

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)
Structure and Practices of the Video Relay Service Program)
CG Docket No. 03-123
CG Docket No. 10-51

ORDER

Adopted: June 26, 2012

Released: June 26, 2012

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this order, we adopt per-minute compensation rates to be paid from the Interstate Telecommunications Relay Services Fund (Fund) for the 2012-13 Fund year for all forms of telecommunications relay services (TRS). Except for the rates for video relay service (VRS), these rates are based on the proposals of the current Fund administrator, Rolka Loube Saltzer Associates (RLSA).

1 TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system. See 47 U.S.C. § 225(a)(3) (defining TRS); see also section 103 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 (2010), as codified in various sections of 47 U.S.C., and amended by Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). TRS is provided in a variety of ways. Interstate TRS calls, and all Internet Protocol (IP) based TRS calls, both intrastate and interstate, are compensated from the Fund. See, e.g., Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket 98-67, Declaratory Ruling and Second Further Notice of Proposed Rule Making, 17 FCC Rcd 7779, 7784-86, ¶¶ 15-22 (2002) (declining to apply jurisdictional separation of costs to Internet Protocol Relay Service (IP Relay), and directing the Fund administrator to reimburse all IP Relay minutes from the Fund).

2 VRS is a form of TRS that enables a relay user who uses American Sign Language (ASL) to communicate on the nation's telephone system by accessing a communications assistant (CA) through a video-to-video link over broadband services; the CA relays the call between the ASL user and the other party to the call. See 47 C.F.R. § 64.601(a)(27).

3 RLSA, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program, CG Docket Nos. 03-123 and 10-51, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed May 1, 2012) (2012 TRS Rate Filing). Under section 64.604(c)(5)(iii)(E) and (H) of the Commission's rules, 47 C.F.R. § 64.604(c)(5)(iii)(E), (H), the Fund administrator is required to file TRS payment formulas and revenue requirements with the Commission on May 1 of each year, to be effective the following July 1. However, on April 30, 2012, the Consumer and Governmental Affairs Bureau (Bureau) waived RLSA's obligation to file proposed rates and revenue requirements for VRS for the 2012-13 Fund year by May 1, 2012. Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing

(continued....)

For VRS, as indicated in the *2011 TRS Rate Order*, the current interim rates will remain in place pending the completion of the current proceeding on reforming the structure and practices in the VRS market.⁴

2. As of July 1, 2012, the per-minute rates for TRS shall be: \$2.0304 for interstate traditional TRS;⁵ \$3.1614 for interstate Speech-to-Speech relay service (STS);⁶ \$1.7730 for interstate captioned telephone service (CTS) and for Internet Protocol captioned telephone service (IP CTS);⁷ and \$1.2855 for IP Relay.⁸ The interim rates for VRS shall continue to be: \$ 6.2390 for Tier I, \$6.2335 for Tier II, and \$5.0668 for Tier III.⁹ The Fund carrier contribution factor shall be 0.01053 and the funding requirement shall be \$711,383,582, based on RLSA's proposed new rates for TRS, STS, CTS, IP CTS, and IP Relay; an extension of the effectiveness of current VRS rates; and projected Fund administration expenses.¹⁰ The carrier contribution factor and funding requirement will be revised if, within the next year, the Commission makes a determination that changes the current VRS rates.

II. BACKGROUND

3. On May 2, 2012, the Bureau released the *2012 TRS Rate PN* seeking comment on the *2012 TRS Rate Filing*, which included proposals for rates based on the rate calculation methodologies

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and *Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Order, DA 12-687 (CGB, rel. April 30, 2012) (*2012 VRS Rate Waiver*).

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 26 FCC Rcd 9972, 9980-81, ¶ 23 (2011) (*2011 TRS Rate Order*) (“We adopt the current interim rates and compensation structure for VRS to be effective until the Commission completes its review of the compensation method and market structure for VRS”). See also *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (2011) (*2011 VRS NPRM*).

⁵ The Multistate Average Rate Structure (MARS) plan, which averages each state's intrastate TRS rates and minutes of use data, is used to calculate the annual interstate traditional TRS rate. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20163-64, ¶¶ 53-56 (2007) (*2007 TRS Rate Methodology Order*), 22 FCC Rcd at 20149-57, ¶¶ 16-35; see also *2012 TRS Rate Filing* at 10 and Exh. 1-1.

⁶ The MARS plan is also used to calculate the rate for interstate STS. See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20156, ¶ 34. Consistent with the *2007 TRS Rate Methodology Order*, RLSA's proposed STS rate includes an additional per-minute amount of \$1.131 to be used for STS outreach. See *id.* at 20165, ¶ 57; see also *2012 TRS Rate Filing* at 11 and Exh. 1-1.

⁷ The Commission also adopted the MARS Plan for interstate CTS and for IP CTS. See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20157-58, ¶¶ 36-38; see also *2012 TRS Rate Filing* at 12 and Exh. 1-2.

⁸ For IP Relay, the Commission adopted a price cap methodology. See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20158-60, ¶¶ 39-46; see also *2012 TRS Rate Filing* at 14 and Exh. 1-3.

⁹ See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20163-64, ¶¶ 53-56 (2007) (*2007 TRS Rate Methodology Order*) (delineating three separate monthly compensation tiers for VRS, based on number of minutes provided for the month).

¹⁰ See *2012 TRS Rate Filing* at 20 and Exh. 2.

established in the *2007 TRS Rate Methodology Order*.¹¹ In response to the *2012 TRS Rate PN*, the Commission received one comment, from Hamilton,¹² and two reply comments, from Sorenson and CaptionCall.¹³ Hamilton argues, as it did in comments to the *2011 TRS Rate Filing*, that all intrastate rates should be included in the MARS calculations.¹⁴ Sorenson supports the extension of the VRS rates.¹⁵ CaptionCall supports RLSA's proposed IP CTS rate.¹⁶

4. Over the past three years, the Commission has undertaken extensive efforts to reform the VRS program to ensure that it is efficiently managed, that providers comply with the Commission's regulations, and that VRS remains a fully viable service for its users. In June 2010, the Commission released the *2010 VRS NOI* in order to take a fresh look at the fundamental structure of the VRS program, including possible rule changes governing the ways in which VRS providers are compensated.¹⁷ On December 15, 2011, the Commission released the *2011 VRS Reform FNPRM*, proposing an alternative compensation mechanism for VRS.¹⁸

5. As in 2011, on April 30, 2012, CGB waived the Fund administrator's obligation to file, by May 1, 2012, proposed VRS rates and VRS revenue requirements for the 2012-13 Fund year.¹⁹ The Bureau explained that it was taking this action because "...the Commission is currently considering an appropriate rate structure for VRS, and we anticipate retaining the current interim rates pending the conclusion of that proceeding."²⁰ The Bureau concluded that requiring the Fund administrator to meet the May 1, 2012 filing deadline would impose an undue burden on the administrator.²¹

III. DISCUSSION

A. The Compensation Rate for TRS and STS for the 2012-13 Fund Year

6. We adopt a per-minute rate of \$2.0304 for traditional TRS and \$3.1614 for STS for the 2012-13 Fund year. This represents a nine percent increase from the 2011-12 Fund year rates for TRS and STS.²² RLSA formulated these rates by applying the MARS analysis adopted in the *2007 TRS Rate*

¹¹ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Public Notice DA 12-696 (May 2, 2012) (*2012 TRS Rate PN*).

¹² See Comments of Hamilton Relay, Inc. (Hamilton), filed in Docket Nos. 10-51 and 03-123 (May 16, 2012).

¹³ See Reply Comments of Sorenson Communications, Inc. (Sorenson), filed in Docket Nos. 10-51 and 03-123 (May 23, 2012); and Reply Comments of CaptionCall (CaptionCall), filed in Docket Nos. 10-51 and 03-123 (May 23, 2012).

¹⁴ See Hamilton Comments at 2-3.

¹⁵ See Sorenson Reply Comments at 1-2.

¹⁶ See CaptionCall Reply Comments at 1-2.

¹⁷ See generally *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 (2010) (*2010 VRS NOI*).

¹⁸ See generally *2011 VRS FNPRM*.

¹⁹ See *VRS Rate Waiver*.

²⁰ *Id.*, ¶ 3.

²¹ *Id.*

²² See *2012 TRS Rate Filing* at 10.

Methodology Order.²³ The MARS rate is calculated by collecting each state's *intrastate* TRS and STS rates and minutes of use data and averaging this data to determine the appropriate interstate rates for these services, as described in the *2012 TRS Rate Filing*.²⁴

7. Since the adoption of the *2007 Rate Methodology Order*, the Fund administrator, with the Commission's concurrence, has excluded from the MARS calculations rates from states with anomalies in their funding mechanisms for TRS and STS. To this end, the MARS rate has not included data for states that reimburse providers at a flat (versus a per-minute) rate.²⁵ Based on this precedent, RLSA excluded Michigan's intrastate TRS and STS data because Michigan continues to compensate TRS and STS on a flat-rate basis.²⁶

8. Hamilton objects to the exclusion of Michigan's data, arguing that it is ultimately irrelevant how a particular state pays its relay provider, as long as that state is able to report the total costs for intrastate TRS and STS.²⁷ However, we decline to require that RLSA recalculate the TRS and STS rates to include Michigan's data. We find that the exclusion of Michigan's rate data is both reasonable, given the lack of a per-minute rate in that state, and consistent with the Commission's precedent since adoption of the *2007 Rate Methodology Order*.²⁸ Although the Commission has asserted that it could make adjustments to this methodology "[t]o the extent future or unforeseen circumstances suggest that the MARS rate is not fair and reasonable,"²⁹ Hamilton has not offered evidence that RLSA's exclusion of rates and data from flat rate states has resulted in a rate that is not fair and reasonable.

B. The Compensation Rates for CTS and IP CTS for the 2012-13 Fund Year

9. We adopt a per-minute compensation rate of \$1.7730 for CTS and IP CTS for the 2012-13 Fund year. These rates are also calculated using the MARS methodology.³⁰ In the *2007 TRS Rate Methodology Order*, the Commission determined that because there is no state data for IP CTS, it would be reimbursed at the same rate as CTS.³¹ The \$1.7730 rate represents approximately a one percent increase from the 2011-2012 Fund year rate for CTS and IP CTS.³² As with the TRS and STS rates, RLSA has excluded Michigan's flat rate-based data from its calculation of the proposed CTS and IP CTS

²³ See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20180-82, App. B-D; see also *2012 TRS Rate Filing* at 9, Exh. 1-1, and App. C.

²⁴ See *2012 TRS Rate Filing* at 9-11.

²⁵ For example, in the *2007 TRS Rate Methodology Order*, the Commission directed NECA to exclude data from Michigan, specifically because this state does "not compensate the providers based on a per-minute rate." *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20165, ¶ 58.

²⁶ See *2012 TRS Rate Filing* at 9.

²⁷ See Hamilton Comments at 2-3.

²⁸ The Commission has excluded data from states using alternative rate methodologies for the past five rate cycles. See *2011 TRS Rate Order*, 26 FCC Rcd at 9974, ¶ 10. Most recently, in 2011, the Commission adopted MARS rates that excluded data from Virginia, Michigan and Maine because each used a flat compensation rate. See *id.* at 9976-77, ¶ 11, n.29.

²⁹ *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20158, ¶ 37.

³⁰ See *2012 TRS Rate Filing* at 11-12, Exh. 1-2, and App. D.

³¹ *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20158, ¶ 38.

³² See *2012 TRS Rate Filing* at 12.

rate calculation. Hamilton objects to this exclusion as well.³³ However, for the reasons stated above, we affirm RLSA's calculation of the CTS and IP CTS rate excluding Michigan's intrastate CTS data.

C. The Compensation Rate for IP Relay for the 2012-13 Fund Year

10. We adopt RLSA's proposed per-minute compensation rate of \$1.2855 for IP Relay for the 2012-13 Fund year.³⁴ In the *2007 TRS Rate Methodology Order*, the Commission adopted a price cap formula for IP Relay for a three-year period, ending June 30, 2010, and stated that the initial three-year cycle would be followed by another three-year rate cycle for IP Relay.³⁵ Therefore, the \$1.2985 rate adopted by the Commission for IP Relay for the 2010-11 Fund year serves as the base rate for the current three-year cycle for IP Relay, which will expire June 30, 2013. Pursuant to the *2007 TRS Rate Methodology Order*, this rate is adjusted annually by an inflation factor and an efficiency factor, and includes any appropriate exogenous costs submitted by providers.³⁶ The inflation factor is the Gross Domestic Product Price Index (GDP-PI), and the efficiency factor is the inflation factor minus a 0.5 percent adjustment to account for productivity gains.³⁷ RLSA states that no claims of exogenous costs were submitted by IP Relay providers.³⁸

D. The Compensation Rates for VRS

11. As noted above, we adopt the current interim VRS rates and compensation structure for VRS, pending further action in the VRS reform proceeding. In the 2010-11 and 2011-12 Fund years, the Commission continued to utilize the tiered rate methodology for VRS, which had been adopted in the *2007 TRS Rate Methodology Order*.³⁹ Tier I includes the first 50,000 monthly VRS minutes; Tier II includes monthly minutes between 50,001 and 500,000; and Tier III includes monthly minutes above 500,000.⁴⁰ In the *2010 TRS Rate Order* and the *2011 TRS Rate Order*, the Commission set the interim VRS rates for the 2010-11 Fund year as \$6.2390 for Tier I, \$6.2335 for Tier II, and \$5.0668 for Tier III.⁴¹ We again adopt these as interim rates and tiers, to become effective July 1, 2012, and to remain in effect until the Commission completes its review of the compensation method and market structure for VRS. As the Commission noted in the *2011 TRS Rate Order*, maintaining the current compensation structure at this time will promote the certainty and stability that is needed while the Commission examines the complex issues raised in the VRS reform proceeding.⁴²

E. Additional Funding Requirements

12. In addition to the per-minute costs of service noted above for TRS, RLSA includes in its funding requirements a \$10,000,000 funding allocation for the National Deaf-Blind Equipment

³³ See Hamilton Comments at 2-3.

³⁴ See *2012 TRS Rate Filing* at 12-14 and Exh. 1-3.

³⁵ See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20159-60, ¶¶ 43-46.

³⁶ See *id.* at 20159, ¶ 43.

³⁷ See *id.*

³⁸ See *2012 TRS Rate Filing* at 13.

³⁹ See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20160-65, ¶¶ 47-56.

⁴⁰ See *id.*

⁴¹ See *2010 TRS Rate Order*, 25 FCC Rcd at 8692, ¶¶ 6-7; *2011 TRS Rate Order*, 26 FCC Rcd at 9980-81, ¶ 23.

⁴² See *2011 TRS Rate Order*, 26 FCC Rcd at 9980-81, ¶ 23.

Distribution Program (NDBEDP), which is mandated by the CVAA.⁴³ In addition, RLSA proposes a \$3,600,000 funding requirement for service provider audits.⁴⁴ RLSA also includes the following in its proposed funding requirements: TRS Fund Administrator expenses based on a fixed-price contract amount of \$1,039,027;⁴⁵ funding for the expenses of the iTRS database administrator of \$415,000;⁴⁶ investment expenses of \$85,000;⁴⁷ data collection agent expenses of \$60,000;⁴⁸ independent financial audit expenses of \$50,000;⁴⁹ legal representation expenses of \$50,000;⁵⁰ expenses related to the Interstate TRS Advisory Council of \$45,000;⁵¹ IPERA compliance expenses of \$25,000;⁵² and a one-month provider payment reserve of \$65,097,273.⁵³ We adopt RLSA's recommendations for total additional funding of \$80,466,300, as proposed.⁵⁴

F. The Carrier Contribution Factor and Funding Requirement

13. We adopt a carrier contribution factor of 0.01053 and funding requirement of \$711,383,582 for the 2012-13 Fund year.⁵⁵ The Fund administrator calculates the total annual funding requirement by adding together the projected payments to TRS providers for each form of TRS, based on the proposed rates and projected minutes of use,⁵⁶ plus administrative expenses and other funding requirements noted above, less surplus amounts from the previous Fund year that can be used to offset the

⁴³ See *2012 TRS Rate Filing* at 16-17 and Exh. 2. In Section 105 of the CVAA, Congress authorized the Commission to allocate up to \$10 million annually from the Fund for a nationwide program to distribute specialized customer premises equipment to enable low income individuals who are deaf-blind to access telecommunications service, Internet access service, and advanced communications. See 47 U.S.C. § 620(c); see also *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, 26 FCC Rcd 5640 (2011) (implementing the NDBEDP, and making the full \$10 million of authorized funding available to the NDBEDP for the first year of its pilot program).

⁴⁴ See *2012 TRS Rate Filing* at 18 and Exh. 2.

⁴⁵ See *id.* at 17 and Exh. 2.

⁴⁶ See *id.* at 16 and Exh. 2.

⁴⁷ See *id.* at 18 and Exh. 2.

⁴⁸ See *id.* at 17 and Exh. 2.

⁴⁹ See *id.* at 19 and Exh. 2.

⁵⁰ See *id.*

⁵¹ See *id.* at 17 and Exh. 2.

⁵² See *id.* at 18 and Exh. 2. The Commission has directed RLSA to establish a baseline error rate for improper payments from the TRS Fund based on a memorandum from the Office of Management and Budget (OMB). See Memorandum from Jacob Lew, OMB, to Heads of Executive Departments and Agencies, *Issuance of revised Parts I and II to Appendix C of OMB Circular A-123* (M-11-16) (April 14, 2011).

⁵³ See *id.* at Exh. 2.

⁵⁴ See *id.*

⁵⁵ See *id.* at 19-20 and Exh. 2.

⁵⁶ Because providers of services compensated using the MARS Plan are no longer required to submit demand projections for those services, TRS, STS, and CTS demand projections are estimated based on actual historical demand. See *id.* at 15-16. IP Relay and VRS demand projections are based on the providers' projected minutes of use for the 2012-13 Fund year. See *id.*

2012-13 Fund year requirement.⁵⁷ The contribution factor is based on the ratio between total expected TRS Fund expenses and interstate end-user telecommunications revenues.⁵⁸

IV. PROCEDURAL MATTERS

14. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).⁵⁹ In addition, 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 2002.⁶⁰

15. *Congressional Review Act.* The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁶¹

16. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html>.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and section 64.604(c)(5)(iii) of the Commission's rules, 47 C.F.R. § 64.604(c)(5)(iii), that this ORDER IS hereby ADOPTED.

18. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate traditional TRS, for the July 1, 2012 through June 30, 2013 Fund year, at the rate of \$2.0304 per completed interstate conversation minute.

19. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate STS, for the July 1, 2012 through June 30, 2013 Fund year, at the rate of \$3.1614 per completed interstate conversation minute.

20. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate CTS and IP CTS, for the July 1, 2012 through June 30, 2013 Fund year, at the rate of \$1.7730 per completed conversation minute.

21. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP Relay service, for the July 1, 2012 through June 30, 2013 Fund year, at the rate of \$1.2855 per completed conversation minute.

⁵⁷ See *id.* at 19-20 and Exh. 2.

⁵⁸ See *id.*

⁵⁹ Pub. L. No. 104-13, 44 U.S.C. § 3501 *et seq.*

⁶⁰ Pub. L. No. 107-198, 44 U.S.C. § 3506(c)(4).

⁶¹ See 5 U.S.C. § 801(a)(1)(A).

22. IT IS FURTHER ORDERED that beginning July 1, 2012, the TRS Fund administrator shall continue to compensate eligible providers of intrastate and interstate video relay service at the rates of \$6.2390 for the first 50,000 monthly minutes (Tier I), \$6.2335 for monthly minutes between 50,001 and 500,000 (Tier II), and \$5.0668 for minutes above 500,000 (Tier III) per completed conversation minute until otherwise directed by the Commission.

23. IT IS FURTHER ORDERED that the Interstate TRS carrier contribution factor shall be 0.01053, and the funding requirement shall be \$711,383,582.

24. IT IS FURTHER ORDERED that this *Order* is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau