 10863-64, paras. 18-19. Although the *AT&T TTY-RTT Transition Waiver Order* stated that waiver requests would be viewed most favorably if they specified with particularity the steps taken by the carrier to ensure accessible and interoperable text alternatives, including timetables and milestones for such implementation, *id.*, the Bureau concluded in the *Iowa ITC TTY-RTT Transition Waiver Order*, that in light of the Commission's recent adoption of the *RTT Report and Order*, which provides guidance and timetables on implementation of RTT, the provision of such information is no longer necessary. *Iowa ITC TTY-RTT Transition Waiver Order*, 32 FCC Rcd at 531-32, 533, paras. 9, 11 & nn.24, 34. For the same reason, we conclude that an initial report is also unnecessary in this instance.

³² See 47 CFR §§ 64.3000, 64.3001. See also *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10863-64, para. 18 & n.71.

³³ See *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Rcd at 10863-64, para. 18 & n.71.

10. Because the waiver will expire on December 31, 2017, a little more than four months from now, we find that there is no need to impose the second condition applied to AT&T in the *AT&T TTY-RTT Transition Waiver Order*, which had required the filing of reports with the Commission every six months, along with informing customers on progress toward and the status of the availability of implementing RTT.³⁴

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 225, 255, and 617 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 225, 255, 716, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, this Order is ADOPTED.

12. IT IS FURTHER ORDERED that TracFone's Petition for Waiver filed on July 7, 2017, IS GRANTED to the extent described herein.

13. IT IS FURTHER ORDERED that the temporary waiver of sections 6.5, 7.5, 14.20, 20.18(c), and 64.603 of the Commission's rules, 47 C.F.R. §§ 6.5, 7.5, 14.20, 20.18, 64.603, and any other Commission rules that require support of TTY technology as an accessible solution for voice over IP networks, SHALL BE EFFECTIVE upon release, and SHALL EXPIRE on December 31, 2017.

14. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to: fcc504@fcc.gov, or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2275 (videophone), or (202) 418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre
Acting Chief
Consumer and Governmental Affairs Bureau

³⁴ See *AT&T TTY-RTT Transition Waiver Order*, 30 FCC Red at 10864, para. 19.