

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

In the Matter of Telecommunications Relay
Services, and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities)
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) CC Docket No. 98-67
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DECLARATORY RULING

Adopted: July 25, 2003

Released: August 1, 2003

By the Commission: Chairman Powell and Commissioner Copps issuing separate statements.

I. INTRODUCTION

1. In this Declaratory Ruling, we address a Petition for Clarification (Petition) filed by Ultratec, Inc. (Ultratec), on April 12, 2002. In its Petition, Ultratec explains that it seeks implementation of a captioned telephone service, which it calls CapTel, as an "enhanced voice carry over (VCO) service," and requests that the Commission clarify that this service is a telecommunications relay service (TRS) and eligible for reimbursement from the Interstate TRS Fund under the TRS rules. For the reasons discussed below, we find that captioned telephone VCO service is a type of TRS, and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. In addition, we clarify that certain TRS mandatory minimum standards do not apply to captioned telephone VCO service, and waive other TRS mandatory minimum standards for

1 Ultratec, Petition for Clarification Provision of Cost Recovery for CapTel, an Enhanced VCO Service filed April 12, 2002.

2 Voice Carry Over (VCO) service is a type of telecommunications relay service used by persons with hearing disabilities who are able to speak directly to the other end user. The communications assistant (CA) types the response back to the person with the hearing disability, but does not voice the conversation. See 47 C.F.R. § 64.601(10).

3 The term "telecommunications relay service" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment 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 impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device. 47 U.S.C. § 225(a)(3).

4 Ultratec Petition at 4.

5 See 47 U.S.C. § 225(d)(3).

captioned telephone VCO service, for all current and future captioned telephone VCO service providers, for the same period of time indicated herein, beginning on the date of release of this *Declaratory Ruling*.

II. BACKGROUND

2. Telecommunications Relay Service enables persons with hearing and speech disabilities to communicate by telephone with a hearing person through a TRS facility.⁶ TRS facilities have special equipment and are staffed by communications assistants (CA) who relay conversations between persons who use text telecommunications devices and persons who communicate by voice. In a traditional TRS call, the caller uses a text telephone (TTY) to dial the telephone number of the local TRS facility.⁷ For the TTY user, the first step – the inbound call to the TRS facility – is functionally equivalent to receiving a dial tone. The CA, in turn, places an outbound voice call from the TRS facility to the called party. The CA serves as the link in the conversation, converting all typed TTY messages from the TTY user into voice messages, and all voice messages from the called party into typed messages for the TTY user.⁸ The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user.⁹

3. Ultratec's captioned telephone VCO service is provided through the Public Switched Telephone Network (PSTN) using specialized customer premises equipment (CPE) and Ultratec's proprietary technology. Ultratec's captioned telephone service uses a telephone that looks similar to a traditional telephone but also has a text display that allows the user, on one standard telephone line, to both listen to the other party speak and simultaneously read captions of what the other party is saying.¹⁰ This way, a typical user of this service, who has the ability to speak and some residual hearing, can both listen to what is said over the telephone and read captions for clarification. A CA using specially developed voice recognition technology generates the captions.

4. To use this service, the captioned telephone user dials the number he or she wishes to

⁶ 47 U.S.C. § 225.

⁷ Individual TRS facilities have their own TRS access numbers (usually toll-free numbers). In addition, some state TRS programs have separate numbers for voice and TTY access. Effective October 1, 2001, TRS centers can be accessed by dialing 711. In addition to dialing their state TRS access numbers for both interstate and intrastate relay calls, TRS users may also dial a toll-free number to reach alternative providers for interstate service.

⁸ See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-56, 15 FCC Rcd 5140, at ¶ 2 (2000) (*Improved TRS Report and Order*).

⁹ We refer to "traditional TRS calls" as those TRS calls accomplished via text-to-voice or voice-to-text, with the text provided via TTY. Such calls are provided through the public switched telephone network (PSTN). There are several types of traditional TRS calls, including Voice Carry Over and Hearing Carry Over (HCO). Hearing Carry Over (HCO) service is a type of telecommunications relay service used by persons with speech disabilities who are able to listen to the other end user, but in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. See 47 C.F.R. § 64.601 (7). Other forms of TRS calls include Speech-to-Speech (STS), IP Relay, and Video Relay Service (VRS). STS is a form of TRS that allows persons with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words as spoken by the person. IP Relay allows TRS users to communicate with voice users through an Internet service provider. VRS allows TRS users to communicate with voice users through video equipment installed at the user's premises and at the relay facility. IP Relay and, as a general matter, VRS, use the internet for one leg of the call. See In the Matter of 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*, 17 FCC Rcd 7779, at ¶ 3 (2002) (*IP Relay Declaratory Ruling*); *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶ 21.

¹⁰ Ultratec *Petition* at 6.

call.¹¹ The user is automatically connected to a captioned telephone CA at the TRS facility.¹² The specialized TRS facility equipment, in turn, automatically connects the captioned telephone user's line to a second outgoing line from the TRS facility to the called party. The captioned telephone user does not need to dial an 800 or 711 exchange to reach the TRS facility and set up the call, nor is there any interaction with the CA (by either party to the call). The CA, instead of typing what the called party says, repeats or re-voices what the called party says and voice recognition technology automatically transcribes it from the CA's voice into text, which is then transmitted directly to the user. The use of voice recognition technology allows the captions to appear on the captioned telephone nearly simultaneously with the called party's spoken words.¹³ Throughout the call the CA is completely transparent and does not participate in the call by voicing any part of the conversation.¹⁴

5. Calls may be placed *to* captioned telephone users via a toll free access number. The caller is prompted by a recording to enter the number he or she wishes to call and the call is automatically processed.¹⁵ A caller using a touchtone telephone enters the called party's number directly via the touchtone keypad, while a rotary telephone user is prompted to say out loud the number he or she wishes to call. There is no CA interaction with the calling party for call set up or at any time during the call.¹⁶

6. On July 26, 2002, Ultratec's *Petition* was placed on Public Notice.¹⁷ A number of parties filed comments, and three parties filed reply comments. Commenters represent common carriers, organizations representing the deaf community, public officials, and over thirty individuals participating in captioned telephone trials.¹⁸ All parties filing comments, except AT&T, support Ultratec's *Petition*.

III. DISCUSSION

A. Statutory Definition of TRS

7. As we have noted, the Communications Act defines TRS as "telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment 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 impairment or speech impairment to

¹¹ *Id.* at 6.

¹² Because, in Ultratec's CapTel service, calls placed through the captioned telephone CPE go directly to the TRS facility (even though the user has dialed the number of the person the user wishes to call), consumers will have to individually subscribe to this service in order to use it. As noted below (note 48), however, consumers cannot be required to pay for this service to the extent it is a type of TRS under the Commission's rules.

¹³ Ultratec *Petition* at 6.

¹⁴ *Id.* at 6-7.

¹⁵ *Ex Parte* letter from Ultratec, Pamela Holmes, Director, Consumer & Regulatory Affairs for Ultratec, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 3, 2002 (*Ultratec Ex Parte Letter*).

¹⁶ *Id.*

¹⁷ *Pleading Cycle Established for Comments on Petition for Clarification on the Provision of and Cost Recovery for Captioned Telephone as an Improved Voice Carry Over Service for Telecommunications Relay Service*, Public Notice, 17 FCC Rcd 11,933 (2002) (*Ultratec CapTel Petition Public Notice*).

¹⁸ *See, e.g.,* Comments filed by AT&T Corp. (AT&T), July 26, 2002; Hamilton Relay, Inc. (Hamilton), July 26, 2002; WorldCom Inc. (WorldCom), July 26, 2002; State of Wisconsin Department of Electronic Government (Wisconsin State), July 26, 2002; National Association for the Deaf (NAD), July 26, 2006; Telecommunications for the Deaf (TDI), July 26, 2002; *see also* Reply comments filed by Ultratec, Inc., August 12, 2002 (Ultratec Reply Comments); Sprint Corporation (Sprint), August 12, 2002; Self Help for Hard of Hearing People (SHHH), August 12, 2002. *See also Ultratec Ex Parte Letter; Ex Parte* letters filed by TDI, May 20, 2003, and May 22, 2003.

communicate using voice communication services by wire or radio.”¹⁹ Since TRS calls handled via captioned telephone VCO service fall squarely within this definition – *i.e.*, they allow communications between persons with hearing or speech disabilities and persons without such disabilities – we conclude that captioned telephone VCO service falls within the statutory definition of TRS.

8. In enacting section 225, Congress did not narrow its definition of TRS only to a specific category of services otherwise defined in the Communications Act, such as "telecommunications services."²⁰ Rather, Congress used the broad phrase "telephone transmission services" that is constrained only by the requirement that such service provide a specific functionality. The requisite functionality is that the service provides the ability for an individual who has a hearing or speech impairment to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of individuals without any such impairment to do so.²¹ Congress further provided that TRS includes “services that enable two-way communication between an individual who uses a TDD [*i.e.*, TTY] or other nonvoice terminal device and an individual who does not use such a device.”²² In this context, we have found that the phrase "telephone transmission service" used in section 225 should be interpreted broadly to include any transmission service (involving telephonic equipment or devices) to the extent that such transmission provides the particular functionality that the definition specifies.²³

9. This conclusion follows from the overall purpose of section 225, which is to "ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."²⁴ Further, section 225 specifically directs us to "ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Communications Act, the use of existing technology and do not discourage or impair the development of improved technology."²⁵ As we have previously concluded, we believe our interpretation of the definition of TRS is therefore consistent with the mandate of section 225(d)(2) because it is technology-neutral and will not impair use of any existing technology or discourage development of new technology.²⁶ Rather, this definition encompasses all transmission using telephonic equipment or devices, so long as the requisite functionality is provided.

10. In this light, the types and forms of relay services that we have found to fall within the definition of TRS have neither been static nor limited to relay services involving a TTY or the PSTN. From the onset, VCO has been a recognized type of TRS. In the Commission’s 1991 *First Report and Order*, which adopted the TRS regulations, the Commission required that VCO be a standard feature of TRS, concluding that VCO (along with Hearing Carry Over (HCO)) was “essential to implement

¹⁹ 47 U.S.C. § 225(a)(3).

²⁰ Telecommunications service is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). Information service is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20).

²¹ 47 U.S.C. § 225(a)(3).

²² *Id.*

²³ See, e.g., *IP Relay Declaratory Ruling*, 17 FCC Rcd 7779, at ¶10.

²⁴ 47 U.S.C. § 225(b)(1).

²⁵ 47 U.S.C. § 225(d)(2).

²⁶ See, e.g., *IP Relay Declaratory Ruling*, 17 FCC Rcd 7779, at ¶10.

functionally equivalent TRS.”²⁷ Further, in the *Improved TRS Report and Order* we added speech-to-speech (STS) and interstate Spanish relay services as required forms of TRS, and also found that VRS is a form of TRS.²⁸ In the *IP Relay Declaratory Ruling* we further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS.²⁹ We concluded that “TRS calls handled via IP Relay allow people with hearing or speech disabilities to communicate with people who do not have such disabilities,” and that IP Relay “also enables two-way communication between an individual who uses a nonvoice terminal (a computer, PDA, Web-capable telephone, or pager device) and an individual who does not use such a device.”³⁰ Based on these factors, “[the Commission] conclude[d] that IP Relay also meets the functionality requirements of Section 225 and thus satisfies the definition of ‘telecommunications relay services’ pursuant to the Act.”³¹

11. As we have noted, VCO is a type of TRS where a person with a hearing disability, but who is able to speak, can speak directly to the other party; in return, a CA types the response back to the VCO user, which the VCO user reads as text. Current VCO technology utilizes one standard telephone line that transmits either text or voice (but not both at the same time). It also does not allow the individual with a hearing disability to make use of his/her residual hearing to hear any portion of the other party’s spoken dialogue (or environment sounds).³² The VCO user receives what the calling party is saying only by reading it as text, which is typed by a CA. Captioned telephone VCO service is an alternative type of VCO. It permits the user to simultaneously *both* hear what the other party is saying (with whatever amount of hearing the user may have) *and* read what the other party is saying. In the context of traditional TRS, the only way to achieve similar functionality – hearing and reading together – is by using “two-line VCO” (2LVCO). 2LVCO, however, requires two telephone lines, three-way calling, the ability to set up the call, and the cognitive ability to do so quickly before the call is disconnected.³³

12. Because TRS calls handled via captioned telephone VCO service, like present VCO, allow people with hearing or speech disabilities to communicate with people who do not have such disabilities, we conclude that captioned telephone VCO service meets the functionality requirements of section 225 and thus satisfies the definition of “telecommunications relay services” set forth in that provision. This conclusion is consistent with previous Commission decisions, noted above, finding that other services providing the same functionality are TRS, as well as the underlying purpose of section 225 and section 7(a) of the Act.

13. As we have noted, all parties filing comments support Ultratec’s *Petition* except AT&T. AT&T objects to Ultratec’s *Petition*, asserting that it is premature for the Commission to make any final determination of the status of captioned telephone service under the TRS statutory and regulatory requirements.³⁴ AT&T argues that before acting on Ultratec’s *Petition*, the Commission should wait until

²⁷ See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Report and Order and Request for Comments*, 6 FCC Rcd 4657, at ¶ 24 (1991) (*First Report and Order*).

²⁸ See *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶¶ 15, 22, 29.

²⁹ See *IP Relay Declaratory Ruling*, 17 FCC Rcd 7779, at ¶ 11.

³⁰ *Id.*

³¹ *Id.*

³² Ultratec *Petition* at 10.

³³ SHHH Comments at 1.

³⁴ AT&T Comments at 2.

all state trials, including those pending, are completed and the final results of such trials are reported.³⁵ AT&T proposes that after final results of the trials are reported, the Commission should initiate a proceeding to evaluate the technical, operational, and cost issues raised by captioned telephone service, thereby allowing the Commission and other interested parties an opportunity to fully evaluate data concerning the provision of this service. AT&T asserts that a more complete record will enable the Commission to better assess all elements of captioned telephone service, including both customer acceptance of the service and any operational and technical issues presented by the provision of such a service.³⁶ Additionally, AT&T asserts this is the same approach the Commission took in adopting VRS and IP Relay service.³⁷

14. We disagree with AT&T that we should wait until all captioned telephone trials have been completed before acting on Ultratec's *Petition*. As Sprint points out, the Commission's findings on VRS were based upon limited tests conducted in one state, Texas, by Sprint, and the Commission's findings on IP Relay were primarily based on WorldCom's limited offering of the service.³⁸ In both of these cases, the Commission, as it has done with Ultratec's *Petition*, sought public comment on the services in question.³⁹ In response to the Public Notice issued in this proceeding, we received comments from industry, organizations representing the deaf community, public officials, and consumers, thereby establishing a complete record upon which to base our decision that captioned telephone VCO service is a form of TRS VCO service under section 225 and our TRS rules.

15. Additionally, as the Commission noted in the *Improved TRS Report and Order*, Congress realized that to fully participate in society individuals must be able to call friends, family, businesses and employers, and therefore the purpose of section 225 is to give people with hearing or speech disabilities access to the telephone network.⁴⁰ Although the Commission did not establish a single, formal process for determining when new types of service or equipment fit the statutory definition, the Commission did encourage parties to petition for a determination as to whether a service or equipment falls within the definition of TRS.⁴¹ We agree with commenters⁴² that this approach encourages the development of innovative TRS and facilitates the speedy approval of such new technology, thereby advancing the objectives of the Americans with Disabilities Act and section 225.⁴³ We also agree with the National Association for the Deaf (NAD) that captioned telephone service is an example of just the type of

³⁵ *Id.* at 1-2. AT&T states that captioned telephone trials in Maryland began on March 5, 2002 and were scheduled to run until November 2002, with a possible three-month extension; Wisconsin captioned telephone trials began October 1, 2001, and were scheduled to be completed on June 30, 2002. Captioned telephone trials in some states remain ongoing, although most are expected to end shortly.

³⁶ *Id.* at 3-4.

³⁷ AT&T Comments at 2-3.

³⁸ Sprint Reply Comments at 3.

³⁹ See Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, CC Docket No. 90-571, *Notice of Inquiry*, 12 FCC Rcd 1152 (1998); Consumer Information Bureau Seeks Additional Comment on the Provision of Improved Telecommunications Relay Service, DA 01-1555, *Public Notice*, 16 FCC Rcd 13,100 (2001)

⁴⁰ *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶13.

⁴¹ *Id.*

⁴² See Wisconsin Department of Electronic Government Comments at 4-5; Sprint Reply Comments at 4.

⁴³ Title IV of the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69; 47 U.S.C. § 225.

advancement that the Commission contemplated when it called for innovation in TRS.⁴⁴

16. In sum, we find that that captioned telephone VCO is a type of TRS VCO service under section 225. Specifically, captioned telephone VCO service is simply an innovative way of providing VCO TRS service. Captioned telephone VCO service offers consumers the benefit of operating more like conventional voice telephone service, with direct dialing of the called party's number and the nearly simultaneous delivery of the actual voice of the called party and written text of what the called party has said as generated by the CA re-voicing the message. The record reflects that it is less intrusive and more natural for the call participants, and that users who become hearing impaired later in life may find it easier to adjust to captioned telephone VCO service than to traditional TRS services.⁴⁵ Therefore, captioned telephone VCO service will reach a segment of the population that has traditionally not been well serviced by current TRS options.⁴⁶ Finally, just as VRS has allowed greater functional equivalence in telecommunications for callers who use sign language, we believe that captioned telephone VCO service will provide greater functional equivalence for those people who prefer VCO TRS and use this technology.

17. We recognize that Ultratec's captioned telephone service is presently being provided via proprietary CPE equipment and technology (known as "Fastran").⁴⁷ Moreover, currently Ultratec is the only company offering to TRS providers any type of captioned telephone VCO service. To avoid authorizing a particular proprietary technology, rather than a particular functionality or service, we define the captioned telephone VCO service that we recognize as TRS in this *Declaratory Ruling* as any service that uses a device that allows the user to simultaneously listen to, and read the text of, what the other party has said, on one standard telephone line. TRS providers, therefore, that may choose to offer captioned telephone VCO service are not bound to offer any particular company's service.

B. Payment from the Interstate TRS Fund

18. In enacting section 225, Congress provided for the compensation of TRS providers for their costs of providing TRS.⁴⁸ There are two aspects to the cost recovery framework: (1) collecting money from various telecommunications services 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, on a per minute basis, for the costs of providing eligible TRS services.⁴⁹ As with all jurisdictional cost-recovery mandates, section 225's cost recovery scheme distinguishes between interstate and intrastate TRS.⁵⁰ These provisions provide 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."⁵¹ As a general matter, the costs of

⁴⁴ NAD Comments at 1. *See also Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶ 13.

⁴⁵ Wisconsin Department of Electronic Government at 2.

⁴⁶ Hamilton Comments at 4; SHHH Reply Comments; Wisconsin Department of Electronic Government at 1.

⁴⁷ Ultratec *Petition* at 9.

⁴⁸ 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).

⁴⁹ 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); *see generally* 47 U.S.C. § 225(d)(3).

⁵⁰ *See, e.g.*, 47 U.S.C. §§ 225(c), (d)(3); 47 C.F.R. §§ 64.603, 64.604(c)(5).

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

providing intrastate TRS are recovered by each state.⁵² No specific funding method is required for intrastate TRS or state TRS programs.⁵³ 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. With respect to interstate TRS, the Commission has enacted a shared-funding mechanism based on contributions from all carriers who provide interstate services. All contributions are placed in the Interstate TRS Fund, which is administered by the TRS Fund administrator, presently the National Exchange Carrier Association (NECA).⁵⁴ The administrator uses these funds to compensate eligible TRS providers for the costs of providing interstate TRS.⁵⁵

19. In its *Petition*, Ultratec clarifies that it is not seeking classification of captioned telephone VCO service as a mandatory component of TRS, but rather as an “optional service eligible for interstate cost recovery.”⁵⁶ Ultratec does not indicate whether it believes that *all* captioned telephone VCO calls should be supported by the Interstate TRS Fund, as is presently the case with VRS and IP Relay, or just those that are interstate.⁵⁷ Ultratec also does not indicate any reimbursement rate that it believes should be applicable to the provision of captioned telephone VCO service.

20. Telecommunications for the Deaf (TDI) and Sprint, however, request that for the present time all costs associated with captioned telephone VCO service should be recovered from the Interstate TRS Fund, regardless of whether the call is intrastate or interstate.⁵⁸ TDI notes that in the *Improved TRS Report and Order* the Commission concluded, in addressing cost recovery for VRS, that section 225 does not require the Commission to strictly follow a jurisdictional separation of costs in all cases.⁵⁹ TDI asserts that because of the experimental nature of captioned telephone technology, the Commission would be justified in making such service an exception to section 225’s general requirement that the costs of intrastate and interstate calls be treated separately. TDI also asserts that because captioned telephone service is still in its infancy, funding all calls from the Interstate TRS Fund is the best way to promote the offering and use of this service. Sprint asserts that permitting all calls to be reimbursed from the Interstate TRS Fund, as is presently the case with VRS, will encourage the rapid proliferation of

⁵² The costs of providing certain types of intrastate TRS, including Video Relay Service (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. In the *Improved TRS Report and Order* we concluded that, as a temporary measure, VRS providers could be compensated for the costs associated with providing both interstate and intrastate VRS. *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶ 26. And in the *IP Relay Declaratory Ruling*, we similarly concluded that, on an interim basis, providers of IP Relay may seek compensation from the Interstate TRS Fund for providing both interstate and intrastate IP Relay. *IP Relay Declaratory Ruling*, 17 FCC Rcd 7779, at ¶ 20.

⁵³ 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(d)(3)(B).

⁵⁴ See 47 C.F.R. § 64.604(c)(5)(iii).

⁵⁵ 47 C.F.R. § 64.604(c)(5)(iii)(E) & (F).

⁵⁶ Ultratec *Petition* at 5 n.1.

⁵⁷ See *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶26; *IP Relay Declaratory Order*, 17 FCC Rcd 7779, at ¶22.

⁵⁸ See TDI Comments at 3; Sprint Comments at 5.

⁵⁹ TDI Comments at 3; citing to *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶ 26, wherein the Commission adopted “special funding arrangements for VRI [VRS] service, where it is provided, by allowing the costs of all calls – both interstate and intrastate – to be reimbursed from the interstate TRS Fund, while we continue to evaluate the issues surrounding mandating VRI [VRS] service.”

captioned telephone service throughout the United States.⁶⁰ TDI and Sprint agree that an interstate funding mechanism for captioned telephone service, if adopted, should be reviewed in three years to provide the proper balance of regulatory certainty, the encouragement of providers to enter the market, and the flexibility to adapt to change as needed.⁶¹

21. While no party opposed TDI and Sprint's recommendation that all costs associated with captioned telephone VCO service be reimbursed from the Interstate TRS Fund, we find it inappropriate to adopt such a funding scheme. Although the Commission has previously recognized that the word "generally" in section 225 gives us some discretion to fund intrastate services from the Interstate TRS Fund,⁶² we find no compelling reason to exercise that discretion in this case. The Commission used this "special" funding mechanism for VRS to encourage a new technology, reduce costs, and spur industry and consumer investment in the equipment and technologies necessary for VRS. By contrast, in the current situation, as Self Help for Hard of Hearing People (SHHH) points out, captioned telephone service is not so much a new relay service as a more advanced and functionally equivalent way of providing VCO that uses one standard telephone line using the PSTN.⁶³ Further, although the Commission allowed the costs of all IP Relay TRS calls to be recovered from the Interstate TRS Fund, it did so on an interim basis because of the need to quickly adopt a compensation methodology for IP Relay (among other competing compensation proposals) to encourage the development of this service.⁶⁴ We also note that, unlike both VRS and IP Relay service, because captioned telephone service uses the PSTN it can be readily determined whether a particular call is interstate or intrastate. For these reasons, we deny TDI and Sprint's request to allow the costs of all captioned telephone calls – intrastate and interstate – to be recovered from the Interstate TRS Fund.

22. Accordingly, we direct the administrator of the Interstate TRS Fund, NECA, to reimburse eligible providers who choose to provide *interstate* captioned telephone VCO service for their cost of providing such service. Such compensation shall be paid for captioned telephoned VCO relay services provided after the release date of this *Declaratory Ruling*. Compensation shall be based on the monthly minutes of use, in accordance with the rules established for the Interstate TRS Fund.⁶⁵ As Ultratec did not provide any information on costs associated with the offering of captioned telephone service, we will direct NECA to use the PSTN-based traditional TRS per minute reimbursement rate for interstate captioned telephone VCO calls.⁶⁶ State TRS programs, of course, are free to offer this service and to reimburse the providers of intrastate captioned telephone VCO service as they see fit.

23. Finally, because presently captioned telephone VCO service is provided by only one company using proprietary technology, we direct NECA to exclude all costs of providing this service, including the cost of captioned telephone CPEs, as well as the projected minutes of use of this service, in determining the reimbursement rate for traditional TRS (which, as noted, is the rate we apply in this *Declaratory Ruling* to captioned telephone VCO service).⁶⁷ At the same time, we direct providers of

⁶⁰ Sprint Reply Comments at 5.

⁶¹ TDI Comments at 5; Sprint Reply Comments at 5.

⁶² *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶ 26.

⁶³ SHHH Reply Comments at 2.

⁶⁴ *See IP Relay Declaratory Order*, 17 FCC Rcd 7779, at ¶ 20.

⁶⁵ 47 C.F.R § 64.604(c)(5)(iii)(E).

⁶⁶ We note that this is the rate that applies to VCO calls as well. *See Proposed Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services (TRS) Fund for July 2002 through 2003, Public Notice*, DA 02-1422, CC Docket No. 90-571 (2002).

⁶⁷ We note that although the providers' projected minutes of use of captioned telephone VCO service shall not be used in determining the reimbursement rate for traditional TRS that will apply to this service, the Interstate TRS

captioned telephone VCO service to submit their cost and use data specific to the provision of this service to NECA so that we will be able to monitor and review the costs associated with this new service.

C. Mandatory Minimum Standards

24. Our rules set forth operational, technical, and functional mandatory minimum standards that TRS providers must meet.⁶⁸ 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 Fund for the provision of TRS, the provider must either meet the mandatory minimum standards or request and receive waivers of the standards.

25. Ultratec requests clarification and/or waiver of certain mandatory minimum standards as applied to captioned telephone VCO service, including those requiring STS and HCO, and others addressing 711 dialing access, communications assistants, and the use of ASCII⁶⁹ and Baudot⁷⁰ formats.⁷¹ Further, a commenter asserts that we should permit captioned telephone CAs to interrupt the conversation to ask the speaker to slow down if the captioned text is lagging too far behind the conversation.⁷²

26. In analyzing the applicability of our TRS mandatory minimum standards to captioned telephone service, we consider established legal standards for waiver pursuant to section 1.3 of the Commission's rules.⁷³ The Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."⁷⁴ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."⁷⁵ The Commission must take a "hard look" at applications for waiver⁷⁶ and consider all relevant factors when determining if good cause exists.⁷⁷ The party

(...continued from previous page)

Fund administrator should include its projection of the minutes of use of this service in determining the Interstate TRS Fund size estimate and carrier contribution rate. As we explained in the June 30, 2003, TRS rate order, in determining the reimbursement rate for each type of relay service the Interstate TRS Fund administrator uses projected costs and minutes submitted by providers in the annual relay center data collection. *See* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Order*, CC Docket No. 98-67, DA 03-2111 at par. 9 & n.36 (rel. June 30, 2003). This approach is used in this context because the providers' costs are directly related to their demand forecasts. *Id.* By contrast, in determining the fund size estimate and carrier contribution rate, the administrator uses its own projection of minutes of use based on recent actual minutes of use modified by a growth factor, which is based on historical data and trends analysis. This typically produces a larger number of projected minutes than the providers' projections, and helps to guarantee that the Interstate TRS Fund has sufficient monies to cover the compensation of all providers for all of their services in the covered year. Any excess monies are carried over into the next fund year.

⁶⁸ *See* 47 C.F.R. § 64.604.

⁶⁹ ASCII is an "acronym for American Standard Code for information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher." 47 C.F.R. § 64.601(3).

⁷⁰ Baudot is a "seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at 45.5 baud rate." 47 C.F.R. § 64.601(4).

⁷¹ *See Ultratec Ex Parte Letter.*

⁷² *See* Comments filed by David Coco, Ph.D.

⁷³ 47 C.F.R. § 1.3.

⁷⁴ *FPC v. Texaco, Inc.*, 377 U.S. 33, 39 (1964).

⁷⁵ 47 C.F.R. § 1.3.

⁷⁶ *FPC v. Texaco, Inc.*, 377 U.S. 33, 39 (1964).

⁷⁷ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

petitioning the Commission for a waiver bears the heavy burden of showing good cause: “[an] applicant [for a waiver] faces a high hurdle even at the starting gate.”⁷⁸ 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.”⁷⁹ Finally, a waiver of one or more portions of the Commission’s rules does not excuse an applicant from compliance with the Commission’s other requirements.⁸⁰

27. Applying these standards, we find good cause exists to grant, to the extent indicated below, the requested waivers and clarifications, and that doing so is in the public interest. These waivers and clarifications shall apply to captioned telephone VCO service as indicated below. The waivers of certain mandatory minimum standards applicable to CAs are conditioned upon the providers’ filing annual reports with the Commission detailing their compliance with this *Declaratory Ruling* and any technological advances that may enable captioned telephone service providers to meet these waived standards.⁸¹ With regard to the other waivers and clarifications set forth below, because they are not based on the technological infeasibility of meeting the particular requirements, but rather on the fact that such requirements are simply inapplicable to this type of TRS, we do not condition these waivers on the filing of annual reports.

1. Waiver of Speech-to-Speech (STS) and Hearing Carryover (HCO) Requirements

28. Ultratec asks that we clarify that the TRS mandatory minimum standards pertaining to STS and HCO are not applicable to captioned telephone service because this service is merely a subset of the VCO service.⁸² As we have noted, STS is a form of TRS that allows persons with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words as spoken by the person.⁸³ HCO is a type of TRS used by persons with speech disabilities who are able to listen to the other end user, but in reply, the CA speaks the text as typed by the person with the speech disability.⁸⁴

29. We agree that the mandatory minimum standards relating to STS and HCO should be waived for captioned telephone VCO service. Captioned telephone VCO service is a particular type of TRS defined by its use of specialized CPE equipment, specialized TRS facility equipment, and voice recognition technology used by a CA so that a person with some residual hearing can speak to the other party and in return both listen to what the other party is saying and read text of what that party is saying. This service, therefore, is simply not able to handle STS or HCO relay calls. In other words, as Ultratec notes in its reply comments,⁸⁵ these other relay services provide particular functionalities that do not

⁷⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁷⁹ *Northeast Cellular Telephone Company, L.P v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸⁰ See 47 C.F.R. § 1.3; *Part 68 Waiver Request of Alameda Engineering Inc., et al, Order*, 10 FCC Rcd 12135, 12139 (1995).

⁸¹ We have previously conditioned waivers of our TRS mandatory minimum standards on the filing of annual reports. See, e.g., *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration*, CC Docket No. 98-67, FCC 03-46, 68 FR 18825 (rel. March 14, 2003).

⁸² *Ultratec Petition* at 21. We note that Ultratec also seeks waiver of VRS. Since, however, VRS is not a mandatory form of TRS, a TRS provider is not required to offer this service; therefore, no waiver is necessary.

⁸³ See 47 C.F.R. § 64.601(11).

⁸⁴ See 47 C.F.R. § 64.601(7).

⁸⁵ *Ultratec Reply Comments* at 22.

apply to captioned telephone calls: STS users rely on special CAs to re-voice what they have said, but since they can hear the called party's response they do not rely upon printed text; HCO users rely on the CA to speak the text as typed, but do not rely on printed text as the HCO user can hear the called party's response.⁸⁶

30. We note that no commenters objected to Ultratec's request for waiver of these TRS mandatory minimum standards.⁸⁷ WorldCom, however, notes that Ultratec failed to provide evidence that it is technologically infeasible for captioned telephone to meet these TRS requirements, but supports permanent waiver of these TRS mandatory minimum standards if such evidence can be provided.⁸⁸ SHHH specifically supports the waiver of these standards, stating that STS and HCO users will not want to use captioned telephone, as neither STS nor HCO involve transcription of speech into text by a CA.⁸⁹ SHHH, however, asserts that it objects to permanent waivers on the grounds of technological infeasibility "as [technological infeasibility] is usually a temporary condition."⁹⁰ SHHH points out, for example, that initially there were objections to requiring VCO as a mandatory relay service on the grounds that it was technologically infeasible to provide such service, but that the development of VCO technology removed these objections.⁹¹

31. Although we agree with SHHH that permanent waivers should not be granted on the basis of technological infeasibility, since to do so could inhibit the development of new and progressive technology, in this instance the issue is not one of technological feasibility but rather of whether a particular type of TRS must also provide the functionality of all other forms and types of TRS. We find that in those instances, such as with captioned telephone VCO service, where certain TRS mandatory minimum standards inherently do not apply to a particular service, those standards should be waived. Therefore, we grant captioned telephone service providers waiver of our TRS mandatory minimum standards addressing STS and HCO.

2. 711 Dialing Access

32. In the *Second Report and Order*, the Commission required nationwide access to TRS via the abbreviated dialing code 711 to ensure easy access to all required forms of TRS.⁹² At the same time, the Commission encouraged the continuation of alternate, direct access numbers to reach particular types of relay services. The Commission concluded that these direct access numbers would enable frequent

⁸⁶ Analogously, we note that previously we concluded that providers of VRS need not provide STS. In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, and Request by Hamilton Telephone Company for Clarification and Temporary Waivers, *Memorandum Opinion and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 22, 948 (2001). We noted that "[t]he nature of VRS is very different from STS; STS is a speech-based service that involves the use of specially trained CAs who are able to understand and repeat the words of individuals who have speech patterns that are difficult to understand, while VRS is a visual service that utilizes interpreters to interpret sign language over video facilities." *Id.* at ¶ 26.

⁸⁷ We note that AT&T did not comment on Ultratec's request for waiver of these TRS mandatory minimum standards.

⁸⁸ WorldCom Comments at 3.

⁸⁹ SHHH Reply Comments at 2-3.

⁹⁰ *Id.* at 3.

⁹¹ *Id.* See also *First Report and Order on TRS*, 6 FCC Rcd 4657, at ¶ 24.

⁹² The Use of N11 Codes and Other Abbreviated Dialing Arrangements, *Second Report and Order*, 15 FCC Rcd 15,188 (2000) (*N11 Second Report and Order*). See also 47 C.F.R. § 64.603 (requiring access via the 711 dialing code).

users of specific services, such as traditional text-based TRS, HCO, VCO, and STS, to maximize call-processing efficiency.⁹³

33. Ultratec seeks waiver of this TRS mandatory minimum standard for both inbound and outbound calls. With respect to outbound captioned telephone calls, Ultratec asserts that it is impossible for a captioned telephone user to dial 711 to make a captioned telephone call, because the captioned telephone is designed to automatically dial the captioned telephone service when the user dials the number of the called party, and therefore the captioned telephone user never interacts with a CA to set up an outbound call.⁹⁴ With respect to inbound calls to a person using captioned telephone service, Ultratec notes that the service provides for a toll-free number that, when called, prompts the caller to dial the number of the person they are calling and then the call is automatically processed. Ultratec acknowledges, however, that it is technologically feasible for an inbound caller to dial 711, interface with a CA, and then have the call routed to the appropriate captioned telephone service center trunk together with the number to be dialed. At the same time, Ultratec asserts that such a procedure would add substantial delays and cost to making an inbound captioned telephone call, and is at odds with one of the central features of captioned telephone service, which is that the CA is completely transparent throughout the call.⁹⁵

34. We agree that providers of captioned telephone VCO service should not be required to provide 711 access for outbound captioned telephone calls, and therefore waive that requirement for such calls. As Ultratec has explained, there is no need to set up an outbound captioned telephone call because the service is designed so that the calling party simply dials the number of the called party and then is automatically connected to the captioned telephone service and the CA.⁹⁶ Requiring captioned telephone providers to permit 711 access for outbound captioned telephone VCO calls reduces its functional equivalency. 711 access simply complicates an advancement in TRS that provides the identical functionality available to voice telephone users: the calling party makes a call by dialing the number of the party he wishes to call. For this same reason, it is unlikely that a captioned telephone user would ever want to dial 711 when placing a captioned telephone VCO call.⁹⁷

35. With respect to inbound calls – *i.e.*, the ability to place calls *to* a captioned telephone user – we waive the requirement to provide access via 711 for one year. The Commission implemented 711 dialing not only for the convenience of persons with hearing disabilities in placing TRS calls, but also to facilitate calls from voice users who may be unfamiliar with TRS.⁹⁸ Therefore, voice callers and persons with disabilities who are unfamiliar with TRS generally or with captioned telephone service, trying to reach a captioned telephone user, should be able to reach such a user by dialing 711. Otherwise, if the calling party does not know or have available the captioned telephone service 800-number, the calling party may be able to place only a traditional TRS call via 711, and thereby the called party (the captioned telephone user) will be deprived of his or her preferred method of relay service (*i.e.*, captioned telephone VCO service). At the same time, however, we recognize that the present record is limited with respect to

⁹³ *Id.* at ¶ 28.

⁹⁴ Ultratec Reply Comments at 23. We note, however, that a captioned telephone can also be used as a regular telephone, in which case a user could make a TRS call by dialing 711 or any other number of a TRS service. When the telephone is used in that manner, however, it is not being used as captioned telephone.

⁹⁵ *Id.*; *see also* Ultratec *Petition* at 6-7.

⁹⁶ Ultratec *Petition* at 6.

⁹⁷ At the same time, we note that if a provider decides to offer a captioned telephone VCO service that does not include this “dial-through” feature, *see* Ultratec *Petition* at 11, but instead requires that the call be initiated or set up through a CA, this rule will apply.

⁹⁸ *N11 Second Report and Order*, 15 FCC Rcd 15,188, at ¶14.

this issue. Therefore, we waive for one year the requirement that providers offer access via 711 to captioned telephone service for inbound calls made to a captioned telephone user. This one-year waiver will give providers time to either come into compliance with this aspect of the Commission's 711 access rules or make a showing to the Commission that a continued waiver is in the public interest.

3. Communication Assistants

36. Ultratec seeks clarification and waiver of several mandatory minimum standards that apply to CAs.⁹⁹ First, Ultratec seeks clarification that its voice recognition technology (Fastran) can be used to meet the CA's competency skill requirements, and that the requirement that CAs be competent in interpretation of typewritten ASL is not applicable to captioned telephone CAs.¹⁰⁰ Second, Ultratec seeks clarification that the oral-to-type test requirement for captioned telephone CAs can be interpreted as being an oral-to-text test.¹⁰¹ Third, Ultratec seeks waiver of the requirement that CAs cannot refuse single or sequential calls.¹⁰² Finally, Ultratec seeks waiver of the CA gender preference requirement.¹⁰³

37. As set forth below, we clarify Ultratec's voice recognition technology can be used to meet the CA's competency skill requirements, and waive the TRS mandatory minimum standard requiring CAs to be competent in interpretation of typewritten ASL as applied to captioned telephone CAs. We also grant waiver of the CA oral-to-type test requirement and permit the use of an oral-to-text test instead for captioned telephone VCO CAs. Further, we grant waiver of the requirement that CAs not refuse single or sequential calls as applied to captioned telephone CAs handling *outbound* captioned telephone calls. These waivers are conditioned upon the providers filing annual reports, for a period of three years, with the Commission detailing their compliance with this Order and any technological advances that may enable captioned telephone service providers to meet these waived standards. We grant waiver of our gender preference mandatory minimum standard as applied to captioned telephone VCO calls.

a. CA's competency skill requirements.

38. Commission rules require that CAs have competent skills in typing, grammar, spelling, and interpretation of typewritten American Sign Language (ASL), and that CAs type at a minimum speed of 60 words per minute.¹⁰⁴ Ultratec seeks clarification that its voice recognition technology (Fastran) can be used to assist CAs in achieving the required competency skill levels.¹⁰⁵ Ultratec notes that captioned telephone CAs do not, for the most part, rely on their own grammar, spelling, or typing skills, as the majority of text transcription is verbatim through the voice recognition technology. Ultratec also notes that the use of voice technology increases the speed and accuracy of the CA's response well-above the 60

⁹⁹ See *Ultratec Ex Parte Letter*.

¹⁰⁰ See 47 C.F.R. § 64.604(a)(1), requiring that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette and that that CAs must provide a typing speed of a minimum of 60 words per minute and allowing that technological aids may be used to reach the required typing speed.

¹⁰¹ See 47 C.F.R. § 64.604(a)(1), requiring that TRS providers conduct oral-to type tests of CA's typing speed.

¹⁰² See 47 C.F.R. § 64.604(a)(3), prohibiting CAs from refusing single or sequential calls or limiting the length of a call utilizing relay services.

¹⁰³ See 47 C.F.R. § 64.604(a)(7), requiring that TRS providers make the best effort to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

¹⁰⁴ See 47 C.F.R. § 64.604(a)(1).

¹⁰⁵ *Ultratec Ex Parte Letter*.

words per minute requirement.¹⁰⁶

39. In establishing the 60 words per minute mandatory typing speed for CAs, the Commission determined that this requirement could be satisfied by CAs who type 60 words per minute or by “technology such as speech recognition or auto-correct software to otherwise transmit words at a speed equivalent to 60 wpm [words per minute].”¹⁰⁷ We therefore clarify that the use of voice recognition technology in the provision of captioned telephone VCO service, such as that employed by Ultratec, is a permissible means for not only enhancing transmission speed, but also for achieving the CA’s competency skills required by the TRS mandatory minimum standards.

40. A Commenter and SHHH contend that the error rate for captioned telephone CAs should be assessed by a third party.¹⁰⁸ In response, Ultratec states that this is already taking place.¹⁰⁹ Ultratec asserts that each of the state trial participants is an independent party conducting an assessment of its captioned telephone service. Ultratec notes that as part of participating in the trial, each participant is directed to respond to specific questions concerning error rates and comprehension on call evaluation forms. Ultratec states that all of the individual call evaluations received from trial participants are entered into a database and reported to the contracting states on a monthly basis. The evaluations are based on each individual’s impression of his/her calls.¹¹⁰

41. In light of Ultratec’s efforts to assess the quality of its service, we do not believe that it is necessary at this time to establish third party oversight of captioned telephone service. Further, we believe that our current rules provide sufficient incentive for Ultratec and other captioned telephone providers to address any problems encountered by captioned telephone users on an ongoing basis. Our TRS rules place the responsibility of ensuring that CAs are in compliance with our requirements on TRS providers.¹¹¹ As we have noted, to be eligible for cost recovery under our TRS rules each provider must meet all of our non-waived TRS mandatory minimum requirements.¹¹² Moreover, TRS providers are required to maintain a log of consumer complaints that must be submitted to the Commission annually.¹¹³ These reports will provide us with a warning of possible service quality problems, as well as the manner in which captioned telephone providers are addressing these problems. Finally, because this is a service to which users have to subscribe, consumer satisfaction will provide additional incentive to providers to rectify any service quality problems that may arise.

42. In addition, we waive the TRS mandatory minimum standard requiring CAs to be competent in interpretation of typewritten ASL as applied to captioned telephone CAs.¹¹⁴ As Ultratec has

¹⁰⁶ See Ultratec *Petition* at 11, stating that “in ongoing trials in the States of Wisconsin and Maryland, the average CapTel CA transcribes via voice recognition well over 140 words per minute (many over 180 wpm) with an error rate of less than 2%. Moreover, the transcription of what is said is over 98% verbatim.”

¹⁰⁷ *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶74.

¹⁰⁸ David Coco Comments at 1; SHHH Comments at 3. We note that both David Coco and SHHH assert that because Ultratec is using voice recognition technology the Commission may need to develop an additional set of quality criteria. While we do not reach this issue in our consideration of Ultratec’s *Petition*, we will consider this issue in future TRS proceedings.

¹⁰⁹ Ultratec Reply Comments at 19.

¹¹⁰ *Id.*

¹¹¹ See 47 C.F.R. § 64.604(a)(1).

¹¹² See 47 C.F.R. § 64.604(c)(5)(iii)(C).

¹¹³ See 47 C.F.R. § 64.604(c)(1).

¹¹⁴ See 47 C.F.R. § 64.604(a)(1); see also Ultratec *Ex Parte Letter*. We note that no party objected to this suggested “clarification.”

explained, a captioned telephone user speaks with his own voice directly to the other party the same way he would in a traditional relay VCO call, and uses his residual hearing to listen to the called party's response while at the same time reading text of the response. Therefore, there is never an instance where either party to a captioned telephone call would use typewritten ASL. Similarly, because captioned telephone CAs never participate directly in a captioned telephone conversation (they are transparent), captioned telephone CAs would never be in a position to interpret written ASL. This waiver is contingent on the filing of annual reports, for a period of three years, with the Commission.¹¹⁵

b. CA Oral-to-typed test requirement

43. Commission rules require that TRS providers must give oral-to-type tests of CA speed.¹¹⁶ Ultratec asserts that such a test is not applicable to captioned telephone CAs, and requests that the Commission allow captioned telephone providers to give oral-to-text tests of captioned telephone CA speed instead.¹¹⁷ Ultratec states that captioned telephone CAs' words per minute transmission output and performance level is dependent on the CA's skill in using the voice recognition system, and that there is only a very minimal amount of actual keyboard based typing (less than 2 percent of the conversation in most cases). Ultratec also asserts that to the user, the method of transcribing the voice of the other party into a text system, whether by typing or by voice recognition or any combination of the two, is not important, but rather it is the speed and accuracy of the text.

44. Title IV of the Americans with Disabilities Act mandates the provision of relay services that are functionally equivalent to traditional voice communication telephone services.¹¹⁸ To this end, Congress directed the Commission to take actions that would encourage the development of improved relay technologies.¹¹⁹ For these reasons, we will also grant waiver of the CA oral-to-type test requirement and permit the use of an oral-to-text test instead for captioned telephone VCO CAs. We believe that allowing oral-to-text tests is consistent with our mandate not to impede the development or implementation of new and improved methods of providing TRS, and at the same time to ensure the quality of captioned telephone services. This waiver is contingent on the filing of annual reports, for a period of three years, with the Commission.

c. Sequential Calls

45. Our TRS rules prohibit CAs from refusing single or sequential calls utilizing relay services.¹²⁰ Ultratec seeks clarification that this TRS mandatory minimum standard does not apply to captioned telephone users.¹²¹ Ultratec explains that unlike traditional TRS, captioned telephone users are

¹¹⁵ We note that if typewritten ASL is ever used in a captioned telephone VCO call, this rule will apply.

¹¹⁶ See 47 C.F.R. § 64.604(a)(1).

¹¹⁷ See *Ultratec Ex Parte Letter*.

¹¹⁸ See 47 U.S.C. § 225.

¹¹⁹ 47 U.S.C. 225(d)(2); see also H. Rep. No. 485 Part 4, 101st Cong, 2nd Sess. 66 (1989), urging the Commission not to adopt regulations implementing Title IV that would have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

¹²⁰ See 47 C.F.R. § 64.604 (a)(3). When a TRS user places a call through traditional TRS, the user relies on the CA to place the call. Therefore, because the telephone connection between the user and CA does not terminate at the end of a call, a TRS user can place more than one call through the CA without having to reconnect to the TRS facility. This is an important feature for TRS users desiring to make several calls in a row, and is consistent with the notion that the first step of a traditional TRS call – the inbound call to the TRS facility – is functionally equivalent to receiving a dial tone. See ¶ 2, *supra*.

¹²¹ See *Ultratec Ex Parte Letter*.

in complete control of their telephone calls. To place a captioned telephone call, the user dials the number they wish to reach directly, without CA involvement in the call set-up. The CA's only role is to transcribe the called party's response into text. The CA, therefore, has no way to refuse a call or to refuse to make sequential calls for a TRS user.¹²²

46. Because, given the way captioned telephone calls work, when an outbound captioned telephone VCO call is made a CA is not involved with call set-up and has no way to refuse the call, we waive the TRS mandatory minimum requirement to not refuse single or sequential calls as applied to captioned telephone CAs handling *outbound* captioned telephone calls.¹²³ This waiver is contingent on the filing of annual reports, for a period of three years, with the Commission.¹²⁴ We note, however, that inbound captioned telephone calls (*i.e.*, calls made to a captioned telephone user) made through a TRS facility involve set-up by a CA. Therefore, we do not waive this requirement for inbound captioned telephone calls. We recognize, however, that if an inbound call is made to a captioned telephone user via the captioned telephone access number, set-up is also automatic, and thus there is no way for a CA to refuse the call.¹²⁵

d. Gender Preference

47. Our rules require that TRS providers must make “best efforts to accommodate a TRS user’s requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.”¹²⁶ Ultratec asserts that this TRS mandatory minimum standard is not applicable to captioned telephone VCO service.¹²⁷ Ultratec notes that unlike traditional relay calls, where the caller may wish to have their call voiced by a CA of the same gender, the captioned telephone service CA is invisible to both participants in the call because both parties to the captioned telephone call speak for themselves. In other words, Ultratec asserts that because a captioned telephone call never involves the CA speaking or interacting with either party to the call, this TRS mandatory minimum is not applicable to captioned telephone CAs.¹²⁸

48. SHHH objects to a waiver of this standard, asserting that the CA gender requirement is a relay user’s preference that can be provided through caller profiles.¹²⁹ We disagree. The purpose of this requirement is to ensure that the recipient of a TRS call will know the gender of the person calling.¹³⁰ For example, if a male TRS user calls a hearing individual who is unfamiliar with TRS the hearing individual may be confused by hearing a female CA relay the male TRS user’s conversation. With

¹²² *Id.*

¹²³ We note that no party objected to this waiver request.

¹²⁴ We note, however, that if a provider decides to offer a captioned telephone VCO service that does not include the “dial-through” feature, *see Ultratec Petition* at 11, but instead requires that the call be initiated or set up through a CA, this rule will apply. This conclusion is consistent with our treatment of outbound 711 dialing, noted above (note 97).

¹²⁵ *See* ¶ 5 above.

¹²⁶ *See* 47 C.F.R. § 64.604(a)(6).

¹²⁷ *See Ultratec Ex Parte Letter.*

¹²⁸ *Id.*

¹²⁹ SHHH Comments at 4.

¹³⁰ In adopting the choice of gender requirement in the *Improved TRS Report and Order*, we stated that this rule was “necessary in order to have functionally equivalent communications because voice users know the gender of the party they are conversing with, and TRS users should have the same treatment.” *Improved TRS Report and Order*, 15 FCC Rcd 5140, at ¶ 71.

captioned telephone VCO service, however, the called party is able to hear the voice of the captioned telephone user as the captioned telephone user speaks for himself. Therefore, the called party should be able to determine the gender of the calling party. In addition, captioned telephone VCO service is designed so that the user directly calls the other party to the call, with the CA transparent both in the set-up and during the call. This functionality would be defeated if gender preference had to be accommodated. For these reasons, we grant waiver of this mandatory minimum standard for captioned telephone VCO service. We note that if a TRS user desires to exercise his or her choice of gender, he or she can place the TRS call by dialing 711 and reaching a CA.¹³¹

4. Interrupt Functionality

49. A Commenter asserts that the captioned telephone CAs should be able to interrupt the conversation if necessary to ask the speaker to slow down if the captioned text starts lagging too far behind the conversation.¹³² Ultratec and SHHH oppose this proposal, arguing that it would move functional equivalency a step backward by removing control of the call from the captioned telephone user. Ultratec and SHHH assert that consumers do not want the captioned telephone CA to have any speaking role in the call, but want the CA to be completely invisible. Moreover, Ultratec and SHHH argue that if problems arise with the text lagging behind the voice conversation, the consumer using captioned telephone service can ask the other party to slow down; that way, the conversation proceeds in a natural fashion.¹³³

50. We agree with Ultratec and SHHH that allowing captioned telephone CAs to interrupt captioned telephone calls will interfere with the natural flow of the conversation and largely defeat one of the central features of the captioned telephone VCO service, *i.e.*, that the CA is transparent during the set-up and throughout the call. Therefore, we do not require that captioned telephone CAs be able to interrupt such calls.

5. Call Release

51. In our recent TRS *Second Report and Order*, we adopted rules that require TRS facilities to provide several types of innovative services to TRS consumers when the local exchange carrier network servicing the TRS facility offers such services to the general public.¹³⁴ Among these services is call release. Call release allows a CA to set up a TTY-to-TTY call that once set up does not require the CA to relay the conversation. The call release feature allows the CA to sign-off or be “released” from the telephone line, without triggering a disconnection between the two TTYs, after the CA connects the originating TTY caller to the called party’s TTY through, *e.g.*, a business switchboard.¹³⁵ For example, if a person, who is deaf, wants to call another person, who is also deaf, at a hotel, the calling party generally must go through the hotel’s switchboard. Once the two TTYs are connected, TRS call release allows the CA to sign off, or be “released,” from the call.¹³⁶

¹³¹ We recognize that because the captioned telephone user knows that the called party’s response is being re-voiced by a CA, he or she may be more comfortable with the same gender CA handling the call. Such concerns, however, fall outside the functional equivalency mandate.

¹³² See Comments filed by David Coco, Ph.D.

¹³³ *Id.*

¹³⁴ Telecommunications 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*, FCC 03-112 (rel. June 17, 2003) at ¶ 62 (*Second Report and Order*).

¹³⁵ *Id.* at ¶ 68.

¹³⁶ *Id.*

52. We waive, on our motion, this rule for captioned telephone VCO service providers. Captioned telephone service, by its nature, requires the CA to remain on the line for the duration of the call, as the CA revoices the called party's end of the conversation to ensure that the captioned telephone user does not miss any part of the called party's conversation. Therefore, necessarily, the CA would never be "released" from this type of call.

6. ASCII and Baudot Format

53. The TRS mandatory minimum standards require that "TRS ... be capable of communicating with ASCII and Baudot format, at any speed generally in use."¹³⁷ Ultratec states that, similar to VRS and STS, captioned telephone VCO service does not make use of ASCII or Baudot for transmission.¹³⁸ Ultratec explains that its captioned telephone service uses simultaneous voice and data protocol based on the V.32 standard, and the current TTY protocols referenced in the Commission's rules do not support captioned telephone's need for the transmission of both voice and data simultaneously. Therefore, Ultratec asserts that we waive the applicability of the ASCII and Baudot format requirements as applied to captioned telephone service.

54. We agree that this requirement does not to apply captioned telephone service, and therefore waive this TRS mandatory minimum standard in that context. We note that no party objected to this request for waiver.

IV. PROCEDURAL MATTERS

55. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹³⁹ requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."¹⁴⁰ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁴¹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴² 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).¹⁴³

56. This *Declaratory Ruling* addresses a Petition for Clarification (*Petition*) filed by Ultratec, Inc. (Ultratec), on April of 2002.¹⁴⁴ This *Petition* requests that the Federal Communications Commission

¹³⁷ See 47 C.F.R. § 64.604(b)(1).

¹³⁸ See *Ultratec Ex Parte Letter*.

¹³⁹ 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).

¹⁴⁰ 5 U.S.C. § 605(b).

¹⁴¹ 5 U.S.C. § 601(6).

¹⁴² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹⁴³ 15 U.S.C. § 632.

¹⁴⁴ Ultratec, *Petition for Clarification Provision of Cost Recovery for CapTel, an Enhanced VCO Service* filed April 12, 2002.

(Commission) clarify that captioned telephone service is a form of voice carry over (VCO) TRS and is eligible for reimbursement from the Interstate Telecommunications Relay Service Fund. The Commission sought comments on the Ultratec *Petition* in a Public Notice.¹⁴⁵ As a result of the Ultratec *Petition* and filed public comments, the Commission is issuing this *Declaratory Ruling*, which will allow Ultratec to recover its costs of providing interstate captioned telephone service from the Interstate TRS Fund.

57. As noted in paragraph 22 of the *Declaratory Ruling*, this item imposes a regulatory burden on the Interstate TRS Fund Administrator, requiring it to pay to eligible providers of captioned telephone service the costs of providing interstate service. The Interstate TRS Fund is a not-for-profit organization, and therefore is a "small organization." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁴⁶ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹⁴⁷ Because the Interstate TRS Fund is the only entity affected by the *Declaratory Ruling*, we conclude that a "substantial number" of small entities will not be affected by the *Declaratory Ruling*.

58. Therefore, we certify that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Declaratory Ruling*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.¹⁴⁸ In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.¹⁴⁹

59. *Paperwork Reduction Act.* This Declaratory Ruling contains new or modified 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 collections contained in this item.

V. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152 and 225, this DECLARATORY RULING IS ADOPTED.

61. IT IS FURTHER ORDERED that Ultratec's *Petition for Clarification* IS GRANTED to the extent indicated herein.

¹⁴⁵ *Pleading Cycle Established for Comments on Petition for Clarification on the Provision of and Cost Recovery for Captioned Telephone as an Improved Voice Carry Over Service for Telecommunications Relay Service*, Public Notice, 17 FCC Rcd 11,933 (2002). See *supra* fn 14.

¹⁴⁶ 5 U.S.C. § 601(4).

¹⁴⁷ U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

¹⁴⁸ See 5 U.S.C. § 801(a)(1)(A).

¹⁴⁹ See 5 U.S.C. § 605(b).

62. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Declaratory Ruling* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

63. To request materials in accessible formats (such as braille, large print, electronic files, or audio recording), 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 *Declaratory Ruling* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb.dro>.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Secretary

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; CC Docket No. 98-67

The digital migration creates tremendous opportunities for all Americans. Our decision today brings important innovation and additional choice to Americans with hearing disabilities. For over a decade, the Telecommunications Relay Service (TRS) has enabled persons with hearing and speech disabilities to communicate by telephone through live intermediaries. With the cooperative effort of hundreds of communications carriers, this process has proved tremendously successful. However TRS – like all telecommunications services – cannot remain technologically static. Instead we must continue to ensure that innovation in the marketplace yield greater opportunities for TRS users.

Our action today permits a technology that generates live, word-for-word captions of spoken telephone conversations to become eligible for TRS funds. Despite the emergence of impressive new technologies that can transfer speech to text rapidly and accurately, the Commission’s TRS funding rules simply did not provide funds to some new technologies that could make communications with people who are deaf or hard of hearing easier and faster than ever before.

This Commission has dedicated itself to building on the decade of TRS excellence through greater flexibility and technological adaptation. That is the philosophy that supported our recent TRS Further Notice, our IP Relay Order and today’s decision. I look forward to working with my colleagues, industry and the disability community to build on this strong foundation.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Telecommunications Relay Services, and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67)*

When we speak about the transformative power of telecommunications services, we really are speaking about the ability of technology to improve the life of every American. In a small but significant way, our action today does just that. By clarifying that captioned telephone service is an enhanced voice carry over service eligible for interstate fund reimbursement, we may enable millions of Americans to benefit from the innovative simplicity of this new form of TRS.

When Congress passed the Americans with Disabilities Act more than twelve years ago, it cautioned the Commission to avoid action that would “discourage or impair the development of improved technology.” With today’s action we heed Congress’ warning. Yet as the pace of technology quickens, we need to resolve petitions like this one with greater speed. For the same reason, we need to commit to reviewing our TRS requirements with ever greater frequency. The Commission also needs to complete its section 255 proceeding on accessibility to equipment and services. Similarly, we need to do more to encourage a robust dialogue between telecommunications companies and the hearing and speech impaired communities that rely on their products and services.

Although disabled Americans face unique challenges, innovative telecommunications services present unique possibilities for improving their lives. As their lives are improved, so are the lives of millions of others who can communicate with them.