

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued. We can also waive the 30-day delayed effective date of the Administrative Procedure Act (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

We find it unnecessary to undertake notice-and-comment rulemaking because this notice merely provides technical corrections to the regulations. We are not changing our payment methodology, but rather, are simply implementing correctly the payment methodology that we previously proposed, received comment on, and subsequently finalized. Thus, because the public has already had the opportunity to comment on the payment methodology being used to calculate wage indexes, additional comment would be unnecessary.

Further, it would be impracticable at this point in time either to solicit additional comments or to delay the effective date of these changes beyond October 1, 2003. The Social Security Act, in subparagraphs (G) and (H) of section 1888(e)(4), requires the updated SNF PPS rates to be in place at the beginning of each Federal fiscal year. Since the fiscal year begins on October 1, 2003, it is imperative that we ensure that the correct rates are in place and effective by October 1, 2003, and it would not have been possible to publish a notice and receive comments on it in the brief period of time between discovering our error and the October 1, 2003 effective date for the updated SNF PPS rates.

Finally, we believe that engaging in notice and comment prior to making these corrections or delaying the effective date beyond October 1, 2003 would be contrary to the public interest. As a matter of good public policy, the rates used in the SNF PPS should not be based on wage indexes that we now know were miscalculated. The public interest is served by ensuring that the rates used in the SNF PPS are correct and that such rates are in effect for the entire fiscal year. Thus, it would be contrary to the public interest to delay implementing such corrected rates in

order either to engage in notice-and-comment rulemaking or to provide for a 30-day delay in the effective date. Therefore, we find good cause to waive notice-and-comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 24, 2003.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 03-24549 Filed 9-26-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98-67; FCC 03-190]

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

AGENCY: Federal Communications Commission.

ACTION: Clarification and waiver.

SUMMARY: This document clarifies that captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS), and that eligible providers of such service are eligible to recover their costs in accordance with section 225 of the Communications Act. This document also clarifies that certain TRS mandatory minimum standards do not apply to captioned telephone VCO service, and waives other TRS mandatory standards for captioned telephone VCO service, for all current and future captioned telephone VCO service providers, for the same period of time indicated herein, beginning on the date of release of this *Declaratory Ruling*.

DATES: Effective August 1, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comment on the information collection contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1-A804, 445 12th Street SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the

Internet to

Kim_A_Johnson@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418-1362 (voice), (202) 418-1398 (TTY), or e-mail Janet.Sievert@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Declaratory Ruling* contains new and/or modified collections subject to the PRA of 1995, Pub. L. 104-13. These will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and/or modified information collection(s) contained in this proceeding. This is a summary of the Commission's *Declaratory Ruling*, adopted July 25, 2003, released August 1, 2003. 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. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY). This *Declaratory Ruling* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

Paperwork Reduction Act

The *Declaratory Ruling* contains either new and/or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Declaratory Ruling* as required by the PRA of 1995, Pub. L. 104-13. Public and agency comments are due November 28, 2003.

Synopsis

In this *Declaratory Ruling*, the Commission responds to a *Petition for Clarification* filed by Ultratec, Inc. (Ultratec), requesting that the Commission clarify that captioned telephone service, which Ultratec calls CapTel, an enhanced VCO service, is a type of TRS and eligible for

reimbursement from the Interstate TRS Fund under the TRS rules. TRS enables persons with hearing and speech disabilities to communicate by telephone with a hearing person through a TRS facility. 47 U.S.C. 225. TRS facilities have special equipment and are staffed by communications assistants (CA) who relay conversations between persons who use text telecommunications devices and persons who communicate by voice. In a traditional TRS call, the caller uses a text telephone (TTY) to dial the telephone number of the local TRS facility. For the TTY user, the first step—the inbound call to the TRS facility—is functionally equivalent to receiving a dial tone. The CA, in turn, places an outbound voice call from the TRS facility to the called party. The CA serves as the link in the conversation, converting all typed TTY messages from the TTY user into voice messages, and all voice messages from the called party into typed messages for the TTY user. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00–56, 15 FCC Rcd 5140 at paragraph 2 (2000); published at 65 FR 38432, June 21, 2000 (*Improved TRS Report and Order*). The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. We refer to “traditional TRS calls” as those TRS calls accomplished via text-to-voice or voice-to-text, with text provided via TTY. Such calls are provided through the public switched telephone network (PSTN). There are several types of traditional TRS calls, including VCO. Ultratec’s captioned telephone VCO service is provided through the PSTN using specialized customer premises equipment (CPE) and Ultratec’s proprietary technology. Ultratec’s captioned telephone service uses a telephone that looks similar to a traditional telephone but also has a text display that allows the user, on one standard telephone line, to both listen to the other party speak and simultaneously read captions of what the other party is saying. This way, a typical user of this service who has the ability to speak and some residual hearing, can both listen to what is said over the telephone and read captions for clarification. A CA using specially developed voice recognition technology generates the captions. This *Declaratory Ruling* finds that captioned telephone VCO service is a type of TRS, and that eligible providers of such service are

eligible to recover their costs in accordance with section 225 of the Communications Act.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

This *Declaratory Ruling* addresses a Petition for Clarification (*Petition*) filed by Ultratec, Inc. (Ultratec), on April of 2002. Ultratec, *Petition for Clarification Provision of Cost Recovery for CapTel, an Enhanced VCO Service* filed April 12, 2002. This *Petition* requests that the Commission clarify that captioned telephone service is a form of VCO TRS and is eligible for reimbursement from the Interstate TRS Fund. The Commission sought comments on the Ultratec *Petition* in a Public Notice. *Pleading Cycle Established for Comments on Petition for Clarification on the Provision of and Cost Recovery for Captioned Telephone as an Improved Voice Carry Over Service for Telecommunications Relay Service*, Public Notice, 17 FCC Rcd 11,933 (2002); published at 67 FR 48415, July

24, 2002. As a result of the Ultratec *Petition* and filed public comments, the Commission is issuing this *Declaratory Ruling*, which will allow Ultratec and any other provider of captioned telephone VCO service to recover its costs of providing interstate captioned telephone service from the Interstate TRS Fund.

As noted in paragraph 22 of the *Declaratory Ruling*, this item imposes a regulatory burden on the Interstate TRS Fund Administrator, requiring it to pay eligible providers of captioned telephone service the costs of providing interstate service. The Interstate TRS Fund is a not-for-profit organization, and therefore is a “small organization.” A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration). Because the Interstate TRS Fund is the only entity affected by the *Declaratory Ruling*, we conclude that a “substantial number” of small entities will not be affected by the *Declaratory Ruling*. Therefore, we certify that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities.

Report to Congress

The Commission will send a copy of the *Declaratory Ruling*, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

Ordering Clauses

Pursuant to the authority contained in sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152 and 225, this *Declaratory Ruling* is adopted. Ultratec’s *Petition for Clarification* is granted to the extent indicated herein. The Commission’s Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Declaratory Ruling* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 03-24485 Filed 9-26-03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 030716175-3175-01; I.D.: 071503B]

RIN 0648-AQ77

Endangered and Threatened Species: Amendment of the Code of Federal Regulations to Withdraw Critical Habitat Designations Vacated by Court Order

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to remove critical habitat designations for 19 salmon and steelhead Evolutionarily Significant Units (ESUs) in order to comply with an order of a Federal District Court.

DATES: The action became effective on April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Stone, NMFS Northwest Region (WA, OR, and ID), 503/231-2317; Craig Wingert, NMFS Southwest Region (CA), 562/980-4021; or Lamont Jackson, NMFS Headquarters (Silver Spring, MD), 301/713-1401.

SUPPLEMENTARY INFORMATION: On February 16, 2000, NMFS published a final rule designating critical habitat for 19 ESUs of west coast salmon and steelhead under section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (65 FR 7764). The designations included more than one hundred and fifty river subbasins covering a total land area of approximately 154,000 square miles (400,400 square kilometers) in WA, OR, ID, and CA. Within each occupied subbasin, NMFS designated as critical habitat those stream areas accessible to listed fish, along with the associated riparian zone. Areas considered inaccessible included areas above long-standing natural impassable barriers and areas above impassable dams, but not areas above ephemeral barriers such as failed culverts.

NMFS determined in 2000 that the critical habitat designations would

impose few if any additional requirements on federal agencies beyond those already imposed by the listing of the species themselves. The ESA's prohibition against any action that is likely to result in the destruction or adverse modification of critical habitat applies only to federal agencies, which are also prohibited from taking any action that is likely to jeopardize the continued existence of listed species. NMFS reasoned that since it was designating only occupied habitat, there would be few or no actions that adversely modified critical habitat that also did not jeopardize the continued existence of the species. Therefore, NMFS determined there would be no economic impact as a result of the designations (65 FR 7764, 7765, February 16, 2000).

The National Association of Homebuilders (NAHB) challenged the critical habitat designations in U.S. District Court in Washington, D.C. as having inadequately considered the economic and other impacts of the designations (*National Association of Homebuilders v. Evans*, Civ. No. 00-2799). NAHB also challenged NMFS' designation of Essential Fish Habitat (EFH) (Pacific Coast Salmon Fishery Management Plan, 2000). While the NAHB litigation was pending, the U.S. Court of Appeals for the Tenth Circuit issued its opinion in *New Mexico Cattlegrowers' Association v. U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001). In that case, the Court rejected the Fish and Wildlife Service's approach to economic analysis, which was similar to the approach taken by NMFS in the final rule designating critical habitat for 19 ESUs of west coast salmon and steelhead. Subsequent to the Tenth Circuit decision, NMFS entered into and sought judicial approval of a consent decree resolving the NAHB litigation. That decree provided for the withdrawal of the critical habitat designations for the 19 salmon and steelhead ESUs, and dismissed NAHB's challenge to the EFH designations. The District Court approved the consent decree and vacated the critical habitat designations by Court order on April 30, 2002 (2002 WL 1205743, D.D.C. April 30, 2002).

As a result of the Court's decision, the agency is now amending the Code of Federal Regulations to withdraw critical habitat designations for the following 19 ESUs of salmon and steelhead: (1) Puget Sound chinook salmon; (2) Lower Columbia River chinook salmon; (3) Upper Willamette River chinook salmon; (4) Upper Columbia River spring-run chinook salmon; (5) California Central Valley spring-run

chinook salmon; (6) California coastal chinook salmon; (7) Oregon Coast coho salmon; (8) Hood Canal summer-run chum salmon; (9) Columbia River chum salmon; (10) Ozette Lake sockeye salmon; (11) Southern California steelhead; (12) South-Central California coast steelhead; (13) Central California Coast steelhead; (14) Central Valley California steelhead; (15) Upper Columbia River steelhead; (16) Snake River Basin steelhead; (17) Lower Columbia River steelhead; (18) Upper Willamette River steelhead; and (19) Middle Columbia River steelhead.

Classification

This final rule implements a Court order and does not involve the exercise of agency discretion and, therefore, under 5 U.S.C. 553(b)(B) good cause exists to waive the notice and comment requirements of the Administrative Procedure Act, as such procedures are unnecessary. Further, in that this rule implements a Court order already in effect, good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 226

Endangered and threatened species

Dated: September 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

PART 226—[AMENDED]

■ 1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Remove Tables 7 through 24.

■ 3. Remove and reserve § 226.212.

[FR Doc. 03-24567 Filed 9-26-03; 8:45 am]

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