

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 30, 2016

Released: June 30, 2016

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. This order adopts per-minute compensation rates to be paid from the Interstate Telecommunications Relay Services Fund (TRS Fund, or Fund) for the Fund Year beginning July 1, 2016, for all telecommunications relay services (TRS). This order also determines the total size of the TRS Fund for the coming year and the contribution factor, i.e., the percentage factor used to calculate how much interstate and international revenue telecommunications carriers and other covered service providers must contribute to the TRS Fund.

2. Effective July 1, 2016, the per-minute compensation rates for interstate and Internet-based TRS, other than video relay service (VRS), shall be: (1) for interstate traditional TRS, \$2.6245; (2) for interstate Speech-to-Speech relay service (STS), \$3.7555; (3) for interstate captioned telephone service (CTS) and Internet Protocol captioned telephone service (IP CTS), \$1.9058; and (4) for IP Relay, \$1.30. These rates are based on recommendations of the current Fund administrator, Rolka Loube Associates LLC (Rolka Loube).

3. For VRS providers with more than 500,000 monthly minutes, the per-minute VRS compensation rates for the period from July 1, 2016, through December 31, 2016, are: Tier I (a

1 TRS enables an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to communicate by telephone or other device through the telephone system. See 47 U.S.C. § 225(a)(3) (defining TRS). TRS is provided in a variety of ways. Currently, interstate TRS calls and all Internet Protocol (IP) based TRS calls, both intrastate and interstate, are compensated from the Fund. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling, 22 FCC Rcd 379, 380, 381, 390, paras. 3, 5-6, 25 (2007).

2 See Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed May 5, 2016) (2016 TRS Rate Filing); Supplemental Submission (filed June 7, 2016) (2016 TRS Rate Filing Supplement). Under the Commission's TRS rules, the Fund administrator is required to file TRS payment formulas and revenue requirements with the Commission on May 1st of each year, to be effective the following July 1st. 47 CFR § 64.604(c)(5)(iii)(E), (H).

provider's 1st 500,000 monthly minutes), \$4.44; Tier II (a provider's 2nd 500,000 monthly minutes), \$4.44; and Tier III (a provider's monthly minutes in excess of 1 million), \$3.68. The applicable per-minute VRS compensation rates for the period from January 1, 2017, through June 30, 2017, are: Tier I, \$4.06; Tier II, \$4.06; Tier III, \$3.49.³ For VRS providers with 500,000 or fewer monthly minutes, the per-minute VRS compensation rates are: For the period from July 1 to October 31, 2016, \$5.29; for the period from November 1, 2016, to April 30, 2017, \$5.06; for the period from May 1 to June 30, 2017, \$4.82.⁴

4. Based on these compensation rates, projected demand for the services, and projected Fund administration expenses, we adopt a funding requirement of \$1,143,562,791, and a carrier contribution factor of 0.01862, as proposed by Rolka Loube.⁵

II. BACKGROUND

5. On May 20, 2016, the Consumer and Governmental Affairs Bureau (Bureau) released the *2016 TRS Rate PN*, seeking comment on Rolka Loube's *2016 TRS Rate Filing*, in which the Fund administrator proposed revised compensation rates for and recommended a revenue requirement and contribution factor for 2016-17.⁶ In response to the *2016 TRS Rate PN*, the Commission received comments from eight parties, including TRS providers and telecommunications industry contributors to the Fund.⁷

III. DISCUSSION

A. Compensation Rates for TRS, STS, CTS, and IP CTS

6. For the 2016-17 Fund Year, we adopt Rolka Loube's proposed per-minute rates of \$2.6245 for interstate traditional TRS, \$3.7555 for interstate STS, and \$1.9058 for interstate CTS and for intrastate and interstate IP CTS.⁸ These rates represent, respectively, increases of approximately 14.6 percent for traditional TRS, 9.8 percent for STS, and 0.8 percent for CTS and IP CTS from the 2015-16 Fund Year rates for those services. Rolka Loube developed each of these rates by applying the MARS analysis adopted in the *2007 TRS Rate Methodology Order*. The MARS rate is calculated by collecting each state's intrastate TRS, STS, and CTS rates and minutes of use data and averaging the state data to determine the appropriate interstate rates for these services.⁹

³ *VRS Reform Order*, 28 FCC Rcd at 8705-06, para. 215.

⁴ *Structure and Practices of the Video Relay Service Program et al.*, Report and Order, 31 FCC Rcd 2339, 2346, Table 2 (2016) (*VRS Partial Rate Freeze Order*).

⁵ See 2016 TRS Rate Filing at 40; 2016 TRS Rate Filing Supplement at 8.

⁶ *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2016-17 Fund Year*, Public Notice, DA 16-518, 31 FCC Rcd 4612 (CGB 2016) (*2016 TRS Rate PN*).

⁷ The following individual parties submitted comments: ASL Services Holdings, LLC dba GlobalVRS (GlobalVRS), Convo Communications LLC (Convo), Hamilton Relay, Inc. (Hamilton), IDT Telecom, Inc. (IDT), Purple Communications, Inc. (Purple), Sorenson Communications, Inc., and CaptionCall, LLC (Sorenson), Sprint Corporation (Sprint), and United States Telecom Association (USTA). Reply comments were submitted by IDT.

⁸ Consistently with rate determinations in past years, the STS rate includes an additional per-minute amount of \$1.1310 to be used for STS outreach. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20170, para. 57 (2007) (*2007 TRS Rate Methodology Order*). Rolka Loube notes that the demand for STS is small compared to other services and suggests that the Commission revisit this issue to determine whether there is a more effective way to inform people with speech disabilities about the availability of this service. 2016 TRS Rate Filing at 18. Any action on this recommendation will be addressed separately from this Order.

⁹ Because the states set rates for intrastate CTS but not IP CTS, the compensation rate for IP CTS is set equal to the rate for interstate CTS. *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20161, para. 38.

7. No party disputes that Rolka Loube's recommended rates correctly apply the MARS methodology. We so conclude and adopt the recommended rates.¹⁰

B. Compensation Rate for IP Relay

1. Background

8. For the IP Relay compensation rate, which is subject to a price cap methodology, the 2016-17 Fund year will begin a new three-year price cap period.¹¹ In the *2013 TRS Rate Order*, the Bureau set a base compensation rate of \$1.0147 and an efficiency/inflation adjustment factor of 6 percent for the three-year period ending June 30, 2016.¹² On reconsideration, the Bureau increased the base rate to \$1.0309 per minute and reset the efficiency/inflation adjustment factor at 0 percent.¹³ Subsequently, after Purple Communications ceased its provision of IP Relay service and Sprint filed an emergency petition seeking adjustment of the compensation rate, the Bureau reset the IP Relay compensation rate at \$1.37 per minute, effective retroactively from November 15, 2014, to ensure continuity of service to eligible consumers.¹⁴ In the *2015 TRS Rate Order*, based on application of the price cap formula, the Bureau maintained the IP Relay compensation rate at the same \$1.37 level.

9. In the *2016 TRS Rate Filing*, after reviewing information on provider costs, Rolka proposes an IP Relay compensation rate of \$1.2122 per minute, which would be applicable for the 2016-17 Fund Year and would serve as the base rate for the new three-year price cap period. This represents a reduction of \$0.1578 from the current rate of \$1.37 per minute.

10. Sprint, which is the only TRS provider currently providing IP Relay service, opposes

¹⁰ In light of the Commission's open rulemaking on IP CTS compensation rate methodology, the Bureau also sought comment on whether the weighted average projected costs of IP CTS were correctly calculated in the 2016 TRS Rate Filing and on the merits of the alternative ways suggested by Rolka for calculating an IP CTS compensation rate based on the IP CTS costs reported by providers. *2016 TRS Rate PN*, 31 FCC Rcd at 4613 (*citing Misuse of Internet Protocol (IP) Captioned Telephone Service et al.*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420, 13472-79, paras. 111-27 (2013), *vacated in part on other grounds sub nom. Sorenson Communications, Inc. and CaptionCall, LLC v. FCC*, 755 F.3d 702 (D.C. Cir. 2014)). Comments submitted regarding these and other issues currently under consideration in the IP CTS rulemaking will be included in the record of that rulemaking.

¹¹ The Commission adopted a price cap methodology for IP Relay in 2007, based on a three-year rate cycle, and subsequently approved continued use of that methodology and rate cycle. *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20159-60, paras. 43-46; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 25 FCC Rcd 8689, 8700, paras. 25-26 (2010). The price cap plan for IP Relay applies three factors to a base rate – an inflation factor, an efficiency (or “X”) factor, and exogenous costs. The formula takes a base rate and multiplies it by an adjustment percentage that reflects an increase due to inflation, offset by a decrease due to efficiencies. *Id.* The inflation factor is Gross Domestic Product – Price Index (GDP-PI). The efficiency factor has been described as a figure equal to the Inflation Factor, less a designated amount to account for productivity gains. *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20163, paras. 43-44.

¹² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, Order, 28 FCC Rcd 9219, 9224, para. 17 (CGB 2013).

¹³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, Order, 29 FCC Rcd 8044, 8052, para. 19 (CGB 2014) (*2014 TRS Rate Order*).

¹⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 16273, 16275-78, paras. 6-12 (CGB 2014) (*IP Relay Rate Adjustment Order*). To facilitate Sprint's expansion of capacity to service the expected sudden influx of new customers migrating from Purple, the Bureau also established a separate rate of \$1.67 per minute, applicable to any monthly minutes handled in excess of 300,000 during the period from November 15, 2014, to May 15, 2015. *Id.*

Rolka Loube's recommendation and urges the Commission to maintain the existing \$1.37 compensation rate pending the development of a new approach to rate-setting for this service.¹⁵ Sprint also argues that service enhancement for consumers who are deaf-blind should be factored into the rate calculation, as well as outreach costs, including planned outreach to the deaf-blind community.¹⁶ Sprint argues that the national outreach initiatives ordered in the *VRS Reform Order* are still in the developmental stage and have not yet resulted in "real-world outreach."¹⁷

11. In two ex parte filings, Sprint provides additional detail on a number of specific service enhancements and outreach measures that it proposes to undertake in the 2016-17 Fund Year.¹⁸ Noting that it recently held a number of meetings with members of the deaf-blind community to discuss "targeted changes that would improve the overall accessibility, mobility, and usability of IP Relay," Sprint describes three projects that have been planned to address these service improvements and that were not included in the costs reported to Rolka Loube earlier this year. To facilitate access to IP Relay services by people who are deaf-blind, these projects involve software modifications to improve the mobility and accessibility of Sprint's IP Relay applications on Android and Apple platforms, to simplify the user registration process, and to optimize Sprint's IP Relay website for some popular web browsers.¹⁹

12. Regarding outreach activities, Sprint describes two categories of outreach activity for which it seeks compensation. The first category comprises general outreach activities, which focus on "raising awareness among the community of individuals who can benefit most from access to IP Relay."²⁰ The historical and projected costs attributed to these activities were previously reported as line items in Sprint's annual cost report.²¹ Sprint argues that these activities, which "reflect Sprint's ongoing commitment" to educating the community of people who are deaf, hard of hearing, deaf-blind, and who have speech disabilities, perform necessary functions that are not being addressed by the National Outreach Program because that program's activities focus on "educating hearing individuals about TRS and why they should accept incoming relay calls," which, while important, does not address the need to inform and educate individuals with disabilities who may not be aware of the benefits of IP Relay.²² As a second category of outreach activity, Sprint proposes new measures and the hiring of personnel specifically dedicated to educating the deaf-blind community about Sprint's recent and proposed service improvements and to "strengthening Sprint's ties to the Deaf-Blind community and expanding awareness of the availability and advantages of IP Relay."²³

2. Discussion

13. We reject Sprint's argument that the current \$1.37 rate should be maintained in order to preserve the status quo pending the Commission's adoption of a new ratemaking methodology. The Commission's prior decisions established a specific ratemaking methodology for IP Relay, and Rolka

¹⁵ Sprint Comments at 2.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 3.

¹⁸ Letter from Scott R. Freiermuth, Counsel, Government Affairs, Federal Regulatory, Sprint, to Marlene H. Dortch, FCC Secretary (filed June 6, 2016) (Sprint June 6 Ex Parte); Letter from Scott R. Freiermuth, Counsel, Government Affairs, Federal Regulatory, Sprint, to Marlene H. Dortch, FCC Secretary (filed June 21, 2016) (Sprint June 21 Ex Parte).

¹⁹ Sprint June 6 Ex Parte at 2; *see also* Sprint June 21 Ex Parte at 6-8.

²⁰ Sprint June 21 Ex Parte at 2; *see also id.* at 3.

²¹ *See* Sprint June 6 Ex Parte, Attach. A, Item A (referring to annual filing).

²² Sprint June 21 Ex Parte at 3-4.

²³ *Id.* at 4-5.

Loube's analysis has been conducted in accordance with those determinations. The Bureau is not free to disregard those results on the basis that the Commission is considering changes in methodology that have yet to be adopted. We do, however, consider Sprint's specific arguments for modifying Rolka Loube's recommended rate to take account of proposed service improvements and recent and proposed outreach activities.

a. Service Improvement Costs.

14. Regarding Sprint's proposed service improvement costs, we find that Sprint has sufficiently supported the addition to its reported costs of new software modifications to be undertaken in the 2016-17 Fund Year to improve access to IP Relay service by the deaf-blind community. The exit of several providers from the IP Relay market has had a significant impact on deaf-blind consumers, for whom IP Relay service is often the sole or primary means of communicating by telephone.²⁴ At a meeting on June 17, 2016, between Bureau staff and representatives of the deaf-blind community, a representative of that community confirmed that Sprint had conferred with the community approximately one month earlier about ways to modify its IP Relay service to address ongoing concerns that the deaf-blind community had with respect to accessing IP Relay.²⁵ To ensure that such consumers have full access to IP Relay service, we will allow the inclusion of these late-reported costs. In light of Sprint's failure to include these projected costs in its annual report submitted March 1, 2016, however, the inclusion of these costs in the IP Relay rate will be subject to possible true-up, based on review of the reports to be submitted detailing Sprint's actual expenditures on such service improvements.

b. Outreach Costs

15. The Commission determined in 2013 that IP Relay outreach should be conducted through what is now called the National Outreach Program and that provider-specific outreach costs should no longer be included as compensable costs.²⁶ Sprint requests a waiver of this restriction with respect to its IP Relay outreach costs. The Commission's rules may be waived for good cause shown.²⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁸ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁹ Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule and if such a deviation will serve the public interest.³⁰ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.³¹

16. The current IP Relay environment, in which Sprint is the only service provider, presents special circumstances that warrant consideration.³² As Sprint points out, in its decision to establish a

²⁴ See, e.g., *IP Relay Rate Adjustment Order* at 16276, para. 7 & n.25, citing Joint Statement of American Association of Deaf-Blind (AADB) and DeafBlind Citizens Action, CG Docket Nos. 03-123 and 12-38 (filed Nov. 3, 2014); National Association of the Deaf *Ex Parte*, CG Docket No. 03-123 (filed Nov. 10, 2014); Helen Keller National Center and AADB *Ex Parte*, CG Docket No. 03-123 (filed Nov. 13, 2014); Martha Timms *Ex Parte*, CG Docket No. 03-123 (filed Nov. 12, 2014); Judy Jonas *Ex Parte*, CG Docket No. 03-123 (filed Nov. 17, 2014).

²⁵ See Elaine Gardner, Disability Rights Office, CGB, Submission for the Record, CG Docket No. 03-123 (filed June 28, 2016).

²⁶ *VRS Reform Order*, 28 FCC Rcd at 8634-39, 8696, paras. 31-39, 192.

²⁷ 47 CFR § 1.3.

²⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁰ *Northeast Cellular*, 897 F.2d at 1166.

³¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

³² *WAIT Radio*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

national program to replace provider-directed outreach, the Commission found that provider outreach expenditures had been ineffective in educating new-to-category users and the general public, because the vast majority of expenditures classified as outreach had been devoted to “individual branded marketing campaigns, which . . . focus primarily on efforts to win back TRS users from competitors, often in conjunction with expensive and enticing giveaways of free products.”³³ In the present IP Relay service market, with only one provider, this concern appears to be much less applicable than in more competitive relay service markets. Similarly, there is less reason to fear that provider-directed outreach expenditures in the IP Relay context will duplicate the outreach efforts of other providers.³⁴

17. However, Sprint has not demonstrated with particularity³⁵ that the first category of outreach costs for which it seeks consideration – i.e., the general IP Relay outreach expenses that it previously reported to the TRS Fund administrator – are necessary expenditures for measures that would not otherwise be addressed through the National Outreach Program.³⁶ Nor has Sprint presented a persuasive case that inclusion of such costs in determining the IP Relay rate is critical to achieving the purposes of the IP Relay program. Therefore, we decline to waive the outreach cost recovery prohibition established in the *VRS Reform Order* to permit recovery of Sprint’s general outreach expenditures because we do not find that such deviation from the rule would serve the public interest.

18. At the same time, we conclude there is good cause to grant a temporary, narrowly limited waiver of the outreach cost recovery prohibition to allow recovery of the second category of Sprint’s outreach costs, namely, the projected costs of Sprint’s specific outreach activities targeting the deaf-blind community. The absence of other providers in the IP Relay market continues to have a significant impact on deaf-blind consumers.³⁷ Sprint has provided a detailed explanation of its proposed targeted outreach to the deaf-blind community – including outreach related to Sprint’s recent and proposed service improvements for such consumers. Based on the information provided, we are persuaded that the outreach activities enumerated by Sprint are needed to effectively educate deaf-blind consumers regarding IP Relay service, ensure that they are aware of Sprint’s service improvements instituted to benefit this group, and to offer members of the deaf-blind community an opportunity to provide feedback on making the service more accessible to and usable by individuals who are deaf-blind.³⁸

19. For the foregoing reasons, we grant a temporary, limited waiver of the prohibition on recovery of provider-directed outreach for Fund Year 2016-17, to permit Sprint to recover the costs described in its ex parte filings for outreach activities and dedicated staff specifically targeted at outreach to the deaf-blind community. To ensure that the costs incurred and outreach activities actually undertaken pursuant to this waiver are as described and advance the purposes of the TRS program, we require Sprint, as a condition of this waiver, to provide quarterly reports on its service improvements and outreach expenditures focused on the deaf-blind community in each quarter of Fund Year 2016-17, with an itemized list of each service improvement completed, each new hire, and each outreach activity

³³ Sprint June 6 Ex Parte at 3, citing *VRS Reform Order*, 28 FCC Rcd at 8635, para. 31.

³⁴ *VRS Reform Order*, 28 FCC Rcd at 8635, para. 31.

³⁵ As noted, however, the burden is on the party requesting a waiver to show particular circumstances warranting deviation from the general rule. *Tucson Radio*, 452 F.2d at 1382; *Northeast Cellular*, 897 F.2d at 1166.

³⁶ Sprint June 6 Ex Parte, Attachment A, Item A. In this regard, it is not the case that the National Outreach Program is focused only on outreach to hearing individuals, as Sprint contends. Although the general public is an important target of national outreach, the national program is also charged with providing information specifically to new-to-category users who are deaf, hard-of-hearing, deaf-blind, or who have a speech disability. *VRS Reform Order*, 28 FCC Rcd at 8637, 8638, paras. 34, 36.

³⁷ See *supra* note 24.

³⁸ Based on internal discussions with Commission staff, we also conclude that they will not duplicate activities of the National Outreach Program or of the NDBEDP Outreach Coordinator in Fund Year 2016-17.

conducted, identifying the specific groups targeted or met with, and the dates and amounts expended for each item. These reports shall be filed with the TRS Fund administrator and CGB and shall be due on November 1, 2016, February 1, 2017, May 1, 2017, and August 1, 2017.

20. Based on analysis by Rolka Loube of the costs recently reported by Sprint for the service improvements and the targeted outreach for which we authorize recovery, we set the IP Relay rate for the 2016-17 Fund Year, which is also the base rate for the new three-year price cap cycle, at \$1.30 per minute, a reduction of \$.07 from the current rate of \$1.37 per minute. This rate, however, is subject to possible true-up based on review of the reports submitted by Sprint, as directed above.

C. Compensation Rates for VRS

21. In the 2013 *VRS Reform Order*, based on the Fund administrator's finding that the tiered VRS compensation rates continued to exceed the weighted average allowable costs of providers, the Commission pre-set a gradual reduction of the VRS compensation rates over a four-year period, to provide certainty to providers and establish a "glide path" toward cost based levels.³⁹ For VRS providers with more than 500,000 monthly minutes, the applicable per-minute VRS compensation rates for the period from July 1 to December 31, 2016, are: Tier I (a provider's 1st 500,000 monthly minutes), \$4.44; Tier II (a provider's 2nd 500,000 monthly minutes), \$4.44; and Tier III (a provider's monthly minutes in excess of 1 million), \$3.68. The applicable per-minute VRS compensation rates for the period from January 1 to June 30, 2017, are: Tier I, \$4.06; Tier II, \$4.06; Tier III, \$3.49.⁴⁰ In the *VRS Partial Rate Freeze Order*, the Commission modified the Tier I rates applicable to VRS providers whose total monthly minutes do not exceed 500,000. For VRS providers with 500,000 or fewer monthly minutes, the per-minute VRS compensation rates are: For the period from July 1 to October 31, 2016, \$5.29; for the period from November 1, 2016, to April 30, 2017, \$5.06; for the period from May 1 to June 30, 2017, \$4.82.⁴¹ These VRS compensation rates were adopted by the Commission in the *VRS Reform Order* and the *VRS Partial Rate Freeze Order* and consequently are not subject to modification in this Order.⁴²

D. The Carrier Contribution Factor and Funding Requirement

22. We adopt Rolka Loube's proposed funding requirement of \$1,143,562,791 and carrier contribution factor of 0.01862 for the 2016-17 Fund Year.⁴³ The Fund administrator calculates the 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, plus administrative expenses and other funding requirements noted above, less surplus amounts from the previous Fund Year that can be used to offset the 2016-17 Fund Year requirement.⁴⁴ The contribution factor is based on the ratio between the net funding requirement and total interstate and international end-user revenues for the prior calendar year.⁴⁵

23. For traditional TRS, STS, and CTS, Rolka projected demand using recent historical data,

³⁹ *VRS Reform Order*, 28 FCC Rcd at 8702-06, paras. 209-16.

⁴⁰ *Id.* at 8705-06, para. 215.

⁴¹ *VRS Partial Rate Freeze Order*, 31 FCC Rcd at 2346, Table 2.

⁴² In light of the Commission's open rulemaking on VRS compensation rate methodology, the Bureau also invited comment on whether the weighted average projected costs of VRS were correctly calculated in the 2016 TRS Rate Filing and on the possible relevance of such cost data to the determination of the future ratemaking methodology for VRS. *2016 TRS Rate PN*, 31 FCC Rcd at 4613, citing *VRS Reform Order*, 28 FCC Rcd at 8706-10, paras. 217-38. Comments filed regarding these issues will be included in the record of that rulemaking.

⁴³ See 47 CFR § 64.604(c)(5)(iii)(B); 2016 TRS Rate Filing at 40; 2016 TRS Rate Filing Supplement at 8.

⁴⁴ See 2016 TRS Rate Filing, Exh. 2; 2016 TRS Rate Filing Supplement, Exh. 2 Revised.

⁴⁵ 2016 TRS Rate Filing at 7; 2016 TRS Rate Filing Supplement at 4.

an approach that has historically provided reasonably accurate results for these services.⁴⁶ For VRS and IP Relay, Rolka Loube relied on the providers' demand projections, an approach that in recent years has provided reasonably accurate results for those services.⁴⁷ Accordingly, we find that Rolka Loube's TRS demand projections are reasonable.

24. In addition to projected payments for TRS, Rolka Loube includes in its proposed funding requirement a \$10,000,000 funding allocation for the National Deaf-Blind Equipment Distribution Program (NDBEDP).⁴⁸ Rolka Loube also includes the following estimated expenses in its proposed funding requirement: TRS numbering directory administration expenses of \$540,000; TRS Fund administrator compensation of \$1,350,000; revenue data collection agent expenses of \$60,000, the Interstate TRS Advisory Council expenses of \$45,000; investment management expenses of \$190,000, service provider audits expenses of \$1,000,000; expenses of \$225,000 for compliance with the Improper Payments Elimination and Recovery Act of 2010 (IPERA),⁴⁹ bankruptcy representation expenses of \$50,000, and independent TRS Fund audit expenses of \$60,000.⁵⁰ The TRS numbering directory and Fund administrator compensation are reasonable estimates based on the existing contracts for those services.⁵¹ No comments were received regarding the recommended inclusion of any of the costs listed in this paragraph. We find the recommended amounts for the other expenses listed to be fair estimates based on reasonable projections of costs.

25. Also included are a two-month payment reserve totaling \$178,599,000 and a \$20 million reserve for the costs of implementing VRS reform initiatives.⁵² IDT opposes Rolka Loube's proposed two-month reserve, urging that the Commission reduce the reserve to one month (i.e., by 50 percent) in order to provide some reduction in what IDT considers to be "out-of-control" costs and an "obscenely" high contribution factor. IDT argues that a supplemental contribution has been required only once in the history of the Fund and that, regardless, the Commission can easily address any threatened shortfall.⁵³

26. We find that the two-month payment reserve, which has been in place for the past two Fund Years,⁵⁴ is reasonable and not excessive. As explained above, Fund revenue requirements are determined based on projections of demand, and such projections sometimes prove to be inaccurate. Given that Fund expenditures have been rising over time, the recommended reserve is a reasonable precautionary measure to guard against the possibility of unexpectedly large increases in Fund payments in the course of a Fund Year. We will not abandon this prudent measure based on speculative assumptions that the reserve will not be needed or that any shortfall occurring in the 2016-17 Fund Year

⁴⁶ 2016 TRS Rate Filing at 30-31.

⁴⁷ *Id.* at 31.

⁴⁸ *Id.* at 35-36. Although the NDBEDP pilot program was to have ended on June 30, 2016, the Commission extended it for an additional year, until June 30, 2017, to provide additional time to consider public comment on proposed rules to make the program permanent. See *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, FCC 16-69 (rel. May 27, 2016).

⁴⁹ Pub. L. No. 111-204 (July 22, 2010).

⁵⁰ 2016 TRS Rate Filing at 35-38.

⁵¹ *Id.* at 35, 36.

⁵² *Id.* at 38-39.

⁵³ IDT Comments at 1-2.

⁵⁴ See *2014 TRS Rate Order*, 29 FCC Rcd at 8053, para. 23; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 30 FCC Rcd 7063, 7069, para. 17 (CGB 2015) (*2015 TRS Rate Order*).

could be effectively addressed by exacting a supplemental contribution⁵⁵ or by deferring its recovery to the subsequent Fund Year.⁵⁶ Further, to the extent that it goes unused, the payment reserve is not wasted. Rather, the remaining portion (and any accrued interest) is simply turned over for use in the next Fund Year, including payments for service actually provided in the final months of the previous Fund Year.⁵⁷

27. We also approve the recommended reserve for VRS Reform initiatives. As several of these are still in the initial stages of implementation, we find it is reasonable to continue maintaining a reserve for this purpose in the same amount previously approved.⁵⁸

28. In summary, we conclude that Rolka Loube's demand projections are reasonable and that its funding proposals are consistent with the Commission's rules on contribution computations,⁵⁹ and we therefore adopt the proposed funding requirement \$1,143,562,791 and carrier contribution factor of 0.01862 for the 2016-17 Fund Year.

IV. PROCEDURAL MATTERS

29. 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: <https://www.fcc.gov/general/disability-rights-office-headlines>.

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to 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.

31. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate traditional TRS, for the period from July 1, 2016, through June 30, 2017, at the rate of \$2.6245 per completed interstate conversation minute.

32. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate STS, for the period from July 1, 2016, through June 30, 2017, at the rate of \$3.7555 per completed interstate conversation minute.

33. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate CTS and IP CTS, for the period from July 1, 2016, through June 30, 2017, at the rate of \$1.9058 per completed conversation minute.

34. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible

⁵⁵ Although IDT argues that, in the event of an unexpected increase in payments, "the Commission could easily amend the contribution factor for the remainder of the Fund Year or otherwise require a supplemental contribution" (IDT Comments at 2), the need for supplemental contributions would not necessarily be discovered and acted upon in time to prevent a shortfall in the current Fund Year.

⁵⁶ See *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 703, 707 n.20 (2013), *vacated sub nom. Sorenson Communications, Inc. and CaptionCall, LLC v. FCC*, 755 F.3d 702 (D.C. Cir. 2014) (noting that the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(A), provides that an officer or employee of the federal government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation).

⁵⁷ See 47 CFR § 64.604(c)(5)(iii)(B); 2016 TRS Rate Filing at 38-39.

⁵⁸ See *2015 TRS Rate Order*, 30 FCC Rcd at 7069, para. 17 (CGB 2015) (approving a \$20 million VRS reform implementation reserve).

⁵⁹ 47 CFR § 64.604(c)(5)(iii)(A), (B).

providers of IP Relay service for the period from July 1, 2016, through June 30, 2017, at the rate of \$1.30 per completed conversation minute, subject to possible true-up as discussed herein.

35. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of intrastate and interstate video relay service with more than 500,000 monthly minutes: (1) for the period from July 1 to December 31, 2016, at the rates of \$4.44 per completed conversation minute for a provider's first 500,000 monthly minutes (Tier I), \$4.44 per completed conversation minute for a provider's second 500,000 monthly minutes (Tier II), and \$3.68 per completed conversation minute for a provider's monthly minutes exceeding 1 million (Tier III); and (2) for the period from January 1 to June 30, 2017, at the rates of \$4.06 per completed conversation minute for a provider's first 500,000 monthly minutes (Tier I), \$4.06 per completed conversation minute for a provider's second 500,000 monthly minutes (Tier II), and \$3.49 per completed conversation minute for monthly minutes exceeding 1 million (Tier III).

36. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of intrastate and interstate video relay service with 500,000 or fewer monthly minutes: (1) for the period from July 1 to October 31, 2016, at the rate of \$5.29 per completed conversation minute; (2) for the period from November 1, 2016, to April 30, 2017, at the rate of \$5.06 per completed conversation minute; and (3) for the period from May 1 to June 30, 2017, at the rate of \$4.82 per completed conversation minute.

37. IT IS FURTHER ORDERED that the Interstate TRS Fund revenue requirement shall be \$1,143,562,791 and the Interstate TRS Fund carrier contribution factor shall be 0.01862.

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

FEDERAL COMMUNICATIONS COMMISSION

Alison Kutler, Chief
Consumer and Governmental Affairs Bureau