

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
CG Docket No. 03-123

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission:

I. INTRODUCTION

1. In this proceeding, the Commission continues to promote communications accessibility for individuals who have speech and/or hearing disabilities in light of advances in technology and an evolving marketplace. In the Report and Order, we update the Commission’s definition of telecommunications relay service (TRS) in accordance with the Twenty-First Century Communications and Video Accessibility Act of 2010.1 In the Further Notice of Proposed Rulemaking (Notice), consistent with prior Commission actions taken in response to marketplace changes, we propose to eliminate the equal access and multiple billing options requirements. We also propose to cease Federal Register publication of state requests for TRS program certification, while continuing to publish these certification applications in the Commission’s electronic document management system and on the Commission’s website.

II. BACKGROUND

2. The Commission initially adopted TRS rules in 1991, pursuant to Title IV of the Americans with Disabilities Act of 1990.2 Many of these rules have remained essentially unchanged since that time, while technology and telecommunications markets have continued to evolve.

3. Statutory Definition of TRS. The original version of 47 U.S.C. § 225, enacted in 1990, defined TRS as:

[T]elephone 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

1 Pub. L. No. 111-260, § 103(a), 124 Stat. 2751, 2755 (2010) (CVAA); Pub. L. No. 111-265 (technical amendments to CVAA).

2 Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-39 (1990) (ADA).

have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.<sup>3</sup>

This definition, which was incorporated into the Commission's rules,<sup>4</sup> assumed that this service would be used only for communications between people with hearing or speech disabilities and hearing individuals. That assumption was warranted in 1990, when text telephone (TTY)-based TRS was the only type of relay service available.<sup>5</sup>

4. Since then, many new forms of relay services have been developed and deployed to address the varied communication needs of people with hearing and speech disabilities. Video relay service (VRS) meets the needs of consumers who use sign language;<sup>6</sup> speech-to-speech relay (STS) serves consumers with difficult-to-understand speech;<sup>7</sup> Internet Protocol (IP) Relay is used by people who rely on text,<sup>8</sup> and Captioned Telephone Service (CTS) and Internet Protocol Captioned Telephone Service (IP CTS) enable people with some hearing loss to use their voices on a phone call while reading captions of the other party's speech.<sup>9</sup> As a result, there are times when users of different types of TRS need to communicate with each other via relay services—even though no hearing person may be participating in the call. For example, a TTY caller who does not know sign language may want to call someone who uses VRS; an STS user may want to communicate with someone who uses IP Relay; and an IP CTS user may want to call someone who uses a TTY.<sup>10</sup>

5. Accordingly, in 2010, Congress amended the statutory definition of TRS to remove the specification that one of the parties to a TRS call must be a hearing person. As amended, TRS means:

[T]elephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio *with one or more individuals*, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.<sup>11</sup>

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<sup>3</sup> *Id.* (emphasis added). The original definition also stated: “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.” *Id.*

<sup>4</sup> 47 CFR § 64.601(a)(39) (incorporating the ADA definition, with a few non-substantive changes).

<sup>5</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, 6 FCC Rcd 4657 (1991) (*First TRS Report and Order*) (requiring the provision of TRS).

<sup>6</sup> VRS allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the communications assistant (CA) to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller. 47 CFR § 64.601(a)(47).

<sup>7</sup> STS uses “specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.” *Id.* § 64.601(a)(37).

<sup>8</sup> IP Relay permits communication “in text using an Internet Protocol-enabled device via the Internet, rather than using a TTY.” *Id.* § 64.601(a)(20).

<sup>9</sup> *See id.* § 64.601(a)(19) (definition of IP CTS).

<sup>10</sup> *See generally* Hamilton Relay, Inc. Comments, CG Docket No. 03-123, at 3 (filed Nov. 20, 2014) (Hamilton Comments).

<sup>11</sup> CVAA, § 103(a) (emphasis added). In addition, section 103(a) of the CVAA updated the terminology used to refer to people with disabilities who may use TRS, replacing “an individual who has a hearing or speech impairment” with “an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability.” *Id.* The amendment adopted herein to the definition in our rules reflects this non-substantive change as well.

In 2014, the Commission proposed to amend the definition of TRS contained in the Commission's rules to conform to changes made in the CVAA.<sup>12</sup>

6. *Equal Access and Billing Options Requirements.* As required by section 225 of the Communications Act, as Amended (the Act),<sup>13</sup> the Commission's rules prescribe mandatory minimum standards to ensure that TRS provides telephone service for people with hearing or speech disabilities that is functionally equivalent to voice communication service.<sup>14</sup> The initial set of TRS standards adopted in 1991<sup>15</sup> reflects the prevailing telephone service practices of that time, when providers of telephone service generally assessed per-minute rates for long distance calling based on the distance and duration of the call,<sup>16</sup> and long distance services were provided on an unbundled basis by competing interexchange carriers, along with special billing options for those services. Specifically, the "equal access" rule provides that "TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users."<sup>17</sup> Another rule, the billing options requirement, directs TRS providers to offer "the same billing options (e.g., sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services."<sup>18</sup>

7. The voice communications marketplace and our regulation of voice services have undergone major changes since these provisions were adopted. Today, users of voice over Internet Protocol (VoIP) and mobile telephone services routinely receive free long distance as part of their service plans, virtually eliminating the need for equal interexchange access and billing options.<sup>19</sup> Consistent with these changes, in 2014, the Commission amended its TRS rules to conditionally exempt providers of Internet-based forms of TRS (iTRS)<sup>20</sup> from both the TRS equal access and billing options requirements, concluding that these features, traditionally offered for wireline voice services, were no longer necessary to ensure functionally equivalent service.<sup>21</sup> Among other things, the Commission explained that "consumers derive no value from equal access to long distance carriers where . . . they do not pay long-

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<sup>12</sup> *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, CG Docket No. 03-123, 29 FCC Rcd 10697, 10724-25, para. 65 (2014) (*iTRS Exemptions Order* when referring to the Report and Order and *TRS Definition FNPRM* when referring to the Further Notice of Proposed Rulemaking).

<sup>13</sup> 47 U.S.C. § 225(d)(1).

<sup>14</sup> See 47 CFR § 64.604.

<sup>15</sup> See *First TRS Report and Order*, 6 FCC Rcd at 4660-62, paras. 17-19, 22.

<sup>16</sup> *iTRS Exemptions Order*, 29 FCC Rcd at 10704-06, paras. 12-16; see also Hamilton and Sprint Joint Petition for Rulemaking, CG Docket No. 03-123, at 4 (filed Sept. 23, 2015), <https://ecfsapi.fcc.gov/file/60001324916.pdf> (Joint Petition for Rulemaking).

<sup>17</sup> 47 CFR § 64.604(b)(3).

<sup>18</sup> *iTRS Exemptions Order*, 29 FCC Rcd at 10703-04, para. 11. The billing options requirement is a subset of what has come to be known as the "types of calls" requirement, which directs TRS providers to handle any type of telephone call normally provided by carriers. See 47 CFR § 64.604(a)(3)(ii); *First TRS Report and Order*, 6 FCC Rcd at 4600, para. 17.

<sup>19</sup> *iTRS Exemptions Order*, 29 FCC Rcd at 10704, para. 12.

<sup>20</sup> See 47 CFR § 64.601(a)(18) (defining iTRS). Presently, iTRS includes VRS, IP Relay, and IP CTS.

<sup>21</sup> *iTRS Exemptions Order*, 29 FCC Rcd at 10704-06, paras. 12-16. As a condition of the exemption from the equal access rule, iTRS providers are not permitted to assess separate charges for long distance calling. *Id.* at 10706, para. 16; 47 CFR § 64.604(b)(3). As a condition of the billing options exemption, iTRS providers must either allow callers to use calling cards or credit cards to pay for long distance calls or not assess charges for long distance calling. *iTRS Exemptions Order*, 29 FCC Rcd at 10705, para. 14; 47 CFR § 64.604(a)(3)(ii).

distance charges for iTRS calls and, consequently, have no interest in ‘price shopping’ for a long distance provider.”<sup>22</sup> For similar reasons, the Commission concluded that operator-assisted billing options are not necessary to provide functionally equivalent communication.<sup>23</sup>

8. On September 23, 2015, Sprint Corporation (Sprint) and Hamilton Relay, Inc. (Hamilton) (collectively “Petitioners”) filed a joint petition for rulemaking requesting that the Commission broaden the exemptions adopted for iTRS to include providers of traditional TRS<sup>24</sup> and state-program CTS, to the extent that such providers do not assess charges for long distance traffic that they carry.<sup>25</sup> Sprint and Hamilton also separately petitioned for temporary waivers of these requirements.<sup>26</sup> Hamilton subsequently requested a similar exemption and temporary waiver for STS.<sup>27</sup> On August 24, 2016, the Consumer and Governmental Affairs Bureau (CGB) granted temporary waivers of the equal access and billing options rules for these services for a two-year period.<sup>28</sup> On August 8, 2018, CGB extended the waivers through August 24, 2019, and on August 20, 2019, CGB further extended the waivers through August 24, 2020.<sup>29</sup> These waivers are subject to the condition that no long distance charges may be assessed on TRS users.

9. *Federal Register Notice of State Requests for Certification.* Section 225 provides that states choosing to establish state TRS programs must request and receive certification for such programs from the Commission.<sup>30</sup> In its initial 1991 decision implementing Section 225, in order to inform the public of the states seeking Commission certification of TRS programs, the Commission adopted a requirement that, upon the filing of state certification applications, notice of such applications would be

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<sup>22</sup> *iTRS Exemptions Order*, 29 FCC Rcd at 10706, para. 16.

<sup>23</sup> *Id.* at 10704, para. 12. The Commission also found that, due to the technical difficulties inherent in equal access routing for iTRS calls, as well as the absence of billing relationships between iTRS providers and consumers (because users are not charged for iTRS calls), compliance with these rules would be inefficient, and to a certain extent, technically infeasible. *Id.* at 10704-05, 10706, paras. 13, 16.

<sup>24</sup> Traditional TRS historically has been defined by the Commission as text-based TRS that allows a TTY user to type out his or her portion of a conversation and have it voiced to the other party by a CA, after which the CA types back to the TTY user what the other party voices. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5142, para. 2 (2000); 47 CFR § 64.601(a)(40) (definition of TTY).

<sup>25</sup> Joint Petition for Rulemaking.

<sup>26</sup> Petition for Interim Waiver of Sprint Corporation, CG Docket No. 03-123 (filed Sept. 23, 2015), <https://ecfsapi.fcc.gov/file/60001324928.pdf>; Petition for Interim Waiver of Hamilton Relay, Inc., CG Docket No. 03-123 (filed Mar. 14, 2016), <https://ecfsapi.fcc.gov/file/60001533861.pdf>.

<sup>27</sup> Hamilton, Supplement to Petition for Interim Waiver, CG Docket No. 03-123, (filed Aug. 17, 2016), <https://ecfsapi.fcc.gov/file/10817896919141/Hamilton%20Supplement%20to%20Petition%20for%20Interim%20Waiver.pdf> (Hamilton Supplement).

<sup>28</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Hamilton Relay, Inc. and Sprint Corporation Petitions for Interim Waiver of Section 64.604(b)(3) and 64.604(a)(3)(ii)*, CG Docket No. 03-123, Order, 31 FCC Rcd 9511 (CGB 2016) (*Hamilton and Sprint Waiver Order*).

<sup>29</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Hamilton Relay, Inc. and Sprint Corporation Petitions for Interim Waiver of Section 64.604(b)(3) and 64.604(a)(3)(ii)*, CG Docket No. 03-123, Order, 33 FCC Rcd 8063 (CGB 2018) (*Hamilton and Sprint Waiver Extension*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Hamilton Relay, Inc. and Sprint Corporation Petitions for Interim Waiver of Section 64.604(b)(3) and 64.604(a)(3)(ii)*, CG Docket No. 03-123, Order, DA 19-789 (CGB Aug. 20, 2018).

<sup>30</sup> 47 U.S.C. § 225(f).

published in the Federal Register.<sup>31</sup> Adoption of this requirement pre-dated the Commission's establishment of an electronic document management system (EDOCS).<sup>32</sup> Subsequently, in adopting certification requirements for Internet-based forms of TRS—after the establishment of EDOCS—the Commission did not require Federal Register publication of applications for Internet-based TRS certifications.<sup>33</sup> Indeed, virtually no other Commission authorization process currently requires Federal Register publication of applications, unless an application is designated for hearing or an environmental impact statement is required.<sup>34</sup>

### III. REPORT AND ORDER

10. We amend the definition of TRS contained in the Commission's rules to conform to the current statutory definition, as amended by the CVAA. All parties commenting on the *TRS Definition FNPRM* support this change,<sup>35</sup> by which we formally confirm what our program administration already recognizes in practice—that in some instances, achieving communication between two individuals who have speech or hearing disabilities requires more than one type of relay service.<sup>36</sup>

11. We note that, by updating our rules' definition of TRS, we do *not* thereby authorize compensation for *every* call between two individuals with hearing or speech disabilities. In most cases, people using the same form of TRS can understand each other without additional help from a relay service.<sup>37</sup> For example, a call between two registered VRS users, in which both parties use video to sign to each other, would not require any help from a CA and would not be eligible for compensation from the TRS Fund.<sup>38</sup> The same applies to calls between two TTY users or between two users of IP Relay.<sup>39</sup> An exception to this same-relay-service rule applies, however, when more than one person on a call uses CTS, IP CTS, or STS. This is because calls between or among CTS, IP CTS, or STS users may still require captioning or re-voicing using more than one relay leg to ensure that one party's speech can be understood by the other party.<sup>40</sup>

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<sup>31</sup> *First TRS Report and Order*, 6 FCC Rcd at 4665, para. 37; *see also* 47 CFR § 64.606(a)(1).

<sup>32</sup> *See* Public Notice, FCC, FCC Announces New Electronic Document Management System (June 19, 2000), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-203412A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-203412A1.pdf).

<sup>33</sup> *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order, 26 FCC Rcd 10898, 10902-04, paras. 7-12 (2011); 47 CFR § 64.606(a)(2).

<sup>34</sup> *See* 47 CFR §§ 1.221, 1.1308. Federal Register publication is also required if a government agency requests exemption from the Commission's telephone terminal equipment registration requirement for reasons of national defense or security. *Id.* § 68.2(c).

<sup>35</sup> *See* Hamilton Comments at 2; Sorenson Communications, Inc. (Sorenson) Comments, CG Docket No. 03-123, at 1 (filed Nov. 20, 2014) (Sorenson Comments); *see also* Sorenson Reply Comments, CG Docket No. 03-123, at 1 (filed Dec. 19, 2014).

<sup>36</sup> *TRS Definition FNPRM*, 29 FCC Rcd at 10724-25, para. 63; H.R. Rep. No. 111-563 at 23 (2010); S. Rep. No. 111-386 at 6-7 (2010). To comply with the CVAA's definition, compensation is currently paid for relay calls that require more than one type of TRS. *See* Sorenson Comments at 2.

<sup>37</sup> *See* Hamilton Comments at 3 (agreeing such calls should not be compensable).

<sup>38</sup> *TRS Definition FNPRM*, 29 FCC Rcd at 10725, para. 66. Because the telephone numbers for VRS calls are reported to the TRS Fund administrator when compensation payment is requested, the administrator is able to confirm that one party to a VRS call is *not* a registered VRS user. *See* 47 CFR § 64.604(c)(5)(iii)(D)(2) (specifying call data that must be submitted with each compensation request); *id.* § 64.611(a)(4) (providing for submission of user registration data to the TRS User Registration Database).

<sup>39</sup> With TTY-to-voice TRS or IP Relay, the CA converts what the user with a disability types into voice, and conversely reports what the hearing person says back as text.

<sup>40</sup> Specifically, for calls between or among CTS and IP CTS users, each party requires captioning by a CA or automated speech recognition (ASR) system in order to understand what the other party says to that user. *TRS*

(continued....)

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

##### A. Equal Access and Billing Options Requirements

12. *Equal Access Requirement.* We propose to repeal the equal access requirement.<sup>41</sup> In the past, when carriers charged time- and distance-sensitive rates for long distance service and incumbent local exchange carriers (LECs) were required to provide equal access to competing long distance carriers, the corresponding equal access requirement for TRS was deemed necessary to ensure that TRS users were charged competitive rates for long distance calls.<sup>42</sup> Today, by contrast, voice telephone subscribers typically pay a bundled or flat rate for telephone service, without time or distance differentials for long distance calls,<sup>43</sup> and the Commission has ceased to apply an equal access requirement to voice telephone service.<sup>44</sup> Further, some TRS users have migrated to voice services that do not even offer a choice of long distance carrier.<sup>45</sup> Indeed, because the rule only requires equal access “to the same extent that such access is provided to voice users”<sup>46</sup> and because the Commission has eliminated the equal access rule for non-legacy voice users, there are few, and ever-decreasing, situations in which a TRS provider would actually be obligated to provide equal access under the current rule, even if a consumer were to request such access. In this changed environment, we believe special mandates regarding long distance carriage are no longer necessary in order to have parity with voice telephone users when making long distance calls. Additionally, we find credible Petitioners’ assertions that implementing this requirement can be confusing for consumers and cause delays in call set-up,<sup>47</sup> and that it hinders their ability to transition their platforms to more efficient IP-based networks.<sup>48</sup>

13. In other words, the obligation to provide TRS users with their choice of interexchange carrier appears to be unnecessary and may hinder the efficient provision of TRS; given changes in how consumers now acquire and pay for long distance services, the costs and burdens associated with this rule now appear to outweigh any remaining benefits; and TRS providers’ elimination of this outdated calling feature will likely facilitate the updating of TRS platforms to incorporate more modern elements—in

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*Definition FNPRM*, 29 FCC Rcd at 10725, para. 66. Similarly, for calls between or among STS users, each party must have their speech re-voiced in order for the other party to understand what the first party says. *See* Hamilton Comments at 3 (requesting confirmation that STS-to-STS calls are compensable).

<sup>41</sup> As a practical matter, this rule currently applies only to state-program TRS providers. Because iTRS providers do not bill TRS users for service, all iTRS providers fit under the current rule’s exemption for iTRS providers that do not charge for long distance service. *See* 47 CFR § 64.604(b)(3).

<sup>42</sup> *Common Carrier Bureau Reminds all Common Carriers of their Obligation to Provide Access to their Telecommunications Services via Telecommunications Relay Services*, Public Notice, 15 FCC Rcd 9916, 9916-17 (1999) (emphasizing that lack of access to their interexchange carrier of choice could result in TRS users paying higher rates or being unable to access particular services offered by their preferred carrier).

<sup>43</sup> *See Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9514-15, paras. 10-11; Joint Petition for Rulemaking at 5.

<sup>44</sup> *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, WC Docket No. 14-192 et al., Memorandum Opinion and Order, 31 FCC Rcd 6157, 6182-89, paras. 46-54 (2015) (*Equal Access Forbearance Order*), *partial recon. denied*, 32 FCC Rcd 3885 (2017) (forbearing from application of long-distance equal-access requirements to incumbent LECs, except with respect to legacy presubscribed customers).

<sup>45</sup> *See Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9514-15, paras. 10-11; Joint Petition for Rulemaking at 5-6.

<sup>46</sup> 47 CFR § 64.604(b)(3).

<sup>47</sup> Joint Petition for Rulemaking at 8-9 (noting that users are often unaware of the need to register a preferred provider for long distance calls, and that when a user names an interexchange carrier with which the user does not have an account, the carrier sometimes refuses to complete the call).

<sup>48</sup> *Id.* at 12.

accordance with the Act's mandate for the TRS program to take advantage of evolving technologies.<sup>49</sup> We seek comment on our proposal to repeal the equal access requirement.

14. We also propose to clarify that, when TRS providers allow consumers to make long distance calls without incurring per-minute charges, such offerings do not constitute an impermissible financial incentive for TRS use.<sup>50</sup> Although the Commission previously found that long distance discounts offered by TRS providers could constitute an impermissible financial incentive, that ruling was based on the premise that such discounts would cause the charges for long distance calls by TRS users to be lower than those for voice service users.<sup>51</sup> In today's marketplace, we believe the widespread bundling of long distance and local calling eliminates any risk that offering free long distance to TRS users would create an impermissible incentive to make long distance calls.<sup>52</sup> We seek comment on this proposed clarification.

15. *Billing Options Requirement.* We propose to repeal the billing options requirement.<sup>53</sup> This TRS feature also has become "a burden with no associated public interest benefit."<sup>54</sup> Given the widespread bundling of local and long distance calling and the disappearance of per-minute long distance charges, we believe the future likelihood of any TRS provider assessing per-minute charges for wireline calls (and thereby triggering a possible need for billing options) is *de minimis*.<sup>55</sup> Accordingly, alternative billing options no longer appear necessary for TRS users to achieve functionally equivalent service.<sup>56</sup> Eliminating this obligation should make the provision of TRS more efficient because it will relieve TRS providers from the need to maintain obsolete features of circuit-switched networks at a time when they and others within the communications industry have been transitioning to IP-based platforms.<sup>57</sup> We seek comment on our proposal.

#### **B. Elimination of Federal Register Notice of State Requests for Certification**

16. We propose to cease *Federal Register* publication of the Commission's public notices of applications for certification of state TRS programs.<sup>58</sup> The purpose of the Commission's certification

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<sup>49</sup> 47 U.S.C. § 225(d)(2) (requiring the Commission to ensure that its TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology).

<sup>50</sup> See Joint Petition for Rulemaking at 10, n.25 (requesting such clarification).

<sup>51</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 20 FCC Rcd 12503, 12505-06, para. 6 (CGB 2005).

<sup>52</sup> See *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9517, para. 16.

<sup>53</sup> Like the equal access rule, as a practical matter this requirement applies only to state-program TRS providers. Because iTRS providers do not bill users for service, all iTRS providers fit under the current exemption from the billing options rule for iTRS providers that do not charge for long distance service. See 47 CFR § 64.604(a)(3)(ii). With the current proposal to delete the billing options requirement entirely, this iTRS exemption also would be deleted.

<sup>54</sup> *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515-16, para. 13.

<sup>55</sup> This is especially unlikely because Section 225 and our rules prohibit TRS providers from charging time- and distance-sensitive rates higher than those applicable to functionally equivalent voice communications services—which as noted, are increasingly offered without time-sensitive charges. See 47 U.S.C. § 225(b)(1)(D); 47 CFR § 64.604(c)(5).

<sup>56</sup> See *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9515-16, para. 13 (noting that even some wireline carriers are discontinuing these billing options). Petitioners also state that when TRS providers do not assess a charge for long distance service, they receive few, if any, requests for traditional billing options. Joint Petition for Rulemaking at 7.

<sup>57</sup> See Joint Petition for Rulemaking at 11-13; *iTRS Exemptions Order*, 29 FCC Rcd at 10705, para. 14.

<sup>58</sup> 47 CFR § 64.606(a)(1); *First TRS Report and Order*, 6 FCC Rcd at 4665, para. 37.

process is to review the details of a state's TRS program<sup>59</sup> to determine whether it makes intrastate TRS available in a manner that meets or exceeds the Commission's minimum standards, makes available adequate procedures and remedies for enforcing program requirements, and does not conflict with federal law.<sup>60</sup> In this certification process, the Commission does not make rules prescribing how state programs should operate; rather, it determines whether a state program meets the standards of the Commission's existing TRS rules. The Commission's review is ordinarily conducted based on the documentation submitted by a state, and no adjudicatory hearing is ordinarily needed to determine whether a state program merits certification.<sup>61</sup>

17. Federal Register publication of state TRS program certification applications is not required by the Administrative Procedure Act.<sup>62</sup> Moreover, for comparable Commission authorization processes, such as determinations on Internet-based certification applications and common-carrier applications for certificates of "public convenience and necessity," Federal Register publication is not required by our Rules.<sup>63</sup> Nor is publication necessary for consistency with Commission practice in other areas.

18. In addition, while we continue to believe that public input is important in assisting the Commission in its state certification determinations, providing electronic notice of such certification requests via public notice releases that are posted in EDOCS and on the Commission's website should provide sufficient notice to enable interested members of the public to comment on an application, while at the same time preserving Commission resources associated with *Federal Register* publication.<sup>64</sup> We seek comment on our proposal. In particular, we seek comment on whether use of the Commission's own public notice process would be sufficient to enable an informed Commission decision on state program authorization given the Commission's longstanding reliance on this public notice process for comparable types of applications.

## V. PROCEDURAL MATTERS

19. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>65</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is set forth in Appendix C.

20. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document.<sup>66</sup> The IRFA is set forth in Appendix

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<sup>59</sup> The state's documentation must "describe the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program." 47 U.S.C. § 225(f)(1); *see also* 47 CFR § 64.606(a)(1).

<sup>60</sup> 47 U.S.C. § 225(f)(2); 47 CFR § 64.606(b)(1).

<sup>61</sup> *Cf.* 47 U.S.C. § 309(e) (requiring that a radio license application be designated for hearing and that hearing issues be published in the Federal Register, in any case where a "substantial or material question of fact" is presented); 47 CFR § 1.221 (providing for Federal Register publication of orders designating applications for hearing).

<sup>62</sup> *See* 5 U.S.C. § 553(b) (requiring that notice of proposed rulemaking be published in the *Federal Register*).

<sup>63</sup> *See* 47 CFR § 64.606(b)(2); 47 U.S.C. § 214.

<sup>64</sup> Public notices issued by the Commission are also published in the FCC Record, and thereby remain readily available over a longer term to interested parties and members of the public. *See, e.g., Pleading Cycle Established for Comment on Applications for State Certification for the Provision of Telecommunications Relay Service*, 33 FCC Rcd 3560 (2018). The applications themselves are made available on the Commission's website. *See, e.g., id.* at 3560.

<sup>65</sup> 5 U.S.C. § 601 *et seq.*

<sup>66</sup> 5 U.S.C. § 603(a).



D. 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 Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>67</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>68</sup>

21. *Congressional Review Act.* The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>69</sup>

22. *Paperwork Reduction Act Analysis.* This document does not contain new or modified or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA).<sup>70</sup> Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.<sup>71</sup>

23. *Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>72</sup> interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>73</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers 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 Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

24. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY).

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>70</sup> Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520 (2016).

<sup>71</sup> 44 U.S.C. § 3506(c)(4).

<sup>72</sup> 47 CFR §§ 1.415, 1.419.

<sup>73</sup> See *Electronic Filing of Documents in Rulemaking Proceeding*, 13 FCC Rcd 11322 (1998).

25. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>74</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

## VI. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225, the foregoing Report and Order and Further Notice of Proposed Rulemaking ARE ADOPTED, and the Commission’s rules are hereby AMENDED as set forth in Appendix A.

27. IT IS FURTHER ORDERED that this Report and Order SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register.

28. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

29. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>74</sup> 47 CFR § 1.1200 *et seq.*

**APPENDIX A****Final Rules**

The Federal Communications Commission amends Title 47 of the Code of Federal Regulations as follows:

**Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 217, 218, 220, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, and 1401-1473, unless otherwise noted.

2. Amend section 64.601 by revising paragraph (a)(39) to read as follows:

(a) \* \* \*

(39) *Telecommunications relay services (TRS)*. Telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

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## APPENDIX B

## Proposed Rules

The Federal Communications Commission proposes to amend Title 47 of the Code of Federal Regulations as follows:

**Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 217, 218, 220, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, and 1401-1473, unless otherwise noted.

2. Amend section 64.604 by removing and reserving paragraph (b)(3) and revising paragraph (a)(3)(ii) to read as follows:

**§ 64.604 Mandatory Minimum Standards.**

## (a) Operational standards

\* \* \* \* \*

## (3) \* \* \*

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

\* \* \* \* \*

## (b) \* \* \*

## (3) [Reserved]

3. Amend section 64.606 by revising paragraph (a)(1) to read as follows:

**§ 64.606 Internet-based TRS provider and TRS program certification.**

(a) *Documentation*—(1) *Certified state program*. Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer and Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned “TRS State Certification Application.” All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification.

\* \* \* \* \*

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980,<sup>1</sup> as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Further Notice of Proposed Rulemaking.<sup>2</sup> The Commission sought written public comment on the proposals in the *TRS Definition FNPRM*, including comment on each IRFA.<sup>3</sup> No comments were received in response to the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>4</sup> A copy of the Report and Order, and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>5</sup>

**A. Need For, and Objectives of, the Rules**

2. The Report and Order updates the Commission's definition of telecommunications relay service (TRS) to align the definition with changes made by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to the statutory section 225(a)(3) definition.<sup>6</sup>

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. No comments were filed in response to the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>7</sup> The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to which the 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 rule changes.<sup>8</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>9</sup> In addition, the term "small business" has the same meaning as the

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<sup>1</sup> 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).

<sup>2</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waivers of ITRS Mandatory Minimum Standards*, CG Docket No. 03-123, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10725, para. 65 (2014) (*TRS Definition FNPRM*).

<sup>3</sup> *Id.* at 10725, 10735-38, para. 65, Appx. D.

<sup>4</sup> See 5 U.S.C. § 604.

<sup>5</sup> See *id.* § 604(b).

<sup>6</sup> Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, § 103(a), 124 Stat. 2751, 2755 (2010); Pub. L. No. 111-265 (technical amendments to CVAA), amending 47 U.S.C. § 225(a)(3); see also Report and Order at para. 5 (providing the text of the amended statutory definition of TRS).

<sup>7</sup> 5 U.S.C. § 604(a)(3).

<sup>8</sup> *Id.* § 603(b)(3).

<sup>9</sup> *Id.* § 601(6).

term “small business concern” under the Small Business Act.<sup>10</sup> A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>11</sup>

6. The rules adopted in the Report and Order will affect obligations of TRS providers. These services can be included within the broad economic category of All Other Telecommunications.

7. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>12</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>13</sup> For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>14</sup> Thus, a majority of “All Other Telecommunications” firms potentially affected by the rules adopted can be considered small.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

8. The revised definition for TRS does not create direct reporting, recordkeeping or other compliance requirements on IP CTS providers.

**F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

9. 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.<sup>15</sup>

10. Conforming the Commission’s definition of TRS to align the definition with the changes made by the CVAA to the statutory section 225(a)(3) definition will have no impact on TRS providers,

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<sup>10</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). 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.” *Id.*

<sup>11</sup> 15 U.S.C. § 632.

<sup>12</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>13</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>14</sup>

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>15</sup> 5 U.S.C. § 603(b).

including IP CTS providers, because the amendment to the Commission's rules will not change the current practice of allowing compensation for TRS calls that fit within the statutory definition.

**G. Report to Congress**

11. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>16</sup> 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.

**H. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals**

12. None.

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<sup>16</sup> See 5 U.S.C. § 801(a)(1)(A).

## APPENDIX D

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this 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 Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided in the item. The Commission will send a copy of the entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need For, and Objectives of, the Proposed Rules**

2. The NPRM addresses mandatory minimum standards requiring telecommunications relay service (TRS) providers to allow users to have long distance calls carried by their preferred long distance carrier (equal access requirement) and to offer the same billing options (such as collect, calling card, and third party billing) traditionally offered by wireline telephone companies (billing options requirement).

3. The Commission proposes to repeal the equal access requirement so that it is no longer applicable to any form of TRS. The Commission believes it is no longer necessary to provide TRS users with the ability to select their long distance carrier to get certain rates on their toll calls to achieve functional equivalency. When the equal access requirement was adopted in 1991, providers of telephone service generally assessed per-minute rates for long distance calling based on the distance and time of the call.<sup>4</sup> In order to allow users to select the best long distance plan for their needs, the Commission determined that “TRS users should have access to their chosen [interexchange carrier]. . . to the same extent that such access is provided to individuals without speech and hearing disabilities.”<sup>5</sup> Today, by contrast, voice telephone subscribers typically pay for their telephone service through a bundled or flat rate, without time or distance differentials for long distance calls.<sup>6</sup> Additionally, some TRS users have migrated to voice services that do not even offer a choice of long distance carrier.<sup>7</sup>

4. The Commission also proposes to repeal the billing options requirement so that it is no longer applicable to any form of TRS. Given the increasing migration to telephone service bundles for local and long distance calls, the ability for TRS users to employ various billing options for toll calls no

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, CG Docket No. 03-123, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10704-06, paras. 12-16 (2014) (*iTRS Exemptions Order*).

<sup>5</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4661, para. 22 (1991).

<sup>6</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Hamilton Relay, Inc. and Sprint Corporation Petitions for Interim Waiver of Section 64.604(b)(3) and 64.604(a)(3)(ii)*, CG Docket No. 03-123, Order, 31 FCC Rcd 9511, 9514-15, paras. 10-11 (CGB 2016) (*Hamilton and Sprint Waiver Order*).

<sup>7</sup> See *Hamilton and Sprint Waiver Order*, 31 FCC Rcd at 9514-15, paras. 10-11.



longer appears necessary to achieve functionally equivalent service.<sup>8</sup> Because current telephone subscribers rarely pay per-minute long distance charges, “any residual need for long distance billing options [is] eliminated, rendering the requirement to offer this TRS feature a burden with no associated public interest benefit.”<sup>9</sup> The record shows that TRS providers receive few, if any, requests for traditional billing options. Eliminating this obligation will make the provision of TRS efficient because it will relieve TRS providers of the need to maintain obsolete network features at a time when they and others within the communications industry are transitioning to IP-based platforms.<sup>10</sup>

5. In addition, the Commission proposes to eliminate the requirement for the Commission to publish in the Federal Register notice of applications for certification of state TRS programs and instead rely on the Commission’s public notice release process. The Commission seeks comment on these proposals.

### **B. Legal Basis**

6. The authority for this proposed rulemaking is contained in sections 1, 2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225.

### **C. Description and Estimate of the Number of Small Entities Impacted**

7. 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 proposed rules and policies, if adopted.<sup>11</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>12</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>13</sup> 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 SBA.<sup>14</sup>

8. The rule changes proposed in the NPRM will affect obligations of non-Internet based TRS providers. These services can be included within the broad economic category of All Other Telecommunications. There are currently two providers of non-Internet based TRS: Hamilton Relay, Inc. and Sprint Communications.

9. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications

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<sup>8</sup> See *id.* at 9515-16, para. 13.

<sup>9</sup> *Id.*

<sup>10</sup> See *iTRS Exemptions Order*, 29 FCC Rcd at 10705, para. 14.

<sup>11</sup> 5 U.S.C. § 603(b)(3).

<sup>12</sup> *Id.* § 601(6).

<sup>13</sup> *Id.* § 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.”

<sup>14</sup> 15 U.S.C. § 632.

connections are also included in this industry.<sup>15</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>16</sup> For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>17</sup> Thus, a majority of “All Other Telecommunications” firms potentially affected by the rules adopted can be considered small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

10. The Commission’s proposals to delete the equal access and billing options requirements and to eliminate the requirement for the Commission to publish in the Federal Register notice of applications for certification of state TRS programs would not impose any additional reporting, record keeping, or other compliance requirements.

**E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

11. 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.<sup>18</sup>

12. If the Commission amends its rules to eliminate the equal access and billing options requirements, such an amendment would reduce the burden on small entities subject to the rule. Such entities would no longer need to provide TRS users with the ability to select their long distance carrier or offer billing options, and the providers would no longer be required to configure their networks for such functionalities. Other small entities would not be affected.

13. If the Commission were to eliminate the requirement for the Commission to publish in the Federal Register notice of applications for certification of state TRS programs, it would have no impact on small entities because only the Commission is burdened by this obligation.

14. In addition, the NPRM seeks comment from all interested parties. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

**F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission’s Proposals**

15. None.

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<sup>15</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>16</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>17</sup>

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>18</sup> 5 U.S.C. § 603(b).