

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

In the Matter of)
Telecommunications Relay Services and) CC Docket No. 90-571
Speech-to-Speech Services for) CC Docket No. 98-67
Individuals with Hearing and Speech Disabilities) CG Docket No. 03-123

REPORT AND ORDER, ORDER ON RECONSIDERATION,
AND FURTHER NOTICE OF PROPOSED RULEMAKING

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statements.

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I. INTRODUCTION

1. In this *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (Order)* the Commission addresses cost recovery and other matters relating to the provision of telecommunications relay services (TRS)¹ pursuant to Title IV of the Americans with Disabilities Act

¹ The term *telecommunications relay service* means “telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication 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.” 47 U.S.C. § 225(a)(3). As

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of 1990 (ADA).² This *Order* contains, first, a *Report and Order* addressing: (1) cost recovery issues arising from the *TRS Cost Recovery MO&O & FNPRM*,³ (2) cost recovery issues arising from the *IP Relay Declaratory Ruling & FNPRM*,⁴ (3) issues arising from the Notice of Proposed Rulemaking contained in the *Second Improved TRS Order & NPRM*,⁵ (4) petitions seeking extension of the waivers set forth in the *VRS Waiver Order*,⁶; (5) the *711 Petition*,⁷ (6) the petition by a provider of VRS for “certification” as a TRS provider eligible to receive compensation from the Interstate TRS Fund⁸; and (7) the petition for limited waiver concerning Video Relay Service and interpreting in state legal proceedings.⁹ This *Order* also includes an *Order on Reconsideration* addressing petitions for reconsideration of three TRS matters: (1) the petitions for reconsideration of the June 30, 2003 *Bureau TRS Order*¹⁰ with respect to the per-minute compensation rate for VRS; (2) the *Second Improved TRS Order & NPRM*; and (3) the *Coin Sent-Paid Fifth Report & Order*.¹¹ Finally, this *Order* contains a *Further Notice of Proposed Rulemaking (FNPRM)* seeking comment on various TRS-related matters

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discussed further below, TRS “includes services that enable two-way communication between an individual who uses a [TTY] or other nonvoice terminal device, and an individual who does not use such a device,” *id.*, as well as non-English relay services, Speech-to-Speech services (STS), and Video Relay Services (VRS), *see* 47 C.F.R. § 64.601 (9), (12), & (17), respectively. TRS also includes what is called IP Relay, whereby a user may connect to a TRS facility via a computer (or other similar device) through the Internet.

² Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding section 225 to the Communications Act of 1934 (Act), as amended, 47 U.S.C. § 225; implementing regulations at 47 C.F.R. § 64.601 *et seq.* In Title IV, Congress announced that “[i]n order to carry out the purposes established under section 1 [of the Communications Act of 1934], to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” 47 U.S.C. § 225(b)(1).

³ *Telecommunications Services for Individuals with Hearing and Speech Disabilities – Recommended TRS Cost Recovery Guidelines/Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22948 (Dec. 21, 2001) (*TRS Cost Recovery MO&O & FNPRM*).

⁴ *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 02-121, 17 FCC Rcd 7779 (April 22, 2002) (*IP Relay Declaratory Ruling & FNPRM*).

⁵ *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order & NPRM*).

⁶ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 01-3029, 17 FCC Rcd 157 (Dec. 31, 2001) (*VRS Waiver Order*).

⁷ Sprint, Petition for Declaratory Ruling, CC Docket No. 98-67 (filed May 27, 2003) (*711 Petition*) (addressing access to 900 pay-per-call services via 711 dialing).

⁸ Hands On Sign Language Services, Inc., Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification During Processing (filed Aug. 30, 2002) (*Hands On Application*).

⁹ Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief, CC Docket 98-67 (filed June 12, 2003) (*CSD Petition*).

¹⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd 12823 (June 30, 2003) (*Bureau TRS Order*).

¹¹ *Telecommunication Relay Services and the Americans with Disabilities Act of 1990*, Fifth Report and Order, CC Docket No. 90-571, FCC 02-269, 17 FCC Rcd 21233 (Oct. 25, 2002) (*Coin Sent-Paid Fifth Report & Order*).

relating to the two Internet-based forms of TRS, IP Relay and VRS. We also seek comment on issues concerning the TRS Advisory Council¹² and the abuse of communications assistants (CAs) handling TRS calls. We have concluded that it is in the interest of administrative efficiency to consolidate the various proceedings into this *Order*.¹³

2. Over the past decade, the Commission has issued dozens of orders addressing the provision of telecommunications relay services.¹⁴ In these orders, the Commission has steadily expanded the scope of TRS and the features and services available to both persons with hearing and speech disabilities, and to other persons who desire to communicate by telephone with persons with hearing or speech disabilities.¹⁵ In this *Order*, we take another step toward fulfilling the goals of Title IV of the ADA by further refining the rules governing the provision of TRS. We also take, in the *FNPRM* below, what may be the first steps in expanding the forms of TRS that are mandatory TRS services. In this regard, this *Order* also reflects the vital role that broadband services can play in consumers' lives, the economy of our nation, and the fulfillment of important social policy objectives.

II. BACKGROUND

3. The purpose of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."¹⁶ In adopting Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.¹⁷ As a result, Title IV requires common carriers offering telephone voice transmission services to *also* provide TRS throughout the area in which they offer service so that persons with disabilities will have access to

¹² See generally 47 C.F.R. § 64.604(c)(5)(iii)(H).

¹³ Cf. *Second Improved TRS Order & NPRM* at ¶1 & n.5 (addressing several proceedings involving related issues in same Report and Order).

¹⁴ See generally *Second Improved TRS Order & NPRM* at ¶ 6 n.26 (listing TRS orders).

¹⁵ In this regard, we emphasize that TRS is intended to benefit not just persons with particular disabilities, but all persons as the availability of TRS eliminates telecommunications barriers that also prevent, for example, hearing individuals from initiating telephone calls to persons with hearing disabilities. See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 135 (1990) (House Report) (noting that TRS benefits all society); S. Rep. No. 116, 101st Cong., 1st Sess. 83 (1989) (Senate Report) (same).

¹⁶ See 42 U.S.C. § 12101(b)(1).

¹⁷ See, e.g., House Report at 129; Senate Report at 77-78. The ADA is aimed at eliminating discrimination against persons with disabilities in nearly all facets of society, including access to the telephone system. As an anti-discrimination statute, it is the logical outgrowth of civil rights legislation dating back at least to the landmark Civil Rights Act of 1964 (see 42 U.S.C. § 2000a *et seq.*), as well as the federal civil rights protections for individuals with disabilities first established by the Rehabilitation Act of 1973 (see 29 U.S.C. §706 *et seq.*). The congressional "Findings and Purposes" section of the ADA confirms as much, stating that "individuals with disabilities continually encounter various forms of *discrimination*, including ... the *discriminatory* effects of architectural, transportation, and *communication* barriers," and therefore that it is the purpose of the ADA to provide a "national mandate for the elimination of *discrimination* against individuals with disabilities." 42 U.S.C. § 12101 (emphasis added). The legislative history of the ADA also reflects both the statute's place in the long line of federal civil rights laws and, more particularly, Title IV's goal of ending discrimination against persons with disabilities that results from communications barriers. The House Report states, for example, that "[t]he [ADA] completes the cycle begun in 1973 [with the Rehabilitation Act] with respect to persons with disabilities by extending to them the same civil rights protections provided to women and minorities beginning in 1964." House Report at 25. With respect to telecommunications, the House Report notes the need for "Federal prohibition of discrimination on the basis of disability in ... telecommunications." *Id.* at 28. The ADA and its legislative history, therefore, squarely present the problem at which Title IV is directed: millions of Americans cannot use the nation's telephone system because it does not accommodate their hearing, speech, or other disability.

telecommunications services, and provides that they will be compensated for their just and reasonable costs of doing so.¹⁸ The intent of Title IV is to further the Communications Act's goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are "functionally equivalent" to those available to individuals without such disabilities.¹⁹

4. *TRS and the Design of the TRS Regulations.* Section 225 sets forth several overarching principles governing the provision and regulation of TRS. First, section 225 requires the Commission to ensure that TRS is available "to the extent possible and in the most efficient manner" to persons with hearing or speech disabilities in the United States.²⁰ Second, section 225 requires that TRS provide "functionally equivalent" telephone service for persons with hearing or speech disabilities.²¹ Further, the statute requires that the Commission's implementing regulations encourage the use of existing technology and not discourage the development of new technology.²² Finally, the regulatory scheme distinguishes between *intrastate* and *interstate* TRS services, and is reflected, in part, by the arrangement whereby states are responsible for the reimbursement of the costs of intrastate TRS and the Interstate TRS Fund is responsible for the reimbursement of the costs of interstate TRS.²³ With the recognition of VRS and IP Relay as forms of TRS, new issues have arisen, including how to determine whether a particular IP Relay

¹⁸ TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. We have explained the paradigm of a "traditional" (e.g., TTY text-based) TRS call this way: When a person with a hearing or speech disability makes a TRS call, the user dials a telephone number for a TRS facility using a text-telephone (TTY). In this context, the first step for the TRS user, the completion of the outbound call to the TRS facility, is functionally equivalent to receiving a "dial tone." The caller then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the "link" in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 at ¶ 2 (March 6, 2000) (*Improved TRS Order & FNPRM*).

¹⁹ *See, e.g.*, House Report at 129-130 (Section 225 "imposes on all common carriers providing interstate or intrastate telephone service[] an obligation to provide to hearing and speech-disabled individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals."); 47 U.S.C. § 225(a)(3). The statute also provides, however, that common carriers can meet their obligation to provide TRS "individually, through designees, through a competitively selected vendor, or in concert with other carriers." 47 U.S.C. § 225(c). Therefore, every common carrier required to offer TRS need not necessarily do so individually.

²⁰ 47 U.S.C. § 225(b)(1); *see also* House Report at 129.

²¹ 47 U.S.C. § 255(a)(3).

²² 47 U.S.C. § 255(d)(2).

²³ 47 U.S.C. § 255(d)(3). The costs of TRS are not directly recovered from TRS users. Congress expressly made clear that TRS users cannot be required to pay for the costs of TRS. Section 225(d)(1)(D) provides that our regulations must "require that users of [TRS] pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination." 47 U.S.C. § 225(d)(1)(D). In enacting such a regulation, *see* 47 C.F.R. § 64.604(c)(4), we explained that the functional equivalency mandate required us to ensure that carriers' charges for TRS "not exceed charges of functionally equivalent voice service between the same end points, without regard to how the call is routed." *Telecommunication Services for Hearing-Impaired and Speech-Impaired Individuals*, Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 90-376, 5 FCC Rcd 7187 ¶ 14 (Nov. 16, 1990) (*TRS INPRM*). The Interstate TRS Fund is addressed further below.

or VRS call should be reimbursed by a state or the Interstate TRS Fund, and the desire of entities that are not offering voice telephone services to become TRS providers. We address these issues in this *Order*.

5. As we have noted, one of the fundamental premises underlying the TRS regulatory scheme is the distinction between *interstate* and *intrastate* TRS. At the time section 225 and the implementing regulations were enacted, TRS calls – as a functionally equivalent telephone service – were placed over the Public Switched Telephone Network (PSTN). Therefore, it was possible under prevailing technology to automatically determine for every TRS call whether it was an *interstate* or *intrastate* call. As a result, both the oversight of TRS and the mechanism for compensating providers for the costs of TRS, could be based on – and were based on – whether the common carrier was providing *intrastate* TRS or *interstate* TRS. That situation ultimately evolved, however, and in the March 2000 *Improved TRS Order & FNPRM*, the Commission recognized Video Relay Service (VRS) as a form of TRS. Since VRS generally involves the use of the Internet for one leg of the call to the CA, it is currently not possible to automatically determine the geographic location of that party to the call, and therefore to determine whether a particular VRS call is *intrastate* or *interstate*. Similarly, in April 2002 we recognized that IP Relay was also a form of TRS; such calls present the same issue.²⁴ Therefore, VRS and IP Relay have presented regulatory challenges not necessarily contemplated by a regulatory scheme largely based on the determination whether a particular call is *interstate* or *intrastate*.

6. The interstate/intrastate distinction is first reflected in the oversight of the provision of TRS by common carriers. Congress structured section 225 in such a way that although the Commission has jurisdiction over both *intrastate* and *interstate* TRS, the states have the option to exercise primary jurisdiction over the provision of *intrastate* TRS, via a mechanism whereby the Commission would review and certify individual state TRS programs.²⁵ Congress explained that once a state has a TRS program certified by the Commission, the state is responsible for regulating the provision of *intrastate* TRS within the parameters of its certified program.²⁶ The House Report on the ADA states that “[t]he FCC’s authority over the provision of intrastate telecommunications relay services ... is expressly limited by certification procedures ... whereby a state retains jurisdiction over the intrastate provision of telecommunications relay services. The Committee finds it necessary to grant the FCC such residual authority ... to ensure universal service to the hearing- and speech-impaired community.”²⁷ In short, as we noted in the *Improved TRS Order & FNPRM*, “[w]hile the statutory obligation to provide relay services falls to common carriers, the law gives states a strong role by considering carriers to be in compliance with this obligation if they operate in a state that has a relay program certified as compliant by

²⁴ *IP Relay Declaratory Ruling & FNPRM* at ¶ 1 (noting that “there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate”).

²⁵ 47 U.S.C. §§ 225(c) & (f) set forth the state certification framework. *See also* 47 C.F.R. § 64.605. As a general matter, the state must show that its program meets or exceeds all operational, technical, and functional mandatory minimum standards contained in 47 C.F.R. § 64.604. Although states are not required to have a certified state program, currently all 50 states Puerto Rico and the District of Columbia have certified TRS programs. The legislative history of Title IV makes clear that Congress “hope[d] and expect[ed]” that all states would promptly adopt a certified state program. House Report at 130.

²⁶ House Report at 131.

²⁷ House Report at 130-131. The House Report further explains that although section 225 grants the Commission authority to reach TRS, “[t]he grant of jurisdiction to the FCC is limited ... by the state certification procedures required to be established [under Title IV].” House Report at 131. The House Report states that it is the Committee’s intention that “these procedures operate to preserve initiatives” by states to implement TRS programs, and therefore Title IV “provides that any state may regulate intrastate telecommunications relay services provided by intrastate carriers once the state is granted certification by the FCC.” *Id.* The House Report emphasizes that the “certification procedures and review process should afford the least possible intrusion into state jurisdiction.” *Id.*

this Commission.²⁸

7. The interstate/intrastate distinction is also reflected in the cost recovery scheme; *i.e.*, the compensation of common carriers for their costs of providing TRS. There are two aspects to the cost recovery framework: (1) collecting “contributions” from “[e]very carrier providing interstate telecommunications services” based on “interstate end-user telecommunications revenues” to create a fund from which TRS providers may be compensated; and (2) the payment of money from the fund to eligible TRS providers to compensate them for the costs of providing eligible TRS services.²⁹ With regard to collecting money to create the fund, section 225 provides that the costs caused by the provision of *interstate* TRS “shall be recovered from all subscribers for every interstate service,” and the costs caused by the provision of *intrastate* TRS “shall be recovered from the intrastate jurisdiction.”³⁰ With regard to the provision of *intrastate* TRS, as a general matter the costs of providing *intrastate* TRS are recovered by each state.³¹ No specific funding method is required for *intrastate* TRS or state TRS programs.³² States with certified TRS programs generally recover the costs of intrastate TRS either through rate adjustments or surcharges assessed on all intrastate end users, and reimburse TRS providers directly for their intrastate TRS costs.

8. With respect to *interstate* TRS cost recovery, the Commission has established a shared-funding mechanism based on contributions from all carriers that provide interstate telecommunications services. Those contributions are based on the carrier’s interstate end-user telecommunications revenues.³³ All contributions are placed in the Interstate TRS Fund, which is administered by the TRS Fund Administrator, currently the National Exchange Carrier Association (NECA).³⁴ The fund

²⁸ *Improved TRS Order & FNPRM* at ¶ 3. As we have noted, carriers may choose to offer TRS individually, through designees, through a competitively selected vendor, or in concert with other carriers. 47 U.S.C. § 225(c). This provision allows all of the common carriers providing voice telephone service in a state to meet their section 225 obligation to provide *intrastate* TRS through a centralized state program. Generally, the state selects a competitively selected vendor, and by so doing the other common carriers in the state that offer local telephone service are deemed to have met their obligation to provide *intrastate* TRS. In this way, the state certification mechanism, in addition to giving states jurisdiction over *intrastate* TRS, also advances the statutory mandate that TRS be provided in “the most efficient manner.” 47 U.S.C. § 225(b)(1).

²⁹ See 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5). The regulations, addressing these matters separately, characterize the former as “cost recovery,” see 47 C.F.R. §§ 64.604(c)(5)(ii) & (iii)(A) – (D), and the latter as “payments to TRS providers,” 47 C.F.R. §§ 64.604(c)(5)(iii)(E) & (F).

³⁰ 47 U.S.C. § 225(d)(3)(B); see also 47 C.F.R. § 64.604(c)(5)(ii).

³¹ As discussed further below, the costs of providing certain types of *intrastate* TRS, including VRS and IP Relay, are currently not recovered from the states, but are recovered pursuant to the rules governing the recovery of the costs of *interstate* TRS. See *Improved TRS Order & FNPRM* at ¶ 15; *IP Relay Declaratory Ruling & FNPRM* at ¶ 20.

³² In a state with a certified TRS program, the state “shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of [section 225].” 47 U.S.C. § 225(c)(3)(B).

³³ We take this opportunity to reiterate that carriers obligated to contribute to the Interstate TRS Fund (*e.g.*, carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers’ bill as one for relay services. See *TRS Second Report & Order* at ¶ 22; *Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, Report and Order and Request for Comments, CC Docket No. 90-571, FCC 91-213, 6 FCC Rcd 4657 at ¶ 34 (July 26, 1991) (*TRS I*) (“in order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on the subscribers’ lines”).

³⁴ The amount of each carrier’s contribution is the product of the carrier’s interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission. 47 C.F.R. § 64.604(c)(5)(iii). On

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administrator uses these funds to compensate “eligible” TRS providers³⁵ for the costs of providing the various forms of TRS; presently, interstate traditional TRS, interstate Speech-to-Speech, interstate Spanish Relay service, IP Relay, and VRS. Fund distributions are made on the basis of a payment formula initially computed by NECA in accordance with the Commission’s rules, and then approved or modified by the Commission.³⁶ The reimbursement rate calculations are presently based on the cumulative average cost per interstate minute for each service.³⁷ There are currently three different compensation rates for different forms of TRS: a rate for traditional TRS and IP Relay,³⁸ a rate for STS, and a rate for VRS.³⁹

9. *Commission Orders and Rulings.* The Commission issued its first order pursuant to Title IV of the ADA implementing TRS on July 26, 1991.⁴⁰ TRS became available on a nationwide basis pursuant to Commission regulations in July 1993.⁴¹ Since 1991, the Commission has revisited the

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February 24, 2004, the Consumer & Governmental Affairs Bureau issued an Order increasing the fund size from approximately \$115 million to \$170 million for the 2003-2004 fund year as a result of the use of IP Relay and VRS beyond the initial projections of the Fund Administrator. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 04-465 (Feb. 24, 2004).

³⁵ 47 C.F.R. § 64.604(c)(5)(iii)(E) & (F) (setting forth, among other things, the eligibility requirements for TRS providers seeking to receive compensation from the Interstate TRS Fund).

³⁶ 47 C.F.R. § 64.604(c)(5)(iii). The regulations provide that “TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. . . . Such formulas shall be designed to compensate TRS providers for *reasonable* costs of providing interstate TRS, and shall be subject to Commission approval.” 47 C.F.R. § 64.604(c)(5)(iii)(E); *see, e.g., Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 02-1166, 17 FCCR 8840 (2002); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 01-1502, 16 FCCR 12895 (2001); *see generally Bureau TRS Order* at ¶ 13 n.44 (citing all orders adopting compensation rates for traditional TRS); ¶ 15 n.47 (citing all orders adopting compensation rates for STS); and ¶ 18 n.52 (citing all orders adopting compensation rates for VRS).

³⁷ *See generally Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 02-1166, 17 FCC Red 8840 at ¶ 2 (May 16, 2002) (order modifying compensation rates of various TRS services).

³⁸ The Commission determined that the compensation rate for IP Relay would be at the same rate as for traditional TRS because there is little difference in the costs of providing these services. *See IP Relay Declaratory Ruling & FNPRM* at ¶ 22. Likewise, eligible non-English language relay service minutes fall within the traditional TRS rate. *See Improved TRS Order & FNPRM* at ¶¶ 28-31; *TRS Cost Recovery MO&O* at ¶ 13. We raise in the *FNPRM* below whether we should adopt separate compensation rates for traditional TRS and IP Relay.

³⁹ In order for the TRS administrator to make the necessary calculations to determine the per-minute compensation rates, TRS providers are required to submit to the administrator “true and adequate data necessary to determine TRS fund revenue requirements and payments.” 47 C.F.R. § 64.604(c)(5)(iii)(C). Specifically, TRS providers must provide the administrator with “total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment,” as well as “other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements.” *Id.* Using the projected cost and projected minutes of use information it receives from the TRS providers, the TRS administrator determines the per-minute compensation rate for the various forms of TRS.

⁴⁰ *See TRS I.*

⁴¹ 47 U.S.C. § 225(b)(1). Section 225 requires common carriers providing telephone voice transmission services to provide TRS throughout the areas they serve. The statute mandated an implementation date of no later than July 26, 1993. *See* 47 U.S.C. § 225(c). Prior to the enactment of Title IV, some states offered relay services, but the services

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regulations governing TRS on numerous occasions, in part, to make available to consumers new forms of TRS, and to amend the mandatory minimum standards⁴² to improve the quality of TRS, consistent with the goal of functional equivalency set forth in section 225.⁴³ In March 2000, the Commission issued the *Improved TRS Order & FNPRM*, which, in part, concluded that VRS was a form of TRS, but tentatively concluded that the provision of VRS should not be mandatory given its technological infancy.⁴⁴ The Commission nevertheless encouraged the use and development of VRS,⁴⁵ and to this end stated that, on an interim basis, all VRS calls would be eligible for cost recovery from the Interstate TRS Fund.⁴⁶ On December 21, 2001, the Commission released the *TRS Cost Recovery MO&O & FNPRM* which, among other things, sought additional comment on the appropriate cost recovery mechanism for VRS.⁴⁷ On December 31, 2001, the Wireline Competition Bureau⁴⁸ issued the *VRS Waiver Order* waiving, until December 31, 2003, various TRS mandatory minimum standards as applied to VRS.⁴⁹ In September 2003, several petitions were filed to extend these waivers beyond December 31, 2003. We address those petitions below.⁵⁰

10. On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & FNPRM*, which further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS. 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.⁵¹ In the *FNPRM*, the Commission requested comment on whether it

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offered differed from state to state, were subject to many limitations, and were generally limited to intrastate calls. See *Second Improved TRS Order & NPRM* at ¶ 6 n.24..

⁴² 47 C.F.R. § 64.604. The purpose of the mandatory minimum standards is to ensure that TRS is offered, consistent with the functional equivalency mandate set forth in section 225, *TRS I* at ¶ 1, in an efficient and consistent manner throughout the United States. The Commission, as directed by section 225, established mandatory minimum operational, technical, and functional standards. See 47 U.S.C. § 225(d)(1)(B); 47 C.F.R. § 64.604(a)-(c). The House Report explains that “Section (d)(1)(B) [of Title IV] requires the Commission to establish minimum federal standards to be met by all providers of [TRS] including ... standards that will define functional equivalence between telecommunications relay services and voice telephone transmission services.” House Report at 133. The Commission has also made clear that the mandatory minimum standards are intended to ensure that TRS is provided in a manner that is functionally equivalent to the ability of persons who do not have hearing or speech disabilities to communicate using voice communication services. See, e.g., *TRS I* at ¶ 1.

⁴³ See *Second Improved TRS Order & NPRM* at ¶ 6 n.26 (listing many of the Commission’s TRS orders).

⁴⁴ The Commission also stated that because VRS “will be offered on a voluntary basis, we will not require it to operate every day, 24 hours a day.” *Id.* at ¶ 42 (citing 47 C.F.R. § 64.604(b)(4), which states that “[r]elay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day.”).

⁴⁵ *Improved TRS Order & FNPRM* at ¶¶ 23-27.

⁴⁶ *Id.* at ¶ 26.

⁴⁷ *TRS Cost Recovery MO&O & FNPRM* at ¶ 35.

⁴⁸ Formerly, the Common Carrier Bureau.

⁴⁹ *VRS Waiver Order*.

⁵⁰ These waivers were extended to June 30, 2004, by an Order dated December 19, 2003. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket 98-67, DA 03-4029 (Dec. 19, 2003) (*VRS Waiver Extension Order*).

⁵¹ See generally *IP Relay Declaratory Ruling & FNPRM* at ¶¶ 15-26. Further, on March 14, 2003, the Commission extended or granted waivers of mandatory minimum standards requiring the provision of voice carry over (VCO), hearing carry over (HCO), emergency call handling, and 900-number services over IP Relay until January 01, 2008. *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with*

(continued....)

should devise a method for allocating IP Relay calls as intrastate or interstate. We address that issue below.

11. On October 25, 2002, the Commission released the *Coin Sent-Paid Fifth Report & Order*, which resolved long-standing issues concerning access to TRS by depositing coins in a public payphone. We concluded that a technological solution to processing coin sent-paid calls was not available, and that the coin sent-paid functionality was not necessary to achieve functional equivalence.⁵² We therefore eliminated the requirement that TRS carriers and providers be capable of providing coin sent-paid TRS service from payphones.⁵³ With regard to local (non-toll) calls, we mandated that carriers provide free TRS local calls from payphones.⁵⁴ With regard to toll calls, we required carriers to allow the use of calling cards, prepaid cards, and collect or third party billing for TRS calls from payphones.⁵⁵ We also declined to adopt a requirement that common carriers may not charge more than the lower of the coin sent-paid rate or the rate for the calling card, collect, or third-party billing, for TRS toll calls from payphones.⁵⁶ Finally, we encouraged specific outreach and education programs to inform TRS users of alternatives to the use of coins when placing toll calls from payphones.⁵⁷ We address a petition for reconsideration of this order below.

12. On June 17, 2003, the Commission released the *Second Improved TRS Order & NPRM*, which, in part, authorized the availability of signaling system 7 technology to TRS providers, and required TRS facilities to provide various new types of TRS calls, including two-line voice carry-over (VCO) and two-line hearing carry-over (HCO), HCO-to-TTY and HCO-to-HCO, and VCO-to-TTY and VCO-to-VCO.⁵⁸ The Commission also granted waivers of certain of the newly adopted requirements for IP Relay and VRS,⁵⁹ and changed the requirement that TRS facilities automatically forward emergency calls to the nearest Public Safety Answering Point (PSAP) to a requirement that the TRS facilities forward such calls to the appropriate PSAP.⁶⁰ Further, the Commission mandated the offering of several additional TRS features on a functionally equivalent basis with voice telephone features.⁶¹ In the *NPRM*, the Commission asked for comment on such matters as (1) whether TRS facilities should receive a national security/emergency preparedness priority; (2) the security of IP Relay calls; (3) the handling of emergency calls from wireless telephones; and (4) whether and how the Commission should establish a

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Hearing and Speech Disabilities, Order on Reconsideration, CC Docket No. 98-67, FCC 03-46, 18 FCC Rcd 4761 (March 14, 2003) (*IP Relay Order on Reconsideration*).

⁵² *Coin Sent-Paid Fifth Report & Order* at ¶¶ 2, 17.

⁵³ *Id.* at ¶ 17.

⁵⁴ *Id.* at ¶¶ 18-21.

⁵⁵ *Id.* at ¶ 22.

⁵⁶ *Id.* at ¶ 23.

⁵⁷ *Id.* at ¶¶ 2, 28-39.

⁵⁸ *Second Improved TRS Order & NPRM* at ¶¶ 21, 25, 29, 32, 34.

⁵⁹ *Id.* at ¶ 36.

⁶⁰ *Id.* at ¶ 40.

⁶¹ *See id.* at ¶¶ 63-76. The Commission required the offering of answering machine message retrieval, automatic call forwarding, call release, speed dialing, and three-way calling for TRS, but waived these requirements for IP Relay and VRS. On February 24, 2004, an Order was issued that waived for one year (*i.e.*, until February 24, 2005) the rule requiring TRS providers to offer three-way calling functionality. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 04-465 (Feb. 24, 2004).

national TRS outreach campaign.⁶² The Commission also sought comment on ways to improve the operational and technical aspects of TRS service.⁶³ Finally, the Commission requested comment on whether and how it should address the provision of TRS in circumstances not covered by the rules, including eligibility of providers for compensation from the Interstate TRS Fund.⁶⁴ We address these issues below. We also address the petitions for reconsideration of the *Second Improved TRS Order & FNPRM*.

13. On June 30, 2003, the Consumer & Governmental Affairs Bureau (CGB) released the *Bureau TRS Order* adopting interim compensation rates for the various forms of TRS for the July 2003-June 2004 Interstate TRS Fund year.⁶⁵ The Bureau established interim compensation rates of \$1.368 per completed call minute for traditional TRS and IP Relay,⁶⁶ \$2.445 per completed call minute for STS,⁶⁷ and \$7.751 per completed call minute for VRS.⁶⁸ The TRS fund administrator (NECA), had proposed a per-minute VRS compensation rate of \$14.023. On July 30, 2003, five parties filed petitions for reconsideration, challenging the interim VRS compensation rate of \$7.751 per minute and requesting that the Commission adopt NECA's proposed compensation rate of \$14.023. We address these petitions below.

III. EXECUTIVE SUMMARY

14. In this *Report and Order*, we:

- Continue, on an interim basis, the per-minute cost recovery methodology for VRS.
- Adopt the per-minute cost recovery methodology for IP Relay.
- Address the TRS features, requirements, and issues raised in the *Second Improved TRS Order & NPRM*. We decline to adopt a national outreach program or to permit the Interstate TRS Fund to fund such a campaign. We also decline at this time to adopt new rules providing that the Commission can certify providers as eligible for compensation from the Interstate TRS Fund.
- Grant the extension of certain waivers of our TRS mandatory minimum standards as applied to the provision of VRS.
- Grant Sprint's *711 Petition* requesting that the Commission declare that the manner in which it provides 900 pay-per-call services to users who access a relay center by dialing 711 fully satisfies the requirement that such service be offered by TRS providers. At the same time, we acknowledge that there are other ways that TRS providers can achieve this functionality.
- Dismiss, without prejudice, the petition by a provider of VRS for "certification" as a TRS provider eligible for compensation from the Interstate TRS Fund. We note that neither section

⁶² *Id.* at ¶¶ 105, 107-109, 114, 130-133.

⁶³ *Id.* at ¶¶ 115-127.

⁶⁴ *Id.* at ¶¶ 136-137.

⁶⁵ *Bureau TRS Order*. See generally *id.* at ¶¶ 5-22, summarizing the cost recovery scheme for providers of TRS and the annual review and adoption of the per-minute TRS compensation rates for services eligible for compensation from the Interstate TRS Fund.

⁶⁶ *Id.* at ¶ 26.

⁶⁷ *Id.* at ¶ 28.

⁶⁸ *Id.* at ¶ 38.

225 nor our TRS regulations provide that the Commission can “certify” any TRS provider as eligible to receive compensation from the Interstate TRS Fund.

- Deny the petition filed by a provider of VRS that requests limited waiver of our rule prohibiting CAs from refusing to handle calls in the context of VRS calls that are part of legal depositions or other state legal proceedings. We explain that when a VRS CA is acting as such pursuant to section 225 he or she is acting as an invisible, confidential conduit relaying the call between the parties to provide functionally equivalent telephone service. The fact that a party to the call may be making a VRS call to accomplish a particular purpose regulated by state law does not affect the role and obligations of the VRS CA under the congressionally mandated TRS scheme.

15. In the *Order on Reconsideration*, we:

- Affirm in part, and modify in part, the Bureau’s decision setting interim compensation rates for TRS from the Interstate TRS Fund as set forth in the June 30, 2003 *Bureau TRS Order*. More specifically, we conclude that the Bureau correctly determined the interim TRS compensation rates in the *Bureau TRS Order* for the various forms of TRS, but upon review of amended cost data submitted by the providers we modify the per-minute compensation rate for Video Relay Service, increasing it from \$7.751 per minute to \$8.854 per minute. Because the modified compensation rate of \$8.854 is based on information the Commission received from various providers subsequent to the release of the *Bureau TRS Order*, the new compensation rate shall apply to the provision of eligible VRS service effective September 1, 2003, through the end of the 2003-2004 fund year.
- Deny a joint petition for reconsideration of the October 25, 2002, *Coin Sent-Paid Fifth Report & Order*. We again decline to impose cost parity for toll calls via payphones made by TRS users and made by non-TRS users. We also decline to adopt a national outreach program with respect to this issue, or to impose specific outreach obligations on carriers relating to payphone calls.
- Grant, in part, petitions for reconsideration filed in response to the June 17, 2003, *Second Improved TRS Order & NPRM* with respect to the requirement that TRS facilities route emergency *wireline* TRS calls to an “appropriate” PSAP, and amend our rules accordingly.

16. The Commission is also issuing a *Further Notice of Proposed Rulemaking (FNPRM)* seeking public comment on various matters concerning IP Relay and VRS, including the appropriate cost recovery methodology for VRS, possible mechanisms to determine which IP Relay and VRS calls are intrastate and which are interstate for purposes of reimbursement, whether IP Relay and VRS should become mandatory TRS services, whether IP Relay and VRS should be required to be offered 7 days a week, 24 hours a day, and whether, when, and how we should apply the speed of answer rule to the provision of VRS. We also seek comment on redefining the composition, functions, and responsibilities of the TRS Advisory Council, and on issues relating to the abuse of CAs by persons using TRS.

IV. REPORT AND ORDER

A. VRS COST RECOVERY (CC DOCKET NO. 98-67)

1. Background

17. In the March 2000 *Improved TRS Order & FNPRM*, the Commission concluded that VRS is a form of TRS,⁶⁹ but did not make it mandatory because VRS “remains in its technological

⁶⁹ The Commission concluded that TRS is not limited to services involving TTYs but that, given the language of section 225, applies to any “telephone transmission service” that allows a person with a hearing or speech disability

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infancy.”⁷⁰ At the same time, the Commission adopted a “special funding arrangement[]for [VRS service] by allowing the costs of all calls – both *intrastate* and *interstate* – to be reimbursed from the [I]nterstate TRS Fund”⁷¹ The Commission explained that the special funding arrangement was temporary and intended to speed the development of VRS, and that the Commission would “continue to assess the availability of the service and its technological development and determine at some point in the future when it best can be funded in the traditional manner.”⁷² At the same time, the Commission directed the TRS Fund Advisory Council (Advisory Council) and the TRS Fund Administrator to develop cost recovery guidelines for the new types of TRS – including VRS – recognized in the order.⁷³

18. In response to that directive, on November 9, 2000, the Advisory Council and the TRS Fund Administrator submitted recommended TRS cost recovery guidelines for traditional TRS, STS, and VRS.⁷⁴ The Advisory Council and the TRS Fund Administrator proposed the following four recommendations with respect to VRS cost recovery: (1) that the same methodology for rate development in place today for traditional TRS interstate cost recovery be used to develop the VRS reimbursement rate; (2) that providers should be reimbursed based on completed conversation minutes at a national average reimbursement rate; (3) that the TRS Center Data Request⁷⁵ should be expanded to include specific VRS sections to capture VRS costs and demand separately; and (4) that due to its unique characteristics, a separate reimbursement rate based on VRS costs and demand should be calculated.⁷⁶

19. On December 6, 2000, the former Common Carrier Bureau (now the Wireline Competition Bureau) issued a Public Notice seeking comment on the recommended cost recovery guidelines.⁷⁷ The Commission noted that the “recommendations propose methodologies for recovering costs associated with the provision of traditional [TRS], [STS], and [VRS],” and that in each case the recommendation is to apply “the traditional TRS cost recovery model to each service, but captur[e] minutes of use and costs separately and establish[] separate reimbursement rates.”⁷⁸ Sprint Communications Corporation (Sprint), MCI (WorldCom),⁷⁹ and Communications Services for the Deaf (CSD) filed comments on the VRS recommendations.⁸⁰ Sprint and CSD raised alternative proposals for VRS reimbursement.⁸¹

20. On December 21, 2001, the Commission issued the *TRS Cost Recovery MO&O &*

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to “communicat[e] by wire or radio” with a person without such a disability. *Improved TRS Order & FNPRM* at ¶ 13.

⁷⁰ *Id.* at ¶ 22.

⁷¹ *Id.*

⁷² *Id.* at ¶¶ 26-27.

⁷³ *Id.* at ¶ 33. The Commission required these guidelines to be submitted within six months. *Id.*

⁷⁴ *Recommended TRS Cost Recovery Guidelines*, CC Docket No 98-67 (filed Nov. 9, 2000) (*Recommendations*).

⁷⁵ The TRS Center Data Request is a spreadsheet form prepared by NECA that the TRS providers use to itemize their submitted cost data.

⁷⁶ *Recommendations* at 7-8.

⁷⁷ *Interstate TRS Fund Advisory Council and TRS Fund Administrator’s Recommended TRS Cost Recovery Guidelines*, Public Notice, CC Docket No. 98-67, DA 00-2739, 15 FCC Rcd 23987 (Dec. 6, 2000).

⁷⁸ *Id.*

⁷⁹ Throughout this *Order*, we refer to comments by WorldCom, Inc, or MCI as “MCI (WorldCom).”

⁸⁰ See *TRS Cost Recovery MO&O & FNPRM* at ¶ 3.

⁸¹ *Id.*

FNPRM addressing the Advisory Council and the TRS Fund Administrator's cost recovery guidelines. With respect to VRS, the Commission adopted two of the recommendations, concluding that given "the unique characteristics of VRS, a separate reimbursement rate for VRS should be calculated" and "the TRS Center Data Request should be expanded to include specific sections to capture separately VRS costs and minutes for this service."⁸² The Commission declined to adopt, however, the recommendations that the VRS compensation rate should be based on the same methodology in place for traditional TRS, and that the VRS reimbursement rate should be based on completed conversation minutes of use at a national average reimbursement rate.⁸³ The Commission stated that it was "not convinced that this methodology will provide adequate incentives to carriers to provide [VRS]."⁸⁴ The Commission noted that both Sprint and CSD argued that "compensation on a per-minute basis may not adequately compensate VRS providers for the substantial up-front capital costs required to provide the service."⁸⁵ Therefore, the Commission stated that it would seek further comment on these issues. In the interim, the Commission directed the TRS Fund Administrator to adopt a VRS cost recovery rate using the average per minute compensation methodology used for traditional TRS. The Commission stated that the "interim rate shall be in effect until such time that the Commission is able to collect and assess additional data regarding what the permanent VRS compensation methodology should be."⁸⁶

21. As a result, the *TRS Cost Recovery MO&O & FNPRM* sought additional comment on the appropriate cost recovery mechanism for VRS. The Commission noted that both Sprint and CSD suggested in their comments that because of the relatively high initial capital expenditures required for VRS, a per minute compensation rate may not allow them adequate cost recovery.⁸⁷ As a result, Sprint and CSD had proposed that, "for the present time, VRS compensation be based on a flat monthly payment for an assumed number of minutes rather than the completed conversation minutes of use at a national average reimbursement rate."⁸⁸ The Commission concluded that Sprint and CSD's proposal was not sufficiently detailed, and therefore the Commission sought additional comment on these proposals. The Commission also encouraged parties to propose other compensation plans for the provision of VRS.⁸⁹

22. Only two parties, Sprint and MCI (WorldCom), submitted comments in response to the *TRS Cost Recovery MO&O FNPRM*. MCI (WorldCom) opposed Sprint's and CSD's flat rate proposal, contending that the current per minute compensation methodology is adequate and that their proposal would have the perverse affect of rewarding providers for declining levels of demand.⁹⁰ In its February 2002 comments, however, Sprint withdrew its proposed flat monthly compensation plan, stating that it no longer believed it was necessary because the per minute reimbursement rate for providing VRS had increased to a level sufficient to be an incentive for providing VRS.⁹¹ As a result, there are no comments in the record opposing the original proposal of the TRS Advisory Council and TRS Fund Administrator that the VRS compensation rate should be based on the same methodology in place for traditional TRS,

⁸² *Id.* at ¶ 22. The Commission adopted all of the recommendations with respect to traditional TRS and STS.

⁸³ *Id.* at ¶ 23.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at ¶ 24.

⁸⁷ *Id.* at ¶ 35.

⁸⁸ *Id.*

⁸⁹ *Id.* at ¶ 36.

⁹⁰ MCI (WorldCom) Comments at 2-4.

⁹¹ Sprint Comments at 2. Sprint was referring to NECA's proposal of a compensation rate of \$9.614 per minute. In February 2002, there were approximately 13,000 minutes of VRS reimbursed from the Interstate TRS Fund.

and that the VRS reimbursement rate should be based on completed conversation minutes of use at a national average reimbursement rate.

2. Discussion

23. We will continue at this time the interim arrangement adopted in the *TRS Cost Recovery MO&O & FNPRM* that permits VRS to be reimbursed using the same per-minute compensation methodology used for traditional TRS.⁹² As discussed in the *FNPRM* below, however, we seek additional comment on the appropriate cost recovery methodology for VRS and, in particular, whether a methodology other than a per-minute based compensation rate should be adopted for VRS. The determination of a “reasonable” per-minute compensation rate for VRS has presented serious challenges, in part due to issues concerning CA staffing, labor costs, and engineering costs particular to VRS.⁹³ For this reason, we raise below whether an arrangement other than one based on a per-minute compensation rate predicated on predictions of minutes of use and costs would be more appropriate for VRS.

24. We also note that we have made clear that the current arrangement of compensating VRS providers from the Interstate TRS Fund for *all* VRS calls (*i.e.*, both interstate and intrastate) is a temporary one, and one that we would revisit at an appropriate time. Therefore, as also set forth below in the *FNPRM*, we seek comment on what mechanism might be adopted to satisfy the statutory requirement that “costs caused by interstate [TRS] shall be recovered from all subscribers for every interstate service and costs caused by intrastate [TRS] shall be recovered from the intrastate jurisdiction.”⁹⁴ We also seek comment below on whether the provision of VRS has sufficiently developed such that it should be included as a mandatory form of TRS.

B. IP RELAY COST RECOVERY (CC DOCKET NO. 98-67)

1. Background

25. In the April 2002 *IP Relay Declaratory Ruling & FNPRM*, the Commission concluded that IP Relay falls within the definition of TRS,⁹⁵ and that such services were eligible for cost recovery in

⁹² Currently, there are seven VRS providers: Sprint (in conjunction with CSD); MCI (WorldCom) (in conjunction with Hands On); AT&T (in conjunction with Hands On); Sorenson; Communication Access Center (CAC); Hamilton Relay, Inc. (Hamilton); and Hands On. As NECA has reported, the minutes of use for VRS has increased from 7,215 in January 2002 to 159,469 in May 2003, to 381,783 in December 2003, to 534,536 in February 2004, and to 709,718 minutes in March 2004..

⁹³ See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd 12823 (June 30, 2003) (*Bureau TRS Order*).

⁹⁴ 47 U.S.C. § 225(d)(3)(B).

⁹⁵ The Commission concluded that IP Relay falls within the definition of TRS because Congress broadly defined TRS to be a “telephone transmission service” that is constrained only by the requirement that the service provide a particular functionality, and that IP Relay provides the functionality of permitting a person with a hearing or speech disability to communicate by wire or radio with a person without such disabilities. *IP Relay Declaratory Ruling & FNPRM* at ¶ 10. The Commission also noted that this conclusion was consistent with the statutory admonitions that TRS be made available to the extent possible and in the most efficient manner, and that the Commission encourage the use of existing technology and not discourage the development of new technology. *Id.* Finally, the Commission expressly rejected the notion that TRS is limited to “telecommunication services,” noting that TRS was specifically defined. *Id.* at ¶¶ 12-14. The Commission noted that in view of that definition it was “not required to, and consequently [did] not, make a finding whether IP Relay constitutes telecommunications, telecommunications service, or information service.” *Id.* at ¶ 14.

accordance with section 225 and our regulations.⁹⁶ Because “there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate,” the Commission “authorize[d], on an interim basis, recovery of all costs of providing IP Relay from the Interstate TRS Fund.”⁹⁷ As we explained, with IP Relay the caller contacts the TRS provider via the Internet through an Internet service provider (ISP). Because Internet addresses have no geographic correlates (*i.e.*, because Internet addresses are assigned without identifiers of geographic location), the record does not indicate that TRS providers can automatically determine the location of the caller, and therefore determine whether the call is interstate or intrastate.⁹⁸

26. The Commission nevertheless addressed possible methods by which the costs of IP Relay could be allocated between the states and the Interstate TRS Fund.⁹⁹ First, the Commission noted that a method could be adopted that would identify the origination of an IP Relay call, and that “[o]ne possible method of doing so would require IP Relay callers to establish profiles that identify the state from which they are calling.”¹⁰⁰ Second, the Commission noted that a cost allocation formula could be developed based on an approximation of the mix of interstate/intrastate calls that were placed over IP Relay. In other words, a fixed allocator would be adopted by which the total costs of providing IP Relay would be apportioned between the Interstate TRS Fund and the states, and among the several states. Finally, the Commission noted that, “[a]lternatively, a determination could be made that cost allocation is not necessary,” and that IP Relay costs could be permanently recovered from the Interstate TRS Fund.¹⁰¹

27. The Commission concluded that it would not “at this time ... adopt either of the methods ... of allocating costs between states and the Interstate TRS Fund,” noting that each method had various shortcomings.¹⁰² Because, however, the Commission found that it was “in the public interest to authorize a compensation methodology for IP Relay quickly ... in order to encourage the development of this service, the Commission authorized, “on an interim basis, ... any current or prospective IP Relay provider to receive compensation for providing IP Relay-based TRS from the Interstate TRS Fund, using the same formula that is used for interstate PSTN-based TRS calls, until such time as a determination is made concerning the development of a permanent IP Relay cost recovery formula.”¹⁰³ The Commission also directed the Interstate TRS Fund administrator to develop cost recovery guidelines for IP Relay within six months.¹⁰⁴

28. In the accompanying FNPRM, the Commission requested “comment on whether we should attempt to devise a method for allocating calls as intrastate or interstate, and, if so, suggestions for how we may accomplish that goal.”¹⁰⁵ In this regard, the Commission tentatively concluded that the

⁹⁶ *IP Relay Declaratory Ruling & FNPRM* at ¶ 1; *see also id.* at ¶¶ 20-22.

⁹⁷ *Id.* at ¶ 1.

⁹⁸ By contrast, traditional TRS calls are placed via the public switched telephone network (PSTN), which allows the TRS facility or provider to determine the location of the caller from the Automatic Number Identification (ANI) transmitted with the call. This information, along with the called number, allows the TRS facility or provider to determine whether the call is interstate or intrastate, and establishes whether the TRS provider is compensated for the call from the Interstate TRS Fund or from the state.

⁹⁹ *IP Relay Declaratory Ruling & FNPRM* at ¶¶ 17-18.

¹⁰⁰ *Id.* at ¶ 17.

¹⁰¹ *Id.* at ¶ 18.

¹⁰² *Id.* at ¶ 20.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at ¶ 23.

¹⁰⁵ *Id.* at ¶ 41.

classification of an IP Relay call should be decided by the locations of the caller and the ultimate recipient, without regard to the location of any intermediate point of switching or exchange, including the IP Relay center.¹⁰⁶ At the same time, the Commission acknowledged that “this methodology of allocation is problematic because . . . there is no automatic means of determining the origination of IP Relay calls.”¹⁰⁷ The Commission therefore sought comment (1) on whether section 225 requires the Commission to develop a method for allocating IP Relay costs between the Interstate TRS Fund and among the several states, and, if so, (2) on what methods exist or could be developed to determine the location of an IP Relay caller.¹⁰⁸ Specifically, the Commission requested comment on the use of caller profiles to determine the location of the caller, as well as on the use of a fixed allocator.¹⁰⁹ The Commission emphasized that the scope of its inquiry was confined to IP Relay only as a means of functionally equivalent access to the voice telephone network and to the recovery of TRS costs from the Interstate TRS Fund pursuant to section 225 of the Act.¹¹⁰

29. On June 17, 2002, the Commission issued a Public Notice, noting that the *IP Relay Declaratory Ruling & FNPRM* sought “comment on whether the Commission should attempt to devise a method for allocating [IP Relay] calls as intrastate or interstate.”¹¹¹ Nine individuals, corporations, and states filed comments, and two parties filed reply comments.¹¹² Generally, all parties approved of compensating IP Relay from the Interstate TRS Fund as an interim measure. There were differing views, however, on the question of how to compensate IP Relay providers permanently. Many commenters maintain that the Interstate TRS Fund should continue to fund all IP Relay calls, and that such an arrangement is not precluded by the statute. For example, Telecommunications for the Deaf, Inc. (TDI) notes that section 225 requires only that the Commission’s regulations “generally” provide for the allocation of costs, and therefore asserts that promoting IP Relay is sufficient reason for an exemption from allocating costs between the states and Interstate TRS Fund.¹¹³ TDI further notes that insisting on the allocation of costs would be excessively onerous to IP Relay providers and to the states because each IP Relay provider would be required to negotiate contracts with each of 50 states, and it is unlikely that all 50 states would be willing to contract with every IP Relay provider.¹¹⁴

¹⁰⁶ *Id.* at ¶ 42.

¹⁰⁷ *Id.* at ¶ 43.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ The Commission stated: “We emphasize that the scope of our inquiry is confined to IP Relay only and to the recovery of TRS costs from the Interstate TRS Fund. This inquiry is not intended to regulate the Internet, nor to establish standards for the separation of Internet traffic in general, but to regulate IP Relay as a means of functionally equivalent access to the voice telephone network, and to specify how TRS providers may recover the costs for IP Relay. This regulation is pursuant to the authority granted to the Commission by Congress in the Americans with Disabilities Act, codified in Section 225 of the Communications Act.” *Id.* at ¶ 45.

¹¹¹ *Commission Seeks Comment on Classifying Internet Protocol Telecommunications Relay Service Calls as Intrastate or Interstate for Compensation*, Public Notice, CC Docket 98-67, DA 02-1426, 17 FCC Rcd 11255 (June 17, 2002).

¹¹² Comments on the *IP Relay Declaratory Ruling and FNPRM* were filed by AT&T, the Public Service Commission of the State of Missouri (MO PSC), Sprint, Telecommunications for the Deaf, Inc. (TDI), the Verizon telephone companies (Verizon), MCI (WorldCom), and private individuals. Reply comments were filed by Hamilton and TDI.

¹¹³ See TDI Comments at 5-6; see also Verizon Comments at 2-3; MO PSC Comments at 2.

¹¹⁴ See TDI Comments at 5-6; see also MO PSC Comments at 3; Hamilton Reply Comments at 3; MCI (WorldCom) Comments at 6. TDI asserts, in part, that the plain language of section 225, as well as its overriding policy objectives, provides the Commission with discretion to fund IP Relay from the Interstate TRS Fund on a long-term

(continued....)

30. With respect to the specific proposals for how the Commission might separate IP Relay calls into intrastate and interstate calls for purposes of cost reimbursement, the commenters generally oppose registration. First, several commenters state that many users dislike customer profiles and are unwilling to submit personal information via the Internet.¹¹⁵ Further, commenters assert that registration may raise in customers the fear of long-distance charges, since long-distance calls via IP Relay are currently free of charge to the consumer. This fear could cause some consumers to supply false information in the registration process.¹¹⁶ AT&T asserts that a registration requirement would impose an additional burden on IP Relay providers.¹¹⁷ Only one commenter, Verizon, advocates the use of registration, and does so out of concerns about the use of IP Relay for calls both originating and terminating outside the United States, or for calls between parties where neither party has a hearing or speech disability.¹¹⁸

31. With respect to the use of an allocator, AT&T calls the use of an allocator “potentially acceptable” but also states that this method is currently infeasible, without some means for determining the caller’s location.¹¹⁹ Although MO PSC supports continued funding from the Interstate TRS Fund, it asserts that if the Commission decides to allocate the costs of IP Relay it should use the same allocator currently used for toll-free calls, *i.e.*, 60 percent of costs paid by the Interstate TRS Fund and 40 percent paid by the state.¹²⁰ MCI (WorldCom) and TDI question the accuracy of any allocator, given the dearth of data yet available on IP Relay calling patterns.¹²¹ Sprint asserts that states whose residents use IP Relay infrequently will realize that they are subsidizing states with higher IP Relay usage, and may refuse to fund IP Relay in their states, which would require minimizing IP Relay availability to citizens in those states by the use of customer profiles.¹²²

32. On October 9, 2002, NECA, pursuant to the Commission’s direction in the *IP Relay*

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basis. TDI also asserts if an allocation of costs scheme were adopted, IP Relay providers would have to undergo a time-consuming and burdensome competitive bidding process in 50 separate states to provide nationwide IP Relay. MO PSC argues, in part, that the Commission has previously found that Internet traffic is interstate in nature, and that Missouri and other states do not regulate ISPs. Therefore, MO PSC questions the ability of state commissions to determine the eligibility of IP Relay providers for compensation. MCI (WorldCom) states that allocation of costs would require IP Relay providers to establish compensation relationships with every state, and that the administrative burden to both the states and to IP Relay providers will discourage the development of IP Relay. Hamilton’s arguments echo those noted above, and emphasize that the Commission has the authority to provide long-term compensation for IP Relay providers from the Interstate TRS Fund, and that requiring an allocation of costs would lead to excessive costs and burdens and create obstacles to providing and using IP Relay.

¹¹⁵ See Sprint Comments at 2; TDI Comments at 11; Hamilton Reply Comments at 4.

¹¹⁶ See *e.g.*, MCI (WorldCom) Comments at 5, TDI Reply Comments at 4-5.

¹¹⁷ See AT&T Comments at 4.

¹¹⁸ See Verizon Comments at 3-4.

¹¹⁹ See AT&T Comments at 2-3 (linking determination of appropriate allocator with parties’ location).

¹²⁰ See MO PSC Comments at 3. Toll-free calls, like IP Relay calls, cannot be identified as intrastate or interstate; however, in the case of toll-free calls, it is the recipient, rather than the caller, whose location is unknown. For this reason, the Interstate TRS Fund developed a methodology based on statistical studies for all providers to use to determine their interstate toll-free calls. For the July 2003 to June 2004 fund year, NECA used a factor of 51 percent interstate to be applied to total toll-free traditional TRS and STS. NECA applies the same principle to calls placed to 900 numbers. See NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CC Docket No. 98-67 (filed May 1, 2003) at 6-7.

¹²¹ See MCI (WorldCom) Comments at 7; TDI Comments at 12.

¹²² See Sprint Comments at 2.

Declaratory Ruling & FNPRM, filed its IP Relay cost recovery guidelines.¹²³ In the “Findings” section of its filing, NECA stated that there was no automatic means of determining whether an IP Relay call is intrastate or interstate, and that a “resolution of this problem is not in the foreseeable future.”¹²⁴ NECA also stated that “[r]equiring all IP Relay users to register or create profiles is considered discriminatory, an invasion of privacy, and a deterrent to the use of this service.”¹²⁵ Further, NECA stated that use of a fixed allocator “could unfairly allocate costs between intrastate and interstate jurisdictions.”¹²⁶ NECA also stated that it would be “overly burdensome” on the states if some IP Relay costs were required to be recovered as intrastate.¹²⁷ NECA’s recommended cost recovery guidelines, however, did not directly address the allocation of costs or a means by which it could be determined which calls are interstate and which are intrastate. Rather, NECA simply recommended that because the characteristics of traditional TRS and IP Relay are basically the same except for the method of accessing the TRS facility, “the same national average rate development methodology and cost recovery reimbursement rate as traditional TRS service [should apply to] . . . all IP Relay minutes.”¹²⁸ NECA did note that IP Relay costs could significantly increase “if providers are required to establish and maintain reporting and reimbursement relationships with every state,” and that a fixed allocator “is not feasible at this time.”¹²⁹ NECA added that “[o]nly reimbursement from the Interstate TRS Fund for all IP Relay minutes will assure the growth of this innovative service in its early stages,” and that the “Commission should revisit IP Relay cost recovery periodically to determine if changes in technology or other circumstances make a change in the funding mechanism workable.”¹³⁰

33. On December 13, 2002, the Commission issued a Public Notice inviting comment on NECA’s proposed cost recovery guidelines.¹³¹ Four parties filed comments in response to this Public Notice, and four parties filed reply comments.¹³² Commenters generally supported NECA’s recommendation for compensation of IP Relay on a per-minute basis at the same rate as traditional TRS.¹³³ Commenters also agreed that all IP Relay calls should continue to be compensated from the Interstate TRS Fund because it was impossible to automatically determine the location of an IP Relay caller¹³⁴ and such an arrangement would promote the growth of IP Relay and competition among IP Relay providers.¹³⁵

¹²³ NECA, *Recommended Internet Protocol (IP) Cost Recovery Guidelines*, CC Docket No 98-67 (filed Oct. 9, 2002) (*IP Relay Cost Recovery Recommendations*).

¹²⁴ *Id.* at 12.

¹²⁵ *Id.*

¹²⁶ *Id.* at 13.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 14.

¹³⁰ *Id.*

¹³¹ *Interstate Telecommunications Relay Service (TRS) Fund Advisory Council Files Proposed Guidelines for the Recovery of Costs Associated with Internet Protocol Relay Services*, Public Notice, CC Docket No. 98-67, DA 02-3409, 17 FCC Rcd 24812 (Dec. 13, 2002).

¹³² Comments were filed by AT&T, NECA, Sprint, and MCI (WorldCom). Reply comments were filed by AT&T, Hamilton, Verizon, and MCI (WorldCom).

¹³³ See, e.g., Hamilton Reply at 2-3; MCI (WorldCom) Reply Comments at 2; AT&T Reply Comments at 2.

¹³⁴ See, e.g., AT&T Comments at 4; MCI (WorldCom) Comments at 2.

¹³⁵ See, e.g., AT&T Comments at 3-4; MCI (WorldCom) Comments at 2.

2. Discussion

34. We are presented with two distinct cost recovery issues with respect to IP Relay: first, what cost methodology should we adopt to compensate providers for their costs of providing eligible IP Relay service, and second, by what mechanism can we determine (directly or by proxy) which IP Relay calls are interstate and which are intrastate so that the states, as well as the Interstate TRS Fund, are responsible for the cost of IP Relay. As discussed below, we conclude that the per minute reimbursement methodology, presently in place for all types of TRS, should continue to be used for IP Relay, and we therefore adopt that methodology for IP Relay. We seek further comment, however, in the *FNPRM* below, on what mechanism we might adopt to ensure that, consistent with congressional intent, only the costs of interstate IP Relay calls are compensated from the Interstate TRS Fund. Although, as noted above, this issue was previously raised, we believe that it is important to refresh the record on this issue and that we are able to address, in tandem, possible means of determining which calls are interstate and which calls are intrastate for both of the Internet based TRS services, *i.e.*, IP Relay and VRS.

35. *Cost Recovery Methodology.* We conclude that the per minute reimbursement methodology presently in place for all types of TRS should continue to be used for IP Relay, and therefore we adopt that cost recovery methodology for compensating eligible providers of this service. We agree with NECA that the same national average rate development methodology used for traditional TRS service should apply to the provision of IP Relay. We note that no party has opposed the continued use of this methodology for IP Relay, or is on record as supporting an alternative cost recovery approach.

36. At the same time, we question whether the same per-minute compensation rate should apply to both IP Relay and traditional TRS. We note, for example, that the use of IP Relay has matured to the point where presently the number of IP Relay minutes per month is over double the number of minutes of interstate traditional TRS.¹³⁶ In addition, the costs associated with providing each service may be sufficiently different so that under the present arrangement the providers of one service may be significantly over-compensated and the providers of the other service may be significantly under-compensated. Therefore, in the *FNPRM* below we seek comment on whether we should direct the TRS Fund Administrator to calculate and propose for Commission adoption separate per-minute compensation rates for IP Relay and traditional TRS based on the respective costs and projected minutes of use for each of these forms of TRS.

37. *Determining which calls are interstate and which calls are intrastate.* The issue of determining what mechanism might be adopted to determine which IP Relay calls are interstate, and therefore compensable from the Interstate TRS Fund, and which calls are intrastate, requires us to address the tension among: Congress's directive that states compensate providers of *intrastate* TRS and the Interstate TRS Fund compensates providers of *interstate* TRS; the fact that the record does not indicate that TRS providers can automatically determine the location of the person using the Internet-based leg of an IP Relay call, and therefore determine whether the particular call is interstate or intrastate¹³⁷; and Congress's directive that we encourage existing technology and not impair the development of new technology. As we recognized as much in the *IP Relay Declaratory Ruling & FNPRM*, the present arrangement of compensating all IP Relay calls from the Interstate TRS Fund was intended to be an

¹³⁶ According to NECA, in March 2004 there were approximately 2.2 million minutes of traditional interstate TRS and 5.2 million minutes of IP Relay.

¹³⁷ With an IP Relay TRS call, one party to the call is connected to the CA via the Internet and communicates with CA via text; the other party to the call communicates with the CA via the PSTN. Therefore, the CA is simultaneously engaged in a PSTN telephone call with one party, and an Internet-based text conversation with the other party. The nature of a TRS call, however, is not dependent on how the two legs to the call are completed or by the type of transport that is used. Rather, the interstate or intrastate nature of a TRS call is based on the physical location of the parties to the call; in that way, each TRS call can be categorized as either interstate or intrastate.

interim one.¹³⁸ Therefore, as noted above, we seek comment in the *FNPRM* below on what mechanism we might adopt to ensure that the Interstate TRS Fund compensates IP Relay providers only for the costs of interstate IP Relay calls, and that the states assume the burden of compensating providers of intrastate service.

C. IMPROVED TRS MEASURES (CG DOCKET NO. 03-123)

38. In the June 2003 *Second Improved TRS Order & NPRM*, the Commission sought comment on additional issues concerning the provision of TRS, including other services and features that could further the statutory mandate of functional equivalency. We address these matters below.

1. Emergency Preparedness for TRS Facilities and Services

39. *Background.* In the *Second Improved TRS Order & NPRM*, we noted that in 1988 the Commission created the Telecommunications Service Priority (TSP) Program as the regulatory framework to guide telecommunications carriers in repairing or providing new telecommunications services in the event of a disaster.¹³⁹ The program was established to help reduce the chaos after a disaster when carriers may be overwhelmed with requests for repairs or new services. In accordance with the TSP rules, telecommunications services are prioritized so that the carriers can determine which services to repair first.

40. Under the TSP rules, entities engaged in national security and emergency preparedness (NSEP)¹⁴⁰ activities that rely on telecommunications services to carry out these activities qualify for participation in the program. There are two NSEP categories: “Emergency NSEP” services and “Essential NSEP” services.¹⁴¹ These categories (and subcategories) set forth particular functions that a telecommunications service must support in order for the service to obtain a TSP designation, and therefore be eligible for priority restoration or provisioning before service is restored to non-TSP entities.¹⁴² A service designated under the TSP program is assured of restoration of existing circuits or provisioning of new circuits before service is restored to non-TSP services. Telecommunications lines serving federal, state, and local government agencies (such as 911 call centers), as well as private firms, can be covered by the program, provided they serve at least one of the enumerated national security or

¹³⁸ *IP Relay Declaratory Ruling & FNPRM* at ¶¶ 20-21.

¹³⁹ *Second Improved TRS Order & NPRM* at ¶ 104; *see also* 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 5.

¹⁴⁰ National security and emergency preparedness telecommunications services (or NSEP services) are defined to be those “telecommunications services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States.” *See* 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 3.f.

¹⁴¹ Telecommunications services in the Emergency NSEP category are those “new services so critical as to be required to be provisioned at the earliest possible time, without regard to costs of obtaining them.” Telecommunications services in the Essential NSEP category are those services “required to be provisioned by the due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs.” There are four subcategories to the Essential NSEP: (1) National Security Leadership; (2) National Security Posture and U.S. Population Attack Warning; (3) Public Health, Safety, and Maintenance of Law and Order; or (4) Public Welfare and Maintenance of National Economic Posture. The third subcategory noted above includes, for example, services necessary to support population warnings, weather crisis, hospitals, and distributions of medical supplies. *See* 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 12.

¹⁴² Priority levels of 1 through 5 may be assigned to services within the categories and subcategories. *See id.* at 3.i.

emergency preparedness functions.¹⁴³

41. The TSP program is a voluntary program. As a general matter, “service users” – *i.e.*, individuals or organizations supported by particular telecommunications services or lines – may make a request that particular telecommunications services upon which they rely receive an NSEP priority assignment.¹⁴⁴ As we have noted, in so doing they must show that the telecommunications services support an NSEP function. These requests are directed to the Office of Priority Telecommunications (OPT) of the Department of Homeland Security’s National Communications System (NCS). Non-federal TSP users (e.g., state, local, foreign governments) require a federal sponsor.¹⁴⁵ The FCC functions as a sponsoring federal organization.¹⁴⁶ The FCC also provides regulatory oversight of implementation of the TSP system.

42. In the *Second Improved TRS Order & NPRM*, we noted that the NSEP priorities “do not presently address the provision of TRS.”¹⁴⁷ We also noted that, in most cases, TRS is the only means of communication between persons with hearing and speech disabilities and emergency services and other persons.¹⁴⁸ The Commission therefore tentatively concluded that in the event of a disaster it is appropriate that TRS services be made available on the same basis that telephone service for the general public is made available.¹⁴⁹ We also sought comment on whether our rules should be amended to provide for the continuity of operations of TRS facilities in the event of an emergency.¹⁵⁰ We reasoned that if operation of the LEC and the TRS facilities were compromised during an emergency, both facilities would be reinstated simultaneously.¹⁵¹

43. Although commenters generally support the notion that TRS facilities should have the same level of service restoration priority in the event of a disaster as assigned to LEC facilities,¹⁵² several

¹⁴³ See generally Telecommunications Services Priority Fact Sheet at <http://www.fcc.gov/hspc/factsheets/telecom-priority.pdf>.

¹⁴⁴ 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 6.b.(2).

¹⁴⁵ See generally Telecommunications Services Priority Fact Sheet at <http://www.fcc.gov/hspc/factsheets/telecom-priority.pdf>. Sponsoring federal organizations decide whether to sponsor foreign, state, and local governments and private industry (including telecommunications service vendors) requests for priority actions. Federal organizations forward sponsored requests with recommendations for disposition to the NCS, basing their recommendations on the NSEP TSP system categories described in the TSP regulations. 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 6.c.

¹⁴⁶ *Id.* at 6.a.

¹⁴⁷ *Second Improved TRS Order & NPRM* at ¶ 104.

¹⁴⁸ *Id.* We also noted that TRS providers are already required to ensure that TRS facilities have redundancy features, including uninterruptible power sources for emergency use, that are functionally equivalent to those in the central switching office in the public switched telephone network (PSTN), as described in 47 C.F.R. § 64.604(b)(4). *Id.*

¹⁴⁹ *Id.* at ¶ 105.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* We also sought comment on other means by which we might ensure equal treatment of LEC facilities and TRS facilities in this context. Lastly, we sought comment on whether TRS providers and state TRS programs must provide an operational plan, beyond that already required in our rules, to ensure the survivability and continued operation of TRS facilities in case of an emergency. *Id.*

¹⁵² See, e.g., AT&T Comments at 2-3; California Public Service Commission (CA PUC) Comments at 4; Hamilton Comments at 2; Hands On Comments at 2-3; Iowa Utilities Board (Iowa UB) Comments at 2; MCI (WorldCom) Reply Comments at 2; Maryland Department of Budget and Management (MD DBM) Comments at 2; Sprint Comments at 1-2; TDI Coalition Comments at 5-7. A few commenters also suggest that the costs associated with

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commenters suggest that the NPRM was not entirely accurate in describing how the NSEP system works.¹⁵³ Verizon notes, for example, that basic telecommunications services to the general public are not addressed by the NSEP priority system.¹⁵⁴ Verizon also states that telecommunications carriers are not included in the NSEP because they are permitted to make repairs to their own networks before restoring service to those on the NSEP list. If telecommunications carriers did not make such repairs, none of the priority service repairs would work.¹⁵⁵ Verizon suggests the Commission engage the expertise of the Commission's Network Reliability Interoperability Council or the TSP Oversight Committee before adopting a new set of rules that might be confusing or conflict with other national security priorities.¹⁵⁶ More generally, several commenters caution that our proposal does not give clear enough guidance to carriers, and may have the unintended effect of slowing down a carrier's ability to respond to other priorities that are important for national security.¹⁵⁷

44. Only a few commenters addressed the questions raised in the *NPRM* concerning whether TRS providers and state TRS programs should be required to provide an operational plan, beyond that already required in our rules, to ensure the survivability and continued operation of TRS facilities in case of an emergency.¹⁵⁸ The MD DBM urges the Commission to require all TRS providers to establish a formal agreement to support each other during emergency situations.¹⁵⁹ The TDI Coalition suggests the Commission require TRS providers and state TRS programs to develop, and provide to the Commission, operational plans to address how they will respond in the event of an emergency affecting TRS service.¹⁶⁰

45. *Discussion.* We continue to believe that all appropriate steps should be taken to ensure that service to TRS facilities is made available in time of emergency, and that restoration of service to TRS facilities should occur, to the extent feasible, in tandem with restoration of dial tone service to the

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the Commission's sponsorship of TRS facilities be recovered from the Interstate TRS Fund. *See* MCI (WorldCom) Reply Comments at 2; Sprint Comments at 2.

¹⁵³ For example, Verizon questions whether the proposal means that TRS facilities will have the same priority as LEC facilities in the sense that both will have a super priority over all five priority levels, and if TRS service is considered part of the LEC network that is able to supersede the five NSEP levels, does that mean that telephone companies would be required to give priority to restoring service to TRS facilities *before* restoring such service to the President of the United States, the Department of Defense, and 911 providers. Verizon Comments at 8.

¹⁵⁴ Verizon Comments at 6. Verizon notes that basic telecommunication services to the general public are prioritized below the top 5 levels, so they are addressed only after all other priority services have been dealt with. *See also* MCI (WorldCom) Comments at 2; SBC Comments at 2.

¹⁵⁵ Verizon Comments at 7. Verizon notes that telecommunications carriers must get their own systems up and running before they can begin to restore service to the five priority levels established by the NSEP priority system. *See also* SBC Reply Comments at 2 (the 5-priority system does *not* address basic telecommunications service to the general public and a more extensive record should be developed prior to assigning NSEP priority status to TRS to determine the impact such assignment would have on existing NSEP priorities).

¹⁵⁶ Verizon Comments at 3.

¹⁵⁷ *See, e.g.,* Verizon Comments at 6; Verizon Reply Comments at 2-3; SBC Reply Comments at 2. *But see, e.g.,* AT&T Comments at 2-3; MCI (WorldCom) Comments at 1-3; TDI Coalition Comments at 5-7.

¹⁵⁸ *See* MD DBM Comments at 2; TDI Coalition Comments at 6-7.

¹⁵⁹ MD DBM Comments at 2.

¹⁶⁰ TDI Coalition Comments at 6-7. According to TDI, such a report should include, *inter alia*, identification of regional facilities to take over handling incoming TRS calls for TRS facilities located in close proximity to an emergency and FCC encouragement to state TRS program administrators to work with their respective Homeland Security or Emergency Preparedness agencies to designate their state's TRS facilities for priority restoration in the event of state emergencies.

general public, thus ensuring that individuals with hearing or speech disabilities have service available on the same basis as individuals without such disabilities. We do not, however, adopt our tentative conclusion in the NPRM to assign at least the same NSEP priority to TRS that applies to telecommunications carriers or other telecommunications services available to the general public. As noted by several commenters, carriers are permitted to make repairs to their own networks before restoring service to those on the NSEP list.¹⁶¹ In addition, telecommunication services for the general public are *not* included in the priority system *per se*, but are to be restored only after the designated priorities – such as restoring service to national security leaders, emergency service providers, and public health officials – have been addressed.¹⁶² Since there is no priority assignment for the general public, according TRS providers the same priority as the general public would do nothing to ensure rapid recovery of TRS service.¹⁶³

46. The more relevant question is whether TRS facilities perform a function that falls within one of the NSEP categories so that certain telecommunications services or lines that support this function would be eligible for priority restoration. If the answer to that question is yes, the next step is to identify the particular telecommunications services and lines that should be restored. We believe, for example, that a TRS facility might assert that it falls within the “Public health, safety, and maintenance of law and order” category, and that therefore at least some of the circuits that connect a TRS facility to the switch might be given a priority designation.¹⁶⁴ The particular circuits or lines that might be covered depend in large part, of course, on how calls to the particular TRS facility (e.g., 711 calls) reach the facility.

47. Because the TSP program is voluntary, we are not mandating that TRS facilities apply for priority status, but we strongly encourage them to enroll all qualifying services in the TSP program. In this regard, they will have to work with their telecommunications carrier to identify the particular circuits or lines that link the facility to the switch, or other circuits or lines upon which the facility relies to handle TRS calls. When asked to do so, we will sponsor their applications to the NCS, as we have with PSAPs.¹⁶⁵

48. Finally, we decline at this time to require TRS providers and states to provide an operational plan, beyond that already required in our rules, to ensure the survivability and continued operation of TRS facilities. However, we encourage the states and TRS providers to work together to ensure that TRS services continue to be available in the case of an emergency, whether this means allowing TRS facilities to remain open when a state of emergency is declared or allowing TRS employees to travel the roads when a weather state of emergency has been declared. We will revisit this issue in the future as necessary.

¹⁶¹ See, e.g., MCI (WorldCom) Comments at 2-3; SBC Comments at 2; Verizon Comments at 3.

¹⁶² See, e.g., MCI (WorldCom) Comments at 1-3; Verizon Comments at 3.

¹⁶³ To the extent that the NPRM suggested that LECs and the general public enjoy a priority in the TSP system, we clarify that NSEP TSP priority does not typically apply to the local exchange carriers (LECs) or other common carriers or to the general public.

¹⁶⁴ We note that the “Public health, safety, and maintenance of law and order” category states that it covers “the minimum number of telecommunications services necessary” to support this function. Therefore, it may be that not all of the circuits connecting the TRS facility to the switch would be entitled to priority restoration.

¹⁶⁵ See <http://www.fcc.gov/hspc/emergencytelecom.html>. As note above, several commenters suggest that the Interstate TRS Fund pay the costs associated with TRS facilities obtaining TSP assignment (there is a cost, e.g., for enrolling each line in the program). We agree that such costs are a “reasonable cost” of providing TRS that may be submitted to the TRS fund administrator and included in the determination of the appropriate provider compensation rates. We note, for example, that section 64.604(b)(4) of our rules requires TRS facilities to take certain steps to be able to continue to operate in the event of an emergency.

2. Mandatory Minimum Standards (Operational Standards)

a. Security of IP Relay Calls

49. *Background.* In the *Second Improved TRS Order & NPRM*, the Commission sought comment on whether additional requirements might be necessary to ensure the security of IP Relay calls.¹⁶⁶ We noted that IP Relay calls involve information packets that are sent via the Internet, and that the Internet does not have the same privacy protections as does traditional TRS over the PSTN. We therefore sought comment on whether IP Relay calls should have a level of security using encryption that is similar to that used in commercial transactions over the Internet. We also sought comment on whether other security measures exist or are expected that could be used by IP Relay providers to ensure the security of IP Relay transmissions.¹⁶⁷

50. Commenters addressing the issue of security of IP Relay calls generally agree that IP Relay users should be guaranteed the same standards of security and confidentiality that apply to traditional TRS,¹⁶⁸ and assert that reliance on encryption to ensure the confidentiality of IP Relay calls is superior to other security measures available with current technology.¹⁶⁹ A number of commenters also support security for Internet-based TRS transmissions that would be comparable to that used in protecting Internet commercial transactions.¹⁷⁰ Other commenters, however, assert that a non-relay user of the Internet for communications such as instant messaging or email is not guaranteed encryption, and therefore it should not be mandated for IP Relay.¹⁷¹ The CA PUC states, for example, that the Commission may want to consider IP Relay to be functionally equivalent to other means of public Internet communication, not to commercial transactions, and cautions that, in fact, mandating certain security levels over the Internet may potentially dampen the development or application of new technologies for Internet access to relay.¹⁷² The MO PSC suggests that if a relay user's communication contains highly sensitive information, the user can make a traditional land line text telephone call, and forego IP Relay for that particular call.¹⁷³ MCI (WorldCom) does not support measures such as registration, sign-ins, or passwords as a means to provide security for TRS calls.¹⁷⁴ MCI (WorldCom) asserts that these steps would do nothing to increase confidentiality and that TRS users have consistently stated that requiring registration would violate the notion of functional equivalency.¹⁷⁵ Several commenters also urge the Commission to not require multiple methods to ensure confidentiality, *i.e.* encryption *and* registration, sign-ins or passwords, because imposing such requirements would lead to

¹⁶⁶ *Second Improved TRS Order & NPRM* at ¶¶ 106-107.

¹⁶⁷ *Id.*

¹⁶⁸ *See, e.g.*, CA PUC Comments at 5.

¹⁶⁹ *See, e.g.*, AT&T Comments at 4; CA PUC Comments at 5; MCI Comments at 8; Sprint Comments at 2. MCI (WorldCom) and Sprint note that their Internet-based TRS (*i.e.*, IP Relay and VRS) are encrypted with secure socket layer (SSL) security up to 128 bits, depending on the capability of the end-user's web-browser

¹⁷⁰ *See, e.g.*, MD DBM Comments at 3-4; MO PSC Comments at 2; TDI Coalition Comments at 7, Reply Comments at 3; *see also* CA PUC Comments at 5-6; MCI (WorldCom) Reply Comments at 3 (not opposed to the Commission mandating a minimum level of transmission security equal to the level utilized in commercial Internet transactions).

¹⁷¹ Iowa UB Comments at 2; CA PUC Comments at 5.

¹⁷² CA PUC Comments at 5-6.

¹⁷³ MO PSC Comments at 2.

¹⁷⁴ MCI (WorldCom) Comments at 4.

¹⁷⁵ MCI (WorldCom) Comments at 4.

delays in handling IP Relay calls.¹⁷⁶

51. *Discussion.* We believe that providers of IP Relay calls should adopt measures to ensure the confidentiality of those communications. We will not require, however, that providers adopt any particular technology in this regard. We will allow TRS providers to determine for themselves the level of security they will offer consumers, and the means by which they will protect the privacy of the Internet-based TRS callers and their personal identification information, so that no aspect of a relayed conversation is retrievable in any form. Because consumers may choose among several IP Relay providers, we are confident that consumers will factor their desire for security into their choice of provider. We will, of course, revisit this issue if it appears that voluntary efforts by the providers are not sufficiently ensuring the security of IP Relay calls.

b. Emergency Call Handling over Wireless Networks

52. *Background.* In the *Second Improved TRS Order & NPRM*, we noted that dialing 911 is the most familiar and effective way of reaching help in an emergency, and that PSAPs are required to be able to receive direct calls from persons who use a TTY.¹⁷⁷ We also noted that calling 911 via a TTY is the preferred method for reaching assistance. Nevertheless, persons with disabilities may also call a PSAP by dialing 711 (or another direct access number) to reach a TRS facility and CA, who in turn can call the PSAP. With respect to *wireline* calls, we concluded in the *Second Improved TRS Order & NPRM* that emergency calls made through TRS must be routed to the “appropriate” PSAP, not necessarily the “nearest” PSAP, based on the calling party’s telephone number and its caller location information.¹⁷⁸ With respect to *wireless* emergency calls made via a TRS facility, however, we noted that additional challenges remain with respect to determining the appropriate PSAP because there is no correlation between a wireless telephone number and the location of the person making the call that the TRS facility can use to determine the appropriate PSAP to call.¹⁷⁹ We therefore noted that in the wireless context, in order to route an emergency call to the appropriate PSAP, the TRS provider must have an alternative way to identify the location of the caller and the telephone number for the appropriate PSAP for that location. We therefore sought comment on how TRS facilities might determine the appropriate PSAP to call when receiving an emergency wireless 711 call.¹⁸⁰ We also sought comment on whether wireless carriers have the capability and should be required to transmit Phase I or Phase II E911 information to TRS facilities.¹⁸¹

53. Some commenters urge us not to adopt a requirement that TRS facilities route wireless emergency calls made to the facility with a TTY device to an appropriate PSAP based on the location of the calling party because PSAPs are already required to be able to receive direct calls from TTYs pursuant to the ADA.¹⁸² Commenters also assert that such a mandate would raise serious implementation

¹⁷⁶ See, e.g., AT&T Comments at 4; Sprint Comments at 2.

¹⁷⁷ *Second Improved TRS Order & NPRM* at ¶ 37.

¹⁷⁸ We clarify below in the *Order on Reconsideration* what we meant by the “appropriate” PSAP in the wireline context.

¹⁷⁹ *Second Improved TRS Order & NPRM* at ¶¶ 43-45.

¹⁸⁰ *Id.* at ¶¶ 108-109.

¹⁸¹ Phase I Enhanced 911 (E911) calls automatically report the telephone number and the location of the antenna that received the wireless call. Phase II requires wireless carriers to provide for more precise location information (e.g., within 50-300 meters). See, e.g., *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, CC Docket No. 94-102, FCC 02-210, 17 FCC Rcd 14841 (July 26, 2002).

¹⁸² See, e.g., AT&T Comments at 6; AT&T Wireless Comments at 2-5; SBC Reply Comments at 3-4; Sprint Comments at 3-7; T-Mobile Reply Comments at 2-4. See also T-Mobile Reply Comments at 4, n.15; DOJ, Access

difficulties for both wireless carriers and TRS providers.¹⁸³ TRS providers also generally oppose such a requirement.¹⁸⁴ T-Mobile also emphasizes that the use of TRS facilities to answer and route emergency calls is not only at odds with the “direct access” requirement, but also makes such calls more time-consuming than direct TTY-911 calls and therefore potentially less effective.¹⁸⁵ The TDI Coalition, however, asserts that functional equivalency requires that an emergency call from a wireless phone be treated in the same manner regardless of whether the call goes to the PSAP through a TRS facility via 711 or directly via 911.¹⁸⁶

54. *Discussion.* We find that it is premature to implement guidelines for TRS facilities routing wireless emergency TRS calls. We will defer further consideration of how TRS facilities should respond to such calls pending further implementation of the E911 requirements. At the same time, we will continue to monitor the handling of emergency calls via wireless networks by persons with hearing and speech disabilities, and if we determine that these calls are not handled in an efficient manner or in compliance with our regulations for E911 over wireless networks, we will revisit this issue. We also note that the record demonstrates that innovative methods have been developed that allow routing of wireless emergency calls through TRS facilities to an appropriate PSAP.¹⁸⁷ SBC, for example, states if the wireless carrier can provide E911 Phase I or Phase II data, at least one of SBC’s TRS facilities can receive this information, even though SBC does not have the capability to then route the 711 wireless call along with the Phase I or Phase II E911 data received to an appropriate PSAP.¹⁸⁸ This suggests that, under certain circumstances, it is technologically feasible to receive some emergency information and to route emergency calls to an appropriate PSAP. Finally, we continue to advise TRS users to call a PSAP directly via 911, rather than through a TRS facility, until such time as it is technologically feasible for TRS facilities to direct wireless emergency calls to an appropriate PSAP.¹⁸⁹

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for 9-1-1, Section I.B. (Telephone relay services are not as effective for emergencies, because they are far more time-consuming than calls between two TTYs).

¹⁸³ The record demonstrates that the receipt of Phase I/Phase II location information is a condition precedent to any requirement that TRS facilities be capable of routing wireless emergency calls to a PSAP, and that the amount of time required to implement automatic emergency call handling for wireless calls will be contingent on when wireless carriers are capable of providing TRS facilities with necessary Phase I and Phase II information. *See, e.g.*, Hamilton Comments at 3; Hands On Comments at 3; Wireless RERC (Research Engineering and Rehabilitation Center) (Wireless RERC) Reply Comments at 3.

¹⁸⁴ *See, e.g.*, MCI (WorldCom) Reply at 3; Sprint Comments at 3-4; Verizon Wireless Comments at 5. *But see, e.g.*, TDI Coalition Reply Comments at 3-4 (TDI argues that, because it has not been a requirement to do so, it is currently not technically feasible to route emergency TRS calls to the same PSAP that would receive an emergency call if it were placed directly by a wireless carrier).

¹⁸⁵ *See* T-Mobile Reply Comments at 4. fn 14.

¹⁸⁶ *See* TDI Coalition at 7-8; *see also* Wireless RERC (wireless providers should be required to provide the same 911/E911 information to TRS users that they provide for speaking/hearing subscribers).

¹⁸⁷ *See, e.g.*, MCI (WorldCom) Comments at 5-6; SBC Comments at 3-4.

¹⁸⁸ SBC Comments at 4.

¹⁸⁹ The record demonstrates that wireless E911 capability is limited to the E911 network deployed between wireless carriers, LECs, and PSAPs that is accessed only by dialing 911. *See, e.g.*, Verizon Wireless Comments at 3. We emphasize that the paramount focus and concern must be placed on training and development of PSAP facilities to provide functionally equivalent service to persons with hearing and speech disabilities when they dial 911, even over wireless networks. In addition, Wireless RERC also suggests that current technology is sufficiently developed that it would be reasonable for us to consider investigating the feasibility of requiring that pagers with Internet browsers be able to connect with IP Relay in order to contact hearing parties and other emergency services. *See* Wireless RERC Reply Comments at 3. We will defer consideration of that issue to a future proceeding.

c. Non-Shared Language TRS

55. *Background.* Our regulations define “[n]on-English language relay service” as a “telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.”¹⁹⁰ In the *1998 TRS NPRM*,¹⁹¹ we noted that “some TRS providers may be offering ‘translation’ services to TRS users (*i.e.*, communication between two parties who each use a different language) including Spanish-language and ASL [American Sign Language] translation services.”¹⁹² We tentatively concluded, however, “that any such ‘translation’ TRS, especially foreign language translation services, are value-added TRS offerings that go beyond ‘relaying’ of conversation between two end users.”¹⁹³ At the same time, we asked whether an exception should be made for ASL translation services. We noted that ASL is a language unique to the deaf community,” and therefore “ASL translation services may be necessary to provide ‘functional equivalency’ to ASL users.”¹⁹⁴

56. In the *Improved TRS Order & FNPRM*, the Commission concluded that the provision of ASL translation service was necessary to provide “functional equivalency” to ASL users.¹⁹⁵ We noted that ASL is a language with a syntax and grammar different than that of English, and that because many ASL relay users type in ASL syntax rather than in English syntax, a CA must be able to correctly translate the ASL text message to English in order to avoid translation inaccuracies.

57. In response to the *Improved TRS Order & FNPRM*, the Public Utilities Commission of Texas (TX PUC) filed a petition requesting that the Commission allow other non-shared language relay translation service (beyond ASL to English translation service) to be reimbursable from the Interstate TRS Fund.¹⁹⁶ The TX PUC asserted that there is a great demand for the translation of non-shared language through TRS.¹⁹⁷ For so many of these children, Spanish is the spoken language in their homes. However, because these children are educated in school in ASL and English, many deaf children of Spanish speaking families are not able to participate in family communications.¹⁹⁸

¹⁹⁰ 47 C.F.R. § 64.601(13). By relaying a conversation in a “shared language” we mean that both the calling and called party use the same language; therefore, in relaying the conversation the CA does not translate what is typed or voiced from one language to another.

¹⁹¹ *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 98-90, 13 FCC Rcd 14187 (May 20, 1998) (*1998 TRS NPRM*).

¹⁹² *1998 TRS NPRM* at ¶ 39.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Improved TRS Order & FNPRM* at ¶¶ 44-46. With the exception of ASL-English translation, the Order did not address non-shared language TRS.

¹⁹⁶ Public Utilities Commission of Texas (TX PUC), Petition for Reconsideration, CC Docket No. 98-67 (filed March 24, 2000). This service would require TRS providers to offer translation services for those non-English languages common in their area, for example, Spanish-to-English conversations through a CA/translator.

¹⁹⁷ Hispanics are the fastest growing minority group in the deaf school age population in the United States. This is particularly true in Texas. Schildroth & Hotto, Changes In Student And Program Characteristics, *American Annals Of The Deaf*, 141(2), 68-71 (1996), Published in Hispanic Outlook in Higher Education, May 2000, Jean F. Andrews, Ph.D. & Donald L. Jordan, Ph.D. Lamar University, Beaumont, TX.

¹⁹⁸ There are more than 7,000 deaf children from Spanish-speaking homes in the U.S. ASL becomes the first language for many of these Hispanic youths because it is the first language that is fully accessible to them, even

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58. In the *Second Improved TRS Order & NPRM*, we noted that multi-lingual translation services through TRS might meet the unique needs of certain identifiable TRS user populations.¹⁹⁹ We therefore sought comment on whether the Commission should find that *non-shared* (or multi-lingual) language translation service through relay is a form of TRS compensable from the Interstate TRS Fund. More specifically, we asked whether provision of such service is consistent with, or necessary under, our functional equivalency mandate. Recognizing new types of relay services offered since the Commission originally raised this question in 1998, we also asked how, if adopted, non-shared language TRS would be implemented for VRS, STS, and other forms of TRS, and how the service would be funded.

59. Commenters representing TRS providers and disability advocacy groups assert that non-shared language relay should be recognized as TRS because it provides functionally equivalent relay access to millions of deaf children, parents, or friends with Spanish speaking Americans who wish to communicate by telephone but cannot because the persons who are deaf have been educated in ASL and English.²⁰⁰ This support, however, is not unanimous. Several LECs and state utility commissions oppose a requirement that non-shared language TRS, whether traditional TRS or VRS, be reimbursed.²⁰¹

60. *Discussion.* We recognize that the provision of non-shared language relay service may satisfy a specific need for persons with hearing or speech disabilities desiring to communicate with persons who use a different language. Nevertheless, we affirm our conclusion in the *1998 TRS NPRM* that such a service exceeds the functional equivalency mandate.²⁰² The Commission finds that non-shared language TRS is equivalent to a translation service, which is a “value-added” service for hearing parties.²⁰³

61. We recognize, however, that states, in their efforts to tailor intrastate TRS to meet the needs of their citizenry while meeting or exceeding the Commission’s minimum standards, may identify the need to offer non-shared language TRS. We support, and in fact encourage, states to assess the need for, and if appropriate offer, non-shared language intrastate TRS.²⁰⁴ The Commission does not find that offering non-shared language TRS conflicts with Commission rules, but rather is an example of an entity permissibly exceeding the mandatory minimum standards.²⁰⁵ We therefore agree with commenters that

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though ASL is not the primary language used in their home. Schildroth & Hotto, Changes In Student And Program Characteristics. American Annals Of The Deaf, 141(2), 68-71 (1996).

¹⁹⁹ *Id.* at ¶ 113. In particular, we noted that in states with large Hispanic populations there are often a large number of Hispanic children who are deaf and, as a result, do not learn Spanish. Because these children are educated in ASL and English, many deaf children of Spanish speaking families cannot communicate with their relatives through shared-language TRS.

²⁰⁰ See, e.g., CSD Comments at 5-6; Hands On Comments at 2; Sprint Comments at 8-9; TDI Coalition Reply Comments at 5-6; MD DBM at 4.

²⁰¹ See, e.g., AT&T Comments at 9; Iowa UB Comments at 3; MO PSC Comments at 3; SBC Reply Comments at 4; Verizon Comments at 12-13; also see, e.g., CA PUC Comments at 6, Verizon Reply Comments at 5, (states should be allowed to voluntarily provide intra-state non-shared language VRS).

²⁰² *1998 TRS NPRM* at ¶39.

²⁰³ See AT&T Comments at 7; Iowa UB Comments at 3; MO PSC Comments at 3; SBC Reply Comments at 4; Verizon Comments at 12.

²⁰⁴ With regard to non-English relay service, we have stated in the *Improved TRS Order* that we urge states to [...] be sensitive to changes in local demographics that may warrant the addition of non-English relay services. *Improved TRS Order & FNPRM* at ¶31.

²⁰⁵ 47 C.F.R. § 64.605(b)(1) (certified state programs must meet or exceed all operational, technical, and functional TRS mandatory minimum standards).

states and TRS providers should be able to make the determination on whether to offer non-shared language TRS.²⁰⁶ Because we find that this service is beyond the scope of section 225, however, even though we encourage the voluntary provision of intrastate (or interstate) non-shared language TRS, non-shared language TRS is not reimbursable from the Interstate TRS Fund.²⁰⁷

62. Sprint proposes that any non-shared language TRS offerings should require that at least one party be using English or ASL.²⁰⁸ We decline to adopt such a requirement. We believe that the determination whether to offer such services, and the possible combinations of languages, should be left to the states to determine.

3. Mandatory Minimum Standards (Technical Standards)

a. Call Set-up Time

63. *Background.* In the *Second Improved TRS Order & NPRM*, the Commission noted that our TRS speed of answer rule currently requires that providers shall answer 85% of all calls within 10 seconds.²⁰⁹ We further noted that after a call is answered, the TRS provider may require additional time to set-up the call, but that our rules currently do not specify a call set-up time and some consumers have expressed frustration with the length of time it takes to set up certain TRS calls. The Commission recognized that there may be several ways to reduce call set-up time, especially for non-traditional TRS calls. We therefore sought comment on how call set-up can be effectively and efficiently handled for the various forms and types of TRS with the aid of new technology or by any other methods. We also sought comment on whether the Commission should require a specific call set-up time for various types and forms of TRS calls, and if so, how such set-up time should be measured.²¹⁰

64. Nearly all commenters oppose any requirement that TRS providers complete the call set-up time for TRS calls within a specific period of time. They note, for example, that call set-up times vary significantly depending on the type of TRS call, the caller's disability, and the caller's preferences, making it difficult to generalize various call set-up times.²¹¹ Commenters also assert that specific call set-up times are not necessary because there is a financial incentive for TRS providers to set-up the calls as quickly as possible, since the time spent on setting up calls is not compensable from the Interstate TRS Fund.²¹² The TDI Coalition, however, suggests that the Commission could reasonably determine an average set-up time for the various forms and types of TRS, and require that a certain percentage of all call set-ups be completed within such a time.²¹³

65. *Discussion.* We decline to adopt either a standard call set-up time for all forms of TRS,

²⁰⁶ See, e.g., CA PUC Comments at 6; MCI (WorldCom) Comments at 6-7; see also SBC Reply Comments at 4; Verizon Reply Comments at 5.

²⁰⁷ We note that while ASL-Spanish VRS has been voluntarily offered, it is not reimbursable from the Interstate TRS Fund.

²⁰⁸ Sprint Comments at 9.

²⁰⁹ *Second Improved TRS Order & NPRM* at ¶ 115-117 (citing 47 C.F.R. § 64.604(b)(2)).

²¹⁰ *Id.* at ¶ 117.

²¹¹ See, e.g., AT&T Comments at 11; CSD Comments at 6; MCI (WorldCom) Comments at 7; SBC Comments at 5; CA PUC Comments at 7; Sprint Comments at 10; MCI (WorldCom) Reply Comments at 5.

²¹² See, e.g., AT&T Comments at 10-12; CSD Comments at 6; MCI (WorldCom) Comments at 7.

²¹³ TDI Coalition Reply Comments at 8-9. TDI Coalition states that this approach would alleviate the concern expressed in the comments that each TRS call may have different set-up requirements that could increase or decrease the normal set-up time.

or specific set-up times for the various forms of TRS and types of TRS calls. We believe that it would be difficult to determine appropriate set-up times, and that the established principle of not compensating the TRS providers for setting up the call is sufficient incentive for providers to continue to attempt to minimize this time period. In this regard, we urge TRS providers to set-up all TRS calls as expeditiously as possible. At the same time, we encourage consumers to file complaints should they experience unreasonable delays in setting up their TRS calls. Finally, we do not believe that TDI Coalition's suggestion for establishing standards for call set-up times, and mandating percentage-based compliance, would be more effective in reducing call set-up times than the inherent incentive a TRS provider has to minimize the non-compensable time their CAs are occupied.

b. TRS Facilities

(i) Communication Access Real-time Translation

66. *Background.* In the *Second Improved TRS Order & NPRM*, the Commission explained that communication access real-time translation (CART) can be used to increase the speed of a TRS call.²¹⁴ The Commission sought comment to determine whether TRS providers should offer CART or CART-type services to improve the speed of TRS. We requested detailed information regarding how CART, or similar technology and equipment, may be utilized by a TRS facility, as well as relevant technical requirements, CA training issues, and other challenges that may exist to providing this service through TRS.

67. Some commenters agree that CART's greater transmission speed may shorten the conversational lag in a TRS call.²¹⁵ They generally note, however, that the use of CART by a TRS facility has several disadvantages. Several commenters note that there would be an insufficient number of CART-trained CAs to meet the demand for CART if it were required for TRS, and that therefore the labor costs for stenographers would increase and drive up the cost of providing TRS.²¹⁶ MCI (WorldCom) and MO PSC assert that most TTY users would not realize increased communication speed from CART because of the limited transmission speed coming from the end user's TTY.²¹⁷ Sprint also notes that stenographer-based CART and CART-type technologies may well become obsolete because of increasing advances in voice recognition technology.²¹⁸ Although CART is offered in Maryland, its state TRS administrator proposes further study before determining whether CART should be required for TRS.²¹⁹ On the other hand, because CART increases the speed of a TRS call and therefore makes it more functionally equivalent, and it is technologically feasible to use CART with TRS, the TDI Coalition

²¹⁴ *Second Improved TRS Order & NPRM* at ¶¶ 118-119. Communication access real-time translation (CART) is an instant translation of the spoken word into written English using a stenotype machine, notebook computer, and real-time software. See National Court Reporter's Association, CART, <http://cart.nraonline.org/index.html> (visited March 26, 2004). With CART, a stenographer can type speech verbatim at a significantly higher word per minute (wpm) rate than is possible with typing on a standard keyboard. As a result, the conversation pace proceeds at a much higher rate (150 to 200 wpm) during a call.

²¹⁵ See, e.g., Hamilton Comments at 5; MO PSC Comments at 4.

²¹⁶ See, e.g., CA PUC Comments at 8; MCI (WorldCom) Comments at 8-9; SBC Reply Comments at 4; Sprint Comments at 11-12.

²¹⁷ MO PSC Comments at 4; MCI (WorldCom) Reply Comments at 6.

²¹⁸ *Id* at 12. Sprint claims that the existing voice recognition software has about a 92 percent accuracy rate.

²¹⁹ MD DBM Reply Comments at 5. We note that presently Federal Relay Service is offering a CART based service called Relay Conference Captioning. See <http://www.fedfcc.us/info/VRC.aspx>. Because it remains relatively new, we will monitor its use and reliability.

recommends that we mandate the use of CART in the provision of TRS.²²⁰

68. *Discussion.* We conclude that it would be premature to require the use of CART at this time. The record reflects that the use of CART by TRS facilities has several disadvantages that warrant further analysis. The record also demonstrates that CART is not the only technology available that is designed to increase communication speed in this context, and also that it is not economical to offer such service for conference calls.²²¹ We will revisit this matter when it appears that CART or other technologies such as speech recognition technology develop to the point where they not only are effective in improving the transmission speed of a TRS call, but are also economically feasible to use for TRS.

(ii) Interrupt Functionality

69. *Background.* In the *Second Improved TRS Order & NPRM*, we sought comment on the technological feasibility of providing TRS consumers with interrupt functionality.²²² We noted that this feature allows a TTY user to interrupt incoming text messages in order to convey a message back to the CA, so that the TRS conversation is more like a conventional telephone conversation in which each party can begin speaking before the other party has finished speaking.²²³ As a general matter, when a TTY user is typing or receiving a TTY message he or she cannot type in response until the sending party is finished typing on his or her TTY. We noted, however that some TRS providers were already offering some type of interrupt functionality.²²⁴ We sought additional information about how the interrupt functionality is being provided, whether any non-proprietary TTY protocols are able to support interrupt functionality, and the experiences consumers have had with use of this feature. We noted, for example, that Ultratec's TurboCode TTYs and other TTYs with this feature have been available for nearly a decade.²²⁵

70. Commenters assert that there are no non-proprietary TTY protocols on the market that would enable TRS providers to offer interrupt functionality.²²⁶ The MD DBM and AT&T explain, for example, that although interrupt functionality can be made available with consumer premises equipment (CPE) or TTYs supported by non-Baudot protocols,²²⁷ the vast majority of existing TTYs are supported by the Baudot protocol for which only a proprietary type of interrupt functionality exists.²²⁸

71. *Discussion.* We decline to mandate interrupt functionality at this time. First, we believe that it is not appropriate to mandate specific TRS features that can only be provided via proprietary

²²⁰ TDI Coalition Reply at 6.

²²¹ See, e.g., Hamilton Comments at 5; Sprint Comments at 12.

²²² *Second Improved TRS Order & NPRM* at ¶ 120.

²²³ *Id.*

²²⁴ Sprint Relay service offers Ultratec Turbo Code to relay users. See <http://www.sprintbiz.com/government/relay/services.html>.

²²⁵ TurboCode is a proprietary protocol for Baudot code based TTYs that enables interrupt functionality. See Ultratec's website www.ultratec.com. Ameriphone's Q140 protocol also enables the interrupt functionality. See <http://www.clarityproducts.com/store/Downloads/Q-90DU.pdf>; see also MO PSC Comments at 4-5.

²²⁶ See, e.g., AT&T Comments at 12; CA PUC Comments at 8; Sprint Comments at 13; MCI (WorldCom) Reply Comments at 6-7.

²²⁷ Text telephones transmit and receive coded messages. The primary code in which text telephones transmit information is known as Baudot. The code consists of tones – a different one for each character and command on the keyboard. The device both generates tones and translates them into characters and commands. See Franklin H. Silverstein, Ph.D., *Telecommunications Relay Service (TRS) Handbook, Empowering the Hearing and Speech Impaired* (1999).

²²⁸ See AT&T Comments at 12 n.26; MD DBM Reply Comments at 5-6.

technology. Second, TRS consumers are increasingly using other forms of TRS, such as IP Relay and VRS. With respect to VRS, it is possible for the consumer and VRS CA to interrupt one another because they see each other signing. With respect to IP Relay, it is also technologically possible for the consumer and the CA to interrupt each other.²²⁹ We nevertheless continue to encourage TRS providers to be innovative with new telecommunications technologies that would further place persons with hearing and speech disabilities on an equal footing with voice callers.

(iii) TRS Consumers' LEC Offerings

72. *Background.* In the *Second Improved TRS Order & NPRM*, we sought comment on the applicability of certain LEC features – *i.e.*, anonymous call rejection, call screening, and preferred call-forwarding²³⁰ – to TRS. These features are all services that affect how incoming calls to the subscriber will be handled or directed; the services respond to either the identification of the caller or the lack of such identification. We tentatively concluded that these features should be provided to TRS customers, whether the called party is the voice user or the TTY user, if they are offered by the subscribing TRS customer's local carrier *and* if the TRS facility can send Caller ID to the local carrier. We sought comment on this tentative conclusion, as well as on how these features or services could be implemented by TRS providers.

73. Commenting TRS providers note that they would be able to provide anonymous call rejection, call screening, and preferred call-forwarding to the extent that they have the necessary technology (such as Signaling System 7 (SS7)) and the TRS consumers subscribe to these features through their LEC.²³¹ TRS providers explain that these features may be provided in a TRS call only when the TRS facility possesses the necessary technology to pass the subscriber's ten-digit Caller ID information to the LEC.²³² Several TRS providers emphasize the need for the LECs' cooperation in giving the TRS provider access to the Caller ID information if the TRS provider is going to be able to provide these LEC-based services to the TRS consumers who subscribe to them.²³³

74. *Discussion.* We conclude that TRS providers are capable of providing anonymous call rejection, call screening, and preferred call-forwarding as long as the TRS consumer seeking to use these features, whether the calling party or called party, subscribes to the service. The provision of these features is akin to provision of Caller ID, which we addressed in the *Second Improved TRS Order & NPRM*.²³⁴ In that order, we concluded that “when a TRS facility is able to transmit any identifying information, the TRS facility must pass through, to the called party, the number of the TRS facility, 711, or, if possible, the 10-digit number of the calling party.”²³⁵ We also noted that “TRS providers are

²²⁹ See *e.g.*, www.ip-relay.com; www.relaycall.com; www.sprintrelayonline.com; and www.hiprelay.com.

²³⁰ *Second Improved TRS Order & NPRM* at ¶¶ 121-122. Anonymous call rejection is a feature that automatically rejects calls to the user's number when the calling party has blocked his or her Caller ID information. Call screening (or selective call blocking) allows a user to create a list of telephone numbers (no-call list) from which the user does not wish to accept calls. Calls from numbers on the no-call list receive an announcement that informs the caller that the called party is not receiving calls at this time. All calls not on the no-call list are placed to the called party. Preferred call-forwarding allows a user to create and maintain a list of “special” telephone numbers where, if a call is received from one of those numbers, the call will be forwarded to another number.

²³¹ See, *e.g.*, AT&T Comments at 12; Hamilton Comments at 5; MCI (WorldCom) Comments at 9; Sprint Comments at 13-14.

²³² See, *e.g.*, MCI (WorldCom) Comments at 9; SBC Reply Comments at 5; Sprint at 13-14.

²³³ Sprint Comments at 13-14; CA PUC Comments at 9.

²³⁴ *Second Improved TRS Order & NPRM* at ¶ 23-25.

²³⁵ *Id.* at ¶ 25.

required to observe the Commission's rules pertaining to Caller ID and call blocking services."²³⁶ The same result applies here. Since the same technology that is used to transmit the Caller ID data also enables anonymous call rejection, call screening, and preferred call-forwarding, we require the offering of these features to the extent such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC.

75. With respect to the LECs' cooperation in giving the TRS provider access to the Caller ID information for the TRS provider to be able to provide these LEC-based services to the TRS consumers who subscribe to them, we note that in the *Second Improved TRS Order* we required the Caller ID transmission to the extent that the providers have access to SS7 technology or similar technology.²³⁷ We reach a similar conclusion here and encourage LECs to allow TRS providers access to a subscriber's information that would enable the TRS provider to support these features. At the same time, we remind LECs not to interfere with TRS providers' ability to provide functionally equivalent TRS service under our rules, just as is the case with a consumer's ability to have equal access to his or her interexchange carrier of choice.²³⁸

(iv) Talking Return Call

76. *Background.* Talking return call, sometimes referred to as "automatic call-back," is a feature widely available to non-TRS users, which allows a consumer to automatically call the last incoming telephone call received, whether or not the call was answered. To use this feature, the user enters a code (such as "*69") to obtain the telephone number of the party that last called the user's telephone number. The customer will then receive by voice the telephone number of the last incoming telephone call. The feature also includes an additional option for the consumer to enter another code, such as "1," to request that the carrier call the telephone number of the last party that called the consumer.²³⁹ In addition, this feature can be used to automatically call a telephone number that has been busy once the called party hangs up (busy line monitoring).²⁴⁰ Because this feature relies on voice, it is largely unusable by persons who are deaf.

77. In the *Second Improved TRS Order & NPRM*, we noted that in certain circumstances the deaf TRS user might be able to use an automatic call back feature.²⁴¹ We explained that we believed it was possible for the TRS facility to provide the identification of the last party who called the TRS consumer via the TRS facility (unless the caller's information was blocked by the caller). We also noted that if the TRS consumer is a TTY user, it may also be possible for the TRS facility to provide this information via a TTY interface (*i.e.*, by text), instead of the voice interface used by LECs. The Commission, therefore, sought comment on the feasibility of TRS providers offering this feature and whether this feature should be required as a mandatory minimum standard. The Commission also sought comment on whether it was feasible for the TRS provider to do busy line monitoring to determine when the line becomes idle and is able to receive a call.

78. Commenting TRS providers and the CA PUC agree that offering talking return call to the

²³⁶ *Id.* at ¶ 22.

²³⁷ *Second Improved TRS Order & NPRM* at ¶¶22-25.

²³⁸ *See, e.g.*, 47 C.F.R. §64.604(b)(3).

²³⁹ *See Second Improved TRS Order & NPRM* at ¶¶ 123-124.

²⁴⁰ *See id.* at ¶ 123.

²⁴¹ *Id.* at ¶¶ 123-124.

TRS user with a hearing disability would be either cost-prohibitive or technologically infeasible.²⁴² Sprint contends that the TRS provider would have to build and operate a large database that would capture and store the last called number for each call placed through its TRS platform.²⁴³ Hamilton and the MO PSC contend that this feature depends on a TTY or CPE that enables such functionality.²⁴⁴ Hamilton points out that this feature is available only in a “station-to-station” environment, and not when an operator, or a CA in the case of TRS, is involved in the call.²⁴⁵ The TDI Coalition, however, emphasizes that because TRS providers have the obligation to ensure the functional equivalency of TRS, they should place much effort in facilitating the talking return call feature for TRS consumers.²⁴⁶

79. With respect to busy line monitoring, some TRS providers oppose having to offer this feature because the TRS provider would have to undertake an extensive network build-up.²⁴⁷ For example, a provider would likely be required to have a separate line to monitor the busy line, and such “monitoring lines” would not be used for the provision of other TRS services, and therefore would be underutilized, increasing costs of providing TRS services.²⁴⁸

80. *Discussion.* We will not require the talking return call and busy line monitoring features at this time. We find that the feasibility of TRS providers offering the talking return call feature depends on the technical capability of a TRS user’s TTY or CPE, and that presently no TTY or CPE is capable of offering a LEC-based talking return call feature. We also agree with the commenters that it is not practical to offer busy line monitoring because requiring a CA to monitor a busy line involves the CA waiting idly on line for an unforeseeable length of time until the line becomes available, at which time the CA will need to call the TRS user to inform the TRS user of the intended called party’s availability. Furthermore, our TRS reimbursement scheme does not provide for compensating a CA’s idle time. We conclude that busy line monitoring would be unduly burdensome to the TRS provider and to the TRS user.

c. Technology

(i) Speech Recognition Technology

81. *Background.* In the *Second Improved TRS Order & NPRM*, the Commission sought further comment on computer-assisted speech recognition technology (SRT), sometimes referred to as voice-to-text (VTT) technology, and its possible use in the TRS environment.²⁴⁹ We noted that SRT

²⁴² See, e.g., CA PUC Comments at 10; Hamilton Comments at 6-7; Iowa UB Comments at 3; MCI (WorldCom) Comments at 9-10 (this feature will work only if the LECs make the voice announcements associated with *69 accessible via TTY); Sprint Comments at 15 (the build-up requires a separate line to monitor the busy line and that such “monitor lines” would not be used for the provision of other TRS services that would be underutilized).

²⁴³ Sprint Comments at 14. Sprint adds that they are unaware of any demand within the deaf and hard-of-hearing community for this type of functionality. See also MCI Comments at 9-10.

²⁴⁴ See, e.g., Hamilton Comments at 5; MO PSC Comments at 5.

²⁴⁵ Hamilton Comments at 7.

²⁴⁶ TDI Coalition Comments at 12. See also MO PSC Comments at 5; Sprint Comments at 14; CA PUC Comments at 10. CA PUC recommends the Commission allow for a sufficient amount of time for testing and research to see if offering such a feature is feasible in a TRS environment. Iowa PUC Comments at 3. Iowa PUC supports mandating such feature if it is technologically feasible.

²⁴⁷ See, e.g., Hamilton Comments at 7; Sprint Comments at 14; MCI (WorldCom) Comments at 9-10.

²⁴⁸ Sprint Comments at 15.

²⁴⁹ *Second Improved TRS Order & NPRM* at ¶ 125. With VTT or speech recognition technology, the CA, instead of typing, re-voices the voice caller’s message into a specialized speech recognition device that translates the speech into text.

could significantly shorten the time it takes for the voice caller's message to be converted into text, and therefore could greatly improve the use of TRS. The Commission noted, however, that it lacked sufficient information on this technology to require its use by TRS providers, and therefore sought comment on the current status of the development of speech recognition technology, including the extent, if any, to which TRS providers have already integrated speech recognition technology into their operations.

82. Although some commenters note that use of SRT is becoming increasingly prevalent,²⁵⁰ other commenters also assert that further research and development of such technology is necessary before its use can be mandated for TRS.²⁵¹ Several commenters also suggest that we should not mandate the use of SRT because the market, and not regulation, should drive its availability in the TRS industry.²⁵² In addition, two commenters report that there is no non-proprietary SRT available for use by TRS providers.²⁵³

83. *Discussion.* We conclude that it is premature to mandate the use of SRT by TRS facilities. Such technology remains in an experimental stage, and there is no non-proprietary SRT available for use by TRS providers. We will, however, closely monitor the development of SRT and may revisit this matter in the future.²⁵⁴ We believe that the use of any technology, such as SRT, that can substantially speed up a TRS call is important to the provision of TRS consistent with the functional equivalency mandate.

(ii) Transmission Speed

84. *Background.* In the *Second Improved TRS Order & NPRM*, we noted that text-based TRS calls generally take four times as long as similar voice-to-voice calls, and therefore that faster transmission speeds for text-based TRS calls would move the speed of such calls closer to that of voice-to-voice calls.²⁵⁵ We therefore sought comment on whether improved transmission speeds for the TTY leg of a TRS call is technologically feasible, and whether mandating improved transmission speeds would be compatible with legacy TTYs.

85. The few commenters on this issue have not proposed a specific requirement that would promote increased transmission speed. Rather, they recommend that we encourage continued research into this issue.²⁵⁶

86. *Discussion.* We conclude that it is premature to mandate any particular transmission speed technology. Such technology continues to develop. At the same time, the sharp increase in the use of IP Relay and VRS may render this issue less relevant to the evolution and growth of TRS. Nevertheless, we will continue to monitor the development of technology that can enhance the transmission speed of TTY-based TRS calls.

²⁵⁰ See, e.g., Hamilton Comments at 4-5; Relay Nevada Administrator Comments at 1-2; TDI Coalition Comments at 13.

²⁵¹ Relay Nevada Administrator Comments at 1-2; TDI Coalition Comments at 12.

²⁵² See, e.g., SBC Reply Comments at 5; Sprint Comments at 15-16.

²⁵³ CA PUC Comments at 10. Ultratec's CapTel service uses its proprietary SRT.

²⁵⁴ Several TRS providers have undergone SRT trials, using technology such as Ultratec's FasTran.

²⁵⁵ *Second Improved TRS Order & NPRM* at ¶ 126.

²⁵⁶ See, e.g., Hamilton Comments at 4; MO PSC Comments at 6; TDI Coalition Comments at 12-13.

(iii) TTY Protocols

87. *Background.* In the *Second Improved TRS Order & NPRM*, we noted that we previously sought comment on the use of new transmission TTY protocols, such as the V.18 protocol, for TTYs and similar products that might improve the interconnection of TRS facilities or TTYs with wireless devices.²⁵⁷ We also noted, however, that we had not received adequate information on this issue; therefore, we sought further comment regarding the extent to which innovative non-proprietary protocols for TTY products are currently being used and could be used by TRS providers. We note that our rules presently require that TRS be capable of communicating with ASCII and Baudot formats.²⁵⁸

88. The record demonstrates that there are no new non-proprietary TTY protocols available on the market.²⁵⁹ The TDI Coalition nevertheless recommends that the Commission encourage the adoption and prompt implementation of new, faster TTY protocols as soon as they are commercially available and have widespread use among TTY users.²⁶⁰

89. *Discussion.* We will not mandate the use of additional TTY protocols. We recognize that it is desirable to make TRS “universal” for all types of callers by ensuring its compatibility with various TTY protocols. The record reflects, however, that presently there are no TTY protocols available that are not proprietary, and we will not mandate proprietary protocols.²⁶¹ Nevertheless, this is an issue we will continue to monitor.

4. Public Access to Information and Outreach

90. *Background.* In the *Second Improved TRS Order & NPRM*, we noted that although our mandatory minimum standards require providers to take certain steps to inform the general public about TRS,²⁶² the rule may not be fully effective. We therefore sought comment on a variety of issues regarding the public’s access to information about TRS and outreach.²⁶³ In particular, we sought comment on the effectiveness of current outreach efforts, the availability of state programs to serve as models for a national program, and the types of additional outreach requirements that might be required for TRS providers and states.²⁶⁴ We also sought comment on the role, if any, federal funding should have in these efforts, including whether, if the Commission were to require a coordinated outreach campaign (instead of, or in addition to, the outreach required of individual TRS providers), such a campaign could be supported by the Interstate TRS Fund. We noted that our rules provide for payments from the Interstate TRS Fund to compensate eligible TRS providers for their reasonable costs of providing interstate TRS.²⁶⁵ We sought comment on whether the Interstate TRS Fund may be used to compensate third parties (*i.e.*, non-providers) for the cost of a coordinated outreach program.²⁶⁶ We also sought comment on whether the cost recovery provisions of section 225²⁶⁷ require that portions of an outreach

²⁵⁷ *Second Improved TRS Order & NPRM* at ¶ 127.

²⁵⁸ 47 C.F.R. § 64.604(b)(1).

²⁵⁹ *See, e.g.*, Sprint Comments at 15-16; TDI Coalition Comments at 13; SBC Reply Comments at 5.

²⁶⁰ TDI Coalition Comments at 9.

²⁶¹ *Second Improved TRS Order & NPRM* at ¶ 127.

²⁶² 47 C.F.R. § 64.604(c)(3).

²⁶³ *Second Improved TRS Order & NPRM* at ¶¶ 128-133.

²⁶⁴ *Id.* at ¶¶ 129-133.

²⁶⁵ 47 C.F.R. § 64.604(c)(5)(iii)(E).

²⁶⁶ *Second Improved TRS Order & NPRM* at ¶ 133.

²⁶⁷ 47 U.S.C. § 225(d)(3).

campaign designed for implementation at the state level must be paid for by the states. Finally, we instructed the Consumer Advisory Committee (CAC) to review the issues concerning outreach as set forth in the *NPRM*, and make recommendations to the Commission regarding this matter.²⁶⁸

91. Generally, the comments reflect a need for more outreach to educate the public about TRS and support a nationwide awareness campaign that is funded by the Interstate TRS Fund, and assert that the Commission has authority under section 225 to use the Interstate TRS Fund to fund outreach, whether by paying individual TRS providers' outreach expenses or by funding programs administered by the Interstate TRS Fund Administrator or a government body.²⁶⁹ For example, the TDI Coalition states that nearly all commenters (1) documented the need for a national outreach program, (2) supported the Commission's authority to implement such a program, and (3) provided useful insights into how such a national outreach program could be administered and funded.²⁷⁰ At the same time, the TDI Coalition recognizes there was a difference in opinion about how to fund a national outreach program.²⁷¹ The TDI Coalition also asserts that the record clearly demonstrates that despite the Commission's exhortations for carriers to voluntarily engage in outreach, adequate successful outreach is not occurring.²⁷²

92. AT&T cautioned, however, that TRS is now in a transitional phase between reliance on the circuit switched network and Internet-based relay services, and therefore that imposing additional and unnecessary obligations on TRS providers to popularize TRS based on an obsolescent technology may be inconsistent with the Commission's broader ADA mandate.²⁷³ The CA PUC also cautioned that establishing specific outreach standards or dollar requirements would not treat all providers fairly, and that in a multi-vendor environment (such as California) there is competitive pressure to provide TRS outreach to consumers.²⁷⁴ CSD points out that while some states have taken the initiative to broaden TRS awareness, others have done little. CSD also believes that some of the duplication occurring across the state programs can be eliminated through a single national campaign that would benefit all subscribers uniformly across America.²⁷⁵ CSD urges the Commission to permit the TRS Fund Administrator to procure the services of vendors to conduct a coordinated and comprehensive outreach program to promote

²⁶⁸ *Second Improved TRS Order & NPRM* at ¶ 79. The mission of the Consumer Advisory Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations), in proceedings before the Commission. See Comments of the Consumer Advisory Committee.

²⁶⁹ For example, Hands On supports an outreach program being targeted to the hearing community to publicize how to reach deaf and hard of hearing persons via TRS, and believes that the TRS Advisory Council should have a role in coordinating a nationwide outreach effort. Hands On Comments at 6-10. The MD DBM asserts that a national non-branded (not provider or state specific) outreach effort would allow for consistency in providing information to the general public, benefiting all relay users, and that providers are reluctant to incur outreach and education costs that could benefit a competitor. MD DBM Reply Comments at 7. Verizon notes that the Commission has allowed the use of the Interstate TRS Fund to pay for outreach efforts by TRS Providers according to the N11 Order, and that because the Commission has allowed TRS providers' outreach expenses to be paid by the TRS fund, it also has the ability to fund outreach efforts that are conducted by the TRS Fund Administrator. Verizon Comments at 10-11. Verizon suggests that the Commission should instruct the TRS Fund Administrator to implement a national outreach program, and to synchronize its efforts with successful outreach programs that are already being administered in many states. Verizon Reply Comments at 3-4; see also CSD Comments at 11; Sprint Comments at 17.

²⁷⁰ TDI Coalition Comments at 10.

²⁷¹ *Id.* at 10.

²⁷² *Id.* at 11.

²⁷³ AT&T Comments at 13-14.

²⁷⁴ CA PUC Comments at 12.

²⁷⁵ CSD Comments at 9.

universal access to all forms of TRS.²⁷⁶

93. At the November 20, 2003, CAC meeting the recommendations of the TRS Working Group were adopted, and subsequently submitted to the Commission. The CAC reported that approximately 10% of outbound calls result in hang-ups by hearing parties, and that these hang-ups result from a lack of understanding of TRS; that current efforts for educating the public on TRS are not effective, as many hearing people still associate a relay service call with a telemarketing-type call; that although some states have a formalized outreach program, the programs are “branded” to an individual state or a specific relay provider; and that TRS information appearing in the front of local telephone directories was the most common form of outreach in many states, but that this information needs to be standardized and made more understandable.²⁷⁷

94. The CAC stated that only a coordinated information and outreach program could achieve a “national consciousness” on the use and benefits of TRS. In this regard, the CAC believes that the Commission has authority to conduct a national TRS outreach campaign pursuant to its broad ancillary jurisdiction contained in section 4(i) of the Act.²⁷⁸ The CAC notes that the Commission has, on many occasions, been involved with customer education or outreach programs to one extent or another.²⁷⁹ The CAC asserts that since the Commission has statutory authority to direct carriers to engage in a customer outreach program, and it also has authority to direct that such program be funded from TRS contributions from carriers and their customers. The CAC recommends that the TRS national outreach campaign be funded by monies approved by the Commission in whatever capacity it deems appropriate, whether that be the Interstate TRS Fund or another mechanism within the responsibility of the Commission. In addition, the CAC believes that a new advisory board should be established to operate under the chosen funding mechanism, which will advise the Commission on a national outreach campaign and direct the outreach payments to an approved professional outreach firm.

95. *Discussion.* We recognize that outreach is an issue of recurring and serious importance for TRS users. Those who rely on TRS for access to the nation’s telephone system, and thereby for access to family, friends, businesses, and the like, gain little from the mandate of Title IV if persons receiving a TRS call do not understand what a relay call is and therefore do not take the call, or if persons desiring to call a person with a hearing or speech disability do not know that this can easily be accomplished through TRS (and dialing 711). We also recognize the strong sentiment reflected in the comments that outreach efforts to date have not been adequate. At the same time, we note that our regulations presently require that common carriers take certain steps to “assure that callers in their service areas are aware of the availability and use of all forms of TRS.”²⁸⁰ These regulations reflect that it is the

²⁷⁶ *Id.* at 10. CSD states that a directive for a comprehensive TRS outreach campaign would be consistent with the Commission’s actions in its Report and Order on 711 access where the Commission laid out what it said it believed to be necessary to achieve a successful campaign: dissemination of “information through the mainstream media, including newspaper, radio, and television advertisements and articles, which can more effectively reach substantial portions of the American public.”

²⁷⁷ CAC Comments at 1.

²⁷⁸ CAC Comments at 1.

²⁷⁹ For example, the CAC points out that in 1992 the Commission decided that AT&T should not be permitted to receive all calling card calls dialed from payphones on a 0+ basis and devised a regulatory plan that permitted coin phone subscribers to select the long distance carrier or operator services provider of choice (*i.e.*, coin phone presubscription). Therefore, the Commission directed AT&T to “educate its cardholders to check payphone notices and to use 0+ access only at public phones identified as presubscribed to AT&T. CAC Comments at 3, *referencing, Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Phase I, Report and Order and Request for Supplemental Comment, FCC 92-465 (Oct. 8, 1992).

²⁸⁰ *See* 47 C.F.R. § 64.604(c)(3).

duty and responsibility of common carriers obligated to provide TRS to ensure that the public is aware of TRS.²⁸¹ Moreover, state TRS programs play a vital role in providing outreach; pursuant to our state certification requirements, the states must ensure that the providers in their state program also provide outreach as required under our regulations.²⁸²

96. Our current regulatory scheme, therefore, has not overlooked the importance of outreach, and we have reminded carriers on a number of occasions of their obligations under our rules.²⁸³ We now reiterate that common carriers obligated to provide TRS must take steps to educate the public about TRS. We take this opportunity to clarify that the responsibility for outreach lies with all carriers to “assure that callers in their service areas are aware of TRS. The term ‘callers’ refers to the general public, not just consumers with speech and hearing disabilities. It is crucial for everyone to be aware of the availability of TRS for it to offer the functional equivalence required by the statute.”²⁸⁴ In this regard, given the continued existence of some anecdotal evidence indicating that recipients of TRS calls may hang-up on the calls, and at the same time the sharp increase in the use of TRS generally, the common carriers obligated to provide outreach might consider directing some of their outreach efforts towards the general public.

97. We decline to permit or require the Interstate TRS Fund to fund a national outreach campaign. We have noted in the past the question whether the Interstate TRS Fund can fund such a program.²⁸⁵ Even apart from that issue, however, we conclude that the cost of an effective *national* outreach campaign would be prohibitive, with uncertain outcomes. Further, the amount of money that the Interstate TRS Fund might devote to an outreach campaign would have to be balanced with our efforts in other parts of this *Order* (and in other recent orders) to more precisely define and manage the costs that determine the compensation rates from the Interstate TRS Fund in an effort to safeguard the integrity of the fund. These costs, as we have noted, may include costs attributable to reasonable outreach efforts, and in this way some of the costs for outreach are already supported by the Interstate TRS Fund. We also note that the majority of TRS calls are local and intrastate, which suggests that the state TRS providers and state TRS programs should be taking the lead in providing meaningful outreach.

98. Finally, we decline to implement the recommendation of the CAC that we charge it with a continuing role in TRS outreach planning and implementation. We appreciate their willingness to continue in this capacity; however, with our recognition that it is ultimately the responsibility of the common carriers to provide effective outreach, it is unnecessary to further impose upon the CAC at this time. At the same time, we suggest the CAC develop voluntary Best Practice Guidelines for state TRS programs, TRS providers, and common carriers. We will work with the working group on this effort, and will ensure that the results of this effort, and other relevant materials, are available on our website so that common carriers, TRS providers, state programs and advocates will have the opportunity to share their outreach ideas and approaches. In this regard, we also direct the Consumer & Governmental Affairs Bureau to take concrete steps through educational and outreach efforts to further enhance public awareness of TRS. In addition to making factsheets and other informational materials available for dissemination through the Commission's web site and national consumer call centers, the Commission will launch a comprehensive outreach campaign that will include participating in conferences and other

²⁸¹ Although the statute and our rules provide that all common carriers providing telephone voice transmission services are obligated to provide TRS, our rules allow carriers to provide TRS individually, through designees, through a competitively selected vendor or in concert with other carriers. *See* 47 C.F.R. § 64.603. As such, most states have selected one or two carriers to provide TRS.

²⁸² 47 C.F.R. § 64.605(b).

²⁸³ *See, e.g., Second Improved TRS Order & NPRM* at ¶ 80.

²⁸⁴ *Improved TRS Order & FNPRM* at ¶ 105; *see also TRS I* at ¶ 28.

²⁸⁵ *Second Improved TRS Order & NPRM* at ¶ 133.

events that provide opportunities for Commission staff to further educate not only users of TRS, but also the general public, about TRS. Finally, the Commission will provide media outlets likely to reach individuals who use TRS, as well as those of general distribution, with information about the availability of, and further developments in, the provision of TRS.

5. Procedures for Determining TRS Providers' Eligibility for Receiving Payments from the Interstate TRS Fund

99. *Background.* In the *Second Improved TRS Order & NPRM*, we noted that there is no federal certification process for TRS providers seeking compensation from the Interstate TRS Fund for the provision of eligible TRS services.²⁸⁶ Presently, our regulations provide for the certification of state TRS programs,²⁸⁷ and that TRS providers seeking compensation from the Interstate TRS Fund may establish their eligibility by showing that they operate “under contract with and/or by certified state TRS programs.”²⁸⁸ In these circumstances, the state program is responsible for ensuring that the provider offers its services in compliance with the TRS mandatory minimum standards. In addition, our regulations currently provide that TRS providers may establish their eligibility by showing that they are “owned by or operated under contract with a common carrier providing interstate [TRS] services,”²⁸⁹ or are “[i]nterstate common carriers offering TRS pursuant to 64.604.”²⁹⁰ In these circumstances, however, because of the absence of any certification process, there is no means by which the Commission can determine whether the providers are offering the TRS services in compliance with our rules. For this reason, we sought comment on whether, and if so, how, we should amend our rules to address the eligibility of TRS providers for compensation from the Interstate TRS Fund in those circumstances not presently covered by our regulations.²⁹¹

100. We sought comment on proposed rules that would require the Commission to certify a TRS provider desiring to offer TRS independent of a certified state program or eligible common carrier providing TRS and to receive compensation from the Interstate TRS Fund.²⁹² Further, we sought comment on whether the Commission should institute a certification process specifically for providers of IP Relay, VRS, and any other technology that does not fit easily into the traditional separation of intrastate and interstate services, for the period of time that such services are totally reimbursed from the Interstate TRS Fund.²⁹³ We also sought comment on whether we should require all TRS providers seeking reimbursement from the Interstate TRS Fund to apply to the Commission, under the rules proposed above, regardless of their involvement in a certified state program.²⁹⁴

101. Commenters generally agree that we should continue allowing interstate TRS providers to be reimbursed from the Interstate TRS Fund so long as the TRS provider participates in a certified state TRS program, without having a federal certification requirement. Commenters also generally agree, however, that a federal certification requirement is appropriate if a TRS provider does not participate in a state TRS program, is not a common carrier, and is providing Internet-based TRS, such as IP Relay and

²⁸⁶ *Id.* at ¶ 136.

²⁸⁷ 47 C.F.R. § 64.605.

²⁸⁸ 47 C.F.R. § 64.604(c)(5)(iii)(E)(1).

²⁸⁹ 47 C.F.R. § 64.604(c)(5)(iii)(E)(2).

²⁹⁰ 47 C.F.R. § 64.604(c)(5)(iii)(E)(3).

²⁹¹ *Second Improved TRS Order & NPRM* at ¶¶ 134-140.

²⁹² *Id.* at ¶¶ 136-140.

²⁹³ *Id.* at ¶ 139.

²⁹⁴ *Id.* at ¶ 140.

VRS.²⁹⁵ In this regard, the MO PSC²⁹⁶ and Sorenson,²⁹⁷ among others, assert that a federal certification process should be an alternative to participating in a state TRS program, and not an additional regulatory requirement for new or existing TRS providers. SBC opposes a certification requirement for existing TRS providers, and believes that imposing the proposed federal certification or other requirements on TRS providers that already qualify for federal reimbursement is wholly unnecessary and would prove duplicative, inefficient, wasteful, and ultimately burdensome for these providers.²⁹⁸

102. Sorenson states that the current requirement that a non-common carrier be associated with a certified state program creates a burden for potential TRS providers, discouraging potential TRS providers that are unfamiliar with state regulatory processes.²⁹⁹ Sorenson therefore contends that a federal certification process would reduce the administrative and regulatory costs experienced by potential TRS providers and ensure they are not stymied by individual state regulatory processes.³⁰⁰ The TDI Coalition asserts that it is vital that measures be implemented to ensure that interstate TRS providers provide quality of service, and that a federal certification program can ensure a baseline national level of quality, consistency of service, and outreach requirements.³⁰¹ The TDI Coalition strongly urges us to establish a federal TRS certification program to ensure the quality provision of TRS when there is no state program oversight of interstate TRS providers.³⁰²

103. *Discussion.* We will defer at this time any decision about requiring Commission certification of providers seeking compensation from the Interstate TRS Fund, but invite further comment on this issue in the *FNPRM* below as part of our broad inquiry into issues relating to the provision, compensation, and oversight of IP Relay and VRS. As a general matter, we recognize that the underlying issue we are facing is two-fold: (1) how to define those entities providing TRS that are eligible for compensation from the Interstate TRS Fund for providing eligible services; and (2) how to ensure that such entities are providing TRS in compliance with the TRS mandatory minimum standards. With regard to the first point, our regulations set forth the eligibility requirements for TRS providers seeking compensation from the Interstate TRS Fund.³⁰³ As a general matter, we have construed these requirements to require eligible providers to be either part of a state program or to provide service under contract with another provider obligated to provide TRS services.³⁰⁴ Because Title IV puts the obligation on the entities providing telephone transmission service to also offer TRS, and also grants states the

²⁹⁵ See, e.g., CA PUC Comments at 13; Hamilton Comments at 8; Hands On Comments at 12-14, Hamilton Reply Comment at 4-5; MCI (WorldCom) Comments at 12-14, MCI (WorldCom) Reply Comments at 8; MD DBM Reply Comments at 14; Sorenson Comments at 2-4; TDI Coalition Comments at 14.

²⁹⁶ MO PSC Comments at 7.

²⁹⁷ Sorenson Comments at 4.

²⁹⁸ SBC Comments at 6-7. *But see* Hands On Comments at 13-14 (a federal certification program would promote competition and innovation and decrease the cost of service by allowing the providers actually delivering the service to bill the Interstate TRS Fund directly).

²⁹⁹ Sorenson Comments at 2.

³⁰⁰ *Id.*

³⁰¹ TDI Coalition Comments, at 14.

³⁰² TDI Coalition Comments at 10.

³⁰³ 47 C.F.R. § 64.604(c)(5)(iii)(F).

³⁰⁴ There is a third eligibility category: “[i]nterstate common carriers offering TRS pursuant to § 64.604.” This category applies to common carriers offering telephone voice transmission services that are obligated to provide TRS in a state that does not have a certified TRS program. The three eligibility categories, therefore, are modeled upon the ways in which common carriers may be deemed to be in compliance with their underlying obligation, as set forth in or at sections 225(c)(1) – (2) of the Act, to provide TRS.

primary jurisdiction over the provision of TRS, we believe that requiring eligible providers to fall into one of these categories is consistent with the statutory scheme.³⁰⁵

104. With regard to ensuring that TRS providers meet our applicable mandatory minimum standards, presently all states have certified state TRS programs, which are primarily responsible for providers' compliance with our rules. Although it is conceivable that there may be eligible TRS providers that neither provide service under contract with another provider obligated to provide TRS services or operate outside of any state program (*e.g.*, if a state no longer has a certified program), we do not believe that that possibility warrants the adoption at this time of a new regulatory scheme for TRS providers. We also note that the complaint process provides a mechanism by which we can learn about service problems and take necessary corrective action when it is not possible for a state to address the matter.³⁰⁶ Finally, we note that to the extent we adopt separation of cost rules for Internet based services presently compensated solely from the Interstate TRS Fund, and therefore require the states to fund the intrastate calls, state oversight of such services will necessarily follow. For these reasons, we will not adopt a procedure at this time by which providers seeking compensation from the Interstate TRS Fund must be certified by the Commission, but will seek further comment on this issue below with respect to providers of IP Relay and VRS.

D. VRS WAIVERS OF TRS MANDATORY MINIMUM STANDARDS

1. Background

105. In 2001, Hamilton and Sprint filed requests for waiver of certain aspects of the *Improved TRS Order & FNPRM* relating to the TRS mandatory minimum standards as applied to the provision of VRS. On December 31, 2001, the Commission issued the *VRS Waiver Order* granting, for a period of two years ending December 31, 2003, the requests for waiver.³⁰⁷ The waivers were for the following TRS requirements: (1) types of calls that must be handled; (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; and (5) pay-per-call services.³⁰⁸

106. In September 2003, Hamilton, Hands On,³⁰⁹ and AT&T filed petitions to extend these

³⁰⁵ Again, circumstances where a state does not have a TRS program certified under our rules presents other issues. We note that presently all states Puerto Rico and the District of Columbia have certified TRS programs.

³⁰⁶ 47 C.F.R. § 64.604(c)(6).

³⁰⁷ *VRS Waiver Order*.

³⁰⁸ *VRS Waiver Order* at ¶¶ 9-20; see 47 C.F.R. §§ 64.604(a)(3), (a)(4), (b)(2), (b)(3) & (b)(6). We note that previously, in the *Improved TRS Order & FNPRM* that recognized VRS as a form of TRS, we concluded that certain other mandatory minimum standards did not apply to VRS. See *Improved TRS Order & FNPRM* at ¶ 42. In addition, in the *TRS Cost Recovery MO&O* we clarified that providers of VRS need not also provide video-based STS or Spanish relay. See *TRS Cost Recovery MO&O* at ¶¶ 25-27. Further, VRS – like all non-mandatory forms of TRS – need not be offered every day, 24 hours a day. See 47 C.F.R. § 64.604(b)(4).

³⁰⁹ We note that Hands On also seeks clarification that VRS providers may immediately terminate calls where: (1) the VRS communications assistant is subjected to harassment or indecency, and (2) calls directed to third parties appear to be designed to harass or annoy such parties, either as a result of obscenity or other threatening or annoying conduct. We raise issues concerning the abuse of CAs handling TRS calls in the *FNPRM* below. We also note that CSD seeks clarification that American Sign Language (ASL) to Spanish Relay is not currently a form of VRS reimbursable from the Interstate TRS Fund. CSD Comments at 6. That is correct. In the *Improved TRS Order & NPRM* we stated TRS includes “any non-English language relay services which relay conversations in a *shared* language.” *Improved TRS Order & FNPRM* at ¶¶ 28-31 (emphasis added). We subsequently sought comment on this issue in the generic context of TRS in the *Second Improved TRS Order & FNPRM* in response to a petition filed by the Texas PUC that urged the Commission to find that multi-lingual translation relay services (*i.e.*, non-shared language TRS) provided by an interstate TRS providers are compensable from the Interstate TRS Fund. See *Second Improved TRS Order & NPRM* at ¶¶ 98, 110-114. We resolved that issue in the *Report and Order* above.

VRS waivers.³¹⁰ Hamilton also seeks waiver of voice initiated calls, including voice carry over (VCO)³¹¹ and Speech-to-Speech (STS),³¹² as well as hearing carry over (HCO).³¹³ In addition, Hamilton requests that, to the extent necessary, we waive the automatic call forwarding requirement in circumstances where the called party is a VRS user.³¹⁴ Further, Hamilton seeks clarification that VRS providers need not provide STS or Spanish Relay.³¹⁵ Finally, these parties request that we conform the various IP Relay and VRS waiver expiration dates, and combine the required annual reporting requirements for IP Relay and VRS into one annual filing.

107. On October 6, 2003, Hamilton's and Hands On's *Petitions* were placed on Public Notice.³¹⁶ On October 8, 2003, AT&T's *Petition* was placed on Public Notice.³¹⁷ In response to the Public Notices, three parties filed comments.³¹⁸ No reply comments were filed.

108. On December 12, 2003, Hands On filed an amendment to its waiver request, asserting that VRS should be made a mandatory service and that, relatedly, the speed of answer waiver should be for only one year, not five years (as Hands On originally requested).³¹⁹ Hands On summarizes that making VRS a mandatory TRS service, and requiring VRS providers to meet the speed of answer rule, are essential steps to making VRS functionally equivalent to voice telephone service.³²⁰ Hands On's amended filing followed CSD's November 25, 2003, amendment to its comments, wherein CSD asserted that VRS should be a mandatory TRS service and that the speed of answer requirement should be waived for only one year.³²¹

³¹⁰ Hamilton Relay, Inc., *Petition for Waiver Extension*, filed September 15, 2003; Hands On Video Relay Service, Inc., *Petition for Waiver*, filed September 22, 2003, AT&T Corp., *Petition for Limited Reconsideration and for Waiver*, filed September 23, 2003.

³¹¹ Voice carry over (VCO) is a form of TRS used by persons with hearing disabilities who are able to speak directly to another end user. The communications assistant types the response back to the person with the hearing disability, but does not voice the conversation. See 47 C.F.R. § 64.601(9).

³¹² Hamilton *Petition* at 10-11.

³¹³ Hearing carry over (HCO) is a form of TRS used by persons with speech disabilities who are able to listen to the other end user. The communications assistant speaks the text as typed by the person with the speech disability. See 47 C.F.R. § 64.601(7).

³¹⁴ Hamilton *Petition* at 9-10.

³¹⁵ *Id.* at 9. This request for clarification refers to our discussion of this issue in the *TRS Cost Recovery MO&O* at ¶¶ 25-27.

³¹⁶ *Hamilton Relay, Inc. and Hands On Video Relay Service, Inc. Petitions for Waiver Extension, Permanent Waiver, and Clarification of Video Relay Service Requirements*, Public Notice, CC Docket No. 98-67, DA 03-3036 (Oct. 6, 2003).

³¹⁷ *AT&T Corp. and Verizon File Petitions for Reconsideration of Telecommunications Relay Service Requirements from the Second Improved TRS Order & NPRM, FCC 03-112*, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, DA 03-3109 (Oct. 8, 2003).

³¹⁸ See e.g. Comments and Request for Clarification, filed by Communication Services for the Deaf, Inc. (CSD), October 20, 2003; Comments of Sorenson Media, Inc., filed by Sorenson Media, Inc., October 20, 2003; Comments of Sprint Corporation, filed by Sprint Corporation, October 20, 2003.

³¹⁹ *Hands On Amendment to Waiver Request*, filed December 12, 2003.

³²⁰ *Id.* at 5.

³²¹ *CSD Ex Parte Amendment to Comments on Petitions for VRS Waivers* at 1, filed November 25, 2003. As we note further below, the question whether VRS should be a mandatory type of TRS has only recently been raised, and therefore it would be premature to address it at this time. We seek comment on that issue in the *FNPRM* below.

2. Discussion

a. Extension of TRS Waivers Granted in the December 31, 2001, *VRS Waiver Order*

109. Our rules set forth operational, technical, and functional mandatory minimum standards applicable to the provision of TRS.³²² These standards apply to all forms of TRS when they are offered, unless they are waived. Therefore, for a provider to be eligible for reimbursement from the Interstate TRS Fund³²³ for the provision of TRS, the provider must either meet all applicable mandatory minimum standards or request and receive a waiver of the standards.

110. In analyzing the applicability of our TRS mandatory minimum standards to VRS, we consider established legal standards for waiver of the Commission's rules. As we have noted, the Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."³²⁴ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."³²⁵ The Commission must take a "hard look" at applications for waiver and must consider all relevant factors when determining if good cause exists.³²⁶ The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[an] applicant [for waiver] faces a high hurdle even at the starting gate."³²⁷ In addition, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."³²⁸ Finally, we have also regularly reminded that waiver of one or more portions of the Commission's rules does not excuse an applicant from compliance with the Commission's other requirements.³²⁹

111. Applying these standards, we find good cause exists to grant Hamilton's, Hands On's, and AT&T's waiver requests, to the extent indicated below, with respect to the five TRS requirements originally waived in the December 31, 2001, *TRS Waiver Order*, and that doing so is in the public interest. As set forth below, these waivers are granted provided that VRS providers submit an annual report to the Commission, in narrative form, detailing: (1) the provider's plan or general approach to meeting the waived standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standard; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waivers should continue in effect. Further, as requested by the parties and for administrative convenience, VRS providers may combine the reporting requirement established in this Order with existing VRS/IP Relay reporting requirements scheduled to be submitted annually on April 16th of each year pursuant to the *IP Relay Order on Reconsideration* and the *Second Improved TRS Order &*

³²² See 47 C.F.R. § 64.604.

³²³ See *Improved TRS Order & FNPRM* at ¶ 39.

³²⁴ *FPC v Texaco, Inc.*, 377 U.S. 33, 39 (1964).

³²⁵ 47 C.F.R. § 1.3.

³²⁶ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

³²⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

³²⁸ *Northeast Cellular Telephone Company, L.P. v FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³²⁹ See 47 C.F.R. § 1.3; *Part 68 Waiver Request of Alameda Engineering, Inc.*, Order, 10 FCC Rcd 12135, 12139 (Sept. 28, 1995).

NPRM.³³⁰ Further, for administrative convenience, and also consistent with the *IP Relay Order On Reconsideration* and the *Second Improved TRS Order & NPRM*, all waivers granted herein, with the exception of emergency call handling and speed of answer, will expire on January 1, 2008. Because the speed of answer issue is raised below in the *FNPRM*, the waiver for VRS of the speed of answer requirement will end on January 1, 2006, or at the time the Commission adopts a speed of answer rule for VRS, whichever is earlier. The waiver for emergency call handling will expire on January 1, 2006.

112. As set forth below, we extend the waivers of the following mandatory minimum standards for providers of VRS: (1) types of calls that must be handled; (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; and (5) pay-per-call services.

113. *Types of Calls.* Commission rules require TRS providers to handle any type of call normally handled by common carriers.³³¹ In the *VRS Waiver Order*, the Commission granted VRS providers a two-year waiver of the requirement to offer operator assisted calls and to bill certain types of long distance calls to the end user.³³² The Commission conditioned this waiver on VRS providers allowing “VRS calls to be place[d] using calling cards and/or provid[ing] free long distance calls during the waiver period.”³³³

114. Petitioners contend that extension of this waiver is necessary because it continues to be technologically infeasible for VRS providers to determine if a VRS call is local or long distance.³³⁴ Petitioners and commenters also agree that VRS providers do not have the billing mechanism to handle operator assisted calls or to bill long distance calls.³³⁵

115. We agree with the parties that it remains technologically infeasible for VRS providers to offer operator assisted calls and to bill for certain types of long distance calls because one leg of the VRS call is transmitted over the Internet.³³⁶ We therefore grant VRS providers a waiver of this TRS requirement until January 1, 2008, conditioned on the filing of an annual report with the Commission as indicated above. We will also continue to require VRS providers to allow calls to be placed using calling cards and/or to provide free long distance calls during the waiver period.

116. *Emergency Call Handling.* Our rules require TRS providers to automatically and immediately transfer emergency calls to an appropriate public safety answering point (PSAP).³³⁷ The *VRS Waiver Order* granted VRS providers a two-year waiver of this requirement, but also required VRS providers to clearly explain on their website and in any VRS promotional materials “the shortcomings and potential dangers of using VRS to place an emergency call using 911.”³³⁸

³³⁰ See *Second Improved TRS Order & NPRM* at ¶ 76 & n.249; *IP Relay Order on Reconsideration* at ¶ 28 (annual reports required for waivers set forth in the *IP Relay Order on Reconsideration* and the *Second Improved TRS Order & NPRM* are due twelve months after date the *IP Relay Order on Reconsideration* was published in the Federal Register, which was April 16, 2003).

³³¹ See 47 C.F.R. § 64.604(a)(3).

³³² *VRS Waiver Order* at ¶ 10.

³³³ *Id.*

³³⁴ *Hamilton Petition* at 8; *Hands On Petition* at 5-6.

³³⁵ *Hamilton Petition* at 8; *Hands On Petition* at 5-6; *Sorenson Comments* at 5; *CSD Comments* at 2.

³³⁶ *Hands On Petition* at 2; *Hamilton Petition* at 8; *CSD Comments* at 2.

³³⁷ See 47 C.F.R. § 64.604(a)(4); see also *Second Improved TRS Order & NPRM* at ¶¶ 37-42.

³³⁸ *VRS Waiver Order* at ¶ 14.

117. Petitioners contend that extension of this waiver is appropriate because VRS users gain access to VRS via a computer and Internet address, rather than via a telephone, and therefore VRS providers do not receive the automatic number identification (ANI) of the calling party. As a result, the VRS providers cannot identify the caller's location to automatically pass that information on to the PSAP. Commenters agree that, for this reason, this requirement should be waived for VRS providers.³³⁹

118. The record reflects that VRS providers currently do not have the technology to automatically transfer emergency calls, with the caller's location information, to the appropriate emergency service provider.³⁴⁰ We also note that no party, including those in the disability community, filed comments opposing an extension of the emergency call handling waiver for VRS providers. Therefore, because it is currently technologically infeasible for VRS providers to automatically and immediately transfer emergency calls to the appropriate PSAP, we waive this TRS mandatory minimum standard. Because of the importance of emergency call handling, however, this waiver will expire on January 1, 2006, and is conditioned on the filing of an annual report with the Commission as indicated above. In addition, we will continue to require VRS providers to inform VRS users in their promotional materials and on their website of the potential dangers of using VRS for emergency calls.

119. *Speed of Answer.* Our rules mandate that 85 percent of relay calls must be answered within 10 seconds "by any method which results in the caller's call immediately being placed, not put in a queue or on hold."³⁴¹ Because this rule is based on projected call volumes and such projections are difficult to make for a new service, the *VRS Waiver Order* waived this TRS mandatory minimum standard for VRS providers.³⁴² The Commission's aim was to encourage more entrants into the VRS market and help provide more time for technology to develop.³⁴³ The Commission also reasoned that because demand for VRS was undetermined, the 85/10 rule might keep potential VRS providers out of the market, thereby hindering the development and growth of VRS.³⁴⁴

120. As a general matter, petitioners assert that this waiver should be extended because VRS is still in its infancy, it is not a mandatory TRS service, and VRS providers do not have sufficient data with which to determine staffing needs to comply with this rule.³⁴⁵ Petitioners and commenters contend that VRS is still in a "start-up" period, and that during this period staffing requirements may not be clear, and therefore available staffing may not be sufficient to promptly handle all of the incoming VRS calls during times of high demand.³⁴⁶ CSD and Hands On, however, although initially supporting a five-year waiver of this requirement,³⁴⁷ assert that this waiver should be granted only for one year.³⁴⁸ CSD rests its

³³⁹ CSD Comments at 3; Sorenson Comments at 3.

³⁴⁰ CSD Comments at 3.

³⁴¹ See 47 C.F.R. § 64.604(b)(2). This rule is often referred to as the 85/10 rule.

³⁴² *VRS Waiver Order* at ¶ 16.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ Hamilton *Petition* at 6; Hands On *Petition* at 5.

³⁴⁶ Hands On *Petition* at 5; Hamilton *Petition* at 6; Sorenson Comments at 3.

³⁴⁷ In its initial comments, CSD asserted that prior to the reduction of the VRS compensation rate in the *Bureau TRS Order*, it had success in complying with this rule for VRS, but that as a result of the lower rate it has not been able to staff adequate positions to meet the rule during peak periods of demand. CSD therefore supported extension of the waiver "at this time" because "uncertainty in the rate prevents CSD from being able to commit to any service level requirements without significant financial risk." CSD Comments at 4-5. In its *Petition for Waiver*, Hands On asserted that the original basis for the waiver of this requirement continues, and that with increased call volume staffing may not be sufficient to handle all demand during busy hours. Hands On *Petition* at 4-5.

assertion on its view that the interim reduction in the VRS compensation rate has resulted in a “less than functionally equivalent” Video Relay Service because, in part, the lower compensation rate has made it difficult for them to meet the speed of answer rule.³⁴⁹ In other words, CSD suggests that the compensation rate is necessarily tied to the standard of service that is provided, and therefore that by eliminating the waiver for speed of answer the “functionally equivalent bar” will be raised for all VRS providers, and the VRS compensation rate will ultimately reflect a higher standard of service, not a lower standard of service.³⁵⁰ CSD nevertheless asks for a one-year waiver so that providers can prepare to meet the 85/10 standard under a final (*i.e.*, non-interim) compensation rate.³⁵¹ Hands On, in its amendment to its waiver request, agrees with CSD, asserting that the only reason it cannot meet the speed of answer rule is cost.³⁵² Hands On therefore requests that the waiver of the speed of answer rule be for only one year. Hands On further suggests that after one year the standard for VRS should be that 85 percent of all calls must be answered within 20 seconds, instead of the 10 seconds set forth in the rule.³⁵³

121. We find that VRS will continue to benefit from an extension of the waiver of our speed of answer rule, and therefore we waive our speed of answer requirement as set forth herein. We condition this waiver on VRS providers submitting to the Commission an annual report as indicated above detailing, and which also summarizes the provider’s speed of answer data for the prior twelve-month period. Although we are extending this waiver, we again urge providers to work diligently to meet the needs of callers. We note that the record reflects that VRS is a highly competitive service, and that providers who do not provide prompt and efficient service will run the risk that customers will go elsewhere.³⁵⁴ We believe that this competition should provide incentive for VRS providers to answer VRS calls as promptly as possible until such time as we terminate this waiver. We also note that because VRS remains a voluntary service, it is appropriate to provide flexibility that might not be warranted for a mandatory service.

122. With regard to CSD’s and Hands On’s concerns, we believe that it is premature to require VRS providers to meet the speed of answer requirement (or to adopt a different speed of answer requirement for VRS), and note that the record as a whole does not reflect that the sole, or even principal, reason that this requirement cannot be met is because of the current VRS compensation rate.³⁵⁵

(...continued from previous page)

³⁴⁸ See CSD *Ex Parte Amendment to Comments on Petitions for VRS Waivers* at 1; Hands On *Amendment to Waiver Request*.

³⁴⁹ CSD *Ex Parte Amendment to Comments on Petitions for VRS Waivers* at 6.

³⁵⁰ *Id.*

³⁵¹ *Id.* at 6-7. As we have noted above, CSD also requests in its *Ex Parte* filing that we consider making VRS a mandatory service that must be provided 24 hours a day, seven days a week. CSD suggests that “[o]nly if this service is mandated and provided twenty-four hours a day/seven days a week will it truly provide the functionally equivalent service contemplated in the ADA.” *Id.* at 7. Because comment has not been sought on this issue, it would be inappropriate to address it at this time. We raise that issue in the *FNPRM* below.

³⁵² Hands On’s *Amendment to Waiver Request* at 2.

³⁵³ *Id.* at 4. Hands On, like CSD, also addresses the question whether VRS should be a mandatory service that is required to be offered twenty-hours a day, seven days a week. Hands On asserts that after July 1, 2004, VRS should be a mandatory service that must be offered 24/7. *Ibid.* Again, because we have not previously sought comment on whether VRS should be a mandatory service, we cannot address that issue at this time, but we raise it in the *FNPRM* below. We note, however, that our regulations provide that non-mandatory services (like VRS) need not be offered 24/7; therefore, this is not a requirement that has been “waived” for a given period of time and is subject to extension. 47 C.F.R. § 64.604(b)(4).

³⁵⁴ Hands On *Petition* at 5.

³⁵⁵ See Hamilton *Petition* at 6-7.

Nevertheless, we understand CSD's and Hands On's concerns about the quality of service, and the apparent "Catch-22" that so long as a mandatory minimum standard is waived providers cannot be compensated for the costs of meeting the requirement, but that without additional compensation they cannot cover the costs of meeting the requirement to therefore justify the end of the waiver. We will rely on the annual reports to inform us on when the termination of this waiver may be appropriate, as well as on what additional costs may be necessary. In this regard, we intend to closely monitor all of the TRS waivers to ensure that they do not have the unintended effect of "lowering the bar" for quality of service where it is not necessary to do so because of technological or other similarly compelling reasons.

123. Further, because of the importance of this issue to the notion of functional equivalency, we raise below in the *FNPRM*, in connection with other issues concerning VRS, issues concerning speed of answer and the provision of VRS. The comments we receive in response to this *FNPRM* will supplement the information we receive in the annual reports. Because we have expressly raised this issue in the *FNPRM*, the speed of answer waiver for VRS will terminate on January 1, 2006, or at such time as the Commission adopts a rule addressing speed of answer for VRS, whichever is earlier.

124. *Equal Access to Interexchange Carriers.* Our rules require that TRS users have access to their chosen interexchange carrier through TRS to the same extent that such access is provided to voice users.³⁵⁶ In the *VRS Waiver Order*, the Commission granted VRS providers a two-year waiver of this TRS mandatory minimum standard, recognizing that the systems necessary to hand off a video teleconferencing call to a carrier preferred by the end user do not yet exist.³⁵⁷

125. Petitioners contend that a technical solution to this problem has not been developed, and that therefore an extension of this waiver is appropriate.³⁵⁸ Commenters support extension of this waiver, noting that because VRS providers do not receive a caller's ANI via the Internet, they do not have the ability to identify long distance calls, much less to automatically route the call to the calling party's carrier of choice.³⁵⁹ Petitioners and commenters assert that a viable alternative to this TRS requirement is for the Commission to continue to require VRS providers to offer free long distance calling.³⁶⁰

126. Hamilton goes one step further, and argues that this requirement should be permanently waived for VRS providers, as it was for IP Relay providers.³⁶¹ Hamilton argues that in the *IP Relay Declaratory Order & FNPRM* the Commission recognized the inherent difficulty in determining whether an IP Relay call is long distance or local, and that because IP Relay providers provide long distance services free of charge there was no need for a carrier of choice requirement.³⁶² CSD notes, however, that even though technology that allows providers to approximate the location of an IP user does not exist today, it may become available in the future.³⁶³

127. Based on the record, we grant VRS providers a waiver of the equal access to interexchange carrier requirement until January 1, 2008. We do not grant a permanent waiver because we agree with CSD that it is likely that technology that will allow VRS providers to approximate the location

³⁵⁶ See 47 C.F.R. § 64.604(b)(3); see also *Second Improved TRS Order & NPRM* at ¶¶ 54-61.

³⁵⁷ *VRS Waiver Order* at ¶¶ 17-18.

³⁵⁸ *Hamilton Petition* at 8; *Hands On Petition* at 5-6.

³⁵⁹ CSD Comments at 2; Sorenson Comments at 6.

³⁶⁰ *Hamilton Petition* at 8; CSD Comments at 2; Sorenson Comments at 6.

³⁶¹ *Hamilton Petition* at 8; see *IP Relay Declaratory Ruling & FNPRM* at ¶ 31.

³⁶² *Id.*

³⁶³ CSD Comments at 2-3.

of VRS users will become available in the future. Until such time, however, we will require VRS providers to provide free long distance service to their VRS customers.³⁶⁴ We also condition this waiver on VRS providers submitting an annual report to the Commission as indicated above.

128. Relatedly, Hands On seeks clarification that it may require credit card billing to complete international calls.³⁶⁵ Hands On contends that requiring credit card billing for international calls will reduce the potential for abuse or gaming of the system (*i.e.*, a caller located outside of the United States using United States VRS to complete a call to another party located outside of the United States).³⁶⁶ CSD supports Hands On's request, but notes that billing for VRS international calls would have to be measured from the VRS provider's location to the international destination, and not from the location of the VRS user initiating the call, because VRS providers are unable to determine the location of the VRS party making the call.³⁶⁷

129. We believe the parties are confusing our rules governing the provider's compensation for eligible TRS services from the Interstate TRS Fund, with our rules concerning the provider's ability to charge the TRS user for the long distance (including international) charges that apply to such calls. The Interstate TRS Fund does not currently reimburse providers for the costs of providing international calls via IP Relay.³⁶⁸ No such restriction currently applies, however, to international VRS calls.³⁶⁹ At the same time, for IP Relay we have waived the interexchange carrier of choice requirement so long as the provider does not charge for the long distance call.³⁷⁰ Therefore, IP Relay providers *may* charge for long distance calls if they offer carrier of choice; they may even do so for international IP Relay calls, although, as noted above, they will not be compensated from the Interstate TRS Fund for the TRS minutes involved in such a call.³⁷¹ With respect to VRS, we have similarly conditioned our waiver of the carrier of choice requirement on the VRS providers offering free long distance calls to the VRS customer. At the same time, as with IP Relay, we clarify that the VRS provider may charge for the long distance call provided it offers carrier of choice; this rule also applies to international VRS calls.

130. *Pay-Per-Call Services – 900 number calls.* Our rules require TRS providers to be capable of handling pay-per-call calls (*i.e.*, 900 number calls).³⁷² The *VRS Waiver Order* granted VRS providers a two-year waiver of this TRS requirement, noting that demand for pay-per-call VRS was

³⁶⁴ In other words, as with IP Relay, VRS providers cannot bill the user for any long distance charges if they do not offer carrier of choice; conversely, VRS providers that offer carrier of choice may charge for the call (*e.g.*, via a calling card).

³⁶⁵ Hands On *Petition* at 6.

³⁶⁶ *Id.*

³⁶⁷ CSD Comments at 9. We note that such an arrangement would be contrary to our rules concerning carrier of choice and traditional TRS calls; *i.e.*, in those circumstances, a long distance TRS call is billed from the location of the calling party to the location of the called party, without regard to the location of the TRS facility and CA. See generally 47 U.S.C. § 225(d)(1)(D); *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 90-376, 5 FCC Red 7187 at ¶ 14 (Nov. 16, 1990)

³⁶⁸ See *Bureau TRS Order* at ¶ 26 n.73.

³⁶⁹ The Interstate TRS Fund administrator has informally indicated that at this time very few international VRS calls are made.

³⁷⁰ *IP Relay Declaratory Ruling & FNPRM* at ¶ 31.

³⁷¹ We recognize, and expect, that as a practical matter a provider's inability to receive compensation from the Interstate TRS Fund for international IP Relay call minutes will operate as a strong disincentive to handle such calls.

³⁷² See 47 C.F.R. § 64.604(c)(6).

expected to be low and the cost of compliance was high.³⁷³

131. Petitioners now seek extension of this waiver, asserting that VRS providers do not have access to the calling party's ANI, and therefore have no way to bill the calling party for the 900 call.³⁷⁴ Petitioners note that, for this reason, we recently extended the waiver of this requirement for IP Relay.³⁷⁵ Petitioners further assert that simply absorbing the costs of 900 number calls would unnecessarily increase the cost of VRS and unfairly subsidize users of this particular service.³⁷⁶ Commenters support extension of this waiver, stating that there continues to be minimal demand for these services among VRS customers, and that the technological obstacles to handling these types of calls have not been removed.³⁷⁷

132. We agree with the parties that VRS providers do not have the technology to complete pay-per-call (900 number) calls, and therefore we waive this TRS requirement until January 1, 2008. We believe that technology will be developed to allow VRS providers to handle these types of calls, and will require VRS providers to submit a report annually to the Commission as indicated above and detailing advancements that may enable VRS providers to comply with this requirement.

b. New Waiver Requests

133. In addition to requesting extension of the waivers of the TRS mandatory minimum standards set forth in the *VRS Waiver Order*, Hamilton seeks waiver of various other TRS requirements for VRS providers. Specifically, Hamilton seeks waiver of two kinds of voice initiated calls, voice carry over (VCO) and Speech-to-Speech (STS), as well as hearing carry over (HCO).³⁷⁸ Hamilton also seeks waiver of the automatic call forwarding requirement in circumstances where the *called* party is a VRS user.³⁷⁹ Further, Hamilton seeks clarification that VRS providers need not provide STS or Spanish Relay.³⁸⁰ We address these issues, in turn, below.

134. *Voice Initiated Calls and HCO.* Hamilton seeks waiver for VRS providers of the TRS mandatory minimum standards requiring the provision of voice initiated calls, *i.e.*, VCO and STS, as well as HCO.³⁸¹ Hamilton notes that in the *IP Relay Order on Reconsideration* the Commission waived these requirements for IP Relay providers because technological limitations prevent IP Relay providers from providing such calls.³⁸² Hamilton contends that the same technological limitations that prevent IP Relay providers from providing voice initiated calls – *i.e.*, that the Internet is used for one leg of the call and the quality of a voice call of the Internet is often poor and depends on the user's CPE – also limits the ability of VRS providers to provide such calls. For this reason, Hamilton seeks waiver of the requirement that VRS providers must offer VCO and HCO until January 1, 2008. CSD supports Hamilton's request for

³⁷³ *VRS Waiver Order* at ¶¶ 19-20.

³⁷⁴ Hamilton *Petition* at 7; Hands On *Petition* at 6-7.

³⁷⁵ See *IP Relay Order on Reconsideration* at ¶¶ 19-22.

³⁷⁶ Hands On Comments at 7.

³⁷⁷ CSD Comments at 3-4; Sorenson Comments at 6-7.

³⁷⁸ Hamilton *Petition* at 9-10.

³⁷⁹ *Id.* at 9-10.

³⁸⁰ *Id.* at 9.

³⁸¹ Hamilton *Petition* at 10. We note that Hamilton's request that we waive STS for 5 years (as we did for IP Relay providers) conflicts with its request that we clarify that we have previously determined that VRS providers need not provide STS and Spanish Relay. See *id.* at 9-10. We address the application of STS to VRS below.

³⁸² *Id.* at 10-11; see *IP Relay Order on Reconsideration* at ¶¶ 13-18.

waiver of this requirement.³⁸³

135. We agree that because the Internet has to be used for the voice leg of a VCO or HCO VRS call, the quality of such voice calls is uncertain with current technology. For this reason, and because we have waived this requirement for providers of IP Relay, we waive the requirement that VRS providers must provide VCO and HCO until January 1, 2008.³⁸⁴ This waiver is conditioned on the annual submission of a report to the Commission as detailed above.

136. *Automatic Call Forwarding.* In the *Second Improved TRS Order & NPRM*, we did not require automatic call forwarding³⁸⁵ as a TRS mandatory minimum standard because we concluded that this feature is one that the called party subscribes to through his or her local telephone company. As we noted, when a called party has subscribed to call forwarding, any calls to that number – whether from a CA relaying a TRS call or from a person making a conventional voice call – will be automatically forwarded to the alternate number designated by the called party.³⁸⁶ Hamilton agrees with the Commission’s conclusion when it is the VRS user placing a call to a voice user.³⁸⁷ Hamilton points out, however, that when the role of the callers is reversed – *i.e.*, where a voice caller initiates a VRS call, and therefore the VRS CA must make an out-bound VRS call to a VRS user – automatic call forwarding will not work because the called party’s number is really an IP address, and “IP addresses and log-ins (*i.e.*, the method by which VRS users receive calls) do not contain the ANI information necessary to permit call forwarding using the traditional telephone network.”³⁸⁸ Therefore, Hamilton, requests that “to the extent that a waiver of this requirement is necessary,” the Commission should waive this requirement in this context until January 1, 2008, consistent with the other waivers granted to VRS providers.³⁸⁹ CSD supports Hamilton’s request for waiver of this feature in this context.³⁹⁰

137. Hamilton seeks waiver of a requirement that does not exist. We have not required that TRS providers offer automatic call forwarding in any context; therefore, automatic call forwarding need not be provided when a VRS call is initiated by a voice telephone user. Because we have not imposed an automatic call forwarding requirement, no waiver is necessary.

138. *Speech-to-Speech and Spanish Relay.* Hamilton correctly notes that Section 64.603 of our regulations requires TRS providers to offer STS relay service and Spanish Relay.³⁹¹ Hamilton also correctly notes that in the *TRS Cost Recovery MO&O* we stated that VRS providers are not required to

³⁸³ CSD Comments at 7.

³⁸⁴ We note that we have also waived the requirement that IP Relay and VRS providers must provide VCO-to-TTY, HCO-to-TTY, VCO-to-VCO, and HCO-to-HCO. See *Second Improved TRS Order & NPRM* at ¶¶ 35-36. Contrary to Hamilton’s assertion, however, see *Hamilton Petition* at 11 n.30, we have not waived the requirement that VRS providers must provide two-line VCO and two-line HCO. Those types of TRS calls do not present the same problem of using voice over the Internet because the voice call is made on a separate telephone line. See generally *Second Improved TRS Order & NPRM* at ¶¶ 28-30.

³⁸⁵ Automatic call forwarding “permits calls placed by a TTY or other TRS user to another party’s telephone number through a CA to be automatically forwarded to that other party’s forwarded telephone number as previously designated by that other user.” *Second Improved TRS Order & NPRM* at ¶ 66.

³⁸⁶ *Id.* at ¶ 67.

³⁸⁷ *Hamilton Petition* at 9-10.

³⁸⁸ *Id.* at 10.

³⁸⁹ *Id.*

³⁹⁰ CSD Comments at 7.

³⁹¹ *Hamilton Petition* at 9; see 47 C.F.R. § 64.603.

provide STS or Spanish Relay.³⁹² Hamilton now seeks clarification that VRS providers need not provide STS and Spanish Relay, and that a request for a waiver, or a request for an extension of a waiver, for these forms of TRS is not necessary.³⁹³

139. We clarify that, as we stated in the *TRS Cost Recovery MO&O*, providers of VRS need not provide STS or Spanish Relay. As we noted, STS is a speech-based service, whereas VRS is a visual service using interpreters to interpret sign language over a video connection.³⁹⁴ Further, we noted that it would be unduly burdensome to require VRS to be provided in languages other than American Sign Language.³⁹⁵ Therefore, until such time as the Commission directs otherwise, the requirement that VRS providers – as TRS providers – also provide STS and Spanish Relay is waived.

3. Summary of VRS and IP Relay waivers, expiration dates, and annual report filing requirements

140. Several parties suggest that, for administrative convenience and clarity, we conform the various IP Relay and VRS waiver expiration dates to the extent possible, and combine the annual reporting requirements for IP Relay and VRS providers into one annual filing. We recognize that we have now granted waivers of TRS mandatory minimum standards for IP Relay and VRS providers in several orders, and have imposed annual reporting requirements that must address some, but not all, of these waivers. Therefore, we will require IP Relay and VRS providers to file one annual report with the Commission on April 16th of each year addressing the feasibility of meeting any of the TRS requirements waived in our various orders. As we have noted, these reports shall detail the provider's plans to meet the waived standards, the incremental costs that may be incurred in meeting the standards, any relevant technological changes affecting the waived requirements, and the progress made and steps taken to resolve the technological problems that prevent IP Relay and VRS providers from meeting these waived standards. Additionally, to conform the expiration date for all of the waivers for IP Relay and VRS, all waivers granted herein, with the exception of the emergency call handling and speed of answer waivers for VRS, shall expire on the January 1, 2008, expiration date we have mandated for VRS and IP Relay waivers in previous orders.³⁹⁶ Finally, to the extent set forth above, the waivers granted in this *Order* shall apply to all current and potential VRS providers beginning on the release date of this *Order*. We have summarized the present waivers of TRS mandatory minimum standards for IP Relay and VRS providers, the expiration dates of these waivers, and the annual reporting requirements applicable to these waivers in Appendix E to the *Order*.

E. 711 ACCESS TO PAY-PER-CALL (900) SERVICES (CG DOCKET NO. 98-67)

1. Background

141. In May 2003, Sprint filed a Petition for Declaratory Ruling (*711 Petition*) requesting that the Commission declare that the manner in which it provides “900 pay-per-call services to end users who access Sprint's TRS facilities by dialing 711 fully satisfies the requirement that such services be offered

³⁹² See *TRS Cost Recovery MO&O* at ¶¶ 25-27.

³⁹³ CSD states that it “understands STS to be indefinitely waived for VRS providers, and [therefore] does not see the need to seek extension of this waiver at this time.” *CSD Petition* at 7 n.11.

³⁹⁴ *TRS Cost Recovery MO&O* at ¶ 26.

³⁹⁵ *Id.* at ¶ 27.

³⁹⁶ As we have indicated above, because this issue is expressly raised in the *FNPRM* below, the waiver of the speed of answer requirement for VRS will terminate on January 1, 2006, or at the time the Commission issues an order adopting a speed of answer rule for VRS, whichever is earlier. The VRS waiver for emergency call handling will expire on January 1, 2006.

by relay providers.³⁹⁷ As Sprint notes, our rules require TRS providers to offer pay-per-call services – *i.e.*, services that are accessible through use of a 900 number – as “another component of functional equivalency.”³⁹⁸ Our rules also require that TRS providers offer “access via the 711 dialing code to all relay services as a toll free call.”³⁹⁹ Further, our rules require that subscribers be given the ability to block access to pay-per-call services from their lines.⁴⁰⁰ Sprint asserts that it has adopted its particular approach for handling 900 calls “in order to comply with the Commission’s regulatory paradigm governing access to pay-per-call services”; namely, to enable Sprint “to deny access to pay-per-call services through a toll-free number – the 711 access code call is delivered to the TRS center via a toll-free number – and to ensure that there is no pay-per-call block on the line being used by the TRS caller.”⁴⁰¹ Sprint requests that we remove any uncertainty regarding whether this approach complies with the pay-per-call requirement.⁴⁰²

142. More specifically, Sprint explains “that when a person dials the access code 711, the number is converted to the toll-free number assigned to the TRS center of the state from which the end user is calling”; for example, “the 711 voice call by an end user in North Carolina would be converted to 1-800-[. . .] and would then be routed by the local carrier to Sprint’s TRS center handling North Carolina’s calls.”⁴⁰³ Sprint further explains that because the Commission has recognized that pay-per-call services cannot be accessed using a toll-free dialing sequence such as a 1-800 number, a person cannot use 711 to place a 900 call.⁴⁰⁴ Sprint, therefore, has adopted an alternate approach whereby “Sprint CAs instruct callers wishing to avail themselves of pay-per-call services to dial a special 900 number (which is provided without charge) in order to use TRS to place the 900 call.”⁴⁰⁵ In this way, Sprint asserts, Sprint “is able to ensure that there is no pay-per-call block on the line being used by such user.”⁴⁰⁶ Sprint believes that this approach satisfies our rules and, “[i]ndeed, . . . may be the only way to harmonize the availability of pay-per-call services through TRS with the Commission requirement that subscribers be given the ability to block access to pay-per-call services from their lines.”⁴⁰⁷

143. Three parties filed comments in response to the *711 Petition*: AT&T, TDI, and MCI (WorldCom). Two parties filed reply comments: Sprint and TDI. No party filing comments opposed Sprint’s petition. AT&T asserts, however, that “insofar as the [*711 Petition*] may be read to imply that access by TRS customers to 900 pay-per-call services via the 711 dialing code is generally technically infeasible or unavailable, that impression is erroneous.”⁴⁰⁸ AT&T states that its TRS facilities “already offer this capability to customers who use the 711 dialing code” by using “a database that enables the [CA] to correlate the customer-provided 900 number to the appropriate center offering 900 transport for the call,” and then “rout[ing] the outbound call to the identified 900 carrier.”⁴⁰⁹ AT&T also asserts that

³⁹⁷ Sprint, *Petition for Declaratory Ruling*, CC Docket No. 98-67 (filed May 27, 2003) (*711 Petition*).

³⁹⁸ *Improved TRS Order & FNPRM* at ¶ 98; *see also* 47 C.F.R. § 64.604 (b)(6).

³⁹⁹ 47 C.F.R. § 64.603.

⁴⁰⁰ *See* 47 C.F.R. § 64.1508 “(Blocking access to 900 service”).

⁴⁰¹ Sprint Reply Comments at 1-2.

⁴⁰² *711 Petition* at 1-2.

⁴⁰³ *Id.*

⁴⁰⁴ *711 Petition* at 2 (citing *Improved TRS Order & FNPRM* at ¶ 98 n.200).

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ AT&T Comments at 2.

⁴⁰⁹ *Id.* at 2-3.

“other methods are ... available to harmonize the ability to access a TRS center via the 711 code with the customer’s right to block 900 calling originated from his/her telephone.”⁴¹⁰ AT&T further explains that it provides 900 blocking capability through its “TRS Relay Choice Profile (“RCP”) database.”⁴¹¹ AT&T therefore suggests that the Commission not conclude that Sprint’s method for providing TRS users access to 900 calling is the *only* acceptable method of providing that service.⁴¹²

144. TDI acknowledges AT&T’s approach to harmonizing the Commission’s rules concerning 900 calls via TRS and the separate 900-calling blocking rules by the use of customer profile databases.⁴¹³ TDI asserts, however, that many TRS users do not have profiles established with their various TRS providers, and are unaware of how to set one up.⁴¹⁴ TDI, therefore, believes that Sprint and MCI’s (WorldCom) procedures are more “failsafe” than AT&T’s.⁴¹⁵ Accordingly, TDI supports the *711 Petition* that Sprint’s provision of 900 pay-per-call services to TRS end users who access Sprint’s TRS facilities by dialing 711 fully satisfies our rules requiring that feature be offered to TRS users.⁴¹⁶ MCI (WorldCom) also supports Sprint’s petition, and notes that its CAs also redirect the caller to a special 900 number in these circumstances so that its TRS facilities would not be conduits for the circumvention of the pay-per-call blocking rules.⁴¹⁷ MCI (WorldCom) states that it has “not discovered any reliable method of ensuring call blocking for callers who have requested call blocking unless it redirects a relay call made via 711 to its special 900 number.”⁴¹⁸ In its reply comments, Sprint notes that AT&T’s and MCI (WorldCom)’s approach may be valid, despite suggesting some pitfalls, and states that it is not asking the Commission to adopt its approach to the exclusion of others. Rather, Sprint simply seeks assurance that its approach does not run afoul of the Commission’s rules.⁴¹⁹

2. Discussion

145. We grant Sprint’s *711 Petition*. Sprint’s approach is a reasonable method of providing TRS users functional equivalency in making 900 pay-per-call telephone calls through TRS. We conclude that as described in the *711 Petition*, there is no benefit to Sprint expending an uncertain amount of money to develop an alternate method of complying with the TRS mandatory minimum standards that require 900 calls be available to TRS users. We do not require that pay-per-calling be available through TRS in any particular manner or via a particular technology. We find that Sprint’s solution provides pay-per-call functionality to TRS users, and at the same time agree with AT&T and MCI (WorldCom) that there can be multiple ways to provide this particular functionality.

146. Relatedly, we amend the definition of “711” contained in our rules. Presently, 711 is defined as “[t]he abbreviated dialing code for accessing *all types of* relay services anywhere in the United States.”⁴²⁰ With the advent of Internet based TRS – *i.e.*, IP Relay and VRS – we recognize that it is not

⁴¹⁰ *Id.* at 3.

⁴¹¹ *Id.*

⁴¹² *Id.* at 2-3.

⁴¹³ TDI Reply Comments at 2.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ MCI (WorldCom) Comments at 1-2.

⁴¹⁸ *Id.* at 2.

⁴¹⁹ Sprint Reply Comments at 4.

⁴²⁰ 47 C.F.R. § 64.601(1) (emphasis added).

correct to suggest that these forms of TRS can be accessed by calling 711. Therefore, we amend the definition of 711 to delete the words “all types of” and therefore to read: “The abbreviated dialing code for accessing relay services anywhere in the United States.”

F. HANDS ON’S APPLICATION FOR CERTIFICATION AS A VRS PROVIDER ELIGIBLE FOR COMPENSATION FROM THE INTERSTATE TRS FUND

1. Background

147. On August, 30, 2002, Hands On filed an application for “certification”⁴²¹ as a Video Relay Service provider eligible for compensation from the Interstate TRS Fund. As we have noted, VRS is a form of TRS that, rather than using TTYs, uses computers and videoconferencing software to connect the TRS user to a communications assistant who communicates with the TRS user in American Sign Language. The application indicates that Hands On seeks to provide only VRS, and not the traditional TTY-based TRS, Speech-to-Speech (STS) relay service, or Spanish Relay Services that are forms of TRS currently mandated by the Commission’s rules.⁴²² Moreover, Hands On seeks to provide VRS neither as part of a certified state program nor as a service operated in contract with a common carrier providing interstate TRS.⁴²³ Hands On suggests that it is eligible to receive compensation from the Interstate TRS Fund under the third prong of the eligibility standards; *i.e.*, as an “Interstate common carrier offering TRS pursuant to 64.604.”⁴²⁴ Hands On also acknowledges that the regulations do not specify any requirement for “certification” of TRS providers as eligible for compensation from the Interstate TRS Fund.⁴²⁵

2. Discussion

148. We dismiss the *Hands On Application* without prejudice. Neither the statute nor the regulations governing the provision of TRS provides that the Commission can “certify” any TRS provider as eligible to receive compensation from the Interstate TRS Fund.⁴²⁶ The only certification process in the Commission’s rules applies to state TRS programs.⁴²⁷ Although, as discussed above, in the *Notice of Proposed Rulemaking of the Second Improved TRS Order & NPRM* we specifically sought comment on whether the Commission should establish a process whereby the Commission certifies those providers eligible for compensation from the Interstate TRS Fund,⁴²⁸ in this *Order* we have declined to adopt such a procedure at this time.

⁴²¹ Hands On’s filing is captioned: “Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification Pending Processing.”

⁴²² 47 U.S.C. § 225(c) requires that “telecommunications relay services” be provided in compliance with regulations developed by the Commission as mandated by 47 U.S.C. § 225(b). As we have noted, to date the Commission has required traditional TTY-based TRS, STS, and interstate Spanish Relay Services as mandatory TRS Services. *See, e.g., Improved TRS Order & FNPRM* at ¶¶ 13-20 (requiring STS) & ¶¶ 28-30 (requiring interstate Spanish Relay Services).

⁴²³ *See* 47 C.F.R. § 64.604(c)(5)(iii)(F).

⁴²⁴ *Hands On Application* at 5.

⁴²⁵ *Id.*

⁴²⁶ We note that Hands On is presently eligible for compensation from the Interstate TRS Fund both because it operates under contract with a common carrier offering interstate TRS, and because it operates as part of a certified state TRS program. *See* 47 C.F.R. § 64.604(c)(5)(iii)(F).

⁴²⁷ *See* 47 C.F.R. § 64.605.

⁴²⁸ *Second Improved TRS Order & NPRM* at ¶¶ 137-140.

G. PETITION FOR LIMITED WAIVER CONCERNING VIDEO RELAY SERVICE AND INTERPRETING IN STATE LEGAL PROCEEDINGS

1. Background

149. On June 12, 2003, CSD filed a Petition for Limited Waiver and Request for Expedited Relief (*CSD Petition*) requesting a “limited” waiver of our rule prohibiting CAs from refusing to handle calls in the context of TRS calls that are part of legal depositions and other legal proceedings.⁴²⁹ CSD states that over the past year its VRS facilities have received an increasing number of requests to provide VRS in these circumstances.⁴³⁰ CSD notes that there are usually specific qualifications, credentialing, and licensing requirements under state law that apply to interpreters in a legal setting.⁴³¹ CSD asserts that these state law requirements for legal interpreters create a conflict with the TRS mandatory minimum standards in three ways.

150. First, CSD asserts that whereas section 225 and the TRS regulations require TRS CAs to handle all calls, some state laws prohibit the use of interpreters who do not have certain credentials to interpret legal proceedings. Second, CSD asserts that under some state law interpreters are generally required to review the case and discuss the proceeding with the parties before they begin interpreting, but the TRS regulations require that call set-up be as expeditious as possible. Third, CSD notes that some states require that interpreters in a legal setting be able to testify as to the accuracy of their interpreted conversations, but that the TRS mandatory minimum standards prohibit TRS CAs from disclosing the contents of relayed conversations.⁴³² CSD therefore asserts that when a VRS CA receives a call that is part of a legal proceeding, the VRS provider cannot ensure that the VRS CA complies with state law and, as a result, the VRS CA is potentially exposed to civil and criminal liability under state law governing the qualifications of legal interpreters.⁴³³ CSD also asserts that to the extent the VRS CA does not meet state requirements for legal interpreters, the legal protection that these state statutes were intended to create for

⁴²⁹ Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief, CC Docket No. 98-67 (filed June 12, 2003) (*CSD Petition*).

⁴³⁰ *CSD Petition* at 1. CSD notes that when it has knowledge that all parties to such proceedings are located in the same room, CSD declines to provide relay service because such calls are video relay interpreting (VRI), and not VRS calls.

⁴³¹ *Id.* at 3. As CSD notes, a summary of state interpreting laws has been prepared by the National Association for the Deaf and can be found at <http://www.nad.org/infocenter/infotogo/asl/InterpStateLaws.html>. See also Hands On Comments at 2-5; TDI Comments at 1-2; Texas Commission for the Deaf and Hard of Hearing (TCDHH) Comments at 1-2, 5; Registry of Interpreters for the Deaf (RID) Comments at 2; Chicago Hearing Society Comments at 1. RID’s Standard Practice Paper on Interpreting in Legal Settings states that “[a]n interpreter’s first responsibility is to weigh the information regarding the circumstances judiciously to determine whether or not she/he is qualified for the particular situation. Some reasons for declining the assignment could be related to the communication mode of the deaf people involved or personal knowledge or bias in the case. Once the interpreter has accepted an assignment, he or she has the responsibility to facilitate communication accurately and impartially between the parties.” See www.rid.org/125.pdf. Because RID maintains that interpreting in a legal setting is such a specialized and complex field, they have developed a specialty certification for this topic with very strict eligibility requirements. See RID Comments at 2-5.

⁴³² *CSD Petition* at 3-10.

⁴³³ CSD also notes that state legal interpreting requirements vary from state to state, and that interpreters qualified to provide legal interpreting in one state are not automatically qualified to interpret in legal proceedings in another state. Because VRS is provided in centralized locations around the United States, and is provided via the Internet, it is not possible to determine the origination of the VRS calls. CSD asserts that even if its CAs are qualified to provide legal interpreting in the state in which the VRS facility is located, the CAs may not be qualified to provide such services in either the state in which the call originates or terminates. As a result, CAs could potentially be in violation of state interpreting laws in two states. *CSD Petition* at 2-4.

deaf consumers are jeopardized.⁴³⁴ CSD's suggested solution to this apparent conflict is to have the Commission waive the requirement that VRS CAs handle any type of call when the call involves a deposition or other legal proceeding so that the VRS CA can refuse such calls.

151. On August 13, 2003, the *Petition* was placed on public notice.⁴³⁵ In response to the Public Notice, two parties filed comments, one party (CSD) filed reply comments, and three parties filed *ex parte* comments.⁴³⁶ All commenters support CSD's *Petition* and agree that VRS is inappropriate for depositions or other legal interpreting that will be on the record in a court proceeding. At the same time, some commenters note that there are some calls concerning legal matters that are appropriate for VRS.⁴³⁷ In its reply comments, CSD clarifies that it is not seeking to exclude calls that involve routine legal matters such as those between an attorney and a client or witness.⁴³⁸ Rather, CSD explains that it is seeking a waiver that would excuse its VRS CAs from relaying calls involving depositions and other legal proceedings that are typically covered by state interpreter statutes governing civil and criminal proceedings, such as pre-trial and status conferences with judges, hearings, police interrogations, and other on-the-record proceedings that become part of a civil or criminal proceeding.⁴³⁹

2. Discussion

152. The Commission has frequently reiterated the applicable waiver standard: the Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."⁴⁴⁰ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."⁴⁴¹ The Commission must take a "hard look" at applications for waiver⁴⁴² and must consider all relevant factors when determining if good cause exists.⁴⁴³ The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[an] applicant [for waiver] faces a high hurdle even at the starting gate."⁴⁴⁴ In addition, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."⁴⁴⁵ Under these standards we do not find that a waiver is appropriate in this situation, and therefore we deny the request.

153. The gist of CSD's *Petition* appears to be this: if a VRS call coming into a VRS facility happens to be in the context of a legal proceeding, our rules that do not permit a VRS CA to refuse the

⁴³⁴ *Id.* at 1-2.

⁴³⁵ *Communication Services for the Deaf (CSD) Petition for Limited Waiver and Request for Expedited Relief Regarding the Provision of Video Relay Services (VRS) for Depositions and Other Legal Proceedings*, Public Notice, CC Docket 98-67, DA 03-2644 (August 13, 2003) (*CSD Petition Public Notice*).

⁴³⁶ See e.g., TDI Comments; Hands On Comments; CSD Reply Comments; RID Comments; Chicago Hearing Society Comments; TCDHH Comments.

⁴³⁷ See, e.g., TDI Comments at 2; Hands On Comments at 1.

⁴³⁸ CSD Reply Comments at 1.

⁴³⁹ *Id.*

⁴⁴⁰ *FPC v. Texaco, Inc.*, 377 U.S. 33, 39 (1964).

⁴⁴¹ 47 C.F.R. § 1.3.

⁴⁴² *Id.*

⁴⁴³ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

⁴⁴⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁴⁴⁵ *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

call⁴⁴⁶ may result in the VRS CA handling a call for which the CA is not qualified under state law governing the qualifications of interpreters in legal settings. As a result, compliance with our TRS rules may put the individual VRS CA at risk of civil or criminal liability under state law for “interpreting” in a legal proceeding without the proper credentials. Further, given the nature of TRS, the VRS CA would not be able to adequately prepare for the call, and therefore would not be able to accurately facilitate communication between the parties to the legal proceeding. Finally, the VRS CA would be precluded by our rules from testifying in court about the relayed call, or about the accuracy of his or her interpretation. CSD’s proposed solution is that we waive the requirement that the VRS CA must handle these types of calls. We conclude that this request misunderstands the role of a VRS CA (or any TRS CA) under section 225 and our regulations.⁴⁴⁷

154. In enacting Title IV of the ADA, and creating the federally regulated TRS scheme, Congress intended that persons with hearing and speech disabilities be provided with a means of communicating with hearing individuals through a third party – the CA – who relays the conversation between the parties. To this end, as we have frequently explained, the TRS scheme is intended to ensure that persons with hearing and speech disabilities have *functionally equivalent access* to the telephone system.⁴⁴⁸ This guidepost for the provision of TRS – that the relay service should be “functionally equivalent” to voice telephone service – means, as we have stated, that the CA “serves as a *transparent conduit* between two people communicating through disparate modes.”⁴⁴⁹ In other words, the CA’s role is simply to convert typed (or signed) messages into voice messages, and vice versa, so that the parties to the call can communicate back and forth, as any parties to a telephone call would do. It is because of this limited, transparent role of the CA that we have frequently stated that completion of the initial call to the TRS facility, and connecting to a CA, is equivalent to receiving a dial tone.⁴⁵⁰

155. Because the intended role of a TRS CA is to be a transparent conduit that serves as a link in a telephone conversation, the TRS mandatory minimum standards include the requirement that CAs shall be prohibited from refusing calls and must handle any type of call.⁴⁵¹ It would simply not be consistent with the purpose of TRS, and the statutory prohibition against “relay operators ... failing to fulfill the obligations of common carriers,”⁴⁵² to permit TRS CAs to handle only certain types of calls, and therefore to refuse to handle some calls. A hearing person has the ability to use the telephone to call anyone he or she chooses without a third party determining whether the call is one that should not be permitted to be completed. The TRS scheme is intended to give consumers who use relay services this same fundamental opportunity.

⁴⁴⁶ As noted above, we have granted a waiver of this requirement in two circumstances – operator assisted calls and long distance calls billed to the end user. *See VRS Waiver Order* at ¶ 10.

⁴⁴⁷ We note that CSD also asserts that the misuse of VRS for legal interpreting in state legal proceedings may result in violating the legal rights of deaf individuals. Although this may present a legitimate concern, we believe it is one that falls outside the Commission’s purview. That concern is more appropriately addressed to the states.

⁴⁴⁸ *See* House Report at 129 (1990); *Notice of Inquiry*, CC Docket No. 90-571, FCC 97-7, 12 FCC Rcd 1152 ¶2 (Jan. 14, 1997) (“TRS provides access to the voice telephone network for over 30 million Americans with hearing and speech disabilities”).

⁴⁴⁹ *TRS I* at ¶ 13 (emphasis added); *see also Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, FCC 03-190, 18 FCC Rcd 16121 at ¶¶ 4, 33, 42 (August 1, 2003); House Report at 133 (“[TRS] services are to be governed by standards that ensure that telephone service for hearing- and speech-impaired individuals is functionally equivalent to voice services offered to hearing individuals.”).

⁴⁵⁰ *See, e.g., Improved TRS Order & FNPRM* at ¶ 2.

⁴⁵¹ 47 U.S.C. § 225(d)(1)(E).

⁴⁵² *Id.*

156. Therefore, the role of VRS CAs facilitating relay calls (under section 225 and the implementing TRS regulations) is different from that of interpreters in legal settings under state laws. Unlike interpreters in legal settings, VRS CAs are only responsible for relaying the information transmitted to them. They bear no responsibility for whether the information they relay is received, or received accurately.⁴⁵³ Interpreters in legal settings, by contrast, may intercede on behalf of the court, counsel, or client to help ensure that full and accurate comprehension of the proceeding is taking place. They may also be asked to attest to their ability to accurately interpret the legal proceeding in question. Interpreters in legal settings are also obliged to evaluate the assignment (*i.e.*, the proceedings at hand) to determine if they are appropriately qualified, and are expected to recuse themselves or refuse the assignment if they feel they are not the appropriate interpreter. Such expectations are not – and cannot be – placed on VRS (or TRS) CAs. VRS consumers – and VRS (and TRS) providers – should clearly understand that VRS CAs do not assume such responsibilities when relaying a call.

157. The fundamental differences between the roles of a VRS CA and an interpreter in a legal setting should not be confused simply because both circumstances involve interpreting. When a call comes into a VRS facility, and is handled by a VRS CA, that CA must follow the regulatory scheme set forth in section 225 and the implementing regulations. Indeed, there is no reason that the CA should even know that the call is part of a legal proceeding that requires interpreters to meet certain qualifications; again, the CA's role is simply to relay to the hearing person by voice what was said to the CA either via text or sign language (for VRS), and to relay to the person with a hearing disability via text or sign language what the hearing person said to the CA. It follows that there is no basis to waive the requirement that VRS (or TRS) CAs may not refuse any type of call and therefore permit CAs to refuse to handle certain calls involving legal proceedings. Such a conclusion would plainly be at odds with the functional equivalency mandate and the notion that TRS facilities (and hence TRS CAs) must handle any type of call normally provided by common carriers.

158. We also note that granting the requested waiver would likely place the TRS provider and CA in a difficult situation. First, the CA would have to determine whether any particular TRS call involves a proceeding that *might* implicate laws concerning interpreting in a legal setting in the state where the call originates or terminates. If the CA determined that the call in fact was part of a legal proceeding, and that the CA was expected to act as an interpreter under state law, and not merely as a CA (a determination that may often be difficult to make), the CA would have to be permitted to refuse to complete the call. As discussed above, such a scheme would plainly run afoul of the purpose of TRS and the role of the TRS CA, and would greatly reduce the functional equivalency of TRS and violate the Congressional mandate set forth in section 225. Moreover, the reasoning underlying CSD's *Petition* could similarly apply in numerous other contexts. States could pass laws requiring that interpreters facilitating discussions involving, *e.g.*, engineering, architectural, or medical issues, have state certifications indicating that they are "qualified" to interpret conversations on such subjects in specified circumstances. Under CSD's reasoning, TRS CAs would have to be excused from handling relay calls in those circumstances as well.

159. For these reasons, if a caller attempts to use a VRS CA in a legal proceeding conducted over the telephone, the caller is simply making a TRS facilitated telephone call. Such a caller should not expect to receive "interpreting services" typical of interpreters providing services in legal settings. Rather, if a party wants or needs an interpreter for a legal proceeding, it is more appropriately the responsibility of the parties to the legal proceeding to secure the services of such a legally qualified interpreter if they believe such an interpreter is necessary under applicable state law.

160. Similar reasoning applies to the concern that state law that might be applied to require a

⁴⁵³ We note that a VRS CA must be a qualified interpreter, "who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary" 47 C.F.R. § 64.601(10).

TRS CA to testify at a state court hearing concerning a relayed call. When a VRS CA is acting as such and relaying a TRS call, state laws governing legal interpreting in state proceedings have no bearing on the duties and obligations of the CA. Further, section 225 and our implementing rules prohibit the CA from disclosing the content of the relayed conversation, and from keeping records of the content of any conversation beyond the duration of the call. Section 225(d)(1)(F) requires the Commission to prescribe rules that “prohibit relay operators from disclosing the content of any such relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call.”⁴⁵⁴ To comply with this mandate, the Commission adopted rules that prohibit relay operators from “disclosing the content of any relay conversation regardless of the content ... even if to do so would be inconsistent with state or local law.”⁴⁵⁵ In adopting this rule, the Commission noted that issues of confidentiality and liability were raised by states and common carriers in cases where common carriers were required by state or federal law to report obscenity, harassment, child abuse, or criminal conversations. The Commission further noted that relay services are unique in that, “in the present technological environment, they utilize human CAs who see and hear private conversations while acting as transparent conduits relaying conversations without censorship or monitoring functions.”⁴⁵⁶ The Commission added that the ADA does not expressly address the relationship between its prohibition of disclosure and other statutes that permit or require disclosure.⁴⁵⁷ The Commission ultimately concluded that “confidentiality is essential to [relay] service, and that users of TRS can have confidence in the basic privacy of their conversations,”⁴⁵⁸ and therefore except for the very limited law enforcement exceptions contained in section 705 of the Act,⁴⁵⁹ CAs are “prohibited from divulging the content or existence of any relay conversations.”⁴⁶⁰

161. Finally, with regard to CSD’s and commenters’ concern that a VRS CA may be exposed to civil or criminal liability under state laws regulating legal interpreting, we again note that when a VRS CA is relaying a TRS call the CA is not acting as a “legal interpreter” under state law, regardless of the substance of the call. In any event, to the extent the VRS (or TRS) CA may be accused of being a witting or unwitting party to any unlawful scheme to circumvent state requirements for interpreters in legal settings, we note that the Commission has previously found that “Congress, in adopting section 225(d)(1)(E), intended relay operators to have the same service obligations as common carriers generally.”⁴⁶¹ In this regard, the Commission noted that although courts have determined that a common carrier’s obligation to provide service upon request as set forth in section 201(a) of the Act is not absolute and does not necessarily apply to service for illegal purposes,⁴⁶² as a practical matter common carriers

⁴⁵⁴ See *TRS I* at ¶ 13.

⁴⁵⁵ 47 C.F.R. § 64.604(a)(2).

⁴⁵⁶ *TRS I* at ¶ 13.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ 47 U.S.C. § 705.

⁴⁶⁰ *TRS I* at ¶ 14. We note that apart from the practical matter that a VRS CA does not act as a legal interpreter when relaying a TRS call, CSD’s concerns raise a serious issue concerning preemption, *i.e.*, whether enactment of Title IV preempts conflicting state law, at least with respect to the role of the CA in relaying TRS calls. Given our discussion above, we need not address that issue.

⁴⁶¹ *Id.* at ¶ 15. In adopting the final version of section 225(d)(1)(E), the Conference Committee indicated that the provision “specifies that a relay operator is subject to the same standards of conduct that operators are subject to under the Communications Act of 1934.” House Report at 78. As indicated in the Conference Report, the Senate acceded to the House amendment. That amendment added the words “failing to fulfill the obligations of common carriers by” to the Senate version of section 225 (d)(1)(E).

⁴⁶² *Id.* at ¶ 15 & n.16 (citing cases).

generally will not be criminally liable “absent knowing involvement in unlawful transmissions.”⁴⁶³ The Commission further explained that “there must be a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions before any liability is likely to attach.”⁴⁶⁴ The Commission concluded that “CAs, in the normal performance of their duties, would generally not be deemed to have a ‘high degree of involvement or actual notice of illegal use’ or be ‘knowingly’ involved in such illegal use.”⁴⁶⁵ This same reasoning can be applied in this instance. Therefore, absent proof that the CA knowingly participated in an illegal scheme while relaying a TRS call, the CA could not be civilly or criminally liable for relaying a TRS call that happened to involve parties in a legal proceeding.

162. In sum, we agree with CSD and various commenters that VRS is not appropriate in circumstances where state law governing legal proceedings requires the services of interpreters qualified under state law. We also appreciate CSD’s concern that relaying calls that involve on-the-record legal proceedings via TRS facilities places CAs in jeopardy of violating state interpreting laws.⁴⁶⁶ We do not believe, however, that it is necessary or appropriate to waive our rule requiring CAs to handle all types of calls normally handled by common carriers to resolve this matter. VRS (and TRS) CAs, acting as such, are acting pursuant to a congressionally mandated scheme requiring certain entities to offer relay services in compliance with federal standards, and the fact that other parties may seek to use them for other purposes cannot alter this fact. Therefore, such CAs are not acting as “legal interpreters” under any state law. For this reason, as well as those discussed above, we deny CSD’s *Petition*.

V. ORDER ON RECONSIDERATION

A. THE JUNE 30, 2003, *BUREAU TRS ORDER*

1. Background

163. On June 30, 2003, the Commission’s Consumer & Governmental Affairs Bureau released the *Bureau TRS Order* adopting, on an interim basis, TRS compensation rates for traditional TRS, IP Relay, STS, and VRS, as well as a carrier contribution factor and Interstate TRS Fund size.⁴⁶⁷ As discussed in that order, our rules require the TRS fund administrator to file “with the Commission on May 1 of each year, to be effective for a one-year period beginning the following July 1,” its “TRS payment formulas and revenue requirements.”⁴⁶⁸ The *Bureau TRS Order* adopted, on an interim basis, the proposed TRS compensation rates for traditional TRS and IP Relay, as well as for STS. The *Bureau TRS Order* modified, however, the proposed \$14.023 per-minute compensation rate for VRS, establishing instead an interim compensation rate of \$7.751 per-minute. As a result of modifying the VRS compensation rate, the Bureau also modified the proposed carrier contribution factor and the proposed

⁴⁶³ *Id.* at ¶ 15.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.* We are further concerned about reports that VRS is being used as a substitute for sign language interpreting services. See *CSD Petition* at 1; TDI Comments at 1; Hands On Comments at 3. We have received anecdotal information that some entities (both public and private) have used VRS instead of VRI, or instead of hiring an interpreter as a reasonable accommodation, as a means of passing the costs to the Interstate TRS Fund. We remind that VRS, like all forms of TRS, is intended to be a means of giving access to the telephone system. Therefore, in any given situation, if the party using VRS would be making a telephone call but for person’s hearing or speech disability, then the use of VRS would be appropriate. In other circumstances, the party should hire an “in-person” sign language interpreter or use VRI. We will closely monitor alleged instances of the wrongful use of VRS in this regard, and take whatever enforcement action is necessary and appropriate against such misuse.

⁴⁶⁷ See *Bureau TRS Order*.

⁴⁶⁸ 47 C.F.R. § 64.604(c)(5)(iii)(H).

fund size.⁴⁶⁹

164. As the Bureau explained in the *Bureau TRS Order*, the reduction in the per-minute VRS compensation rate resulted from the Bureau's disallowance of certain costs submitted by the providers, which the TRS fund administrator had included in setting the proposed VRS compensation rate. These costs fell into the categories of profits, taxes, labor costs, and engineering costs.⁴⁷⁰ The total amount of disallowed costs was \$25,920,402, which the Bureau subtracted from the TRS fund administrator's projected total costs of providing VRS of \$52,659,750. As a result, dividing the total *allowable* projected costs (\$26,739,348) by the total projected minutes of use (3,449,938),⁴⁷¹ the Bureau arrived at a per-minute VRS compensation rate of \$7.751, which it established as the interim VRS compensation rate in the *Bureau TRS Order*.⁴⁷² The Bureau stated that "[t]his rate will remain in force until we complete our examination of actual and projected cost data submitted by VRS providers, after which time we will produce the final VRS cost recovery rate for the July 1, 2003, through June 30, 2004, TRS fund year."⁴⁷³

165. On July 30, 2003, five parties filed petitions for reconsideration.⁴⁷⁴ Each of these parties challenges the adoption of the VRS compensation rate of \$7.751 per minute, and requests that the Commission accept NECA's proposed compensation rate of \$14.023, retroactive to July 1, 2003. The parties' arguments can be summarized as follows. First, some of the parties argue that the *Bureau TRS Order* was beyond the authority of the Consumer & Governmental Affairs Bureau under its delegated authority. Second, the parties make various arguments in asserting that the *Bureau TRS Order* was not based on a reasoned analysis, and therefore is arbitrary and capricious. Third, several parties make various arguments that the *Bureau TRS Order* was inconsistent with Section 225 of the Communications Act. Finally, one provider makes specific arguments with respect to the treatment of certain of its costs and expense data.

166. We have reviewed the arguments made by the various parties challenging the Bureau's adoption of an interim VRS per-minute compensation rate of \$7.751, rather than the \$14.023 proposed by NECA, the comments filed in response to these petitions,⁴⁷⁵ as well as supplemental cost data submitted by some of the providers. For the reasons set forth below, we affirm the interim TRS compensation rates set forth in the *Bureau TRS Order*. With respect to the compensation rates for traditional TRS and IP Relay, and STS, we adopt the interim compensation rates as the final compensation rates for those services for the July 1, 2003, through June 30, 2004, period.⁴⁷⁶ With respect to VRS, however, our review of the more complete cost data submitted by the providers, which was not available to the Bureau when

⁴⁶⁹ See *Bureau TRS Order* at ¶ 1.

⁴⁷⁰ *Id.* at ¶ 34.

⁴⁷¹ Because the Bureau excluded certain providers' data in its entirety in setting the interim VRS compensation rate, it also excluded 305,385 minutes of projected VRS use. See *id.* at ¶ 37 & n.96.

⁴⁷² *Id.* at ¶ 37.

⁴⁷³ *Id.* (footnote omitted).

⁴⁷⁴ These petitions were filed by Sprint, AT&T, Sorenson Media, Inc. (Sorenson), Hands On, and CSD.

⁴⁷⁵ Six parties filed comments in response to the petitions for reconsideration. Comments were filed by Hamilton, TDI (joined by several "supporting parties"), the National Alliance of Black Sign Language Interpreters (NAOBI), Hands On, NorCal Center on Deafness (NorCal), and the Registry of Interpreters for the Deaf (RID). Of these comments, four support adopting NECA's proposed compensation rate of \$14.023 per minute for VRS. Additionally, 76 individuals filed brief comments. Of these, 69 supported reconsidering the *Bureau TRS Order* and adopting the NECA proposed VRS compensation rate (20 of these comments are identical), five expressed general support for VRS but did not address VRS compensation rates, and one recommended lowering the VRS compensation rate. We address the relevant comments further below. No reply comments were filed.

⁴⁷⁶ We note that no parties challenged the interim compensation rates for those TRS services.

the *Bureau TRS Order* was issued, leads us to modify the VRS compensation rate. For the reasons set forth below, we increase the per-minute compensation rate for Video Relay Service from the interim compensation rate of \$7.751 per minute to \$8.854 per minute. Because the modified compensation rate of \$8.854 is based on data we received after the *Bureau TRS Order* was released, the new compensation rate shall apply to the provision of eligible VRS services effective September 1, 2003.⁴⁷⁷

2. The Bureau's Authority to Adopt the *Bureau TRS Order*

167. Two parties assert that the Consumer & Governmental Affairs Bureau exceeded its delegated authority in rejecting NECA's proposed VRS compensation rate and adopting the substantially lower interim VRS compensation rate.⁴⁷⁸ Sprint asserts that "the Bureau cannot decide '[m]atters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.'" ⁴⁷⁹ Sprint states that the Commission has never before established interim compensation rates for TRS service, although Sprint admits that the Commission has in the past prescribed retroactive rate increases. Sprint argues that in the *Bureau TRS Order* the Bureau departs from past practice with no discussion of its authority to establish interim compensation rates, or of the procedures it will use or the timetable it will follow to establish final compensation rates.⁴⁸⁰ Sprint further argues that the Bureau's approach to setting the interim VRS compensation rate is unprecedented, particularly the use of rate of return on investment rather than cost-plus profit markup in the interim VRS compensation rate calculation.⁴⁸¹ Sprint asserts that the Bureau's claim that markup over expenses is not authorized by the Commission's rules is not supported by any rule proscribing this method, and states that the cost-plus markup has been the Commission's consistent past practice. Sprint concludes that although the Commission does have the authority to subject VRS providers to rate-of-return regulation, it must do so by rulemaking, and that the Bureau may not apply a rate-of-return on investment calculation to VRS without a prior Commission rulemaking.⁴⁸²

168. Hands On argues that the Commission's rules on the functions of the Consumer & Governmental Affairs Bureau "contain[] no provision relating to the setting of interim rates" and, "[i]n indeed, ... contain[] no reference to rate making at all, either generally or in connection with the Bureau's functions relating to persons with disabilities."⁴⁸³ Further, Hands On agrees with Sprint that the Bureau lacks the authority to decide matters that present novel questions.⁴⁸⁴ Hands On asserts that "[i]t is plainly apparent from the Bureau's statements in the *Order* that novel questions of law fact [sic] and policy are presented here. ... The most glaring is that of the denial of profit and the proscription [sic] of a[n] 11.25[%] rate of return on investment only. As the Bureau admits[,] the FCC's rules are silent on these matters. Thus, these matters should not have been decided under delegated authority."⁴⁸⁵

169. As a threshold matter, pursuant to Section 225 and the implementing regulations the

⁴⁷⁷ We note that we address below in the *FNPRM* the open question of the appropriate cost recovery *methodology* for VRS, *i.e.*, whether VRS providers should continue to be compensated on a per-minute basis, as is the case with the other types of TRS, or on some other basis (*e.g.*, lump sum).

⁴⁷⁸ See *Sprint Petition* at 9-12; *Hands On Petition* at 10.

⁴⁷⁹ *Sprint Petition* at 9 (quoting 47 C.F.R. § 0.361(c)).

⁴⁸⁰ *Id.* at 9.

⁴⁸¹ *Id.* at 9-10.

⁴⁸² *Id.* at 11-12.

⁴⁸³ *Hands On Petition* at 10.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

Commission does not engage in “rate making” in determining the compensation that will be paid from the Interstate TRS Fund for providers’ “reasonable costs” of providing TRS. The Commission’s rules state that “TRS Fund payments shall be distributed ... based on formulas approved or modified by the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval.”⁴⁸⁶ Therefore, the Commission has the authority to modify the payment formulas of NECA.

170. The Commission, by this *Order*, affirms the cost recovery methodology for VRS established in the *Bureau TRS Order*. Relatedly, we note that our TRS regulations presently refer to the authority of the Chief of the Wireline Competition Bureau (WCB) over certain matters concerning the Interstate TRS Fund and state certification.⁴⁸⁷ Consistent with section 0.141(f) of our rules, as noted above, the Consumer & Governmental Affairs Bureau actually performs this function. Consequently, we amend our TRS regulations to replace the three references to the “Wireline Competition Bureau” with the “Consumer & Governmental Affairs Bureau.”⁴⁸⁸

3. The *Bureau TRS Order* is Based on Reasoned Analysis

171. Petitioners make several arguments that fall under the rubric that the *Bureau TRS Order* is not based on reasoned analysis, and therefore is arbitrary and capricious and in violation of the Administrative Procedure Act.⁴⁸⁹ We address these arguments in turn.

a. The comparison of the costs of VRS with the costs of Video Remote Interpreting (VRI)

172. All of the petitioners note that the Bureau compared the costs of VRS with the costs of Video Remote Interpreting (VRI),⁴⁹⁰ and assert that VRS and VRI are not, contrary to the *Bureau TRS Order*, “essentially the same” service.⁴⁹¹ Sprint, for example, points out that VRI is available only during

⁴⁸⁶ 47 C.F.R. § 64.604(c)(5)(iii)(E).

⁴⁸⁷ See 47 C.F.R. §§ 64.604(c)(5)(iii)(B) & (I); 64.605(a).

⁴⁸⁸ See Appendix D; see also 5 U.S.C. § 553(b) (notice and comment rulemaking requirements do not apply to rules of agency organization, procedure, or practice).

⁴⁸⁹ “[T]he reviewing court shall ... hold unlawful and set aside agency actions, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; ... in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A) & (C).

⁴⁹⁰ Although sometimes also referred to as “Video Relay Interpreting,” we use the phrase “Video Remote Interpreting” (VRI), as we believe it more actually describes this service. Cf. *Bureau TRS Order* at ¶ 30 & n.78. As we have explained, VRI is used “to conduct in-person communications through sign language interpreters that are located in remote locations.” *Bureau TRS Order* at ¶ 30 (quoting *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, CC Docket No. 98-67, FCC 00-200, 16 FCC Rcd 4054 at ¶ 10 (June 5, 2000)). For example, at a business meeting, VRI can be used to enable a hearing person to communicate with a deaf person when they are in the same room and an interpreter is not available. In this instance, for example, the hearing person would call a remote VRI service (*i.e.*, a sign language interpreter), set up a video connection, and communicate with the deaf person through the sign language interpreter who is at a remote location; the deaf person and the interpreter would see each other and communicate in sign language through the video connection. By contrast, VRS, as a form of relay service, is a means by which a person with a hearing disability, who absent the hearing disability would make a voice telephone call, makes a call through a relay center using a VRS communications assistant to communicate with another person (or vice versa).

⁴⁹¹ *Bureau TRS Order* at ¶ 30; see *AT&T Petition* at 4-5; *CSD Petition* at 9; *Hands On Petition* at 8-9; *Sorenson Petition* at 5; *Sprint Petition* at 14-15.

normal business hours, where VRS is on-demand for extended hours, in some cases 24 hours per day.⁴⁹² Further, petitioners state that there are technological, regulatory, and security issues involved in VRS that do not apply to VRI.⁴⁹³ Petitioners therefore either assert or suggest that that comparing VRS with VRI is not a proper basis for reducing the VRS interim compensation rate.⁴⁹⁴

173. Petitioners and commenters misread the *Bureau TRS Order* in asserting that the comparison between VRS and VRI was a basis for the reduction of the VRS compensation rate. The Bureau did compare the compensation rates of these two services, noting that the cost of VRS is more than five times that of VRI.⁴⁹⁵ The Bureau also stated that “the Commission recognizes that there may be several factors that justify a VRS compensation rate that is higher than that for VRI.”⁴⁹⁶ But the Bureau made clear that this comparison was not the basis (or even “a” basis) for its modification of the compensation rate proposed by NECA. Rather, the Bureau stated that “we have examined the providers’ cost data underlying NECA’s proposed rate ... [and] we conclude that the providers’ cost data cannot support the proposed compensation rate of \$14.023 per-minute.”⁴⁹⁷ Further, the Bureau “identified a variety of areas that warrant adjustment to the proposed costs.”⁴⁹⁸ Finally, the Bureau found “that adjustments made in a number of areas – most significantly, profit calculations, taxes, and labor costs – taken in aggregate, warrant our adjustment to the VRS compensation rate.”⁴⁹⁹

174. These statements make clear that the sole basis of the Bureau’s modification of the proposed VRS compensation rate was a review of the cost data provided by VRS providers. Indeed, the *Bureau TRS Order* makes clear that the comparison of VRS with VRI was simply presented as one factor that lead to concern over the proposed VRS compensation rate, and therefore lead the Bureau to examine NECA’s proposed compensation rate and the providers’ underlying cost data.⁵⁰⁰ Moreover, as we have noted, the Commission has the authority to approve or modify proposed payment formulas,⁵⁰¹ as well as the obligation to ensure that “[s]uch formulas ... [are] designed to compensate TRS providers for reasonable costs of providing interstate TRS.”⁵⁰² A fair reading of the *Bureau TRS Order* makes clear that the basis for the Bureau’s modification of the VRS compensation rate was the Bureau’s evaluation of the actual cost data and projections submitted by VRS providers, and its conclusion that some of the costs submitted were not “reasonable.”

b. The comparison of the proposed VRS compensation rate to historical VRS compensation rates

175. Petitioners similarly assert that, in reducing the compensation rate for VRS to \$7.751

⁴⁹² See *Sprint Petition* at 15; see also *Hands On Petition* at 8; *AT&T Petition* at 7; *CSD Petition* at 9-10; *Sorenson Petition* at 5.

⁴⁹³ See *Sprint Petition* at 15; *CSD Petition* at 10-11; *AT&T Petition* at 8; *Hands On Petition* at 8-9, Exh. 1.

⁴⁹⁴ See *TDI Comments* at 11-13; *NorCal Comments* at 1; *Hamilton Comments* at 2-3; see also *Hands On Comments* at 2.

⁴⁹⁵ See *Bureau TRS Order* at ¶ 30.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.* at ¶ 32.

⁴⁹⁸ *Id.* at ¶ 34.

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.* at ¶ 32.

⁵⁰¹ See 47 C.F.R. § 64.604(c)(5)(iii)(E).

⁵⁰² *Id.*

per minute, the Bureau incorrectly relied on the fact that the per-minute compensation rate for TRS more than tripled in a two-year period. Petitioners assert that the reasons for this increase are readily explainable and do not provide any basis to reduce the compensation rate proposed by NECA.⁵⁰³ For example, Hands On notes that VRS service was not provided until the compensation rate rose to \$9.614 in August 2001.⁵⁰⁴ CSD asserts that when VRS was recognized as a form of TRS in March 2000 the service was considerably different from current VRS service, and that costs were lower in the early days of VRS because the service was offered for more limited hours and from fewer locations.⁵⁰⁵

176. Petitioners again misread the *Bureau TRS Order* to the extent they suggest that the history of increasing VRS compensation rates was the principal reason, or even a reason, that the Bureau modified the VRS compensation rate that NECA had proposed. On the contrary, the Bureau's discussion of the trend of the VRS compensation rates was not a basis for the modification of the VRS compensation rate. In the *Bureau TRS Order*, the Bureau noted that in initially authorizing cost recovery for all VRS calls from the Interstate TRS Fund, and in subsequently granting waivers of certain TRS mandatory minimum standards as applied to VRS, the Commission intended to reduce the costs of providing VRS as VRS technology developed and the service was refined.⁵⁰⁶ In sum, while the high compensation rate for VRS led the Bureau to demand cost data from the providers, it was the provider's cost data – not the trends in compensation rates – that led the Bureau to modify NECA's proposed VRS compensation rate.

c. The disallowance of profit and use of 11.25% rate of return on investment

177. In reviewing the providers' cost data, the Bureau noted that the "profits and tax allowances claimed by all VRS providers equal a markup of 27.2% of the total underlying VRS expenses," and that the "basis for these profit claims is a percentage of total estimated VRS expenses."⁵⁰⁷ The Bureau stated that "[t]his basis is neither described nor authorized under our rules," and therefore applied the 11.25 % rate of return on investment the Commission has established in related contexts, plus applicable tax allowances.⁵⁰⁸

178. Petitioners argue that the exclusion of profits as a legitimate cost for purposes of determining the VRS reimbursement rate was improper. Sprint asserts that the Bureau cited no basis for rejecting the VRS providers' profit markup, and cited no Commission authority proscribing the "cost-plus" methodology used by VRS providers to calculate profit.⁵⁰⁹ Sprint further asserts that NECA has never required VRS providers to furnish it with data under Part 32 of the Commission's rules that would enable the Bureau to calculate an investment base to which to apply a rate of return.⁵¹⁰ Sprint and other petitioners also argue that the 11.25% return on investment allowance that the Bureau adopted is

⁵⁰³ See *AT&T Petition* at 6-7; *CSD Petition* at 7-8; *Hands On Petition* at 7-8; *Sorenson Petition* at 3; *Sprint Petition* at 16.

⁵⁰⁴ See *Hands On Petition* at 7.

⁵⁰⁵ See *CSD Petition* at 8; see also *Sprint Petition* at 16.

⁵⁰⁶ *Bureau TRS Order* at ¶ 31. In this regard, we also note that in NAD's comments to the May 1998 NPRM preceding the March 2000 *Improved TRS Order & FNPRM*, it asserted that as the use of VRS increased, the costs of providing this service would be "drive[n] down." Comments of the National Association of the Deaf and the Consumer Action Network, CC Docket Nos. 90-571 & 98-67 (filed July 20, 1998). That has not been the case.

⁵⁰⁷ *Id.* at ¶ 35. We note that of the \$25,920,402 in total VRS costs we disallowed (of NECA's projected costs of \$52,659,750), almost \$11 million was for the adjustment to profits and tax allowances.

⁵⁰⁸ *Id.*

⁵⁰⁹ See *Sprint Petition* at 9-10.

⁵¹⁰ *Id.*

inappropriate because it is the return on investment allowed for local exchange carriers (LECs), and the nature and costs of VRS providers are very different from those of LECs.⁵¹¹ Hamilton and Hands On also argue that the 11.25% rate of return on investment calculation is inapplicable to the providers' costs of providing VRS and an improper basis for reducing the NECA proposed rate.⁵¹² Hands On states that the 11.25% rate of return on investment allowance was prescribed for dominant carriers in a capital-intensive industry, and is not appropriate for a "labor intensive enterprise such as VRS."⁵¹³ Hands On also suggests that government contracting provides a better analogy, where "a reasonable profit is an expected component of a contract price."⁵¹⁴

179. We do not find petitioners' arguments persuasive. As an initial matter, we note that what the parties mean by "profit" is a markup on expenses; *i.e.*, a return based upon a percentage of total TRS costs that is not itself a cost of providing TRS service. We reject that methodology in this context, *i.e.*, when a TRS provider is seeking payment from the Interstate TRS Fund. First, and most fundamentally, this methodology ignores the role of TRS as an accommodation under Title IV of the ADA for persons with disabilities. It is in this context that Congress provided that TRS providers could recover their "costs."⁵¹⁵ In other words, because Title IV places the obligation on carriers providing voice telephone services to *also* offer TRS to, in effect, remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities, the costs of providing TRS are really just another cost of doing business generally, *i.e.*, of providing voice telephone service. For this reason, the annual determination of the TRS compensation rates is not akin to a rate-making process that determines the charges a regulated entity may charge its customers. Rather, it is a determination of a per-minute compensation rate that will cover the reasonable costs incurred in providing the TRS services mandated by Congress and our regulations.

180. Further, Sprint's assertion that nothing in the Commission's rules prohibits "cost-plus" profit calculations is beside the point. Sprint raises this argument in response to the Bureau's statement that the Commission's rules do not authorize profits as part of TRS costs.⁵¹⁶ Sprint's argument amounts to a statement that any cost not expressly prohibited by the Commission's rules is a permissible VRS cost. In view of the history and purpose of Title IV, we cannot adopt such a position. Moreover, such a position would require us to set forth in the rules a laundry list of prohibited costs. The rules, of course, take a different course by providing that TRS payment "formulas shall be designed to compensate TRS providers for reasonable costs" of providing service.⁵¹⁷ We follow that guidance in concluding that, in the context of Title IV of the ADA, "reasonable costs" do not include a mark-up on the reasonable costs claimed.

181. In this context, therefore – *i.e.*, when Congress has instructed that certain regulated entities must provide an accommodation for persons with disabilities and may seek compensation for their costs of doing so – we believe "reasonable costs" must be construed to be those direct and indirect costs

⁵¹¹ See *AT&T Petition* at 8; *CSD Petition* at 7; *Hands On Petition* at 10-13; *Sprint Petition* at 11-12. Sprint contrasts, for example, the application of rate of return regulation to dominant LECs providing service for which there is stable demand, with its application to VRS providers facing the risks of offering the service in a competitive market with unpredictable demand. *Sprint Petition* at 11.

⁵¹² See Hamilton Comments at 3-4; Hands On Comments at 3.

⁵¹³ Hands On *Petition* at 11.

⁵¹⁴ *Id.* at 12.

⁵¹⁵ See 42 U.S.C. § 12101(a)(3) & (5); 47 U.S.C. § 225(d)(3); see also H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129-131 (1990) (House Report).

⁵¹⁶ See *Sprint Petition* at 10.

⁵¹⁷ 47 C.F.R. § 64.604(c)(5)(iii)(E).

necessary to provide the service consistent with all applicable regulations governing the provision of the service, *i.e.*, the TRS mandatory minimum standards.⁵¹⁸ We therefore find that such “reasonable costs” do not include an additional sum that represents a markup on those costs. Reasonable costs may include, however, a return on capital investment.

182. With regard to the rate of return on capital investment, in applying an 11.25% rate of return on investment to the TRS scheme we are not prescribing a separate rate of return specifically for TRS. Rather, we are using the Commission’s current rate of return on investment that the Commission has applied in a wide range of telecommunications contexts.⁵¹⁹ Therefore, it is irrelevant whether the provider solely provides TRS (or VRS) or provides it along with other telecommunications services. Providers claiming this rate of return on net VRS assets, plus an appropriate tax allowance, will not be challenged. As we have noted, providers are permitted to recover all used and useful direct *costs* relating to VRS, as well as all reasonable overhead costs.⁵²⁰ We also allow this rate of return on capital investment as a means of ensuring that providers are not left to finance reasonable investment in VRS

⁵¹⁸ This conclusion is consistent with the Commission’s treatment of the recovery of costs in other contexts. For example, pursuant to Section 251(e)(2) of the Communications Act, the Commission is required to “ensure that carriers bear the costs of providing long-term number portability [LNP] on a competitively neutral basis,” and to provide for the recovery of these costs. 47 U.S.C. § 251(e)(2); *see Telephone Number Portability and Cost Classification Proceeding*, Memorandum Opinion and Order, CC Docket No. 95-116, DA 98-2534, 13 FCC Rcd 24495 (Dec. 14, 1998) (*LNP MO&O*); *Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, FCC 98-82, 13 FCC Rcd 11701 (May 12, 1998) (*LNP Third Report & Order*). We have adopted a two-part test “for identification of the carrier-specific costs that are directly related to the implementation and provision of telephone number portability, that is, eligible LNP costs.” *LNP MO&O* at ¶ 10. Under this test, “to demonstrate that costs are eligible for recovery ... a carrier must show that these costs: (1) would not have been incurred by the carrier but for the implementation of number portability; and (2) were incurred for the provision of number portability service.” *Id.* (internal quotation marks omitted); *see also LNP Third Report & Order* at ¶¶ 72-77.

⁵¹⁹ In this regard, we note that petitioners are not correct in suggesting that the 11.25% rate of return allowance applies only in the context of dominant local exchange carriers. *See Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, CC Docket No. 89-624, FCC 90-315, 5 FCC Rcd 7507 at ¶ 13 (Dec. 7, 1990). *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, and Order on Reconsideration of the Second Report and Order, CC Docket 96-128, FCC 02-39, 14 FCC Rcd 2545 at n.410 (Feb. 21, 2002) (appropriate rate of return for capital investment in coinless pay phones); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers (LEC Universal Service)*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, 16 FCC Rcd 19613 at ¶ 206 (Nov. 28, 2001) (rate of return for Universal Service); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, CC Docket No. 98-146, FCC 02-33, 17 FCC Rcd 2844 at ¶ 140 (Feb. 6, 2002) (rate of return for telephone service providers in small and rural communities); *Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, FCC 98-82, 13 FCC Rcd 11701 at ¶ 143 (May 12, 1998) (rate of return on capital outlays for number portability); 47 C.F.R. § 76.922(e)(3)(i) (cable rate adjustments to compensate for earlier underestimates entitled to 11.25% interest); 47 C.F.R. § 76.942(f) (refund of fees from cable local franchise authority includes 11.25% interest rate).

⁵²⁰ We note that although recoverable costs may include those corporate overhead costs directly attributable to the provision of TRS, we are concerned about the extent to which some salaries of corporate officers and executives have been included in submitted costs. We therefore will instruct the TRS fund administrator to request that providers identify the corporate officers and executives whose salaries have been included in the submitted overhead costs, and delineate the percentage of such persons’ salaries that the provider maintains is attributable to the provision of TRS.

assets out-of-pocket.⁵²¹ It therefore represents, in a very real sense, the cost of capital, and as a cost-based item it is compensable under the TRS scheme. We affirm, therefore, the Bureau's finding that an average markup of 27.2% on all VRS costs incurred is inconsistent with the intent of the statutorily mandated TRS cost recovery scheme; such a markup is plainly not cost-based. Moreover, it discourages prudent cost control, and is largely accountable for the excessive cost of VRS that was proposed to us in May prior to the Bureau's release of the *Bureau TRS Order*.⁵²² Finally, contrary to Sprint's assertion, it is not incumbent upon the Commission to conduct studies to establish an appropriate markup for VRS when it clear from Title IV that TRS providers are entitled to be compensated only for their costs of providing the service.

d. The adjustments to the providers' cost data

(i) The Bureau's explanation of its adjustments to the cost data

183. In adjusting the VRS per-minute compensation rate, the Bureau reviewed the cost data submitted by the VRS providers and identified three areas in which some or all of the costs reported were not reasonable: profit calculations, taxes, and labor costs.⁵²³ The Bureau therefore excluded some of these costs in calculating the interim VRS compensation rate. The Bureau also rejected certain engineering costs submitted by one of the providers. Petitioners make several generalized arguments in challenging these adjustments and the adoption of the interim compensation rate.

184. Sorenson asserts that the *Bureau TRS Order* does not provide a sufficient explanation of the analysis used to determine the interim compensation rate. Sorenson asserts that, in contrast to the *Bureau TRS Order*, the compensation rate proposed by NECA was based on straightforward analysis of cost data, and suggests that instead of adopting an interim compensation rate the Bureau should have sought further data after providing more specific guidance to the providers.⁵²⁴ Sorenson further asserts that the Bureau's offer to meet with the VRS providers to discuss the adjustments to their cost data is

⁵²¹ Hands On argues that we should analogize to government contracting, where reasonable profit is an expected component of a contract price, in determining whether TRS providers are entitled to recover "profit." See *Hands On Petition* at 12. We do not believe that such an analogy is appropriate. First, the government does not contract with VRS providers to provide the service; to the contrary, Congress mandated the provision of TRS as a condition of voice telephone providers being permitted to begin or continue in that business. Second, we have explained the nature of TRS as an accommodation that is required of telecommunications providers, just as other accommodations for persons with disabilities are required by the ADA of businesses and local and state governments. With respect to TRS, Congress chose to adopt a mechanism for compensation of TRS providers that allows them to be paid by all subscribers for interstate services. See 47 U.S.C. § 225(d)(3)(B). A more appropriate analogy, therefore, would be that businesses increase the price of all goods or services sold in order to pay for the accommodations required by law, or that a state or local government increases taxes for all taxpayers to fund necessary accommodations.

⁵²² We are aware that some common carriers use a subcontractor arrangement to provide VRS. To the extent the argument is suggested that a common carrier would be unable to engage a subcontractor without ensuring that the subcontractor receives some "profit" for its services, that argument has no bearing on our conclusion that the Interstate TRS Fund compensates TRS providers only for the reasonable costs of the providing the service. If subcontractors were an exception to the rule that TRS providers are only entitled to their reasonable costs in providing the service, the exception would likely ultimately swallow the rule and present the recurring issue whether the subcontract arrangement was an arms-length transaction or instead a means by which a provider can obtain markups indirectly that it is precluded from obtaining directly. Further, with particular respect to VRS, we note that it is not a required service, and therefore the providers' initial decision to offer the service, like their decision to then subcontract out the service, is entirely of their own choosing.

⁵²³ See *Bureau TRS Order* at ¶ 34.

⁵²⁴ See *Sorenson Petition* at 4.

insufficient to meet the Commission's obligation to engage in reasoned decision making.⁵²⁵ AT&T similarly contends that although the Bureau stated that it excluded some data because it was predicated on incorrect assumptions, the Bureau did not explain the "nature or the magnitude of the erroneous information."⁵²⁶ Both petitioners request that we adopt the NECA-proposed compensation rate of \$14.023 per minute for VRS.⁵²⁷

185. We agree that the Bureau had an obligation to provide sufficient information in the *Bureau TRS Order* to allow the public to understand the reasoning behind the Bureau's modification of the VRS compensation rate. We find, however, that the information provided by the Bureau is sufficient to allow such an understanding. First, we note that petitioners do not challenge the methodology by which NECA arrived at its proposed TRS compensation rates, and that the Bureau followed the same methodology but simply disallowed some of the underlying cost submitted by the providers. That methodology requires the totaling of all of the providers' submitted costs, and the division of that number by the total number of projected VRS minutes.⁵²⁸ The Bureau explained that it reviewed the cost data submitted by NECA, and disallowed tax allowances,⁵²⁹ replaced the VRS providers' profit markups with an 11.25% rate of return on capital investment, and adjusted labor costs to account for inefficiencies in the labor cost submissions of some VRS providers.⁵³⁰ The Bureau then divided the resultant total by the projected number of VRS minutes, and arrived at the modified VRS compensation rate of \$7.751 per minute.

186. Specific dollar amounts for each VRS provider were not given in the *Bureau TRS Order* because the VRS providers requested confidential treatment for their cost data. Therefore, cost figures and projected minutes were calculated in the aggregate.⁵³¹ This, however, is not a variation from NECA's method of determining a proposed VRS compensation rate, which also uses aggregate amounts. Moreover, the Bureau offered to meet with each VRS provider to explain precisely which costs submitted by that provider were disallowed.⁵³² Because no party other than one of the VRS providers has requested a specific numerical breakdown of the disallowed costs, and because VRS providers were given ample opportunity to discuss which specific cost categories and dollar figures were disallowed, we find that the explanation given by the Bureau of its reasoning in the *Bureau TRS Order* is sufficient. We note that no petitioner chose to dispute the exact calculation of each cost adjustment to its cost data, but rather challenged the replacement of profit markups with a figure of 11.25% rate of return on capital investment,⁵³³ the comparison of VRS with VRI,⁵³⁴ and the reference to historical VRS compensation rates in the *Bureau TRS Order*.⁵³⁵ We therefore find that, in the circumstances of this proceeding, the

⁵²⁵ See *Sorenson Petition* at 5 (citing *Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153, 1165 (D.C. Cir. 1987)).

⁵²⁶ See *AT&T Petition* at 9.

⁵²⁷ See *Sorenson Petition* at 9-10; *AT&T Petition* at 11.

⁵²⁸ See *Bureau TRS Order* at ¶¶ 8-10.

⁵²⁹ *Id.* at ¶ 35-37.

⁵³⁰ See *id.* The Bureau also disallowed certain engineering costs it found unreasonable (discussed below), and excluded some data from providers entirely, based on its assessment that the data were erroneous or unreliable.

⁵³¹ See *id.* at ¶ 33.

⁵³² See *id.* at ¶ 33 n.91. Several such meetings took place at the request of the providers.

⁵³³ See *AT&T Petition* at 8; *CSD Petition* at 7; *Hands On Petition* at 10-13; *Sprint Petition* at 11-12.

⁵³⁴ See *AT&T Petition* at 4-5; *CSD Petition* at 9; *Hands On Petition* at 8-9; *Sorenson Petition* at 5; *Sprint Petition* at 14-15.

⁵³⁵ See *AT&T Petition* at 6-7; *CSD Petition* at 7-8; *Hands On Petition* at 7-8; *Sorenson Petition* at 3; *Sprint Petition* at 16.

Bureau's description of the costs disallowed was sufficient explanation of its reasoning to support its conclusion.

187. Finally, AT&T notes that none of the commenters to the Public Notice issued by the Commission requesting comment on NECA's proposed compensation rates suggested that the VRS compensation rate was excessive,⁵³⁶ and that six of the ten VRS providers, accounting for 93% of all VRS traffic, submitted cost data supporting very similar VRS compensation rates (ranging from \$13.5233 per minute to \$14.6917 per minute). AT&T therefore suggests that a figure of approximately \$14 per minute is the correct compensation rate for VRS.⁵³⁷ The fact that the providers' cost data supported a VRS compensation rate within a narrow range, however, does not mean that that compensation rate is necessarily the appropriate one. This is especially true where, as here, the providers' compensation rates were each based on costs that the Bureau concluded were unreasonable and at odds with the purpose and intent of section 225 and the TRS compensation rules.

(ii) Engineering costs

188. In adjusting the underlying cost data, the Bureau disallowed certain engineering and operations support costs. These costs are directed at such matters as improving picture quality, developing software that would be proprietary, and achieving what the providers believe would be full compliance with the Commission's TRS mandatory minimum standards and the functional equivalency mandate.⁵³⁸ Although the Bureau did find that some of the engineering and software development costs could be properly compensated as capital investment, the Bureau explained to the providers that such costs directed at providing advanced VRS features that fall outside the functional equivalency mandate of section 225 are not compensable from the Interstate TRS Fund as a "reasonable" cost.⁵³⁹

189. We find that the Bureau was correct in disallowing engineering expenses directed at research and development, including software development, relating to VRS enhancements that go beyond the applicable TRS mandatory minimum standards. There are limits – inherent in the Title IV scheme – to a provider's costs of developing and implementing TRS enhancements that are compensable from the Interstate TRS Fund. Title IV is intended to ensure that entities that offer telephone voice transmission services *also* offer TRS so that persons with certain disabilities have access to the *functionality* of a voice telephone call. That functionality is defined by the applicable mandatory minimum standards, so that when a provider offers eligible services that meet these standards it may recover its costs of doing so from the Interstate TRS Fund.⁵⁴⁰ Although these standards have not been

⁵³⁶ See AT&T *Petition* at 3.

⁵³⁷ See *id.* at 9-10.

⁵³⁸ We address this category of costs only generally because the specific arguments made rely on confidential supplemental data.

⁵³⁹ As noted further below, all VRS providers were invited to request a meeting with the Bureau to discuss the *Bureau TRS Order* and its exclusion of costs specific to their submission. Because all providers requested confidential treatment of their data, each meeting was conducted separately.

⁵⁴⁰ See House Report at 133. The House Report explains that section 225 "requires the FCC to establish minimum federal standards to be met by all providers of intrastate and interstate telecommunications relay services, including technical standards, quality of service standards, and the *standards that will define functional equivalence* between telecommunications relay services and voice telephone transmission services. Telecommunications relay services are to be governed by standards that ensure that telephone service for hearing- and speech-impaired individuals is functionally equivalent to voice services offered to hearing individuals. In determining factors necessary to establish functional equivalency, the FCC should include, for example, the requirement that telecommunications relay services transmit messages between the TDD [TTY] and voice caller in real time, as well as the requirement that blockage rates for telecommunications relay services be no greater than standard industry blockage rates for voice telephone services. Other factors that should be included are the opportunity for telecommunications relay

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static, and will continue to change as technology develops and the forms and types of TRS change, there are not gradations of functional equivalency. For a particular provider, the requirement of functional equivalency is met when the service complies with the mandatory minimum standards applicable to the specific service. In this way, the Interstate TRS Fund does not become an unbounded source of funding for enhancements that go beyond these standards, but which a particular provider nevertheless wishes to adopt. This is particularly important because the funding for such enhancements would have to come from our adoption of a higher carrier contribution factor applicable to providers of all interstate telecommunications services – costs ultimately passed on to all consumers.

190. We believe that this conclusion best reconciles the Commission’s interest in avoiding placing undue burdens on the Interstate TRS Fund with the statutory mandate that the Commission’s regulations “do not discourage or impair the development of improved technology.”⁵⁴¹ Covered entities are encouraged to use and develop new technologies to meet these standards – *i.e.*, to provide the functionality mandated by the statute. But at the same time, we do not believe that the Interstate TRS Fund was intended to be a source of funding for the development of TRS services, features, and enhancements that, although perhaps desirable, are not necessary for the provision of functionally equivalent TRS service as an accommodation for persons with certain disabilities.⁵⁴² Indeed, such a result would be especially problematic with respect to the provision of forms of TRS – such as VRS – that we have permitted but have not mandated.⁵⁴³

(iii) The providers’ supplemental data

191. In the *Bureau TRS Order*, the Bureau explained that the VRS compensation rate it was adopting was an “interim” compensation rate that would remain in force until the Bureau completed its examination of the cost data submitted by the providers and other supplemental submissions.⁵⁴⁴ We have reviewed all of the supplemental cost data submitted by the providers.⁵⁴⁵ As noted above, because all of the providers filed for confidential treatment, the adjustments made are described in the aggregate. We note that the quality of the supplementary data we received varied considerably, and that this significantly affected our determinations. While we found that some of the supplemental data submitted by providers successfully resolved specific concerns described in the *Bureau TRS Order*, other submissions were inadequate to address the concerns raised. First, the Bureau found that interpreter salaries submitted by certain providers appeared to be overstated relative to the number of reimbursable minutes budgeted based on actual occupancy and utilization data received from selected providers.⁵⁴⁶ Upon review of the

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services users to choose an interstate carrier whenever possible. The FCC should enumerate other such measurable standards to ensure that hearing and non-hearing individuals have equivalent access to the Nation’s telephone networks.” *Id.* (emphasis added); *see also* 136 Cong Rec. H2421-02 at H2431, 1990 WL 65024 (May 17, 1990) (testimony indicating that the mandatory minimum standards will define functional equivalency).

⁵⁴¹ 47 U.S.C. § 225(d)(2).

⁵⁴² Of course, TRS providers are not *prohibited* from offering service enhancements that exceed these standards; the costs for those enhancements are just not reimbursable from the fund.

⁵⁴³ In addition, we note that, as a general matter, engineering costs cannot be reported as immediate expenses in the year they are incurred. Costs relating to multi-year capital acquisitions, whose benefits clearly last more than one year, should be capitalized, just as the hardware and software they support are capitalized. Treatment of these costs as period costs for a single year results in overstating the VRS costs for that year.

⁵⁴⁴ *Bureau TRS Order* at ¶ 37 & n.97.

⁵⁴⁵ Supplemental cost data was submitted by Hamilton, Hands On, Sorenson, Sprint, and CSD.

⁵⁴⁶ *Bureau TRS Order* at ¶ 36. The “occupancy” rate is the portion of time during a work period that a VRS CA spends at a workstation, available to relay VRS calls, and excludes breaks, meals, vacations, training, and other non-

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supplementary materials submitted by these providers, we sustain the prior disallowances made by the Bureau because budgeted and actual experience continue to be at odds, and in some instances the specific inefficiencies that the Bureau communicated to providers were not addressed. Second, the Bureau disallowed some data as unreliable because it contained various errors or was predicated on incorrect assumptions.⁵⁴⁷ In response to the Bureau's action, several providers submitted supplemental information to correct this data, which included revised staffing plans to establish a reasonable consistency between labor costs and reimbursable service time.⁵⁴⁸ Upon review of this supplemental data, we have allowed additional salary reimbursements based on data that established reasonable consistency between budgeted salaries, budgeted reimbursable minutes, and actual experience.

192. We also restored some costs that related to engineering support. Although, as noted above, engineering costs that are incurred at the election of a provider in order to exceed the mandatory minimum standards, or that lead to the development of proprietary products, are not permitted, we find that some recurring costs are necessary to ensure that VRS assets are properly maintained and to allow providers to meet the minimum technical standards that we prescribe.⁵⁴⁹ Upon review of the supplemental data, we have permitted additional reimbursements on this basis. In addition, some providers submitted supplemental data related to capital costs that the providers had not claimed previously. We are accepting this data and, consistent with our discussion above, are allowing the 11.25% rate of return plus corresponding tax allowances to be applied to the newly submitted capital costs.⁵⁵⁰ Finally, one provider, whose data was previously excluded in its entirety, provided significantly improved supplementary data that we have included in our final calculations.

193. In sum, we have determined overall that the supplementary filings justified the recovery of an additional \$9,503,801 in VRS costs, with a corresponding increase of 213,415 in net reimbursable minutes. Total allowable VRS costs and reimbursable minutes increased to \$62,982,497 and 7,113,290 respectively, resulting in a final VRS per-minute compensation rate of \$8.854. As we have noted, because this compensation rate is based on information that was submitted after we adopted the *Bureau TRS Order*, the new compensation rate of \$8.854 shall apply commencing September 1, 2003, through the

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relaying duties. The "utilization" rate represents the portion of occupancy time in which the VRS CA is actually relaying calls for which the provider can be compensated from the Interstate TRS Fund.

⁵⁴⁷ *Id.*

⁵⁴⁸ We note that labor costs have been a concern for VRS since its inception, since a provider's costs attributable to VRS CAs are generally substantially more than those attributable to traditional TRS CAs. In this regard, in the *VRS Waiver Order* the Bureau waived for VRS providers the TRS mandatory minimum standard that 85% of all calls must be answered within 10 seconds. *VRS Waiver Order* at ¶¶ 15-16; 47 C.F.R. § 64.604(b)(2). The Bureau noted that one provider had asserted that application of this rule to VRS would "result in such heavy and costly staffing needs that a prudent TRS operator would be seriously deterred from offering voluntary VRS." *VRS Waiver Order* at ¶ 15 (citing *Hamilton Waiver Request* at 8). Therefore, the waiver allows VRS providers to add new VRS CAs to their workforce only when justified by the volume of VRS calls. *Id.* at ¶ 16. For this reason, providers' arguments seeking to justify labor costs based on the staffing necessary to meet the speed of answer requirement – a requirement waived for VRS – are not well-taken. We also note that we have extended in this *Order*, above, this waiver for VRS of the speed of answer requirement, but the same time we have raised the issue of speed of answer and the provision of VRS in the *FNPRM* below.

⁵⁴⁹ See 47 C.F.R. § 64.604.

⁵⁵⁰ We would also consider arguments relating to allowances for net working capital, *i.e.*, allowing a return to be earned on funds required to be retained to finance expenditures until reimbursed (since payments from the TRS fund administrator are paid two months in arrears). Because, however, we did not receive critical information that we requested on this matter, we do not determine at this time whether such an allowance should be permitted under the regulations and, if so, the appropriate amount of such an allowance.

2003-2004 fund year.

4. The Bureau TRS Order and the mandates of Section 225

194. Petitioners assert that the *Bureau TRS Order* is inconsistent with section 225. First, Sorenson notes that Section 225(b)(1) directs the Commission to make TRS, including VRS, available “to the extent possible and in the most efficient manner.”⁵⁵¹ Sorenson also notes that Congress required that TRS providers be permitted to recover their “fair costs” for providing VRS.⁵⁵² Sorenson argues that the interim VRS compensation rate of \$7.751 per minute will not allow VRS providers to recover their fair costs, and that therefore they will not be able to provide service to “the extent possible.”⁵⁵³ CSD similarly argues that the interim compensation rate will not provide sufficient flexibility for VRS providers to research and invest in new VRS technologies, thus discouraging or impairing the development of new VRS technology in contravention of section 225.⁵⁵⁴

195. Section 225 provides that “the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”⁵⁵⁵ Section 225 also provides, as we have noted, that the Commission’s implementing regulations shall “encourage . . . the use of existing technology and . . . not discourage or impair the development of improved technology.”⁵⁵⁶ These provisions cannot be read in isolation, and do not mean that we must compensate VRS providers for whatever costs they choose to submit, either as a general matter or in pursuit of enhancements that go beyond what is required under the mandatory minimum standards. The guiding principle, as we have noted, is the recovery of “reasonable” costs, and the Commission (and hence the Bureau) has the authority to decide what costs are reasonable. In this proceeding, the Bureau determined, for example, that markups on costs are not reasonable for a service that is an accommodation for persons with disabilities, and that certain labor inefficiencies resulted in labor costs that could not be considered to be reasonable. The Bureau also determined that it was unreasonable for the Interstate TRS Fund to pay for software development for services that would go beyond our mandatory minimum standards, or that would be proprietary in nature. We find that these conclusions were reasonable and supported by the data submitted, and we therefore affirm them. Section 225’s broader pronouncements concerning ensuring the broad availability of TRS and the use of improved technology do not negate the more specific requirement that providers may be compensated for their costs of providing TRS, and that those costs must be fair and reasonable. Otherwise, the universe of recoverable costs would be unbounded.

196. Petitioners make a variety of related policy arguments in support of their petitions for reconsideration. Hands On, for example, states that its costs of providing VRS exceed the interim compensation rate.⁵⁵⁷ Sorenson asserts that it is not economically feasible to add more VRS interpreters under the interim compensation rate, and that therefore because of high demand, callers are subject to long call waiting times.⁵⁵⁸ CSD argues that uncertainty about compensation rates leads to risk about whether costs can be recovered, and that possible downturns in demand could further hurt its ability to

⁵⁵¹ See Sorenson *Petition* at 6 (quoting 47 U.S.C. § 225(b)(1)).

⁵⁵² See *id.* at 7.

⁵⁵³ *Id.*

⁵⁵⁴ See CSD *Petition* at 3 (citing 47 U.S.C. § 225(d)(3)).

⁵⁵⁵ 47 U.S.C. § 225(b)(1).

⁵⁵⁶ 47 U.S.C. § 225(d)(2).

⁵⁵⁷ See Hand On *Petition* at 12.

⁵⁵⁸ See Sorenson *Petition* at 3.

continue to provide VRS by reducing revenues.⁵⁵⁹ Sprint asserts that if the interim compensation rate is abandoned and NECA's proposed compensation rate of \$14.023 is adopted, the risks associated with providing VRS will be reduced, service will improve, and an increased use of VRS will result in efficiencies of scale and a decline in VRS costs that will, in turn, ultimately drive the compensation rate lower.⁵⁶⁰ All petitioners agree that the adoption of NECA's proposed compensation rate of \$14.023 will allow the continuation and growth of high-quality VRS, to the benefit of persons with and without hearing and speech disabilities who use VRS.

197. We do not doubt that, from a provider's perspective, a relatively higher VRS compensation rate, rather than a lower compensation rate, would be more beneficial to the provider's ability (and desire) to offer VRS. But *all* TRS compensation rates are based on the providers' projected costs of providing the service consistent with the mandatory minimum standards and their projected minutes of use, and are intended to ensure, as we have repeatedly noted, that the providers recover their costs of providing the service. In other words, the process of setting "reasonable" compensation rates is, by its very nature, intended to ensure the continuation of the service. Further, most of the forms of TRS currently available are required services. To the extent petitioners are arguing that without a higher compensation rate they cannot pursue further enhancements to the non-mandatory VRS service, we note that the providers are not entitled to unlimited financing from the Interstate TRS Fund to enable them to further develop a service that is not even required, under a statute that requires providers to offer TRS as an accommodation for persons with certain disabilities.

198. NAOBI and RID raise another concern. They assert that the interim VRS compensation rate could lead to cuts in the interpreter workforce, the use by VRS providers of non-certified interpreters, and greater interpreter workload with attendant health and safety concerns.⁵⁶¹ While we share these commenters' desire to ensure that competent interpreters act as VRS CAs, we have not mandated particular interpreter certifications.⁵⁶² We trust that any VRS provider that employs CAs who are not able to interpret effectively and accurately will rapidly lose business to VRS providers that employ VRS CAs who can do so, and therefore this issue is self-correcting. Further, we have not set specific standards for the daily operations of TRS centers; at the same time, we note that we raise in the *FNPRM* below issues concerning the interpreters' working conditions and the likelihood of repetitive motion injuries for interpreters should VRS be made a mandatory service. In short, the Bureau's adjustment of labor costs was based on its calculations of reasonable efficiency, including reasonable occupancy and utilization rates, and we have no basis on which to disturb that decision.

199. Finally, TDI, Hamilton, and NorCal assert that the interim compensation rate has led to a decline in the quality and availability of VRS.⁵⁶³ We note, however, that since the *Bureau TRS Order* was adopted, a new provider has commenced offering VRS, and it appears that hours of operation were reduced only slightly by some providers.⁵⁶⁴ Further, we are in possession of no data that reflects a

⁵⁵⁹ See *CSD Petition* at 13-14.

⁵⁶⁰ See *Sprint Petition* at 17.

⁵⁶¹ See NAOBI Comments at 1; RID Comments at 1-2.

⁵⁶² Cf. 47 C.F.R. 64.601(14) (defining "Qualified interpreter").

⁵⁶³ See TDI Comments at 10-11; Hamilton Comments at 2; NorCal Aug. 1, 2003, Comments at 1.

⁵⁶⁴ Hamilton commenced its VRS service on October 20, 2003. Hamilton Relay, Inc. Press Release, dated Oct. 20, 2003. We understand that Sprint slightly reduced their operating hours for VRS after the *Bureau TRS Order*, but that Sorenson and CAC have now expanded their hours. See generally www.cacvrs.org and www.sorensonvrs.com. At the same time, we note that, as the TRS fund administrator has reported, the minutes of use for VRS increased from 211,529 in June 2003; to 290,724 in September 2003; to 381,783 in December 2003; to 534,536 in February 2004; and to 709,718 in March 2004. This recent growth in the minutes of use of VRS is reflected in the Consumer & Governmental Affairs Bureau *Order* released February 24, 2004, which, as a result of the significant growth in

(continued....)

meaningful decline in the quality of VRS. More broadly, as we stated above, our mandatory minimum standards are intended to define what constitutes, at a given point in time, functionally equivalent TRS service. Further, the same standards do not apply to each form of TRS. The Commission specifically waived certain requirements for VRS providers, including speed of answer, and also has not required non-mandatory services (like VRS and IP Relay) to be offered 24 hours per day, 7 days a week.⁵⁶⁵ These waivers reflect the fact that in authorizing the provision of a new non-mandatory service as a form of TRS, it may not be appropriate to require providers to meet all of the mandatory minimum standards.⁵⁶⁶ Therefore, for purposes of determining the “reasonable” costs that may be recovered for providing such a service, the costs must relate to the provision of the service in compliance with the applicable non-waived mandatory minimum standards. In other words, although the principle of functional equivalency necessarily applies to the provision of all forms of TRS, the parameters of functional equivalency are specific to each form of TRS. And as we have noted, although providers are entitled to recover their costs for providing functionally equivalent service, they are not entitled to recover their costs of providing what they may think is the best possible service they can offer without regard to cost.

5. Conclusion

200. For the reasons set forth above, we affirm, except as otherwise specifically provided herein, the cost recovery methodology for VRS established in the *Bureau TRS Order*. We adjust the VRS compensation rate to a per-minute compensation rate of \$8.854. Because this adjustment is based on our review of the supplemental data submitted by the providers after we issued the *Bureau TRS Order*, the \$8.854 compensation rate will be effective commencing September 1, 2003.⁵⁶⁷

B. THE OCTOBER 25, 2002, FIFTH REPORT AND ORDER ON “COIN SENT-PAID” TRS CALLS FROM PAYPHONES (CC DOCKET 90-571)

1. Background

201. On October 25, 2002, we issued the *Coin Sent-Paid Fifth Report & Order*,⁵⁶⁸ which adopted measures to ensure the availability of payphone services for TRS users that are functionally equivalent to traditional payphone services provided to non-TRS users.⁵⁶⁹ We noted that we had construed our requirement that TRS providers offer “any type of call”⁵⁷⁰ to include coin sent-paid calls, which are calls made by depositing coins in a coin-operated public payphone.⁵⁷¹ At the same time, we

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the minutes of use of VRS and IP Relay this fund year, increased the Interstate TRS Fund size from approximately \$115 million to \$170 million. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 04-465 (Feb. 24, 2004).

⁵⁶⁵ See *VRS Waiver Order* at ¶¶ 15-16; *Improved TRS Order & FNPRM* at ¶ 42; see also 47 C.F.R. § 64.604(b)(4).

⁵⁶⁶ The Bureau granted waivers both to assist the growth of VRS as a new technology and service, and because some of the TRS mandatory minimum standards, developed for a text- and telephone-based service, simply do not apply to a video- and Internet-based service.

⁵⁶⁷ We note that the fund administrator’s proposed compensation rates for the July, 2004, through June, 2005, fund year were filed on May 3, 2004, and that the Commission is reviewing them and will adopt new compensation rates that will be effective July 1, 2004.

⁵⁶⁸ *Telecommunication Relay Services and the Americans with Disabilities Act of 1990*, Fifth Report and Order, CC Docket No. 90-571, FCC 02-269, 17 FCC Rcd 21233 (Oct. 25, 2002) (*Coin Sent-Paid Fifth Report & Order*).

⁵⁶⁹ See *id.* at ¶ 17; see also *id.* at ¶¶ 23-27.

⁵⁷⁰ See 47 C.F.R. § 64.604(a)(3).

⁵⁷¹ See *TRS I* at ¶ 18 n.18.

noted long-standing concerns about the technical difficulties associated with providing coin sent-paid calls through TRS facilities.⁵⁷² We therefore addressed whether a solution for processing coin sent-paid calls had been developed, as well as other means by which individuals with hearing and speech disabilities could make TRS calls from payphones without using coins but instead using calling cards, prepaid cards, and collect or third-party billing.

202. We concluded that a technological solution to processing coin sent-paid calls was not available, and that the coin sent-paid functionality was not necessary to achieve functional equivalency.⁵⁷³ We therefore eliminated the requirement that TRS carriers and providers be capable of providing coin sent-paid TRS service from payphones.⁵⁷⁴ With regard to local (non-toll) calls, we mandated that carriers provide free TRS local calls from payphones.⁵⁷⁵ With regard to toll calls, we required carriers to allow the use of calling cards, prepaid cards, and collect or third party billing for TRS calls from payphones.⁵⁷⁶ We also declined to codify an element of the “Alternative Plan” that provided that, for TRS toll calls from payphones, common carriers may not charge more than the lower of the coin sent-paid rate or the rate for the calling card, collect, or third-party billing.⁵⁷⁷ We noted that for the charges to be the lower of the coin sent-paid rate or the rate of the caller’s preferred billing mechanism, a comparison must be made, and concluded that “a requirement to compare the coin sent-paid rate and a calling card rate would be unworkable.”⁵⁷⁸ We also concluded that a “requirement that a TRS provider assure the user [the] lower rate for long distance calls is not required for functional equivalency.”⁵⁷⁹ Finally, we encouraged specific outreach and education programs to inform TRS users of their options to coins when placing toll calls

⁵⁷² See *Coin Sent-Paid Fifth Report & Order* at ¶¶ 2, 4; see generally *id.* at ¶¶ 1-15 for the background and history of our various coin sent-paid orders. As we have noted, handling TRS calls made with coins from payphones is technically difficult because a relay call is really two separate calls – one from the customer to the relay facilities, and a second call from the relay facilities to the called party. TRS facilities are not equipped to handle the necessary call processing functions (e.g., assessing the proper charge and handling coin collection and return functions) for the second leg of the call. *Id.* at ¶ 22 n.69.

⁵⁷³ See *id.* at ¶¶ 2, 17.

⁵⁷⁴ E.g., *id.* at ¶ 17.

⁵⁷⁵ See *id.* at ¶¶ 18-21. Even before adoption of the *Coin Sent-Paid Fifth Report & Order*, the first leg of a toll free call to a TRS facility was free of charge to the caller. See also 47 CFR § 64.1330 (b) (requiring that TRS calls for persons with hearing and speech disabilities be available from all payphones at no charge to the caller). In the *Coin Sent-Paid Fifth Report & Order* we noted that each state telecommunications relay facility may be reached toll free by using the state’s 800 dialing number or the TRS 711 dialing code. *Coin Sent-Paid Fifth Report & Order* at ¶ 18 n.54. We further noted that as of October 1, 2001, all telecommunications carriers were required to implement the 711 code for access to TRS calls; that code enables TRS users to reach the local TRS facility from wherever they are placing the call by dialing 711. *Id.* (citing *Use of N11 Codes and other Abbreviated Dialing Arrangements*, Second Report and Order, CC Docket No. 92-105, FCC 00-257, 15 FCC Rcd 15188 (Aug. 9, 2000) (*N11 Second Report and Order*)).

⁵⁷⁶ *Id.* at ¶ 22.

⁵⁷⁷ *Id.* at ¶ 23. The Alternative Plan was an interim plan to enable individuals to make TRS calls from payphones using payment methods other than coins while the Commission, industry, and consumers studied the technology of payphones to determine a feasible coin sent-paid solution. The Alternative Plan required carriers to: (1) allow TRS users to make local TRS payphone calls free of charge; (2) enable TRS users to make toll calls by using calling or prepaid (debit) cards; and (3) develop programs to educate TRS users about alternative payment methods and to make calling or prepaid cards available to TRS users. See *Coin Sent-Paid Fifth Report and Order* at ¶¶ 6-7. Under this plan, carriers were required to offer *either* calling cards *or* prepaid cards at rates not to exceed those that would apply to a similar non-TRS call made using coin sent-paid service. See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Memorandum Opinion and Order, CC Docket No. 90-571, DA 95-1874, 10 FCC Rcd 10927 at ¶ 18 (Aug. 25, 1995).

⁵⁷⁸ *Coin Sent-Paid Fifth Report & Order* at ¶¶ 23-24 & n.80.

⁵⁷⁹ *Id.* at ¶ 24.

from payphones.⁵⁸⁰

203. On November 25, 2002, four consumer groups filed a joint petition for reconsideration of the *Coin Sent-Paid Fifth Report and Order*,⁵⁸¹ raising two central issues. First, the Joint CSP Petitioners assert that the Commission eliminated the requirement of “cost parity” for toll calls via payphones by TRS users and such calls by non-TRS users, and request that the Commission restore the requirements that carriers charge “the lower of the coin sent-paid rate or the rate for calling card and/or prepaid card payment methods for TRS payphone toll calls.”⁵⁸² Joint CSP Petitioners maintain that the requirement of functional equivalency “requires TRS providers to allow consumers to make and receive TRS calls with the same benefits that are available to non-TRS users, including ... choice of payment option.”⁵⁸³ They also assert that if “alternative payment mechanisms result in higher rates for TRS users, the ... mandate of functional equivalency will not be met.”⁵⁸⁴ Further, Joint CSP Petitioners assert that implementation issues should not preclude the requirement of cost parity.⁵⁸⁵

204. Second, the Joint CSP Petitioners assert that the Commission should have implemented a national outreach program under the purview of an entity such as the TRS Fund Administrator, rather than leave outreach to the voluntary efforts of the carriers.⁵⁸⁶ The Joint CSP Petitioners note that some of the voluntary efforts noted by the Commission were required by earlier Commission orders, and assert that the outreach efforts were nevertheless problematic.⁵⁸⁷ The Joint CSP Petitioners assert that by now making outreach obligations voluntary, the outreach will not be effective and, as a result, the Commission is essentially abdicating its responsibilities and legal obligations to provide TRS users with a functionally equivalent service.⁵⁸⁸

205. In response to the Joint CSP Petition, only one comment was filed.⁵⁸⁹ The CSP Industry Team opposes Joint CSP Petitioners’ assertion that additional regulation is needed to ensure functionally equivalent rates for toll TRS calls made from payphones.⁵⁹⁰ The CSP Industry Team asserts that there is no evidence that cost parity is a real problem.⁵⁹¹ According to the CSP Industry Team, “robust competition in the market for calling cards and prepaid cards provides a number of options available for TRS users to make the functional equivalent of coin sent-paid payphone calls, at rates that are usually

⁵⁸⁰ See *id.* at ¶¶ 2, 28-39.

⁵⁸¹ The Joint CSP Petition was filed by TDI, The Consumer Action Network, The National Association of the Deaf, and Self-Help for Hard of Hearing People (Joint CSP Petitioners or Joint CSP Petition).

⁵⁸² Joint CSP Petition at 7; see also *id.* at ii (TRS consumers should not have to “pay more for a toll TRS payphone call under a calling card or prepaid card call payment method than a non-TRS user would have to pay under a coin sent-paid payment method”); *Coin Sent-Paid Fifth Report & Order* at ¶¶ 2, 7-11.

⁵⁸³ Joint CSP Petition at 8.

⁵⁸⁴ *Id.* at 9.

⁵⁸⁵ *Id.* at 9-10.

⁵⁸⁶ *Id.* at 11-21.

⁵⁸⁷ *Id.* at 18.

⁵⁸⁸ *Id.* at 11.

⁵⁸⁹ Comments of the CSP Industry Team filed April 30, 2003. Members of the CSP Industry Team participating in this filing are: AT&T, Sprint, MCI (WorldCom), BellSouth Telecommunications, Inc., Qwest, SBC, Verizon, and Hamilton Telephone (“CSP Industry Team”).

⁵⁹⁰ CSP Industry Team Comments at 3-4.

⁵⁹¹ *Id.* at 3.

lower than coin sent-paid rates, without the necessity of Commission regulation.”⁵⁹² The CSP Industry Team further asserts that functional equivalency does not require the Commission to ensure that all common carriers charge TRS users making toll calls rates that are lower than the coin sent-paid toll rate.⁵⁹³

206. The CSP Industry Team also asserts that the “Commission should not impose mandatory outreach obligations or national outreach efforts designed solely to address payphone calls.”⁵⁹⁴ The CSP Industry Team notes that the issue of outreach for TRS generally was raised in the March 2000 *Improved TRS Order & NPRM*,⁵⁹⁵ and asserts that outreach regarding TRS calls from payphones should be included in a national program addressing all TRS programs. The CSP Industry Team concludes that “[u]ntil the Commission determines whether to create a comprehensive, national outreach program designed for all TRS programs, and what the proper scope of that outreach program will be, it would be inappropriate for it to adopt a national program, or mandatory outreach requirements, designed to deal solely with payphones and coin sent-paid TRS issues.”⁵⁹⁶

2. Discussion

207. We deny the Joint CSP Petitioners’ petition for reconsideration of the *Coin Sent-Paid Fifth Report & Order*. First, we decline to impose additional regulation on TRS calls made from payphones, including the notion of “cost parity.” The Joint CSP Petitioners essentially argue that unless the Commission mandates that TRS consumers using payphones pay rates no higher than a non-TRS user would pay using coins, we have violated the functional equivalency mandate of section 225. We disagree. The principle of functional equivalency does not require such rigid equality, particularly where it is not technologically feasible to reach such a result. As we noted in the *Coin Sent-Paid Fifth Report and Order*, to determine if a TRS consumer using, e.g., a calling card, is receiving a long distance rate at least as low as the coin sent-paid rate, a comparison has to be made between the coin sent-paid rate for the particular payphone (since such rates vary by phone) and the rate for the calling card.⁵⁹⁷ We further noted that the record in this proceeding does not show that it is feasible to make this comparison.⁵⁹⁸ No persuasive arguments have been presented to cause us to alter this conclusion. At most, the Joint CSP Petitioners suggest that *it is possible* that TRS users may on occasion pay higher rates than non-TRS users would pay using coins, and that it is *possible* that carriers can implement a method for ensuring that rates arising from other payment methods be the same or lower than coin rates from payphones.⁵⁹⁹ Such speculation does not provide a basis upon which we can alter the conclusions set forth in the *Coin Sent-Paid Fifth Report and Order*, which are amply supported by the record.

208. We reiterate that toll rates for the payphone industry are not regulated.⁶⁰⁰ We also

⁵⁹² *Id.*

⁵⁹³ *Id.* at 4.

⁵⁹⁴ *Id.*

⁵⁹⁵ Citing *Improved TRS Order & NPRM* at ¶ 134.

⁵⁹⁶ CSP Industry Team Comments at 3. We note that these comments were filed before the Commission released the *Second Improved TRS Order & NPRM*, which, as we note below, declined to make a determination on various outreach issues and sought further comment on outreach issues. See *Second Improved TRS Order & NPRM* at ¶¶ 77-80, 128-133.

⁵⁹⁷ *Coin Sent-Paid Fifth Report and Order* at ¶ 24.

⁵⁹⁸ *Id.* at ¶ 24 & n.80.

⁵⁹⁹ Joint CSP Petition at 10.

⁶⁰⁰ *Coin Sent-Paid Fifth Report and Order* at ¶ 24.

reiterate that calling cards, prepaid cards, and collect and third party billing are payment options for placing TRS toll calls from payphones, and that the calling card and prepaid phone card markets are very competitive.⁶⁰¹ We also again note that the CSP Industry Team advised in their comments in the *Coin Sent-Paid Fifth Report and Order* proceeding that their common carrier members of the Industry Team complied with the Alternative Plan by keeping their prepaid and calling card rates below the coin rate for all of their customers.⁶⁰² We again “encourage all long distance carriers to continue this practice or we may intervene to require it for TRS calls.”⁶⁰³ Finally, with regard to outreach, in the *Second Improved TRS Order & NPRM* we declined to mandate a nationwide uniform outreach campaign,⁶⁰⁴ and, for the reasons discussed above, we have again declined to do so in this *Report and Order*.

C. THE JUNE 17, 2003, SECOND IMPROVED TRS REPORT AND ORDER (CC DOCKET 98-67)

1. Background

209. In the *Second Improved TRS Order & NPRM*, the Commission concluded that, consistent with the functional equivalency mandate, emergency calls made through TRS must be routed to an “appropriate” PSAP, not necessarily the “nearest” PSAP.⁶⁰⁵ In doing so, we “reject[ed] proximity as the primary criterion for determining to which PSAP an emergency TRS call should be routed.”⁶⁰⁶ We defined “appropriate” PSAP as the designated PSAP to which a direct call from the particular number would be delivered.⁶⁰⁷

210. We also addressed the need for TRS providers to have a reliable and accurate PSAP database in order to ensure that an emergency TRS call will be routed to the appropriate PSAP.⁶⁰⁸ We noted that, according to commenters, PSAP databases are available from a variety of resources, suggesting that TRS facilities may expeditiously implement a system to route emergency calls to the appropriate PSAP.⁶⁰⁹ Therefore, we required that all TRS facilities be able to pass emergency callers to the appropriate PSAP within twelve months of publication of the *Second Improved TRS Order* in the *Federal Register*.⁶¹⁰ Under the functional equivalency mandate, we required that TRS facilities “ensure that any database used to route a TRS emergency call to a PSAP be updated on the same schedule that

⁶⁰¹ *Id.* at ¶ 25.

⁶⁰² *See id.* at ¶ 26.

⁶⁰³ *Id.*

⁶⁰⁴ *See Second Improved TRS Order & NPRM* at ¶ 79.

⁶⁰⁵ *Id.* at ¶ 40.

⁶⁰⁶ *Id.* As we also noted, the *Improved TRS Order & FNPRM* required that such calls be routed to the “appropriate” PSAP, but our rules codified the requirement as being the “nearest” PSAP. *Id.* at ¶ 38; *see also* 47 C.F.R. § 64.604(a)(4).

⁶⁰⁷ *Id.* at ¶ 41; *see* 47 C.F.R. § 64.3000(c) (defining the Public Safety Answering Point (PSAP) as a facility that has been designated to receive 911 calls and route them to emergency services personnel). *See also* 47 C.F.R. § 20.3 (defining “designated PSAP” to be the PSAP designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.”).

⁶⁰⁸ *Second Improved TRS Order & NPRM* at ¶ 42.

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.* (making requirement effective twelve months from Federal Register publication date of August 25, 2003 (68 FR 50973)). We noted that many TRS facilities have been relaying TTY calls to the appropriate PSAP since the publication of the *Improved TRS Order*. *Id.* at n.161.

PSAP routing databases are updated for 911 calls placed by voice telephone users.”⁶¹¹

211. On September 24, 2003, Verizon and AT&T filed petitions for reconsideration of the *Second Improved TRS Order & NPRM* with respect to issues concerning the routing of emergency calls to the “appropriate” PSAP.⁶¹² First, Verizon asserts that the “appropriate” PSAP should not be defined to be the *same* PSAP that would have been reached if the caller had dialed 911, but rather to be “*either* a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.”⁶¹³ Verizon notes that directly dialing 911 via a TTY or other device is the preferred method of reaching emergency services, and that dialing 711 to reach a TRS CA “should be understood as the functional equivalent of a voice call to ‘0’ – it should provide a ‘backup’ for callers who, for whatever reason, did not dial 911 directly.”⁶¹⁴

212. Second, Verizon seeks reconsideration of the requirement that the TRS emergency PSAP database be updated on the same schedule as 911 “routing databases.”⁶¹⁵ Verizon explains that because of the way in which 911 calls are routed, it would take several years and be very costly to create a system that would ensure that the TRS provider could direct emergency calls to the same PSAP that would have been reached had the TRS user dialed 911.⁶¹⁶ Verizon adds that, in any event, this is unnecessary because if a TTY user calls 911 the call will be routed automatically to the same PSAP as a call by a voice telephone user.⁶¹⁷ Verizon therefore maintains that TTY users already have functionally equivalent 911 service because PSAPs must be able to receive 911 calls directly from a TTY.⁶¹⁸

213. In its Petition, AT&T also seeks reconsideration of the requirement that databases used to route TRS emergency calls to a PSAP be updated on the same schedule that PSAP routing databases are updated for 911 calls placed by voice telephone users, asserting that such a requirement will impose significant compliance burdens on AT&T and other TRS providers.⁶¹⁹ AT&T explains that this obligation would require that its third party vendor establish new arrangements with each state public agency that maintains and updates the list of PSAPs in its jurisdiction to assure that the list of PSAPs used for routing TRS traffic is concurrently modified to reflect changes for routing traditional voice callers’ emergency traffic.⁶²⁰ AT&T further asserts that if this requirement is kept in place, the Commission should exercise its authority over the LECs that serve wireline 911 callers and require them, as they update their own PSAP databases, to concurrently make the same information available to TRS providers.⁶²¹ AT&T also proposes the establishment of a single database available for all TRS providers

⁶¹¹ *Id.* at ¶ 42.

⁶¹² See *Verizon Petition for Reconsideration of Verizon*, filed September 24, 2003 (*Verizon Petition*); *AT&T Petition for Limited Reconsideration and for Waiver*, filed September 24, 2003 (*AT&T Petition*). See generally *Second Improved TRS Order & NPRM* at ¶ 37-42. In its Petition, AT&T also requested that the Commission waive the deadline for the implementation of the three-way calling requirement in the *Second Improved TRS Order & FNPRM*. *AT&T Petition* at 10. That issue was addressed in an Order released by the Consumer & Governmental Affairs Bureau on February 24, 2004 (DA 04-465).

⁶¹³ *Verizon Petition* at 1-2.

⁶¹⁴ *Id.* at 2-3.

⁶¹⁵ *Id.* at 1.

⁶¹⁶ *Id.* at 5-7.

⁶¹⁷ *Id.* at 2.

⁶¹⁸ *Id.* at 2-3.

⁶¹⁹ *AT&T Petition* at 4.

⁶²⁰ *Id.* at 4-5.

⁶²¹ *Id.* at 5.

to use for routing an emergency TRS call to a PSAP.⁶²² AT&T believes that such a system would greatly simplify those carriers' task by eliminating unnecessary duplication of effort and lack of uniformity in formats and procedures for furnishing such information.⁶²³

214. With respect to the first issue, most commenters support Verizon's proposed modification of the definition of "appropriate PSAP."⁶²⁴ Commenters note the technical difficulties involved in routing to "the" appropriate PSAP as well as the onerous financial burden that would be required to achieve that ability.⁶²⁵ Commenters also note that upgrading the TRS system to meet this requirement is essentially duplicating the 911 system because TTY callers already have the functional equivalent service of a 911 call because PSAPs are required to be able receive TTY calls directly.⁶²⁶ TDI, however, opposes any modification to the definition of "appropriate PSAP," and urges the Commission to retain the requirement that TRS users that dial 711 in emergencies be able to reach the same PSAP that would have received the call if the caller had direct-dialed 911.⁶²⁷

215. With respect to the second issue, Verizon opposes AT&T's proposal that the Commission require LECs to make the same information available to TRS providers whenever the LECs update their PSAP databases.⁶²⁸ Verizon contends that AT&T's request for access to PSAP databases misunderstands the complicated nature of the 911 routing system.⁶²⁹ Verizon states that the 911 routing information is not in a "database" that can be read or used by a TRS provider or national database manager; instead, it is in a format designed to interact with the 911 routers.⁶³⁰ Verizon also opposes AT&T's suggestion that the Commission mandate the development and deployment of a single database jointly by all TRS providers.⁶³¹ Verizon argues that requiring the creation of one single, federally mandated nationwide system would only impose a burdensome and extremely expensive requirement that could distract from and compromise the already effective methods for handling emergency calls.⁶³² Verizon also suggests that a better course of action than a national database is to educate TRS users to dial 911 directly in the event of an emergency.⁶³³ Many commenters agree with Verizon and note the difficulties and burden of

⁶²² *Id.* at 7.

⁶²³ *Id.*

⁶²⁴ *See, e.g.,* The Frontier and Citizens Telephone Companies (Frontier) Reply Comments at 1; Hamilton Comments at 3; MCI (WorldCom) Comments at 3-4.

⁶²⁵ Frontier Reply Comments at 2; SBC Reply Comments at 3-4; Sprint Comments at 2-3.

⁶²⁶ Frontier Reply Comments at 1-2; New York State Telecommunications Association, Inc. (NYSTA) Reply Comments at 2-3.

⁶²⁷ TDI Reply Comments at 3 (citing *Second Report and Order* at ¶ 41).

⁶²⁸ Verizon Comments at 1.

⁶²⁹ *Id.* at 2.

⁶³⁰ Verizon Comments at 2-3. In Verizon's territory, the 911 selective routers generally do not interact with other selective routers; thus information about PSAPs served by one selective router generally is not available to any other selective routers.

⁶³¹ Verizon Reply Comments at 2.

⁶³² *Id.* at 3-4.

⁶³³ *Id.* at 3-4. Hamilton and Ultratec support Verizon's suggestion that TRS users be educated about dialing 911 directly. They refer to this as an outreach campaign. Hamilton Recon Comments at 4; Ultratec Recon Comments at 7. To the extent certain PSAPs are not complying with their obligation to handle TTY calls, SBC suggests the Commission take action to remedy this. SBC Comments at 3. Several commenters emphasize that an emergency call made via TRS facilities and with the assistance of a third-party relay operator (the CA) can never be as efficient as dialing 911 directly. *See, e.g.,* NYSTA Reply Comments at 4; *see also* Frontier Reply Comments at 2 (if the call is terminated prematurely, the TRS operator will certainly not have location information and may not have a

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complying with the requirement of updating databases used to route a TRS emergency call to a PSAP on the same schedule that PSAP routing databases are updated for 911 calls placed by voice telephone users.⁶³⁴

2. Discussion

216. *“Appropriate PSAP.”* We conclude that the requirement we established in the *Second Improved TRS Order & NPRM* – that the “appropriate” PSAP to which an emergency TRS call should be routed is the *same* PSAP to which a direct call from the particular number would be delivered – creates an unnecessary and undue burden on providers, and therefore we reject it. We now adopt the definition of “appropriate” PSAP as “*either* a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner,” and we amend rule 64.604(a)(4) accordingly. Our ultimate guidepost is whether a TRS user calling a TRS facility with an emergency call will have his or her call directed to a PSAP that can respond to the emergency. As Verizon notes, even if the TRS provider routes the emergency call to a PSAP that is not the same one that the caller would have reached if he had dialed 911, the PSAP that receives the emergency call should be able to use the customer’s telephone number to determine which PSAP the caller would have reached if he had dialed 911, and transfer the call to that PSAP.⁶³⁵ We also agree that to require routing to the *same* PSAP would be nearly impossible unless the entire TRS system taps into the 911 routing system, including the E911 system. The overhaul of such a system that essentially duplicates the 911 system would create substantial expense.

217. *Updating PSAP database.* Because we have revised the definition of the “appropriate” PSAP to remove the requirement that emergency TRS calls be routed to the *same* PSAP that would have received the call had the caller dialed 911, we believe that TRS providers should be able to satisfy the requirement in the *Second Improved TRS Order & NPRM* that all TRS facilities be able to pass emergency callers to the appropriate PSAP prior to August 24, 2004 (the effective date of the rule adopted in the *Second Improved TRS Order & NPRM*⁶³⁶). We also believe that this change makes it unnecessary to require TRS facilities to ensure that any database used to route a TRS emergency call to a PSAP be updated on the same schedule that PSAP routing databases are updated for 911 calls placed by voice users, or to require LECs to provide PSAP updates to TRS facilities as they update their own facilities with PSAP information. At the same time, we note that TRS providers have been maintaining their PSAP databases since the Commission amended the Handling of Emergency Calls rule in the *Improved TRS Order & FNPRM*.⁶³⁷ We continue to require providers to maintain and update their databases to the

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callback number. These issues are solved if the caller dials 911 where there is an E-911 system); Ultratec Recon Reply at 7 (direct calling ensures that a caller’s most appropriate PSAP will always receive the caller’s automatic number identification (ANI) and automatic location identification (ALI) via 911 system capabilities.) *But see* TDI Coalition Reply Comments at 6. TDI contends that there always will be TRS users who dial 711 in the case of emergency, because that is the number they routinely dial for service, just as dial tone users routinely dial 411 for directory assistance. TDI also notes that not all users of relay services call relay by TTY. Some users call via Voice Carry Over (VCO), Hearing Carry Over (HCO) or Speech-to-Speech (STS), and these services are not directly compatible with TTYs. Therefore, callers utilizing these services would be unable to call a PSAP directly, even if the PSAP is TTY capable. TDI Coalition Recon Reply at 5-6.

⁶³⁴ *AT&T Petition* at 4; Sprint Comments at 4. Sprint reports that, although Sprint’s PSAP database vendor does not receive real-time updates, there have not been any adverse effects. Sprint supports a further study of AT&T’s proposal.

⁶³⁵ *See Verizon Petition* at 3-4.

⁶³⁶ *I.e.*, 12 months after the *Second Improved TRS Order & NPRM* was published in the Federal Register. *See Second Improved TRS Order & NPRM* at ¶ 42.

⁶³⁷ *Improved TRS Order & FNPRM* at ¶¶ 99-102.

extent possible, and we encourage TRS providers to continue to work with state public agencies to establish a process whereby PSAP data is provided to TRS providers on a timelier basis.

218. We also deny AT&T's request for a single national PSAP database that is available to all TRS providers. We agree with Verizon that, because no national database exists for routing 911 calls, a similar database for TRS emergency calls is not required to satisfy the functional equivalent mandate.

219. Finally, we agree with commenters that placing emergency calls through TRS facilities might never be as effective or reliable as placing direct 911 TTY calls; for this reason, we have already stated that the recommended method for persons with hearing disabilities to reach assistance in an emergency is by dialing 911.⁶³⁸ In this regard, we agree with Verizon and other commenters that more education and outreach is needed to educate TTY users to dial 911 directly, instead of dialing a TRS facility, in an emergency.⁶³⁹ We therefore strongly encourage TRS providers and common carriers to include educational materials addressing this matter with their advertisements and mailings to all customers, and in their other outreach efforts. At the same time, however, we stress that these outreach activities do not relieve TRS providers of their obligation to handle emergency calls under our rules. Our rules require that if an emergency call is made via TRS, TRS providers must ensure that the call is directed to an appropriate PSAP.⁶⁴⁰ Therefore, we reiterate that in the event a TRS user places an emergency call through TRS, by either dialing 711 or a 10-digit TRS number, the CA must immediately handle the emergency call and route it to *an appropriate* PSAP. It is not permissible, as some commenters suggest, for TRS providers to instruct TRS users to hang up and dial 911 in case of an emergency.

VI. FURTHER NOTICE OF PROPOSED RULEMAKING (CG DOCKET NO. 03-123)

220. In this *FNPRM*, we address a number of outstanding issues with respect to VRS and IP Relay including: (1) the appropriate cost recovery methodology for VRS; (2) what type of mechanism we might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate; (3) whether IP Relay and/or VRS should become mandatory forms of TRS; (4) whether IP Relay and/or VRS should be required to be offered 7 days a week, 24 hours a day; and (5) whether we should adopt a speed of answer requirement for VRS, and if so, what should it be and how should it be phased-in. We also raise the issues of whether there should be separate compensation rates for traditional TRS and IP Relay, and whether the compensation payments for VRS should be established for a two-year period instead of a one-year period. Further, we seek additional comment on issues concerning the certification and oversight of IP Relay and VRS providers. We also seek comment on the TRS Advisory Council, including its composition and the role it plays in advising the TRS Fund Administrator on TRS issues. Finally, we raise issues with regard to recurring problems with the abuse of CAs by callers who seek to either harass the CA, or harass a called party, behind the apparent anonymity of an IP Relay call. As in the past, our goal is to continue to ensure that functionally equivalent TRS services are available to consumers, and to ensure the ongoing integrity of the Interstate TRS Fund.⁶⁴¹

⁶³⁸ *Second Improved TRS Order & NPRM* at ¶ 37.

⁶³⁹ To the extent that any PSAPs are not accessible by TTY, we note that this requirement is governed by Title II of the ADA, which is overseen by the Department of Justice.

⁶⁴⁰ We note, however, that this requirement has been waived for IP Relay and VRS. See Appendix E below. We also note above that it is premature to implement guidelines for TRS facilities routing wireless emergency TRS calls.

⁶⁴¹ To the extent we are asking for additional comment on matters raised in previous NPRMs or FNPRMs, we will consider the comments filed in those proceedings along with the comments filed in response to this *FNPRM*.

A. IP RELAY**1. Determining which IP Relay Calls are Interstate and which are Intrastate**

221. As we have noted, we believe that Title IV and its legislative history make plain that Congress intended that the states be responsible for the cost recovery for intrastate relay services provided under their jurisdiction. Therefore, although we previously raised the issue of what mechanism will ensure that the Interstate TRS Fund pays only for IP Relay calls that are in fact interstate, we now seek further comment on this issue. We acknowledge the technical difficulties in determining the location of the party to an IP Relay call who is using the Internet to communicate with the CA. As we have noted, the Internet has no equivalent to the PSTN's ANI, which allows the automatic determination of each caller's location in a traditional TRS call. We also acknowledge that, to the extent IP Relay is not a mandatory service under our rules, not every state may wish to enter into a contract with one or more of the current or future IP Relay providers.⁶⁴²

222. Because the record does not indicate that a technological mechanism presently exists that can provide for the automatic identification of the location of an IP Relay caller, we must look to other methods by which the Commission might determine which IP Relay calls are intrastate and which calls are interstate. Two alternatives have previously been suggested – use of a fixed allocator (as a proxy for the actual identification of a particular call as intrastate or interstate) or registration.⁶⁴³

223. Although commenters generally asserted that the use of an allocator would be unworkable,⁶⁴⁴ we seek further comment on this approach and the following considerations. First, we recognize that to the extent IP Relay is and remains a non-mandatory service, we do not have the authority to require all states to offer IP Relay service. As a result, if we were to establish an allocator for apportioning IP Relay calls between the Interstate TRS Fund and the states, the refusal of one or more states to offer IP Relay, or any change in the number of states that offer IP Relay, might render the determination of the proper allocation *among* the states unduly burdensome.⁶⁴⁵ Second, we seek comment on how we would determine what the allocator should be in this context. Although it is possible to use traditional TRS and STS as a guide, NECA noted in May 2003 that there has been a significant shift in interstate minutes from traditional TRS to IP Relay, which, because it is not possible to jurisdictionally identify IP Relay calls, has made developing a factor for allocating toll-free calls less accurate.⁶⁴⁶ For the same reason, then, using traditional TRS and STS minutes to create a factor for allocating IP Relay calls may not necessarily result in an accurate factor; indeed, we would be using statistics derived from a smaller pool of minutes to determine the appropriate allocation of a larger pool of minutes. Finally, commenters previously asserted that use of an allocator may cause states whose residents rarely use IP Relay to refuse to fund intrastate IP Relay, and would be administratively burdensome.⁶⁴⁷ We therefore seek further comment on whether use of an allocator could be a reasonable

⁶⁴² We note, however, that we raise below in the *FNPRM* whether IP Relay should be made a mandatory service. Depending on the resolution of that issue, it is conceivable that IP Relay could be made a mandatory service effective at the same time the Interstate TRS Fund will pay for only interstate IP Relay calls.

⁶⁴³ No method other than use of a fixed allocator or registration was previously suggested by any commenter.

⁶⁴⁴ See Sprint Comments at 2; MCI (WorldCom) Comments at 6; TDI Comments at 12; Hamilton Reply at 3.

⁶⁴⁵ This is in contrast to the allocator used for toll-free calls, because that allocator merely apportions costs between each state and the Interstate TRS Fund, not among the several states.

⁶⁴⁶ NECA May 1, 2003 filing at 7. As we have noted, IP Relay minutes now substantially exceed traditional TRS minutes. See *id.* at Ex. 2.

⁶⁴⁷ See *e.g.*, Sprint Comments at 2; MCI (WorldCom) Comments at 6. We raise below, however, the related issue of whether IP Relay should become a mandatory form of TRS.

approach to determining which IP Relay calls are (or could be considered) intrastate and which are (or could be considered) interstate, and if so, how such a scheme should be designed and implemented.

224. The other alternative proposed in the *IP Relay Declaratory Ruling & FNPRM* is the use of mandatory customer profiles to determine caller location, *i.e.*, registration of IP Relay customers.⁶⁴⁸ We recognize that some commenters have previously expressed opposition to registration.⁶⁴⁹ We now seek further comment on whether registration should be used to determine whether an IP Relay call is interstate or intrastate, and on the particular concerns we note below.

225. First, with regard to the possible reluctance of TRS users to submit personal information via the Internet, we note that IP Relay providers currently use voluntary profiles to assist regular callers and expedite their calls.⁶⁵⁰ Further, in order for consumers to have Internet access at all, they are often required to give personal information, at least to the extent of a credit card number, or address and telephone number, to an ISP. Moreover, any fears that customers might have of giving personal information via the Internet in this context should be considerably alleviated by our strict TRS confidentiality rules,⁶⁵¹ and by the fact that we are encouraging all IP Relay providers to offer to their customers encryption of calls. In view of these factors, we seek further comment on whether TRS consumers would view registration as an excessive burden in this context.⁶⁵²

226. More specifically, we seek comment on whether we should adopt a registration scheme as follows: To be eligible for compensation from the Interstate TRS Fund, IP Relay providers would be required to ensure that users of their IP Relay service register and have on file with the provider a profile that indicates the geographic location from which they are placing the IP Relay call. Calls could then be handled as follows, depending on the particular circumstances of the call: (1) if the caller is already registered with the provider, and is calling from the location indicated on the registration, the caller would need only to confirm that fact when asked by the CA during the call set up; (2) if the caller is already registered with the particular IP Relay provider, but is calling from a location different from that indicated on the registration, the caller would need to provide either the telephone number of the line through which they are contacting the IP Relay provider or, if the customer's internet connection is not via telephone line (*e.g.*, through the Internet via cable modem or other non-PSTN connection), the location or address from which he or she is calling; and (3) if the caller is *not* already registered with the IP Relay provider that he or she is using (*e.g.*, a first time user of that provider's service), the caller would be required to register with the IP Relay provider before the call is placed. Consumers would not be precluded from registering with more than one provider, and could even be encouraged to do so.

227. In such a manner, an IP Relay provider would be able to identify the location of a party using IP Relay – either from the caller profile of a registered user, the ANI of the Internet connection number, or directly from the caller, depending on the circumstances – and then be able to determine by

⁶⁴⁸ See *IP Relay Declaratory Ruling and FNPRM* at ¶ 43.

⁶⁴⁹ Commenters have asserted, for example, that the use of profiles, or mandatory registration of callers, is unpopular with users of IP Relay, and could discourage the use of IP Relay or lead callers to provide false registration information. See TDI Comments at 11; MCI (WorldCom) Comments at 4; Sprint Comments at 2-3; Hamilton Reply Comments at 4.

⁶⁵⁰ See, *e.g.*, www.iptrs.com/profile.html (Hamilton Relay's website).

⁶⁵¹ See 47 C.F.R. § 64.604(a)(2).

⁶⁵² We also acknowledge that a registration system may permit providers to charge for the long-distance portion of an IP Relay call, where currently consumers are not charged for such calls. We do not believe that this is a reason to reject registration as a means of determining which calls are interstate and which are intrastate. Free long-distance calls are not, and were never intended to be, an essential feature of IP Relay, but merely reflected a *quid pro quo* for the carrier-of-choice waiver.

reference to the telephone number of the other party to the call whether the call is intrastate or interstate. The IP Relay provider would then determine which calls are interstate and which calls are intrastate, and would receive reimbursement from the Interstate TRS Fund only for the interstate calls. We note that if such a scheme were adopted, we would also have to provide that IP Relay providers could not request or require other information from IP Relay users beyond that which would be necessary to determine the customer's location as part of the registration process. IP Relay providers could be required to clearly inform customers that any information they provide beyond telephone number or address for the purpose of determining interstate or intrastate jurisdiction is provided on a purely voluntary basis, as is the case currently with caller profiles.⁶⁵³ We seek comment on this issue as well.

228. We recognize that a registration requirement would affect the current structure of IP Relay. Currently, IP Relay providers operate on a national basis. These providers would likely have to establish a contract relationship with any state in which they desire to offer intrastate service in order to receive compensation for providing intrastate calling within that state.⁶⁵⁴ We would hope and expect that states would enter into contracts with one or more IP Relay provider for service to that state, although that concern would at least be partly satisfied if IP Relay were made a mandatory service, as addressed below. We seek comment on this concern and the issue of multi-vendoring in this context. We also recognize the possibility that some IP Relay users might falsify their registration information or, if they are calling from a location other where they are registered, might not so inform the provider, and therefore the call would be incorrectly viewed as intrastate instead of interstate (or vice versa). We note, however, that if IP Relay providers were able to continue their policies of not charging for long-distance calls,⁶⁵⁵ there will be little incentive for customers to falsify their registrations. Should IP Relay providers begin charging for long-distance calls, customers who have given false registration information to avoid long distance charges would risk the substantial penalties that can result from such illegal action. We also seek comment on this concern, and whether it might be necessary to also adopt procedures for the verification of registration information.⁶⁵⁶

229. We also seek comment on whether, as an alternative to adopting a mechanism by which IP Relay calls might be identified as either interstate or intrastate for purposes of cost reimbursement under section 225, such calls should be deemed inherently interstate and, if so, under what rationale such a conclusion could be based. We also seek comment on whether this conclusion would be consistent with the TRS scheme as intended by Congress. We further seek comment of what impact such a conclusion would have on the Interstate TRS Fund and, more broadly, on the provision of TRS services generally.

230. Finally, we seek comment on any other approaches to determining which IP Relay calls are interstate and which are intrastate. Since this issue was first raised, IP Relay providers, state TRS programs, IP Relay consumers, and others may have new ideas or concerns regarding the various

⁶⁵³ See *Improved TRS Order & FNPRM* at ¶¶ 77-84 (addressing TRS providers' use of customer information).

⁶⁵⁴ We note, for example, that in addition to its nationwide IP Relay, AT&T provides IP Relay via the Maryland Relay website. See www.relaycall.com/maryland/relay.html (Maryland Relay's IP Relay website).

⁶⁵⁵ In the *IP Relay Declaratory Ruling & FNPRM*, we waived the carrier-of-choice mandatory minimum requirement, see 47 C.F.R. § 64.604(b)(3), for IP Relay, noting the difficulty in determining whether or not a given IP Relay call was long-distance and the policy of providers to not charge for long distance. See *IP Relay Declaratory Ruling and FNPRM* at ¶ 31. We conditioned that waiver, however, on IP Relay providers continuing to offer free long-distance calls. *Id.* If we adopted a means of determining whether a particular IP Relay call is interstate or intrastate via a method that allows the determination of the customer's location, and therefore providers were able to determine whether a particular call is long distance, the carrier-of-choice waiver granted previously to IP Relay providers would likely no longer be necessary.

⁶⁵⁶ In this regard, we note that a registration scheme may have the collateral benefit of assisting in the prevention of credit card fraud and other illegal uses of IP Relay.

approaches to the this determination. We also seek comment on, if adopted, when the particular approach should be required to be implemented. We recognize that implementation any new compensation recovery scheme for IP Relay will take time and that, in particular, state TRS programs will need some time to plan for their assumption of the costs of the intrastate service. We emphasize that the alternatives we propose in this *FNPRM* with respect to determining whether an IP Relay call is interstate or intrastate are limited solely to this proceeding for the purpose of attempting to determine which IP Relay calls are interstate and which are intrastate, so that the Interstate TRS Fund compensates only the provision of interstate IP Relay calls.⁶⁵⁷

2. IP Relay as a Mandatory Form of TRS and Offered 24/7

231. Closely related to the issue of how to determine which IP Relay calls are interstate and which are intrastate is whether IP Relay should become a mandatory form of TRS service. We believe that since its inception in April 2002, the provision of IP Relay has sufficiently matured, and is sufficiently widespread, such that making IP Relay a mandatory service may not pose new burdens on IP Relay providers or state TRS programs.⁶⁵⁸ We also recognize that if IP Relay is not a mandatory service and states are required to assume the costs of intrastate IP Relay, there would be some risk that some states would elect not to offer the service.

232. We therefore seek comment on whether we should require IP Relay to be a mandatory form of TRS service and, if so, whether the effective date should be the same date as the implementation of a mechanism that determines which calls are interstate and which are intrastate. We also seek comment on any other issues that may be implicated by the decision to require IP Relay as a mandatory TRS service. In particular, we seek comment on whether IP Relay should be required to be offered 7 days a week, 24 hours a day either as a mandatory service or even if not made a mandatory service.⁶⁵⁹

3. Separate Rates for IP Relay and Traditional TRS

233. Currently, the Interstate TRS Fund administrator requests and analyzes separate data for the costs of providing IP Relay and traditional TRS, but these services are compensated at the same per-minute rate.⁶⁶⁰ We understand, however, that the cost of providing IP Relay may be less than the cost of

⁶⁵⁷ In this regard, we also emphasize that TRS calls are unique in that they are really two calls being handled simultaneously by the CA – for IP Relay calls, this means that one party (*i.e.*, the person with a hearing disability) is communicating with the CA via text and the Internet, and the other party is communicating with the CA via a PSTN telephone call. The CA is handling both calls at the same time, and relaying what was said by the voice caller by text to the person with the hearing disability, and relaying what was typed as text by the person with the hearing disability by voice to the hearing party. This is the accommodation required by Title IV of the ADA so that persons with hearing (and speech) disabilities have access to the telephone system. Therefore, our consideration of whether and how to determine which IP Relay calls are interstate and which are intrastate in this context in no way predisposes how the Commission may proceed with respect to issues relating to the jurisdictional nature of other IP-Enabled services, which are currently the subject of another proceeding. *See IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 (March 10, 2004).

⁶⁵⁸ According to NECA's May 2004 TRS Status Report, the total minutes of IP Relay usage in March 2004 was 5,234,048, which is more than double the 2,167,955 minutes of traditional TRS.

⁶⁵⁹ *See* 47 C.F.R. § 64.604(b)(4)(i) ("Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day.").

⁶⁶⁰ *IP Relay Declaratory Ruling & FNPRM* at ¶¶ 20-22. Every year the Interstate TRS Fund administrator sends a request for data to all interstate TRS providers, seeking costs and demand data for traditional TRS, IP Relay, STS and VRS. The cost data reported consists of annual actual costs, annualized actual costs, and estimated costs. From this data, the TRS Fund administrator develops the relevant projections for the costs, demand, and fund requirement for these forms of TRS for the next compensation cycle, as well as the proposed compensation rates. Although the

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providing traditional TRS; if that is true, providers of IP Relay may be overcompensated, and providers of traditional TRS may be under compensated. Because the TRS Fund Administrator already separately analyzes the cost data for these services, there would be no administrative burden to the Fund administrator in determining and proposing separate per-minute compensation rates for each service. Therefore, we seek comment on whether we should require the TRS Fund administrator to determine and propose, and the Commission to adopt, separate compensation rates for IP Relay and traditional TRS. We also seek comment on any other issues that may be relevant to determining whether these compensation rates should remain the same or should be separately determined for each service.

B. VIDEO RELAY SERVICE

1. Cost Recovery Methodology

234. As discussed above in the *Report and Order*, the Commission has not yet adopted a final cost recovery methodology for VRS. In the *Report and Order*, we extended the interim arrangement set forth in the *TRS Cost Recovery MO&O & FNPRM* that permits the compensation of eligible VRS providers using the average per minute compensation methodology used for traditional TRS. Given that only two parties filed comments to the *FNPRM* raising this issue, and that these comments were filed more than two years ago, we believe that the record should be refreshed on this issue.⁶⁶¹ We therefore request additional comment on the appropriate cost recovery methodology for VRS. In so doing, we acknowledge the unique characteristics of VRS, and recognize that since the Commission recognized VRS as a form of TRS in March 2000 providers have now had several years' experience in delivering this service, during which time this service has grown to its present usage of more than 700,000 minutes per month (a more than tripling in just the past year). In this light, we urge commenters to address in detail how the nature of VRS supports the cost recovery methodology they advocate, and how it is consistent with the cost reimbursement scheme set forth in section 225 and the Commission's rules.

235. Specifically, we seek comment on whether we should permanently adopt the current per minute compensation methodology for VRS, or whether that approach may be inappropriate for VRS. Particularly, we seek comment on what safeguards might be necessary to adopt if we permanently adopted the per minute compensation methodology, given that the volume of minutes of VRS calls has been rapidly growing and our concern that, given the likelihood of future volatile demand levels for this service, a compensation methodology that is based on predicted future demand levels may not result in a fair and reasonable compensation rate.

236. We also invite proposals for alternative cost recovery methodologies, which might include a lump sum payment or periodic payments of estimated actual costs with a "true-up" at the end of the fund year. With respect to the latter approach, we note the Commission has adopted such measures to "true up," or adjust, a carrier's per-line Interstate Common Line Support to account for differences between projected and actual cost data.⁶⁶² In that context, we expect that such a true up arrangement might minimize incentives for carriers to overstate projected interstate common line revenue

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Interstate TRS Fund administrator requests and analyzes separate data for IP Relay and traditional TRS, presently the services are compensated at the same rate.

⁶⁶¹ Sprint Comments to *TRS Cost Recovery MO&O & FNPRM*, filed January 29, 2002; MCI Comments to *TRS Cost Recovery MO&O & FNPRM*, filed January 29, 2002.

⁶⁶² See, e.g. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent LEC and IXCs*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 & 98-166, 16 FCC Red 19613 at ¶¶ 120-178 (Nov. 8, 2001) (*MAG Order*).

requirements, and provide support that reflects their actual costs.⁶⁶³ We seek comment on whether, and if so, how to apply such true up measures to VRS cost recovery.

237. Further, we seek comment on whether, under whatever cost recovery methodology we might adopt, we should clarify the data collection guidelines – set forth in 47 C.F.R. Parts 32 and 36⁶⁶⁴ – currently being used by the TRS fund administrator and the TRS providers, or whether we should adopt additional guidelines or rules, so that the reasonable costs incurred in the provision of VRS, given its unique characteristics, and for which providers are entitled to reimbursement, may be better ascertained for purposes of data submission to the fund administrator, and the calculation of the compensation rate. For example, although we have concluded that VRS is a “functionally equivalent” form of TRS service, it remains a relatively new technology, and some providers may choose to develop and provide advanced features which may go beyond “functional equivalency.” We therefore seek comment on what clarifications, or further guidelines or rules, we might adopt to assist both providers in submitting data reflecting the costs of providing the service, and the administrator and the Commission in reviewing such submissions, in identifying permissible engineering costs and determining reasonable levels of such costs for inclusion in the VRS compensation rate. In this way, we seek to give providers greater certainty that they will be compensated for the reasonable costs of providing VRS consistent with our rules.

238. Similarly, we note that, because of its unique characteristics, the labor costs of VRS constitute a significantly greater proportion of the overall costs of providing the service, as compared to the other forms of TRS. Therefore, we seek comment on ways by which we might clarify the guidelines, or adopt additional guidelines or rules, to ensure that providers are fairly compensated for the reasonable labor costs incurred in the provision of VRS, and also that providers are compensated for labor costs that represent an efficient utilization of labor and the provision of functionally equivalent VRS. Further, we seek comment on whether we should clarify the guidelines, or adopt additional guidelines or rules, to identify other cost elements incurred in the provision of VRS, and to determine reasonable levels of such costs, for which VRS providers are entitled to compensation under section 225 and the Commission’s rules. In providing such comment, we urge commenters to recommend methods to guide the allocation of costs incurred in the provision of service where necessary and appropriate to the provision of VRS to ensure that providers are compensated for the reasonable costs of providing VRS.

239. We also seek comment on whether we should continue to use, in determining the reasonable VRS compensation rate, the rate of return on capital investment developed by the Commission and applied in a wide range of other telecommunications contexts, or whether a different approach should be adopted in this context to compensate providers for their costs of capital. To the extent commenters suggest an alternative approach, we seek comment on the justification for such an approach and the departure from the present norm. Relatedly, we also seek comment on the appropriate treatment of tax allowances in connection with the determination of the VRS compensation rate.

240. In addition, as noted above, the Commission directed the administrator to fashion a form consistent with Parts 32 and 36 for purposes of obtaining the providers’ costs of providing eligible TRS services, so that the compensation rates for the various forms of TRS can then be determined based on these costs. We invite commenters to address the appropriateness of this approach as applied to the development of a permanent cost reimbursement methodology for VRS, and in response to the issues raised above concerning the further clarification of these guidelines, or the adoption of additional guidelines or rules, to identify the costs, and amounts of such costs, that should be used as inputs for a particular methodology in calculating a compensation rate for the providers’ reasonable costs of offering

⁶⁶³ *Id.* at ¶ 166.

⁶⁶⁴ *See See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report and Order, CC Docket No. 90-571, 8 FCC Rcd 5300 at ¶ 30 (July 20, 1993) (directing TRS fund administrator to fashion form consistent with Parts 32 and 36).

the service. To the extent that commenters propose that VRS should be treated differently from other TRS services with respect to cost compensation, we seek comment on the justification for such a departure. More broadly, we also seek comment on whether additional cost recovery guidelines or rules developed for VRS should also apply to the other forms of TRS eligible for compensation from the Interstate TRS Fund. In this regard, we remind commenters that although responses to these inquiries should be made in the context of the development of a permanent cost reimbursement methodology for VRS, such recommendations should also consider the universal applicability of proposed clarifications, or additional guidelines or rules, in the development of cost data to be factored into the development of an overall VRS compensation rate.

2. Determining which VRS Calls are Interstate and which are Intrastate

241. As we noted in the March 2000 *Improved TRS Order & FNPRM*, we authorized VRS providers to be compensated from the Interstate TRS Fund on an interim basis for all VRS calls (*i.e.*, whether intrastate or interstate).⁶⁶⁵ The driving factor behind that funding decision was the desire to promote the growth of VRS usage and technological development. We stated that compensation of all VRS calls from the Interstate TRS Fund “is a temporary arrangement” and that “[w]hen [VRS] develops to the point where it can be required, as we expect it will, we intend[ed] to revert to the traditional cost recovery mechanism.”⁶⁶⁶ As we have noted, VRS has flourished; minutes of use have risen from 7,215 minutes per month in January 2002, to 159,469 minutes per month in May 2003, to 381,783 minutes per month in December 2004, to 534,536 minutes per month in February 2004, and, most recently, to 709,718 minutes per month in March 2004.

242. We have raised above with respect to IP Relay the issue of whether and how to determine which calls are interstate and which calls are intrastate, so that the Interstate TRS Fund compensates only for the provision of interstate calls, and have sought comment on various approaches to doing so. We also seek comment on this same issue with respect to the provision of VRS. With VRS, like IP Relay, there is presently no means available to automatically determine the geographic location of the Internet-based leg of the call, and therefore there is no way to determine if a particular call is intrastate or interstate. A registration requirement, discussed above with respect to IP Relay, is one possible solution to that problem. Requiring the party to the call that is using the Internet to register and have a profile on file with the provider indicating the geographic location of that end of the call (or to otherwise inform the provider of his or her location) permits the TRS provider to determine whether the call is interstate or intrastate for cost recovery purposes. We also seek comment, however, on other approaches, including use of an allocator or other means of determining which VRS calls are interstate and therefore compensable from the Interstate TRS Fund. We also seek comment on whether it is appropriate or necessary that the same approach should be used for both IP Relay and VRS. Finally, as we also have with IP Relay above, we seek comment on whether VRS calls should be deemed inherently interstate for purposes of cost reimbursement under section 225 and, if so, under what rationale such a conclusion could be based. We also seek comment on whether this conclusion would be consistent with the TRS scheme as intended by Congress, and on its likely impact on the Interstate TRS Fund and, more broadly, on the provision of TRS services generally.

3. VRS as a Mandatory Form of TRS and Offered 24/7

243. We also seek comment on whether we should require VRS as a mandatory form of TRS, an issue we have also raised with respect to IP Relay, and, if so, what effect such an arrangement might

⁶⁶⁵ *Improved TRS Order & FNPRM* at ¶ 22.

⁶⁶⁶ *Id.* at ¶ 27.

have on our TRS rules.⁶⁶⁷ The rapidly growing minutes of use of VRS demonstrates that consumers increasingly prefer this service over traditional TRS. Further, as the Commission embarks on a broader initiative to stimulate the deployment of broadband services, we are mindful that VRS can improve existing services for persons with disabilities and can be a demand driver for broadband connections.

244. Relatedly, we seek comment on how this issue relates to the adoption of a mechanism to determine whether a particular VRS call is interstate or intrastate. As with IP Relay, we are mindful that if we adopt a mechanism to determine which calls are interstate and which are intrastate, and require the states to compensate providers for the intrastate calls, but the service is not mandatory, some states may elect not to fund intrastate VRS, so that consumers in those states would not have access to intrastate VRS. We therefore seek comment on whether we should require VRS as a mandatory service if, and when, a jurisdictional separation of cost scheme becomes effective for VRS, or whether these two issues need not necessarily be linked.

245. In addition, we seek comment on the potential implications of making VRS mandatory on: state TRS programs; the available labor pool of qualified interpreters; and the interpreters' working conditions, specifically the increased likelihood of repetitive motion injuries for interpreters. We are particularly concerned about whether there are sufficient numbers of interpreters in the labor pool such that if the provision of VRS were made mandatory, providers could hire a sufficient number of interpreters to handle the call volume.⁶⁶⁸ In this regard, we also seek comment on whether VRS should be required to be offered 7 days a week, 24 hours a day either as a mandatory service or even if not made a mandatory service,⁶⁶⁹ and in view of possible labor shortage issues. Finally, we seek comment on any other issues that may be relevant to adopting and implementing a mechanism to determine which VRS calls are interstate and which are intrastate and the possible mandatory provision of this service.

4. Speed of Answer

246. In the December 31, 2001, *VRS Waiver Order* various TRS mandatory minimum standards were waived for providers of VRS, including the speed of answer requirement.⁶⁷⁰ Although, as set forth above, we have extended these waivers and required the filing of annual reports, as part of this *FNPRM* seeking comment on a number of VRS issues we also seek comment on whether a particular speed of answer requirement should be adopted for VRS. We are aware that consumers have expressed some frustration over long wait times in placing VRS calls, a result at least in part due to the rapidly growing use of VRS by consumers. We recognize that long wait times undermine the notion of functional equivalency, mandated by Congress. We therefore seek further comment on what an appropriate speed of answer rule for VRS might be, whether it should be the same as the present rule for traditional TRS calls, when such a rule should become effective, whether there are a sufficient number of interpreters available to ensure that providers could meet a particular speed of answer rule, and how a

⁶⁶⁷ We note that on May 27, 2004, the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) filed a "Petition for Rulemaking" (Docket No. 98-67) requesting that the Commission make VRS a mandatory form of TRS. Because we are raising this same issue in this *FNPRM*, we hereby invite comment to the CCASDHH petition at the same time that we seek comment to the issues raised in this *FNPRM*.

⁶⁶⁸ We note that even in the March 2000 *Improved TRS Order & FNPRM*, which recognized VRS as a form of TRS but did not mandate that it be provided, we noted the "potentially inadequate supply of qualified [VRS] interpreters." *Id.* at ¶ 24. That, of course, was before the service was actually being provided, and now VRS usage has reached more than 700,000 minutes of usage a month.

⁶⁶⁹ See 47 C.F.R. § 64.604(b)(4)(i) ("Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day.").

⁶⁷⁰ See 47 C.F.R. § 64.604(b)(2) (requiring that 85 percent of all calls must be answered within 10 seconds). This rule is also referred to as the 85/10 rule.

particular rule might affect the cost of providing VRS. More generally, we seek comment on any other matters relating to the intent of the speed of answer rule in the context of VRS.

5. Data Reporting Period

247. Currently, our rules require that the Interstate TRS Fund administrator file with the Commission on May 1 of each year its proposed compensation rates for the various forms of TRS, which rates are to be effective for a one-year period beginning the following July 1.⁶⁷¹ With respect to VRS, the annual per-minute compensation rate has varied sharply from year to year, beginning at \$5.143 in July 2000, jumping to \$17.044 in July 2002, and then \$7.751 in 2003. We understand that this lack of consistency may make it difficult for VRS providers to plan and budget for the provision of this service, particularly with regard to labor costs and staffing. Moreover, as a general matter, the operating expenses for VRS are more complex than with the other forms of TRS, and overall the costs are higher. We therefore seek comment on whether the VRS compensation rate should be set for a two-year period, rather than a one-year period. We seek comment on whether such an arrangement would enable VRS providers to offer this service more effectively and efficiently over time, which might result in a downward pressure on the compensation rate. We also invite related proposals that might result in the more efficient provision of VRS.

6. Other VRS issues

248. Currently, our rules require that CAs, including VRS CAs, remain on the line with the caller for at least 10 minutes.⁶⁷² The purpose of this rule is to minimize any disruption to a TRS call.⁶⁷³ We note, however, that with VRS calls in some instances the caller using ASL and the VRS CA may not be able to understand each other because, *e.g.*, each uses a different style of sign language. In these circumstances, it may be that the VRS call can be more efficiently and effectively handled by a VRS CA other than the one who answered or initially handled the call, and therefore that the 10 minute rule should not apply in this context. We seek comment on whether we should adopt a different standard for the in-call replacement of CAs that applies to VRS calls and, if so, what that standard should be.⁶⁷⁴

249. We also seek comment on whether VRS CAs should be permitted to ask questions to the VRS user during call set-up so that the VRS CA can gain an understanding of the nature of the call before the CA begins relaying the call. As the Commission has explained, because of the limited, transparent role of a CA the completion of the initial call to the TRS facility, and the connection with a CA, is equivalent to receiving a dial tone.⁶⁷⁵ For this reason, and because the role of the CA is to relay the call back and forth between the parties as a transparent entity, CAs generally may not ask questions to the initiating party about the call. VRS, however, presents different challenges for CAs who have to deal with the complexities of sign language, including the fact that one sign can mean different things depending on the context. We therefore seek comment on whether our rules should be amended to expressly permit VRS CAs to ask the caller questions about the nature of the call during call set-up so that the CA has a basic understanding of the context of the call in order to better relay the call. We also seek

⁶⁷¹ 47 C.F.R. § 64.604(c)(5)(iii)(H).

⁶⁷² See 47 C.F.R. 64.604((a)(1)(v) (“CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes.”). This requirement is sometimes referred to as the “in-call replacement of CAs.” See *Improved TRS Order & FNPRM* at ¶ 67.

⁶⁷³ See *Improved TRS Order & FNPRM* at ¶¶ 67-69.

⁶⁷⁴ We noted that we adopted a different standard for STS because of concerns unique to that service; in that case, it was to adopt a *longer* period of time. See *Improved TRS Order & FNPRM* at ¶ 70 (adopting a 15 minute period for STS CAs because “changing CAs can be particularly disruptive to users with speech disabilities”).

⁶⁷⁵ See, *e.g.*, *Improved TRS Order & FNPRM* at ¶ 2; *Second Improved TRS Order & NPRM* at ¶ 5.

comment on how, if such questions are permitted, we may ensure that the VRS CA does not interfere with the independence of the caller should the caller choose to not answer the questions.

C. CERTIFICATION AND OVERSIGHT OF IP RELAY AND VRS PROVIDERS

250. As noted above, in the *Second Improved TRS Order & NPRM* we asked for comment on whether we should adopt rules whereby the Commission “certifies” providers as eligible to receive compensation from the Interstate TRS Fund. We have declined above to adopt any such new procedures at this time. Nevertheless, in view of the fact that we raise numerous issues in this *FNPRM* relating to the provision and compensation of IP Relay and VRS, we seek additional comment on whether the Commission, rather than the states, should “certify” and/or oversee providers of IP Relay and VRS to the extent they are eligible for compensation from the Interstate TRS Fund. We note that because for both of these services there are presently only a handful of national providers, which consumers can access via computer without regard to geographic location, it may be either unnecessary or unworkable to have all 50 states oversee these providers. We therefore seek comment on how the certification and oversight of IP Relay and VRS providers might fit with proposals for determining which calls are interstate and which are intrastate, as well as the possibility that they become mandatory services. We also seek comment on any other matters relating to the oversight and compensation of IP Relay and VRS providers under particular schemes we might adopt whereby states are responsible for the costs of intrastate IP Relay and VRS

D. TRS ADVISORY COUNCIL

251. In the 1993 *Third TRS Report & Order*, in which the Commission adopted the TRS cost recovery rules and appointed NECA as the interim Interstate TRS Fund administrator, the Commission also mandated the creation of an advisory committee to monitor cost recovery issues.⁶⁷⁶ The Commission directed NECA to “establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers.”⁶⁷⁷ The Commission further directed that each group will select its own representative to the committee, and the committee will “meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters.”⁶⁷⁸ The Commission stated that this committee would be a safeguard in view of comments noting that NECA was associated with one specific industry group, local exchange carriers.⁶⁷⁹ The Commission’s creation of this advisory committee is reflected in the TRS regulations.⁶⁸⁰ This committee is known as the TRS Advisory Council. Its bylaws state that its mission is to “advise the interstate TRS Fund Administrator on interstate TRS cost recovery matters.”⁶⁸¹

252. Since its inception, the TRS Advisory Council (Council) has met twice a year⁶⁸² to address matters concerning cost recovery and the Interstate TRS Fund. In addition, on several occasions the Commission has directed the Council, along with the TRS Fund Administrator, to develop cost

⁶⁷⁶ *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, CC Docket No. 90-571, FCC 93-357, 8 FCC Rcd 5300 at ¶ 8 (July 20, 1993) (*Third TRS Report & Order*).

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.*

⁶⁷⁹ *Id.*; see also *id.* at ¶ 5.

⁶⁸⁰ 47 C.F.R. § 64.604(c)(5)(iii)(H).

⁶⁸¹ *By-Laws of the Interstate TRS Fund Advisory Council*, adopted March 1995. In addition to monitoring the fund, the council has worked with the administrator to propose funding mechanisms for the various forms of TRS.

⁶⁸² 47 C.F.R. § 64.604(c)(5)(iii)(H).

recovery guidelines for various forms of TRS.⁶⁸³ Further, the Council plays a role in the TRS Fund administrator's annual proposal of the compensation rates for traditional TRS, IP Relay, STS, and VRS. As a general practice, after receiving and analyzing the cost data provided by the TRS providers, the TRS Fund administrator consults with the Council for final review and approval of the proposed compensation rates before submitting them to the Commission on May 1st of each year.⁶⁸⁴

253. We now recognize the need to reevaluate the appropriate mission of the Council. First, we note that over a several year period the VRS compensation rate rose dramatically from \$5.143 per minute to \$17.044 per minute,⁶⁸⁵ and that for the 2003-2004 fund year the VRS rate proposed by NECA was modified in the *Bureau TRS Order*.⁶⁸⁶ We are cognizant of our fiduciary responsibility to ensure the integrity of the Interstate TRS Fund, and note that although the Council has members that are TRS users and TRS providers, it does not have any members that represent the TRS Fund or the consumers of interstate telecommunications services from whom the "costs of interstate [TRS] shall be recovered."⁶⁸⁷ We therefore seek comment on whether the composition of the Council should be changed or expanded to include parties that represent the TRS Fund or any other relevant interests not currently represented on the Council.

254. More generally, we also seek comment on what the appropriate composition of the Council should be to ensure that all interested parties are fairly represented, and whether our rules should be amended in this regard. Further, we seek comment on whether a different nomination procedure should be adopted, instead of the current practice of self-nomination, to ensure that even among the identified groups there is broader opportunity for persons to be on the Council. Finally, we invite general comment on other ways in which the Council may play a more productive role in connection with the interstate TRS cost recovery scheme or, indeed, whether the Council is simply no longer necessary. We note that our rules do not elaborate the role of the Council other than to "monitor TRS cost recovery matters,"⁶⁸⁸ and we ask whether the Council's role should be expanded to include advising the fund administrator and the Commission on other TRS issues.⁶⁸⁹

E. ABUSE OF COMMUNICATIONS ASSISTANTS (CAs)

255. In recent years, the Commission has been made aware of various instances where TRS calls – particularly IP Relay and VRS calls – are made that are either directly abusive to the CAs or involve abusive, sexually explicit, or threatening language directed to the called party that the CA is asked to relay. An example of the first scenario is where the TRS user, instead of calling the TRS facility to "speak" to the called party, calls the TRS facility and makes abusive remarks directed at the CA. Another example is when both parties to the TRS call engage in sexually explicit and abusive language solely to hear the CA repeat the language or to read the words as typed by the CA. In the second scenario, the CA may be asked to relay a call that is essentially an "obscene" call directed at the called party, a call that threatens the called party, or a call that discusses past or future criminal conduct. There are also relay calls that present other scenarios, such as inappropriate conduct or language that the CA either sees as the

⁶⁸³ See, e.g., *TRS Cost Recovery Recommendations*, filed November 9, 2000; *IP Relay Cost Recovery Recommendations*, filed October 9, 2002.

⁶⁸⁴ See generally 47 C.F.R. § 64.604(c)(5)(iii)(H).

⁶⁸⁵ See, e.g., *Bureau TRS Order* at ¶29. The Commission noted that the VRS compensation rate jumped from approximately \$5 per-minute to \$17 per-minute in a two-year period.

⁶⁸⁶ *Id.* at ¶ 32.

⁶⁸⁷ 47 U.S.C. § 225(d)(3)(B).

⁶⁸⁸ 47 C.F.R. § 64.604(c)(5)(iii)(H).

⁶⁸⁹ See generally *Improved TRS Order & FNPRM* at ¶¶ 123-124 (noting discussion of quality issues).

call is relayed (with VRS) or must relay.⁶⁹⁰ As a general matter, we seek comment on the scope of this problem, the extent to which existing laws may apply to the various scenarios, and whether there are any steps the Commission might take, consistent with section 225, our regulations, and other applicable laws (including the First Amendment) to ensure that CAs are not subject to abusive conduct or language, and to preclude, or minimize to the extent possible, abusive, harassing, or obscene TRS calls directed at the called party.

256. This issue, of course, is framed by the role of a CA as a transparent entity who relays calls between the TRS users to provide functionally equivalent telephone service. Central to the goal of functional equivalency are our rules prohibiting CAs from “intentionally altering a relayed conversation” and, to the extent that “it is not inconsistent with federal, state, or local law regarding the use of telephone facilities for illegal purposes,” requiring CAs to “relay all conversations verbatim.”⁶⁹¹ In view of these rules, TRS providers have generally understood that they must relay all calls regardless of content, and that it is not the role of the TRS provider or the CA to act as a censor for calls they may deem inappropriate. These rules, however, were enacted before a large percentage of TRS calls migrated to IP Relay and VRS, platforms that provide anonymity to the user because the initial leg of the call to the CA is via the Internet.

257. We initially addressed this matter in our *TRS I* order released in July 1991.⁶⁹² In addressing TRS “Confidentiality and Conversation Content,” we noted that some commenters asserted that CAs should not be required to participate in “obscene or harassing calls.”⁶⁹³ We stated, however, that CAs are intended to be “transparent conduits relaying conversations without censoring or monitoring functions,” and that section 225 provides that CAs may not divulge the content of any relayed conversation.⁶⁹⁴ We noted that it is essential “that users of TRS can have confidence in the basic privacy of their conversations.”⁶⁹⁵ At the same time, we also noted other statutes permit or require disclosure in certain circumstances, citing section 705(a), which prohibits disclosure of any telephone conversation except under limited circumstances related to law enforcement.⁶⁹⁶ The Commission concluded that the limited law enforcement exceptions to nondisclosure in section 705 applied to TRS, but emphasized that “except for these very limited exceptions, CAs are prohibited from divulging the content or existence of any relayed conversation.”⁶⁹⁷

⁶⁹⁰ For example, a VRS CA may witness offensive and sexually graphic acts, or illegal acts (e.g., domestic violence or child abuse), either by the VRS caller or by individual(s) in the VRS caller’s background.

⁶⁹¹ See 47 U.S.C. § 225(d)(1)(F); 47 C.F.R. § 64.604(a)(2)(ii).

⁶⁹² *TRS I* at ¶¶ 11-15.

⁶⁹³ *Id.* at ¶ 12.

⁶⁹⁴ *Id.* at ¶ 13.

⁶⁹⁵ *Id.*

⁶⁹⁶ See 47 U.S.C. § 705 (Unauthorized Publication of Communications). Section 705(a) provides, in pertinent part, that “[e]xcept as authorized by chapter 119, title 18, United States Code, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority.” *Id.* (footnote omitted). Section 705 notes that 18 U.S.C. § 2511(2) authorizes certain interception of communications by communications common carriers and by the Commission. *Id.* at n.1.

⁶⁹⁷ *TRS I* at ¶ 14.

258. We also note that a TRS call, like any telephone call, is covered by section 223, which prohibits obscene or harassing telephone calls.⁶⁹⁸ The fact that a TRS call directed to a called party is obscene (and therefore illegal), however, does not directly address the obligation the TRS facility or CA may have to handle such call in confidence, or whether the TRS facility or CA should be able to terminate or decline to handle such calls. We therefore seek comment on whether existing laws adequately address this issue, or whether the Commission should adopt TRS rules directed at curbing abusive calls directed at the CA or the called party. In particular, we seek comment on what types of calls might be deemed to fall outside the scope of a TRS call so that TRS providers could, consistent with our rules, refuse to handle such calls. We also seek comment on whether the TRS provider or CA should, in any particular context, be given the discretion to make the determination that a call is abusive and can be terminated. With regard to VRS in particular, we also seek comment on appropriate CA conduct during idle time, confidentiality with respect to what is seen on the screen, and any other issues concerning the appropriate behavior and language of VRS CAs. Finally, we seek comment or other suggestions on how abusive calls can appropriately and effectively be handled by the TRS providers, the CAs, and the state TRS programs.⁶⁹⁹

VII. PROCEDURAL MATTERS

A. *Ex parte* Presentations

259. This *FNPRM* is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed.⁷⁰⁰

B. Regulatory Flexibility Act

260. As required by the Regulatory Flexibility Act (RFA),⁷⁰¹ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA), which is set forth in Appendix B. Also as required by the RFA,⁷⁰² the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FNPRM*. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the *FNPRM*, and should have separate and distinct headings designating them as responses to the IRFA. The Commission will send a copy of the *Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (Order)*, including the FRFA and IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

⁶⁹⁸ 47 U.S.C. § 223.

⁶⁹⁹ In *TRS I*, we also addressed the potential liability of CAs during the use of TRS for illegal purposes. *TRS I* at ¶ 15. We analogized to the service obligations of common carriers, noting that as a general matter “common carriers will not be criminally liable absent knowing involvement in unlawful transmissions.” *Id.* We stated that “CAs, in the normal performance of their duties, would generally not be deemed to have a ‘high degree of involvement or actual notice of an illegal use’ or be ‘knowingly’ involved in such illegal use.” *Id.* Commenters may also wish to address how the issue of potential CA liability might affect the adoption of new rules governing the TRS provider’s and CA’s obligation to handle, or discretion not to handle, all calls regardless of content.

⁷⁰⁰ See generally 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

⁷⁰¹ See 5 U.S.C. §§ 604. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷⁰² See 5 U.S.C. § 603.

C. Paperwork Reduction Act

261. The *Report and Order* contains new, modified or proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (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 or modified collection(s) contained in this item.

D. Comment and Reply Dates for FNPRM in CG Docket No. 03-123

262. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1415, 1.419, interested parties may file comments on or before 45 days after *Federal Register* publication, and reply comments on or before 75 days after *Federal Register* publication. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

263. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, NATEK, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325 Washington, DC 20554.

264. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, S.W., Room 6-C410, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CG Docket No. 03-123, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

VIII. ORDERING CLAUSES

265. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1,2, 4(i), 4(j), 201-205, 218, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 218, and 225, this REPORT AND ORDER, ORDER ON RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING are ADOPTED, and Part 64 of Commission's rules is AMENDED as set forth in the attached Appendix D, except that the requirements concerning the filing of annual reports subject to the PRA are not effective until approved by OMB. The Commission will publish a document in the *Federal Register* announcing the effective date of the reporting requirements

266. IT IS FURTHER ORDERED that Hamilton's Petition for Waiver Extension IS GRANTED to the extent indicated herein.

267. IT IS FURTHER ORDERED that Hands On's Petition for Waiver IS GRANTED to the extent indicated herein.

268. IT IS FURTHER ORDERED that Sprint's Petition for Declaratory Ruling, CC Docket No. 98-67 (filed May 27, 2003) (*711 Petition*) is GRANTED as provided herein.

269. IT IS FURTHER ORDERED that Hands On's Application for Certification as an Eligible VRS Provider (filed August 30, 2002) (*Hands On Application*) is DISMISSED without prejudice.

270. IT IS FURTHER ORDERED that Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief, CC Docket 98-67 (filed June 12, 2003) (*CSD Petition*) is DENIED as provided herein.

271. IT IS FURTHER ORDERED that the petitions of AT&T, CSD, Hands On, Sorenson, and Sprint for reconsideration of the *Bureau TRS Order* are DENIED.

272. IT IS FURTHER ORDERED that the Interstate TRS Fund shall compensate VRS providers at the rate of \$8.854 per completed interstate or intrastate conversation minute, which rate shall apply to the provision of eligible VRS services by eligible VRS providers effective September 1, 2003.

273. IT IS FURTHER ORDERED that interim per-minute compensation rates set forth in the *Bureau TRS Order* for traditional TRS, IP Relay, and STS are hereby adopted as the final compensation rates for such services for the period July 1, 2003, through June 30, 2004. These rates are \$1.368 per completed interstate conversation minute for traditional TRS and per completed interstate or intrastate conversation minute for IP Relay; and \$2.445 per completed interstate conversation minute for STS.

274. IT IS FURTHER ORDERED that, except as otherwise specifically provided herein, the *Bureau TRS Order* is AFFIRMED.

275. IT IS FURTHER ORDERED that petitions for reconsideration of *Telecommunication Relay Services and the Americans with Disabilities Act of 1990*, Fifth Report and Order, CC Docket No. 90-571, FCC 02-269, 17 FCC Rcd 21233 (Oct. 25, 2002) (*Coin Sent-Paid Fifth Report & Order*) are DENIED as provided herein.

276. IT IS FURTHER ORDERED that petitions for reconsideration of *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, CC Docket No. 98-67, FCC 03-112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order*) are GRANTED to the extent indicated herein.

277. IT IS FURTHER ORDERED that the amendments to sections 64.601 through 64.605 of

the Commission's rules as set forth in Appendix D ARE ADOPTED, effective thirty days from the date of publication in the *Federal Register*.

278. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER, ORDER ON RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

279. 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) 418-0531 (voice) or (202) 418-7365 (TTY). This *Order* can also be downloaded in Word and Portable Document (PDF) formats at <http://www.fcc.gov/cgb.dro>.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

IX. APPENDIX A**LIST OF PARTIES****List of Commenters to the *TRS Cost Recovery MO&O & FNPRM*⁷⁰³:**

MCI (WorldCom)
Sprint Corporation

List of Commenters to the *IP Relay Declaratory Ruling & FNPRM*⁷⁰⁴:

AT&T
Hamilton Relay, Inc.
Public Service Commission of the State of Missouri
Sprint Corporation
Telecommunications for the Deaf, Inc. (with National Association for the Deaf and Association of Late Deafened Adults)
Verizon
MCI (WorldCom)

List of Commenters to the *Second Improved TRS Order & FNPRM*⁷⁰⁵:

AT&T
AT&T Wireless
California Public Utility Commission
Communication Services for the Deaf
Florida Telecommunications Relay, Inc.
Hamilton Relay, Inc.
Hands On Video Relay Service, Inc.
Iowa Utilities Board (IA UB)
Public Service Commission of the State of Missouri
National Exchange Carrier Association
Relay Nevada Administrator
SBC
Sorenson
Sprint Corporation
Telecommunications for the Deaf, Inc.
Verizon

⁷⁰³ *Telecommunications Services for Individuals with Hearing and Speech Disabilities – Recommended TRS Cost Recovery Guidelines/Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22948 (Dec. 21, 2001) (*TRS Cost Recovery MO&O & FNPRM*).

⁷⁰⁴ *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 02-121, 17 FCC Rcd 7779 (April 22, 2002) (*IP Relay Declaratory Ruling & FNPRM*).

⁷⁰⁵ *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order & NPRM*).

Verizon Wireless
MCI (WorldCom)

Reply Comments filed by:

Hands On Video Relay Service, Inc.
Telecommunications Access of Maryland
Maryland Department of Budget and Management
National Exchange Carrier Association
OneWorld Communication
Oregon Public Utility Commission
SBC
Telecommunications for the Deaf, Inc.
T-Mobile
Verizon
Wireless RERC
MCI (WorldCom)

List of Commenters to the petitions for extension of the VRS Waivers⁷⁰⁶:

Communication Services for the Deaf, Inc.
Sorenson Media, Inc.
Sprint Corporation

List of Commenters to 711 Petition⁷⁰⁷:

AT&T
Telecommunications for the Deaf, Inc.
MCI (WorldCom)

Reply Comments were filed by:

Sprint
Telecommunications for the Deaf, Inc.

List of Commenters to the CSD Petition⁷⁰⁸:

Telecommunications for the Deaf, Inc.
Hands On Video Relay Service, Inc.

Reply Comments filed by:

⁷⁰⁶ Hamilton Relay, Inc., *Petition for Waiver Extension*, filed September 15, 2003; Hands On Video Relay Service, Inc., *Petition for Waiver*, filed September 22, 2003, AT&T Corp., *Petition for Limited Reconsideration and for Waiver*, filed September 23, 2003.

⁷⁰⁷ Sprint, *Petition for Declaratory Ruling*, CC Docket No. 98-67 (filed May 27, 2003) (*711 Petition*).

⁷⁰⁸ Communication Services for the Deaf, *Petition for Limited Waiver and Request for Expedited Relief*, CC Docket No. 98-67 (filed June 12, 2003) (*CSD Petition*).

Communication Services for the Deaf
Registry of Interpreters for the Deaf
Chicago Hearing Society
Texas Commission for the Deaf and Hard of Hearing (TCDHH)

List of Commenters to petition for reconsideration of the *Bureau TRS Order*⁷⁰⁹:

Hamilton Relay, Inc.
Telecommunications for the Deaf, Inc.
National Alliance of Black Sign Language Interpreters
Hands On Video Relay Services, Inc.
NorCal Center on Deafness
Registry of Interpreters for the Deaf

Avila, Fern
Babbitt, John
Baccus, Lori
Baker, Virginia
Barr, William V.
Borkowski, John A.
Bousseloub, Lyes
Byrnes, David R.
Clark, Margaret
Clark, Richard
Crouse, Daryl
Cudmore, Brenda
Dahan, Suzanne
Darden, Vicki L.
Dominy, Aurora
Duncan, Theodora
Dunn, Robert
Foreman, Angela Lee
Foshee, Eleanor R.
Freeman, John
Gerlis, Sean
Goff, James R.
Gonzalez, Randy
Gunderson, Jason
Gutsch, Elizabeth
Hafer, Sarah
Hall, Shari
Hughes, Patricia
Jacob, Philip
Jordan, I. King
Kelly, Ed
Kishpaugh, Brian
Klinefelter, Alvena

⁷⁰⁹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd 12823 (June 30, 2003) (*Bureau TRS Order*).

Klinefelter, Larry
Koch, Robert
Kostrubala, Christine
Koukoutakis, Pete
Kovacs, Ty
Kucharski, Andrew
LeBeau, G. Phillip
Lindgren, Victor
Lukacs, Saul
Lukowicz, Rick
Lytle, John T.
Mace, Mark
Malzkuhn, Brian
Manning, Steven
Michalik, Dana
Mikasa, Karl K.
Moccia, Kim
Moers, Betty Lou
Morrison, David Alan
Murray, Patrick M.
Myers, Mark and Alyssa
O'Toole, Diana
Oshman, Betty
Otani, Angela
Pellerin, Rene G.
Porter, Adeline
Posner, Erick H.
Quillen, Steven
Rabb, Thelma
Radonich, Charles
Radonich, Judy
Roth, Ellen
Roush, Dina Marie
Roush, Gary
Rudolf, Richard H.
Scheir, Eric
Schulz, Regina
Slater, Sandra
Stecker, Etta
Stecker, Rusty
Urness, Tiffany
White, Barry
Woodward, William

List of Commenters to petition for reconsideration of the *Coin Sent-Paid Fifth Report & Order*⁷¹⁰:

Coin Sent-Paid Industry Team (AT&T, BellSouth Telecommunications, Inc., Qwest, SBC, Verizon, and Hamilton)

⁷¹⁰ *Telecommunication Relay Services and the Americans with Disabilities Act of 1990*, Fifth Report and Order, CC Docket No. 90-571, FCC 02-269, 17 FCC Rcd 21233 (Oct. 25, 2002) (*Coin Sent-Paid Fifth Report & Order*).

List of Commenters to petitions for reconsideration of *Second Improved TRS Order & FNPRM*⁷¹¹:

The Frontier and Citizens Telephone Companies
Hamilton
MCI (WorldCom)
New York State Telecommunications Association, Inc.
SBC
Sprint
TDI Coalition
Ultratec
Verizon

⁷¹¹ *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order & NPRM*).

X. APPENDIX B**FINAL REGULATORY FLEXIBILITY ANALYSIS (CG DOCKET NO. 03-123)**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking (NPRM) to which this *Report and Order* responds.² The Commission sought written public comment on the proposals in the NPRM section of the *Second Improved TRS Order & NPRM*, including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

Need for, and Objective of, this Report and Order

2. This proceeding was generally initiated to establish technological advancements that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. This proceeding would ensure compliance with the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS.

3. The Commission issued the NPRM in the *Second Improved TRS Order & NPRM* to seek public comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of TRS users. In doing so, the Commission sought to enhance the quality of TRS and broaden the potential universe of TRS users, consistent with Congress's direction under 47 U.S.C. § 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology. The Commission sought comment on: (1) whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements were necessary for ensuring the security of IP Relay transmissions; (3) how TRS facilities might determine the appropriate PSAP to call when receiving an emergency 711 call via a wireless device; (4) whether wireless carriers should be required to transmit Phase I or Phase II E-911 information to TRS facilities; (5) whether certain additional features, services, or requirements should be required, namely non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, LEC offerings, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (6) issues concerning increasing public access to information and outreach; and (7) procedures for determining eligibility payments from the Interstate TRS Fund. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order & NPRM*).

³ See 5 U.S.C. § 604. We also expect that we could certify the *Report and Order* under 5 U.S.C. § 605 because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action.

and our ability to compel compliance with the federal mandatory minimum standards for TRS.

4. In this *Report and Order*, the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225. First, the Commission adopts the per minute reimbursement methodology for IP Relay.⁴ Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC.⁵ Third, the Commission grants VRS waiver requests⁶ of the following TRS mandatory minimum requirements: (1) types of calls that must be handled; (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; (5) pay-per-call services; (6) voice initiated calls –VCO and HCO; (7) provision of STS and Spanish Relay.⁷ Fourth, the Commission amends the definition of “711” by deleting the words “all types of” from the definition, in order to clarify its meaning.⁸ Fifth, in the *Order on Reconsideration*, the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay and STS that were established in the *Bureau TRS Order*.⁹ The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order*. Sixth, the Commission has amended the definition for an “appropriate” PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.¹⁰ These amended and new rules will improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.¹¹

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

5. No comments were filed directly in response to the IRFA in this proceeding. Furthermore, no small business issues were raised in the comments. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on at least one small entity that is a TRS provider. Accordingly, in consideration of this small entity and other small entities that may be similarly situated, we issue this final regulatory flexibility analysis rather than issue a final regulatory flexibility certification.

⁴ See *supra* section IV(B)(2).

⁵ See *supra* section IV(C)(3)(b)(iii).

⁶ See Appendix E, below.

⁷ See *supra* section IV(D)(2).

⁸ See *supra* section IV(E)(2).

⁹ See *Bureau TRS Order*.

¹⁰ See *supra* section V(C)(2).

¹¹ No changes were made to the following items proposed in the *NPRM*: (1) whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements are necessary for ensuring the security of IP Relay transmissions; (3) whether wireless carriers should be required to transmit Phase I or Phase II E-911 information to TRS facilities; (4) whether certain additional features, services or requirements should be required for non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (5) issues concerning increasing public access to information and outreach; and (6) procedures for determining eligibility payments from the Interstate TRS Fund.

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

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹² The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴ 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 A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁶

7. Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules.¹⁷ For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service Report*.¹⁸

8. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.¹⁹ This provides that such a carrier is small entity if it employs no more than 1,500 employees.²⁰ Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately 1,032 having 1,500 or fewer employees.²¹ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's. Therefore, the majority of entities in these categories are small entities.

9. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications

¹² 5 U.S.C. § 604(a)(3).

¹³ 5 U.S.C. § 601(6).

¹⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the 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."

¹⁵ 15 U.S.C. § 632.

¹⁶ 5 U.S.C. § 601(4).

¹⁷ *But see* note 3, *supra*.

¹⁸ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

¹⁹ 13 C.F.R. § 121.201, NAICS Code 517110.

²⁰ *Id.*

²¹ *Trends in Telephone Service* at Table 5.3.

business having 1,500 or fewer employees), and “is not dominant in its field of operation.”²² The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.²³ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.²⁴ This provides that such a carrier is small entity if it employs no more than 1,500 employees.²⁵ Commission data from 2001 indicate that there are 261 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees.²⁶ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA’s size standard. Consequently, we estimate that there are no more than 223 interexchange carriers that are small businesses possibly affected by our action.

11. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.²⁷ Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The Commission estimates that at least one TRS provider is a small entity under the applicable size standard. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities.²⁸ Consequently, the FCC estimates that at least one TRS provider is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. *Reporting and Recordkeeping.* This *Report and Order* may involve new mandatory reporting requirements. First, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber’s LEC and the TRS facility possesses the necessary technology to pass through the subscriber’s Caller ID information to the LEC.²⁹ However, the Commission does not adopt specific

²² 15 U.S.C. § 632.

²³ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²⁴ 13 C.F.R. § 121.201, NAICS Code 517110.

²⁵ *Id.*

²⁶ *Trends in Telephone Service* at Table 5.3.

²⁷ 13 C.F.R. § 121.201, NAICS Code 517110.

²⁸ MCI (WorldCom), for example, provides TRS in only a few states but is not a small business.

²⁹ See *supra* section IV(C)(3)(b)(iii).

requirements for the functionality of these features. We anticipate that TRS providers will offer these features to the extent, and in a manner, that is best suited to their facilities. Second, the Commission granted waiver requests of the Commission's mandatory minimum standards for VRS, providing that VRS providers submit annual reports to the Commission.³⁰ The report must be in narrative form detailing; (1) the provider's plan or general approach to meeting the waiver standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standard; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waivers should continue in effect. The report may be combined with the existing VRS/IP Relay reporting requirements scheduled to be submitted annually to the Commission on April 16th of each year. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

13. *Other Compliance Requirements.* The rules adopted in this *Report and Order* require that TRS facilities route emergency TRS calls to either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner to the designated PSAP to which a direct voice call from a non-TRS number would be delivered.³¹ Furthermore, the rules require that TRS facilities provide certain technological features including: anonymous call rejection, call screening, and preferred call-forwarding.³² These rules will affect TRS providers. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³³

15. One of the main purposes of this *Report and Order* and *Order on Reconsideration* is to clarify many of the current requirements for TRS providers. The *Report and Order* and *Order on Reconsideration* impose new and/or modified reporting requirements for TRS providers. In addition, they impose new service requirements. Because these new service requirements are similar to services currently being offered, the Commission expects a minimal impact on small business. First, the Commission permanently adopts the per minute reimbursement methodology for IP Relay. The per minute reimbursement methodology simplifies the compliance and reporting requirements for small entities by permanently adopting the interim methodology. Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and to the extent that the TRS facility will possess the necessary technology to pass through the subscriber's Caller ID information to the LEC. This new requirement does not adversely impact small business entities because these features are only required where it is technologically feasible to do so; the Commission does not require providers to purchase new

³⁰ See *supra* section IV(D)(2).

³¹ See *supra* section V(B)(2).

³² See *supra* section IV(C)(3)(b)(iii).

³³ See 5 U.S.C. § 603(c)(1)-(c)(4).

equipment or upgrade their equipment to accommodate these new requirements. Third, the Commission grants waiver requests of several TRS mandatory minimum requirements for VRS service. These standards were waived because the Commission determined that they were either technologically infeasible, extremely difficult to comply with given the infancy of the service, or they were more closely related to verbal communication, as opposed to a visual service. Furthermore, these waivers consolidate the reporting requirements for providers, and ensure that VRS facilities are only responsible for those rules that are technologically feasible. Therefore, these waivers have no adverse impact on small businesses. Fourth, the Commission amends the definition of “711” by deleting the words “all types of” from the definition, in order to clarify its meaning. This rule clarifies the definition of 711, thereby simplifying the application of the rule for TRS providers. This clarification has no adverse impact on small entities but, on the contrary, will benefit all entities equally. Fifth, in the *Order on Reconsideration*, the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay, and STS for the 2003-2004 fund year that were established in the *Bureau TRS Order*, and are effective from June 30, 2003, through the June 30, 2004, end of fund year. The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order*; the new rate is effective from September 1, 2003, through June 30, 2004. The new VRS compensation rate was established after review of supplemental expense and service data filed with the TRS administrator. The per minute reimbursement methodology takes into account the projected cost and demand data of all TRS providers for a given service. Therefore, it does not unduly burden small businesses. Sixth, the Commission has amended the definition for an “appropriate” PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner. The revision of this rule simplifies the ability of TRS providers to comply with the Commission’s emergency call handling requirement for TRS. The revision has no adverse impact on small entities.

16. Currently, most TRS providers are not small entities, and are either interexchange carriers or incumbent local exchange carriers, with very few exceptions.³⁴ The Commission refrained from requiring features such as interrupt functionality and talking return call because commenters expressed concern that such features might be cost prohibitive, and might be unduly burdensome to the TRS provider and the TRS user.³⁵ This *Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation. Because such cost-prohibitive and unduly burdensome measures were rejected by the Commission, no arbitrary and unfair burdens are thereby imposed on smaller entities.

Report to Congress

17. The Commission will send a copy of the *Report and Order* and *Order on Reconsideration*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁶ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order*, *Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the *Federal Register*.³⁷

³⁴ See ¶ 11, *supra*.

³⁵ See *supra* section IV(C)(3)(b)(iv).

³⁶ See 5 U.S.C. § 801(a)(1)(A).

³⁷ See 5 U.S.C. § 604(b).

XI. APPENDIX C**INITIAL REGULATORY FLEXIBILITY ANALYSIS (CG DOCKET NO. 03-123)**

1. As required by the Regulatory Flexibility Act (RFA),⁷⁴⁹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM*.⁷⁵⁰ Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.

Need for, and Objectives of, the *FNPRM*

2. The Commission is issuing this *FNPRM* to seek public comment on the cost recovery methodology for VRS, what type of mechanism the Commission might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate, whether IP Relay and VRS should become mandatory forms of TRS and offered 24/7; the appropriate composition and role of the TRS Advisory Council; certification and oversight of IP Relay and VRS providers; and the issue of abuse and harassment of TRS CAs. In doing so, the Commission hopes to enhance the quality of TRS, and broaden the potential universe of TRS users in a manner that will be consistent with Congress' mandate under 47 U.S.C. § 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology.

3. Specifically, the *FNPRM* seeks comment on several IP Relay related issues⁷⁵¹, including: (1) what type of mechanism the Commission may adopt to determine whether IP Relay calls are intrastate or interstate (so that states would be required to pay for intrastate IP Relay calls and the Interstate TRS Fund would continue to reimburse interstate IP Relay calls); (2) whether IP Relay should be a mandatory service and be offered 24/7; and (3) whether there should be separate compensation rates for traditional TRS and IP Relay. The Commission also seeks comment on several VRS related issues⁷⁵² including: (1) the appropriate cost recovery methodology for VRS; (2) what type of mechanism the Commission might adopt to determine which VRS calls are interstate and which are intrastate, (3) whether VRS should be a mandatory form of TRS and be offered 24/7; (4) whether a speed of answer rule specific to VRS should be adopted, and (5) whether the data reporting period for VRS should be different from the present one-year period. Additionally, the *FNPRM* seeks comment on certification and oversight of IP Relay and VRS providers.⁷⁵³ The Commission also seeks comment on whether the composition of the TRS Advisory Council should be changed or expanded to include parties that represent the Interstate TRS Fund or any relevant interests not currently represented by the Council.⁷⁵⁴ Finally, the *FNPRM* seeks comment on whether the Commission should adopt TRS rules to curb abusive calls directed at the CA or

⁷⁴⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷⁵⁰ See 5 U.S.C. § 603. We also expect that we could certify this action under 5 U.S.C. § 605 because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore there are not a substantial number of small entities that may be affected by our action.

⁷⁵¹ See *supra* section VI(A).

⁷⁵² See *supra* section VI(B).

⁷⁵³ See *supra* section VI(C).

⁷⁵⁴ See *supra* section VI(D).

the called party.⁷⁵⁵

Legal Basis

4. The authority for actions proposed in this *FNPRM* may be found in sections 1, 4(i) and (j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201-205, 218 and 225.

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁷⁵⁶ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷⁵⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷⁵⁸ 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).⁷⁵⁹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁷⁶⁰

6. Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules.⁷⁶¹ For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service Report*.⁷⁶²

7. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.⁷⁶³ This provides that such a carrier is small entity if it employs no more than 1,500 employees.⁷⁶⁴ Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately

⁷⁵⁵ See *supra* section VI(E).

⁷⁵⁶ 5 U.S.C. § 604(a)(3).

⁷⁵⁷ 5 U.S.C. § 601(6).

⁷⁵⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the 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."

⁷⁵⁹ 15 U.S.C. § 632.

⁷⁶⁰ 5 U.S.C. § 601(4).

⁷⁶¹ But see note 2, *supra*.

⁷⁶² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

⁷⁶³ 13 C.F.R. § 121.201, NAICS Code 517110.

⁷⁶⁴ *Id.*

1,032 having 1,500 or fewer employees.⁷⁶⁵ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,032 ILECS that are small businesses possibly affected by our action.

8. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”⁷⁶⁶ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.⁷⁶⁷ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.⁷⁶⁸ This provides that such a carrier is small entity if it employs no more than 1,500 employees.⁷⁶⁹ Commission data from 2001 indicate that there are 223 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees.⁷⁷⁰ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 181 interexchange carriers that are small businesses possibly affected by our action.

10. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.⁷⁷¹ Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses.⁷⁷² The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS

⁷⁶⁵ *Trends in Telephone Service* at table 5.3.

⁷⁶⁶ 15 U.S.C. § 632.

⁷⁶⁷ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

⁷⁶⁸ 13 C.F.R. § 121.201, NAICS Code 517110.

⁷⁶⁹ *Id.*

⁷⁷⁰ *Trends in Telephone Service* at Table 5.3.

⁷⁷¹ 13 C.F.R. § 121.201, NAICS Code 517110.

⁷⁷² See National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

service in a small area but they nevertheless are not small business entities.⁷⁷³ The FCC estimates that there is at least one TRS provider that is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. This *FNPRM* seeks comment on the adoption of a cost recovery methodology for VRS, and the possible means for determining which IP Relay and VRS calls are interstate and which are intrastate. The adoption of a cost recovery methodology for VRS other than the current per minute compensation methodology may require VRS providers to maintain different records, although there would be no new reporting requirements. The adoption of a mechanism to determine which IP Relay and VRS calls are interstate and which are intrastate would require providers to keep records of interstate and intrastate calls; it may also change the type of reports and recordkeeping that IP Relay and VRS providers maintain, depending upon how IP Relay and VRS providers are currently maintaining their records. Presently, IP Relay and VRS providers report their costs for all calls and their record of minutes provided to the Interstate TRS Fund Administrator.⁷⁷⁴ If a mechanism were adopted to determine which IP Relay and VRS calls were interstate and which were intrastate, IP Relay and VRS providers would need a database to keep a record of calls and minutes of use that differentiate between interstate and intrastate calls.

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

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take (among others) into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁷⁷⁵

13. The proposals in the *FNPRM*, and the comments the Commission seeks regarding them, result from the Commission's role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities.⁷⁷⁶ The guiding principles shaping these proposals come from Congress's requirement that TRS keep pace with advancing technology and that the Commission's rules should not discourage the implementation of technological advances or improvements, as well as the mandate that TRS services be functionally equivalent to voice telephone services.

14. The majority of TRS service is provided by large interexchange carriers and large incumbent local exchange carriers. Because we believe that few small business entities would be impacted by these proposals, and that the impact, if any, would be minor, it is premature to propose specific alternatives that would minimize significant economic impact on small businesses. Further, since we believe the essence of the rules we may adopt pursuant to this proceeding will confer the benefits of a more streamlined approach to administering TRS on all entities, including small entities, we are further persuaded that it would be premature to consider alternatives to the conferral of such benefits. However, we invite comment on specific alternatives that may minimize the economic impact of the proposed rules on small businesses.

⁷⁷³ MCI (WorldCom), for example, provides TRS in approximately only a few states but is not a small business.

⁷⁷⁴ See *supra* section VI(A) and (B).

⁷⁷⁵ 5 U.S.C. § 603.

⁷⁷⁶ See, e.g., 47 U.S.C. § 225.

Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules

15. None.

XII. APPENDIX D**FINAL RULES**

For the reasons discussed above, the Commission amends 47 C.F.R., Part 64, Subpart F as follows:

- 1. In Part 64, Subpart F, remove the words “Wireline Competition Bureau” and add, in their place, “Consumer & Governmental Affairs Bureau.”**
- 2. Section 64.601(1) is amended to delete the words “all types of” from the definition of *711*.**
- 3. Section 64.604(a)(4) is amended to delete the second sentence and in its place to insert: “An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.”**

XIII. APPENDIX E

SUMMARY OF IP RELAY AND VRS WAIVERS

	<u>IP Relay</u>	Expiration	Address in	<u>VRS</u>	Expiration	Address in
	<u>Providers</u>	Date	Annual Rep.	<u>Providers</u>	Date	Annual Rep.
1. STS	Waived ⁽³⁾	1/1/08	Yes, due 4/16	Waived ⁽¹⁷⁾	Indefinite	No
2. Spanish Relay				Waived ⁽¹⁸⁾	Indefinite	No
3. Types of Calls				Waived ⁽¹⁹⁾	1/1/08	Yes, due 4/16
4. Emergency Call Handling	Waived ⁽⁴⁾	1/1/08	Yes, due 4/16	Waived ⁽²⁰⁾	1/1/06	Yes, due 4/16
5. Speed of Answer				Waived ⁽²¹⁾	earlier of 1/1/06 or when new rule adopted	Yes, due 4/16
6. Equal Access to Interexchange Carrier	Waived ⁽⁵⁾	Indefinite	No	Waived ⁽²²⁾	1/1/08	Yes, due 4/16
7. Pay-per-call (900) Service	Waived ⁽⁶⁾	1/1/08	Yes, due 4/16	Waived ⁽²³⁾	1/1/08	Yes, due 4/16
8. Voice Carry Over (VCO) (one-line) ⁽¹⁾	Waived ⁽⁷⁾	1/1/08	Yes, due 4/16	Waived ⁽²⁴⁾	1/1/08	Yes, due 4/16
9. Hearing Carry Over (HCO) (one-line) ⁽²⁾	Waived ⁽⁸⁾	1/1/08	Yes, due 4/16	Waived ⁽²⁵⁾	1/1/08	Yes, due 4/16
10. VCO-to-TTY	Waived ⁽⁹⁾	1/1/08	Yes, due 4/16	Waived ⁽²⁶⁾	1/1/08	Yes, due 4/16
11. HCO-to-TTY	Waived ⁽¹⁰⁾	1/1/08	Yes, due 4/16	Waived ⁽²⁷⁾	1/1/08	Yes, due 4/16
12. VCO-to-VCO	Waived ⁽¹¹⁾	1/1/08	Yes, due 4/16	Waived ⁽²⁸⁾	1/1/08	Yes, due 4/16
13. HCO-to-HCO	Waived ⁽¹²⁾	1/1/08	Yes, due 4/16	Waived ⁽²⁹⁾	1/1/08	Yes, due 4/16

14. Call Release	Waived ⁽¹³⁾	1/1/08	Yes, due 4/16	Waived ⁽³⁰⁾	1/1/08	Yes, due 4/16
15. 3-way Calling	Waived ⁽¹⁴⁾	1/1/08	Yes, due 4/16	Waived ⁽³¹⁾	1/1/08	Yes, due 4/16
16. Speed Dialing	Waived ⁽¹⁵⁾	1/1/08	Yes, due 4/16	Waived ⁽³²⁾	1/1/08	Yes, due 4/16
17. Providing Service 24/7	Not required ⁽¹⁶⁾		No	Not required ⁽³³⁾		No

(1) We note that we have not waived the requirement to provide two-line VCO for either IP Relay or VRS. *See Second Improved TRS Order & NPRM* at ¶¶ 35-36.

(2) We note that we have not waived the requirement to provide two-line HCO for either IP Relay or VRS. *See id.*

(3) *IP Relay Order On Reconsideration* at ¶¶ 1, 13-14, 28.

(4) *Id.* at ¶¶ 7-12

(5) *IP Relay Declaratory Ruling & FNPRM* at ¶31.

(6) *IP Relay Order On Reconsideration* at ¶¶ 19-22.

(7) *Id.* at ¶¶ 1, 13-14, 28.

(8) *Id.* at ¶¶ 15-18.

(9) *Second Improved TRS Order & NPRM* at ¶¶ 35-36.

(10) *Id.* at ¶¶ 35-36.

(11) *Id.*

(12) *Id.*

(13) *Id.* at ¶ 76.

(14) *Id.*

(15) *Id.*

(16) *See* 47 C.F.R. § 64.604(b)(4) (“Relay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day.”). IP Relay is not a mandatory TRS service.

(17) *See TRS Cost Recovery MO&O* at ¶¶ 25-27; clarified *supra* at ¶¶ 138-139.

(18) *Id.*; clarified *supra* at ¶¶ 138-139.

(19) *VRS Waiver Order* at ¶¶ 9-10; extended *supra* at ¶¶ 113-115.

(20) *Id.* at ¶¶ 11-13; extended *supra* at ¶¶ 116-118.

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- (21) *Id.* at ¶¶ 15-16; extended *supra* at ¶¶ 119-123. The waiver of the speed of answer requirement for VRS will terminate at the time the Commission adopts a new speed of answer rule for this form of VRS, or January 1, 2006, whichever is sooner.
- (22) *Id.* at ¶¶ 17-18; extended *supra* at ¶¶ 124-129.
- (23) *Id.* at ¶¶ 19-20; extended *supra* at ¶¶ 130-132.
- (24) *See supra* at ¶¶ 134-135.
- (25) *Id.*
- (26) *Second Improved TRS Order & NPRM* at ¶¶ 35-36.
- (27) *Id.*
- (28) *Id.*
- (29) *Id.*
- (30) *Id.* at ¶ 76.
- (31) *Id.*
- (32) *Id.*
- (33) *See* 47 C.F.R. § 64.604(b)(4) (“Relay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day.”). VRS is not a mandatory TRS service.

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket 90-571, CC Docket 98-67) Order on Reconsideration; (CG Docket 03-123) Report and Order and Further Notice of Proposed Rulemaking.

Section 225 of the Act seeks to ensure access to communications facilities for all Americans. Today's Order empowers people with disabilities to participate in the information economy and reap its benefits equally with their neighbors.

Today's item takes another step toward fulfilling the goals of Title IV of the Americans with Disabilities Act by further refining the rules governing the provision of Telecommunications Relay Service (TRS). In so doing, we take a first step toward expanding the forms of TRS that will become mandatory TRS services. In addition, this Order gives relay providers the freedom to adapt their offerings to the needs of their customers. Features that they might offer such as automatic call-back, higher transmission speeds, and tighter security for IP Relay calls should represent value added benefits to consumers. At the same time, this Commission must exercise its oversight responsibilities to ensure that our TRS reimbursement mechanism does not become an unbounded source of funding for features that go well-beyond the TRS connectivity that so many people with disabilities depend upon.

Moreover, Video Relay Service (VRS) is an application spurring demand for broadband facilities. I am encouraged by this industry's ability to innovate and provide solutions for customers. The availability of these services reflects the vital role that broadband technology plays in improving consumers' lives, satisfying important social policy objectives, and driving our nation's economy. The possible expansion of TRS funding to include VRS will present difficult questions of federal authority as well as unique reimbursement questions. I look forward to hearing from the disability community as well as other stakeholders, as we tackle these issues together. Our Consumer and Governmental Affairs Bureau will continue to open their doors to interested parties who are legitimately concerned about issues that are vital to the daily lives of people with disabilities.

We are proud of the decade of expanded opportunity and enhanced communications that TRS has fostered. Support for Americans with disabilities is central to the FCC's agenda. Our efforts, however, are in no way complete. I look forward to the continued growth of TRS as well as policies that increase access to the information economy.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (CG Docket No. 03-123), Order on Reconsideration (CC Docket No. 98-67, CC Docket Nos. 90-571).

Telecommunications relay services have long played a vital role in enabling consumers with hearing or speech disabilities to communicate by telephone. In addition, Internet-Protocol technologies have led to vast service improvements for these consumers in recent years. In particular, video relay services enable deaf consumers to enjoy the sort of seamless conversations that hearing consumers take for granted. So I am pleased to support this Order, which addresses a number of outstanding questions regarding TRS providers' regulatory obligations, cost-recovery, and related matters.

I am especially pleased that the Order directs the Consumer and Governmental Affairs Bureau to step up its outreach efforts associated with TRS services. The Commission can play a critical role in informing both the deaf community and the public at large about the availability of TRS services and how these services function. I understand that people sometimes confuse relay calls with telemarketing calls and hang up based on a lack of awareness. We can and should address such problems by developing fact sheets and web-based resources, participating in conferences, and taking a variety of other steps. As the Order notes, the Commission does not have the authority or resources to fund a national television campaign, but we can nevertheless make great strides in improving public awareness.

All of us at the Commission fully support the TRS program and want to ensure that it provides the best possible experience for consumers. At the same time, we have a statutory obligation to ensure that providers recover their "costs" — and this entails not only an assurance of compensation but also a limitation on the amount of recovery from the government. Specifically, while providers are entitled to recover all of their direct costs plus a reasonable return on investment, the statute does not appear to permit mark-ups on ordinary expenses. I recognize that some TRS providers have continuing concerns regarding the cost-recovery methodology adopted by the Bureau and the fund administrator, and I hope that the Further Notice of Proposed Rulemaking we adopt today will help generate more clarity on this issue.

Finally, I am encouraged that we are seeking comment on whether VRS should become a mandatory service. Introducing the service on a voluntary basis made perfect sense given the state of the technology, but VRS usage may surpass traditional TRS in the not-too-distant future. Parties have raised significant questions as to whether there is a sufficient number of qualified interpreters to support a mandatory 24-hour service and whether relay providers will be able to comply with reasonable speed-of-answer requirements and other mandates. I look forward to addressing these and other issues in the further rulemaking.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket Nos. 90-57 & 98-67, CG Docket No. 03-123)*

Fourteen years ago, when Congress passed the Americans with Disabilities Act, it directed the Commission to do everything we could to ensure that those with disabilities have access to functionally equivalent services. That concept—functional equivalency—may sound inelegant, but it translates into equal opportunity, equal rights and a fuller participation in our society. It translates into 54 million Americans having more of the tools they need to be fully productive citizens.

In most ways, today's Order and Notice embraces this mandate of functional equivalency. It updates our rules, resolves open questions and clarifies the obligations of TRS providers. We also seek comment on how to address thorny jurisdictional questions that accompany new Internet services. And we ask if the time is right for VRS to become a mandatory service. These are good and positive steps. But in a few ways, today's Order falls short of the spirit and purpose of the Americans with Disabilities Act. For this reason, I support this Order, but not in two key respects.

I am disappointed with the position the Order takes affirming the Bureau's abrupt decision last year to slash in half the VRS compensation rate with less than twenty-four hours notice. As a general principle, people intuitively endorse lower rates, but here the providers of VRS were left wondering what costs were allowed and what costs were disallowed by a methodology that was employed with too little in the way of rules, standards or prior guidance from the Commission. More importantly, VRS consumers were stuck with the consequences. Service hours were cut without warning and long waits for communications assistants became common. As a result, the service missed the functional equivalency mark by a too wide margin. There are also issues of authority and notice that we do not straighten out and settle in this item. This is unfortunate. It leaves in legal limbo the "know-it-when-I-see-it" VRS cost standard used one year ago. I am pleased we ask questions about adopting guidelines and standards for reasonable costs in the Notice. This is the right thing to do. It will enhance our oversight and ensure the program functions with the integrity it must have. Nonetheless, I believe that what was done last year was without precedent and not right. On this issue, I respectfully dissent.

I also find troubling the conclusion that some forms of non-shared language TRS are not eligible for reimbursement. Latinos are now the largest minority group in the United States. There are thousands of deaf children from Spanish-speaking homes in this country. In fact, they are the fastest growing minority group in the deaf school age population in the United States. For this population to communicate in a functionally equivalent manner with their Spanish-speaking parents, we should be authorizing non-shared language VRS reimbursement. On this issue, I also dissent.

Finally, though I will support the position this decision takes on outreach, I remain concerned that we really need to do more to explain this service. Callers using relay service experience an unacceptably large number of hang-ups because people receiving TRS calls are not familiar with the service. Employment opportunities are not extended to individuals with hearing disabilities because some employers are uncomfortable using TRS for business transactions. This is unacceptable. In this Order, we expressly task the Consumer and Governmental Affairs Bureau to take concrete steps to improve public awareness. I believe that the Bureau is working to do a good job of outreach based on the resources available to it. Nevertheless, we task the Bureau very specifically here and I look to Chief Snowden and his team to do a banner job reaching out to familiarize the population at large with TRS. If

these efforts fail to produce the kind of wide-spread understanding we must have to ensure true functional equivalency, I will push hard for us to revisit this issue.

Thank you to the Consumer and Governmental Affairs Bureau for your hard work on this item. I look forward to working with the staff of the Disabilities Rights Office on the TRS issues we have teed-up in this Notice and other outstanding issues concerning handset hearing aid compatibility, digital captioning and IP services.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART**

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123.

Congress directed this Commission in section 225 of the Act to ensure that telecommunications services are available to hearing-impaired and speech-impaired Americans. To implement this directive, the FCC established the Telecommunications Relay Service (TRS) program, which requires telephone companies to provide relay services throughout the area in which they offer service so that persons with disabilities will have access to telecommunications services. Without federal and state TRS services, millions of Americans would be left out of the communications revolution that is reshaping our economy and society.

This Order makes two promises of future action that are particularly notable. First, the Order commits our Consumer and Governmental Affairs Bureau to launch a “comprehensive outreach plan” to make the availability of TRS services more widely known, not only to Americans with disabilities but to the public-at-large. Outside parties have repeatedly told us, and our own Consumer Advisory Council has concurred, that we must improve our efforts to inform and educate the public about the availability of TRS. Our commitment to take on this challenge is an important promise that we must live up to.

In this Order, we also commit to sponsor the applications of TRS service providers that seek priority status for restoration in emergency situations. Obtaining that status would be an important step towards ensuring that Americans with disabilities have access to communications services in times of crisis.

I cannot support this Order, however, to the extent that it declares all non-shared language TRS services to be “value-added” and ineligible for funding, particularly in the case of Video Relay Services (VRS). Our country is growing increasingly multi-ethnic and multi-cultural. A study by the Pew Hispanic Center reports that 40% of the 40 million Latinos in this country – or 15.5 million people – speak and understand “just a little” or “no” English. I believe the FCC and communications policy has got to keep up with this change and be more responsive to these communities.

I also must dissent in part with respect to our treatment of cost recovery issues for VRS. VRS is an increasingly important tool for those portions of the deaf community who rely on American Sign Language (ASL). This includes individuals who cannot type on a TTY phone easily, such as children and senior citizens, and those who do not speak English. VRS allows ASL and hearing individuals to have real time conversations that more closely mirror the speed and natural flow of voice-to-voice conversations.

In June 2003, the Consumer and Governmental Affairs Bureau reduced our TRS Administrator’s proposed VRS compensation rate by almost fifty-percent. That action left many VRS providers with no choice but to cut service or employees, elicited an outcry from many members of the deaf and heard of hearing community, and raised legitimate questions of substance and process. This Order falls short in addressing these concerns and issues.

It is absolutely critical that the Commission provide oversight to ensure that our VRS compensation rate is limited to “reasonable costs,” the standard articulated in our rules. We also have an obligation, however, to ensure that providers have adequate notice of how we will apply this standard, so that they can plan their operations accordingly.

I am pleased that the Further Notice attached to this Order seeks comment on how we can improve our rules and process for setting the VRS compensation rate. That is movement in the right direction. More broadly, the Further Notice also opens an important dialogue about whether VRS and Internet Protocol (IP) Relay Services should now qualify as mandatory services. The rapid increase in usage of VRS demonstrates the value of this service and hastens the day when this Commission will need to address technical issues about emergency call handling and the speed of answer for VRS calls.

I look forward to working with my colleagues, members of the TRS Advisory Committee, and the many members of the disabilities community on these issues as we move forward.