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

ORDER

Adopted: June 30, 2011 **Released: June 30, 2011**

By the Commission:

I. INTRODUCTION

1. The Commission hereby adopts per-minute compensation rates to be paid from the Interstate TRS Fund ("Fund") for the 2011-12 Fund year for all forms of telecommunications relay services ("TRS").[1] Except for the rates for video relay service ("VRS"),[2] these rates are based on the proposals of the current Fund administrator, the National Exchange Carrier Association ("NECA").[3] For

[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* Sec. 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 Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010 (making technical corrections to the CVAA). TRS is provided in a variety of ways. Interstate TRS calls, and currently 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 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(26). As discussed below, NECA did not propose a VRS rate because the Consumer and Governmental Affairs Bureau ("CGB" or "Bureau") waived the obligation to do so for the 2011-12 Fund year. *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, Order, 26 FCC Rcd 5231 (CGB 2011) (*VRS Rate Filing Waiver Order*).

[3] NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123 and CG Docket No. 10-51, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed Apr. 29, 2011) (*2011 TRS Rate Filing*); supplemented by NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123 and CG Docket No. 10-51, Revised Payment Formulas

(continued....)

VRS, we adopt, until further notice, the current interim rates that were adopted for the 2010-11 Fund year.[4] As discussed below, the VRS rates adopted herein will be in effect on an interim basis until the Commission completes its examination of VRS rates and compensation as part of the *2010 VRS NOI* proceeding.[5]

2. As of July 1, 2011, the per-minute rates for TRS shall be: \$1.8611 for interstate traditional TRS; \$2.9921 for Speech-to-Speech ("STS") service; \$1.7630 for captioned telephone service ("CTS") and IP CTS; and \$1.2920 for IP Relay. 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.[6] Based on the adoption of these rates and NECA's proposals for additional funding requirements, the Commission hereby adopts a carrier contribution factor of 0.01058, and a funding requirement of \$740,399,393.56 for the 2011-12 Fund year.[7] The 2011-12 Fund year encompasses the period of July 1, 2011 through June 30, 2012.

II. BACKGROUND

A. The *2011 TRS Rate Filing* and *2011 TRS Rate PN*

3. On May 4, 2011, CGB released the *2011 TRS Rate PN* seeking comment on the *2011 TRS Rate Filing,* including NECA's proposed carrier contribution factor of 0.01056, and funding requirement of \$739,306,982.99. In the *2011 TRS Rate Filing,* NECA also proposed new per-minute compensation rates for all forms of TRS except VRS, based on the rate calculation methodologies established in the *2007 TRS Rate Methodology Order.*[8] The *2007 TRS Rate Methodology Order* established the current rate methodologies to be used for the 2011-12 Fund year for the various forms of

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and Fund Size Estimate, Interstate Telecommunications Relay Services (TRS) Fund for July 2011 through June 2012 (filed June 14, 2011) (*Supplement*) *See National Exchange Carrier Association Submits the Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services Fund for the July 2011 Through June 2012 Fund Year,* CG Docket No. 03-123, Public Notice, DA 11-826 (CGB 2011) (*2011 TRS Rate PN*) (seeking public comment on the *2011 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.

[4] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8692-98, ¶¶ 6-17 (2010) (*2010 TRS Rate Order*).

[5] *See 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*); *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, Notice of Proposed Rulemaking, 26 FCC Rcd 6496 (2011) (*VRS Rate NPRM*). We take this action without prejudice to the ultimate outcome of the *VRS Rate NPRM*, in which the Commission tentatively concluded that extending the current interim rates and compensation structure would best ensure stability and certainty for VRS while the Commission continues to evaluate these issues. *VRS Rate NPRM*, 26 FCC Rcd at 6496, ¶ 1.

[6] *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*) (delineating three separate monthly compensation tiers for VRS, based on number of minutes provided for the month).

[7] We note that the funding requirement for the 2010-2011 Fund year was \$433,990,484.98. The total Fund size for that same Fund year was \$705,048,502.19, but the Fund had a surplus from the prior Fund year (2009-2010) because NECA had relied on providers' projected VRS minutes, and those projections turned out to be 18% higher than actual historical minutes of use. Rather than reimburse carriers for the previous Fund year contributions, the Commission elected to reduce the funding requirement for the 2010-2011 Fund year.

[8] *See 2011 TRS Rate Filing* at 7-14 and Exh. 2; *see also 2011 TRS Rate PN* at 2.

TRS. For interstate traditional TRS, STS, interstate CTS, and IP CTS, that *Order* adopted the Multi-State Average Rate Structure ("MARS") Plan, explained below.[9] For IP Relay, the Commission adopted a price cap methodology.[10]

4. In response to the *2011 TRS Rate PN*, the Commission received two comments[11] and four reply comments.[12] As discussed further below, Sprint, Hamilton, and AT&T oppose the proposed TRS rate (and by default, the STS rate) as calculated by NECA pursuant to the MARS plan adopted in the *2007 TRS Rate Methodology Order.*[13]

B. *VRS Reform and Rate Proceedings*

5. Over the past two 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. To further this effort, 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.[14] On April 6, 2011, the FCC released an Order adopting a number of rules to eliminate VRS fraud, along with a Further Notice of Proposed Rulemaking to improve the Commission's process for certifying VRS providers.[15]

6. On April 8, 2011, CGB waived the Fund administrator's obligation to file by May 1, 2011 proposed VRS rates and VRS revenue requirements for the 2011-12 Fund year.[16] The Bureau explained that it was taking this action because the Commission was contemporaneously considering the compensation structure for VRS for the 2011-12 Fund year, commencing July 1, 2011,[17] and that "requiring the Fund administrator to meet the May 1, 2011 filing deadline for VRS payment formulas and revenue requirements would impose needless administrative costs and burdens on the Fund administrator and the Fund."[18] The Bureau further explained that after considering the issues before it, the Commission would provide further guidance to the Fund administrator.[19]

7. On April 15, 2011, in order to further develop the record in response to the *2010 VRS NOI,* and in an effort to establish a VRS compensation structure for the 2011-12 Fund year, the Commission released the *VRS Rate NPRM* seeking further comment on the VRS market structure and

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[9] *See 2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20153-58, ¶¶ 26-38.

[10] *See id.* at 20158-60, ¶¶ 39-46.

[11] Sprint Nextel (Sprint) and Hamilton Relay, Inc. (Hamilton) filed comments on May 18, 2011.

[12] Speech Communications Assistance by Telephone (SCT) filed reply comments on May 23, 2011, and AT&T, Hamilton, and NECA filed reply comments on May 25, 2011.

[13] *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20153-58, ¶¶ 26-38.

[14] *See generally 2010 VRS NOI.*

[15] *Structure and Practices of the Video Relay Service Program,* CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011).

[16] *See generally VRS Rate Filing Waiver Order*.

[17] *Id.,* 26 FCC Rcd at 5231**,** ¶ 3*,* citing FCC Items on Circulation: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; 2011-12 VRS Rates NPRM at: http://www.fcc.gov/fcc-bin/circ_items.cgi (visited April 8, 2011). *See also 2010 VRS NOI*.

[18] *VRS Rate Filing Waiver Order,* 26 FCC Rcd at 5231-32, ¶ 3.

[19] *Id.*

compensation method proposals initially raised in the *2010 VRS NOI*.[20] It tentatively concluded, in the event the Commission was unable to fully resolve these issues prior to the beginning of the 2011-12 Fund year, that extending the current interim rates and compensation structure temporarily provided the best means to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to the *2010 VRS NOI* proceeding.[21] In response to the *VRS Rate NPRM*, the Commission received five comments[22] and two reply comments.[23]

C. The New TRS Fund Administrator Contract

8. On March 7, 2011, the Commission awarded a contract to Rolka Loube Saltzer Associates, LLC ("RLSA") to administer the Fund beginning July 1, 2011. RLSA's administrative expenses of $965,000 under the contract are included in NECA's proposed funding requirement for the 2011-12 Fund year.[24] As Fund administrator, RLSA will oversee the collection and disbursement of TRS program funds. As part of this function, RLSA may withhold payments to TRS providers that fail to demonstrate full compliance with all relevant Commission rules governing the provision of TRS, fail to provide adequate documentation or justification in support of compensation, or engage in potential waste, fraud, or abuse. RLSA will also establish and implement internal controls and procedures for the disbursement of funds, subject to Commission approval.

III. DISCUSSION

A. The Compensation Rate for TRS and STS for the 2011-12 Fund Year

9. The Commission adopts a per-minute rate of $1.8611 for traditional TRS and $2.9921 for STS for the 2011-12 Fund year. NECA formulated these rates by applying the MARS analysis adopted in the *2007 TRS Rate Methodology Order*.[25] 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 *2011 TRS Rate Filing*.[26]

10. Since the adoption of the *2007 Rate Methodology Order*, NECA, 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 date, there have been two types of such exclusions. First, the MARS rate has not included data for states that reimburse providers at a flat (versus a per-minute) rate.[27] Second, the MARS rate has excluded data from states that have based their *intrastate* compensation rate on the

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[20] *VRS Rate NPRM,* 26 FCC Rcd at 6496, ¶ 1.

[21] *Id. See also* http://www.fcc.gov/blog/video-relay-service-reform.

[22] National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Hearing Loss Association of America, American Association of the Deaf-Blind, Deaf and Hard of Hearing Consumer Advocacy Network, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (Consumer Groups); Purple Communications, Inc. (Purple); CSDVRS, LLC (CSDVRS); Snap Telecommunications, Inc. (Snap); and Sorenson Communications, Inc. (Sorenson) filed comments on May 16, 2011.

[23] Video Relay Services Consumer Association (VRSCA) and Sorenson filed reply comments on May 23, 2011.

[24] *See 2011 TRS Rate Filing* at 10 and Exh. 2.

[25] *See 2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20180-82, Apps. B-D; *see also 2011 TRS Rate Filing* at 10, Exh. 1-1, and App. C, revised by *Supplement* at 2-3.

[26] *See 2011 TRS Rate Filing* at 8-10.

[27] *See id.* at 9 n.18. 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.

interstate MARS-based rate, because of the circularity of using such data.[28] Again this year, NECA proposes a rate that excludes data from states that use either of these alternative funding methodologies.[29]

11. Hamilton, Sprint, and AT&T offer a number of reasons for opposing NECA's TRS and STS calculations for the 2011-12 Fund year.[30] First, although, as noted above, NECA's practice has been to exclude data from states using alternative rate methodologies during the past four rate cycles, Hamilton and AT&T now raise an objection to this practice.[31] Hamilton argues that data from states that pay providers on a flat rate instead of a per minute basis, but which still use competitively bid rates, offer relevant data for purposes of the MARS calculation.[32] Hamilton goes on to suggest that because a growing number of states are being excluded, there is a danger that the rates calculated by NECA will be distorted.[33] Specifically, it suggests that "as the number of states which are included in the MARS calculation decreases, so does the inherent fairness and reasonableness of the calculation due to the dwindling number of states upon which the Commission is relying for its interstate rate calculation."[34] Finally, Hamilton argues that the one state that used to tie its rate to the interstate rate, California, should now be included in the MARS calculation because that state has switched to a per-minute rate, and so the circularity problem that previously existed is no longer an issue.[35] AT&T agrees with Hamilton's contention that the previous basis for excluding California's rates no longer exists because effective mid-2010, those rates have been competitively bid, rather than being tied to the Interstate TRS rate.[36] AT&T further supports Hamilton's suggestion that NECA include in its calculation states that use alternative compensation methods.[37]

12. All three providers, Hamilton, Sprint and AT&T, also oppose NECA's proposed MARS TRS rate because they claim that this rate may have been miscalculated.[38] For example, Sprint asserts that the 8.7 percent decrease in NECA's proposed rate is "highly suspect" because (1) Sprint has seen an average 5 percent increase in rates for the states that it handles, which would mean that the average state rate paid to other providers would have had to have declined by approximately 17 percent; (2) the MARS rate calculated by NECA would suggest a decline in TRS demand of nearly 34 percent, a figure that is inconsistent with Sprint's experience; and (3) NECA's demand analysis would suggest a decline in state revenues that was far larger than that which Sprint experienced in the states for which it provides TRS.[39] Hamilton supports Sprint's assertions that the trends reflected by NECA's rate analysis are unsupported

[28] In the *2007 TRS Rate Methodology Order*, the Commission stated, "if a state's intrastate rate is based on the interstate rate, that rate will not be used for the MARS calculation." 22 FCC Rcd at 20155, ¶ 29 n.95.

[29] Specifically, NECA excludes Virginia, Michigan and Maine because they use a flat compensation rate. In addition, NECA proposed to exclude California because it based its compensation on the interstate MARS rate for five months of the past Fund year. *See 2011 TRS Rate Filing* at 9.

[30] *See* Sprint Comments at 1-3..

[31] Hamilton Comments at 3-6; AT&T Reply Comments at 2.

[32] Hamilton Comments at 4.

[33] *Id.* at 5-6. Hamilton notes only Michigan was excluded in the first year that the MARS methodology was used, Maine was partially excluded in 2008, and the 2011 NECA proposal recommends excluding Virginia. *Id.* at 6.

[34] *Id.* at 6.

[35] *Id.* at 3; Hamilton Reply Comments at 4.

[36] AT&T Reply Comments at 2.

[37] *Id.* at 3.

[38] Hamilton Comments at 2; Sprint Comments at 2; AT&T Comments at 2.

[39] Sprint Comments at 2. Sprint states that for NECA's analysis to be correct, the revenues received by traditional TRS providers in non-Sprint states would have to have declined by 45 percent.

in the states for which it provides intrastate TRS,[40] and further suggests that two states may have been missing in the list of state rate data contained in NECA's filing, which would mean that NECA left out relevant data.[41] Likewise, AT&T reports that in the states for which it provides traditional TRS, the TRS rate went up, not down, over the past year, and thus agrees with Hamilton and Sprint that the Commission should reevaluate NECA's proposed rates.[42]

13. We decline to require that NECA recalculate the TRS and STS rates to include all of the flat rate states, but we agree with Hamilton and AT&T that the 2011-12 Fund year MARS rate should include California for the seven months after that state switched to a per-minute rate. First, we find that exclusion of rate data based on the use of alternative compensation methodologies is both reasonable and consistent with Commission precedent. 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,"[43] none of the providers have offered evidence that NECA's exclusion of rates and data from flat rate states has resulted in a rate that is not fair and reasonable. Nor do we find that the omission of a total of three states has a significant impact on the outcome, because the methodology still relies on an average of the remaining forty-seven states, the District of Columbia, Puerto Rico, and the Virgin Islands. Simply because there is a slight decrease in the rate from the rate adopted for the 2010-11 Fund year does not, in and of itself, warrant the conclusion that NECA has proposed an unreasonable rate, especially given NECA's continued adherence to the methodology employed over the past four rate cycles.[44] Further, given the explicit direction from the Commission to NECA in the *2007 TRS Rate Methodology Order* to exclude certain rates from its calculations,[45] we decline to direct NECA to use a different methodology in the context of this rate proceeding.[46] Accordingly, consistent with Commission precedent, we continue to allow NECA to exclude from the rate calculation for TRS and STS rates and data from states that utilize alternative compensation methodologies.

14. While we also find reasonable, and consistent with precedent, NECA's proposal to exclude California's data for the first five months (and one day) of 2010 from the 2011-12 MARS rate calculation, we conclude that California's rate data for the remainder of 2010, for which it utilized a per-minute rate, should be included in the 2011-12 MARS rate calculation.[47] The new contractual arrangement that California has with Hamilton for a per-minute rate began June 2, 2010.[48] In the *2007*

[40] *See* Hamilton Reply Comments at 2-3. Like Sprint, Hamilton notes that its average compensation rate for states that it served in 2009 and 2010 increased. Hamilton also reports that it did not experience the 34 percent decrease in TRS demand or the 45 percent reduction in revenues that Sprint says would have justified the NECA demand analysis.

[41] Hamilton Comments at 2.

[42] AT&T Reply Comments at 2.

[43] *2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20158, ¶ 37.

[44] Nor do we find the increase in intrastate TRS rates in some states to be sufficient evidence of an overall increase in average state rates. *See* ¶ 15, *infra*.

[45] *2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20155,¶ 29 (state's intrastate rate will be excluded from MARS calculation where based on the interstate rate); *id.* at 20165, ¶ 58 (excluding the one state that used a flat rate methodology at the time, *i.e.*, Michigan).

[46] We also decline to address in this proceeding whether, as Hamilton suggests, the Commission can make this methodology change without a notice and comment proceeding. Hamilton Reply Comments at 4-5.

[47] At least one commenter agrees. *See* Hamilton Reply Comments at 4 ("Hamilton believes that the Administrator at the very least should have included data from California for the part of the year that its intrastate rate was not tied to the interstate rate").

[48] NECA Reply Comments at 3.

TRS Rate Methodology Order, the Commission addressed how to apply rate data when the methodology for the intrastate compensation rate(s) paid by a state changes during a calendar year. When this occurs, the Commission directed the state and its providers to "list each rate separately and indicate the time period in which each rate was effective" and concluded that "[i]n this way, each rate will be proportionally factored into the ultimate MARS rate."[49] Accordingly, we directed NECA to modify its proposed 2011-12 rates to proportionally factor into the MARS rate calculation the seven months of California per-minute rate data from 2010.[50]

15. With respect to claims by the providers that NECA has miscalculated the 2011-12 proposed TRS rates,[51] NECA has confirmed that it followed "step by step" instructions from the Commission to calculate the relevant data and propose this year's rate.[52] Nevertheless, in response to these providers' claims, NECA recalculated the 2011-12 proposed rate after the comment cycle closed, and derived the same result as it proposed in the *2011 TRS Rate Filing.* Rather than being the result of miscalculations or omitted data, we agree with NECA that the slight change in this year's rate likely is caused by a "change in composition" of states excluded,[53] a change that we note above is reasonable and supported by Commission precedent. Moreover, we emphasize that although Hamilton, Sprint and AT&T claim disparities in NECA's calculations, the data that each has in its possession is limited to the states for which each provides service, and therefore may not fully reveal accurate trends in overall state TRS rates. For example, Hamilton provides intrastate TRS for only 17 states,[54] and therefore has access to only a fraction of the relevant data available to NECA. By contrast, NECA is in a far better position to report on rate trends and accurately predict both TRS and STS demand across all the states. Accordingly, based on the complete information available to and relied upon by NECA, we find it appropriate to adopt NECA's proposed MARS rates for interstate TRS and STS, modified as described above to also take into account seven months of rate data from California. We further find that the rates we adopt here are fair and reasonable.

16. In its *2011 TRS Rate Filing*, NECA states that it based its demand projection on providers' submitted historical data available at the time of its filing. NECA also explains, "[t]o test the validity of the forecast, the Administrator shared the projected demand for the 2011-12 funding year with the TRS providers seeking their feedback on the projections," and that "[t]o the extent that providers' business plans warranted modifications to the projections the information was incorporated into the demand forecast."[55] Based on this demand data, as well as the total dollar amount paid by the states for intrastate TRS and STS for calendar year 2010, in the *2011 TRS Rate Filing* NECA proposed a TRS and base STS compensation rate of $1.8502 per minute.[56] NECA recalculated the rates to include the seven

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[49] *2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20155, ¶ 29.

[50] *See Supplement*.

[51] For example, NECA notes that Hamilton claims that two states may be missing from NECA's rate filing, but does not indicate which states these are. *See* NECA Reply Comments at 2, n. 3.

[52] *Id.* at 2.

[53] *See id.* at 3.

[54] Both Hamilton and Sprint acknowledge that neither has complete access to information about rate trends or demand data for all of the states included in the MARS calculation. Sprint Comments at 2 (acknowledging that "it does not have access to all the information in NECA's possession"); Hamilton Comments at 2 (referring to the "confidential nature of the state submissions").

[55] *2011 TRS Rate Filing* at 15. Notwithstanding this opportunity to make their concerns known about errors in NECA's proposed demand analysis *before* NECA submitted its proposed rates to the Commission, none of the providers came forward at that time to object to NECA's projections.

[56] *See id.* at 10, Ex. 1-1, and App. C. This rate is approximately 8.1 percent lower than the 2010-11 rate of $2.0256.

months of California per-minute rate data, resulting in a MARS TRS and base STS compensation rate of $1.8611 per minute for the 2011-12 Fund year, which we now adopt.

17. Although each year, the base compensation rate that NECA has calculated for STS has been the same as the MARS rate applied to TRS, likewise each year the Commission has added an additional amount of $1.131 per minute to the STS rate to be used for outreach purposes.[57] This is because, in the *2007 TRS Rate Methodology Order*, the Commission recognized that many potential STS users were not being made aware of the availability of this important service.[58] Continuing to apply this methodology, NECA proposed in the *2011 TRS Rate Filing* a rate of $2.9812 for STS for the 2011-12 Fund year, which included the $1.131 for outreach.[59] Based on the modifications to the MARS compensation rate as discussed above, we adopt a rate of $2.9921 for STS for the 2011-12 Fund year.[60]

18. We decline to implement SCT's requests that the Commission adopt the additional outreach funding for STS for a three-year period, rather than for one year, and that the Commission consider a national outreach plan for STS.[61] Though the Commission recognizes a need to reassess STS outreach funding, we intend to consider alternatives for STS outreach in a separate proceeding. Therefore, we approve the per-minute additive to the TRS rate for STS outreach for the 2011-12 Fund year.

B. The Compensation Rates for CTS and IP CTS for the 2011-12 Fund Year

19. The Commission adopts a per-minute compensation rate of $1.7630 for CTS and IP CTS for the 2011-12 Fund year. These rates are also calculated using the MARS methodology.[62] 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.[63] In the *2011 TRS Rate Filing,* NECA proposed a CTS and IP CTS compensation rate of $1.7396 per minute.[64] In light of changes to NECA's proposed MARS rate based on inclusion of seven months of California rate data,[65] we adopt a CTS and IP CTS compensation rate of $1.7630 for the 2011-12 Fund year. This rate represents a $0.0679 increase from the 2010-11 rate of $1.6951.

C. The Compensation Rate for IP Relay for the 2011-12 Fund Year

20. The Commission adopts NECA's proposed per-minute compensation rate of $1.2920 for IP Relay for the 2011-12 Fund year.[66] 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, but also stated that

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[57] *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20166, ¶ 61.

[58] *Id.*

[59] *See 2011 TRS Rate Filing* at 11.

[60] *See Supplement* at 3 (revising the proposed STS rate based on the revised TRS rate). We derive the $2.9921 rate for STS by adding the MARS base STS compensation rate of $1.8611 per minute and the $1.131 per minute for outreach.

[61] *See* SCT Reply Comments at 1-2.

[62] *See 2011 TRS Rate Filing* at 13 revised by *Supplement* at 2.

[63] *2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20158, ¶ 38.

[64] *See 2011 TRS Rate Filing* at 11-12, Exh. 1-2, and App. D.

[65] *See* ¶¶ 13-16, *supra.*

[66] *See id.*

the initial three-year cycle would be followed by another three-year rate cycle for IP Relay.[67] Therefore, the $1.2985 rated 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 that will expire June 30, 2013. As was done in the previous cycle based on 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.[68] The inflation factor is the Gross Domestic Product minus the Price Index (GDP-PI), and the efficiency factor is the inflation factor minus 0.5 percent to account for productivity gains.[69]

21. We note that Hamilton and AT&T argue that the MARS rate should be applied to IP Relay.[70] We are concerned about the practicality of adopting a MARS rate for IP Relay when there are no underlying intrastate TRS programs on which to base such a rate. At the same time, we recognize that the MARS-based rate for CTS is currently applied to IP CTS, and therefore we may reconsider using an average of the intrastate TRS rates using the MARS methodology to calculate an IP Relay rate for future rate cycles.

D. The Compensation Rates for VRS

22. Consistent with the Commission's tentative conclusion in the *VRS Rate NPRM*,[71] we adopt the current interim rates and compensation structure for VRS until the completion of that proceeding. As noted below, we take this action in light of our need to further examine issues raised in the ongoing *2010 VRS NOI* proceeding, including comments filed in response to the *VRS Rate NPRM*.

23. We received varied responses to our request for comments in the *VRS Rate NPRM*.[72] While helpful to our continuing consideration of the compensation methods and potential market structures for VRS, the divergent record in response to the *VRS Rate NPRM* evinces the complexity of the issues and the wisdom of examining these issues further prior to taking final action. In fact, notwithstanding the relatively small field of commenters, the only point on which all commenters agreed was in not opposing extension of the interim VRS rates until the Commission is fully able to resolve VRS

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

[68] *See id.* at ¶ 43.

[69] *See id.*

[70] Hamilton Comments at 2, 7; AT&T Comments at 2-3.

[71] *See VRS Rate NPRM,* 26 FCC Rcd at 6496, ¶ 1 (tentatively concluding, in the event the Commission was unable to fully resolve VRS market structure and compensation method issues prior to the beginning of the 2011-12 Fund year, that "extending the current interim rates and compensation structure provides the best means to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to this proceeding"). We adopt the current interim rate on an interim basis without prejudice to the ultimate outcome of the *VRS Rate NPRM* proceeding.

[72] For example, with respect to VRS accounting methods, Sorenson contends as a threshold matter that this line of inquiry is "simply premature as it presupposes the structure of a long-term rate methodology before the FCC has issued any notice to that effect." Sorenson Comments at 2; Sorenson Reply Comments at 2. Nevertheless, both Sorenson and CSDVRS argue that the Commission should not adopt a Part 32 Uniform System of Accounts for VRS, while Purple disagrees, arguing that Part 32 would appropriately account for the differences in costs based on economies of scale. *See* Sorenson VRS Rate Comments at 2; CSDVRS VRS Rate Comments at 12-13; Purple VRS Rate Comments at 2; Sorenson VRS Rate Reply Comments at 2. On the appropriate treatment of certain costs and expenses, Sorenson, VRSCA, and Snap agree that the costs of raising capital should be included in any mechanism to compensate VRS, while Purple argues that such costs should "continue to be excluded elements of the cost-basis of the VRS rate," and Snap differs from Sorenson on precisely *which* costs of raising capital should be included. *See* Sorenson VRS Rate Reply Comments at 3-4; VRSCA VRS Rate Reply Comments at 2; Snap VRS Rate Comments at 2; Purple VRS Rate Comments at 3.

market structure and compensation method issues.[73] As we noted in the *VRS Rate NPRM,* the 2010-11 Fund year interim rates have resulted in significant savings for the Fund.[74] We also recognized the certainty and stability that the current compensation structure can offer until final rules in the *2010 VRS NOI* proceeding are implemented.[75] In light of all these considerations, 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. The record in response to the *VRS Rate NPRM* provides helpful detail which the Commission will carefully consider as part of its continuing examination of VRS reform.

24. In establishing interim VRS rates for the 2010-11 Fund year, the Commission continued to utilize the tiered rate methodology for VRS based on call volume, adopted in the *2007 TRS Rate Methodology Order*.[76] 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.[77] In the *2010 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.[78] We again adopt these as interim rates and tiers, to become effective July 1, 2011, and to remain in effect until the Commission completes its review of the compensation method and market structure for VRS.

E. Additional Funding Requirements

25. In addition to the per-minute costs of service and administrator costs noted above, NECA proposes additional funding for the expenses of the revenue data collection agent of $60,000,[79] expenses related to the Interstate TRS Advisory Council of $55,000,[80] and expenses related to an audit of the Fund administrator of $50,000.[81] In the past, such expenses were included in NECA's own proposed administrative expenses, but because the next Fund administrator, RLSA, will operate under a fixed-price contract, NECA has proposed additional funding for these variable costs associated with Fund administration to be included in the funding requirement. In addition, NECA includes the contractual costs of $385,000 for the iTRS database administrator in its funding requirement proposal.[82] Finally, NECA includes a $10,000,000 funding requirement for the National Deaf-Blind Equipment Distribution Program (NDBEDP) mandated by Congress.[83] We adopt NECA's recommendations for additional funding as proposed.

F. The Carrier Contribution Factor and Funding Requirement

26. We adopt a carrier contribution factor of 0.01058 and funding requirement of $740,399,393.56 for the 2011-12 Fund year.[84] These figures represent slight modifications to NECA's proposed carrier contribution factor of 0.01056 and funding requirement of $739,306,982.99,[85] to account for the inclusion of seven months of rate data from California, as discussed above.[86] 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,[87] plus administrative expenses and other funding requirements noted above, less surplus amounts from the

[73] Sorenson notes support for the extension of the current VRS rates, "[s]ubject to the outcome of Sorenson's appeal pending before the Tenth Circuit." *See* Sorenson VRS Rate Comments at 1 (citing *Sorenson Commc'ns, Inc. v. FCC*, Docket Nos. 10-9536 and 10-9560 (10th Cir.)).

[74] *VRS Rate NPRM,* 26 FCC Rcd at 6498, ¶ 5.

[75] *Id.*

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

[77] *See id.*

[78] *See 2010 TRS Rate Order*, 25 FCC Rcd at 8692, ¶¶ 6-7.

previous Fund year that can be used to offset the 2011-12 Fund year requirement.[88] The contribution factor is based on the ratio between total expected TRS Fund expenses and interstate end-user telecommunications revenues.[89]

IV. PROCEDURAL MATTERS

27. *Paperwork Reduction Act*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. 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, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

28. *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. *See* 5 U.S.C. § 801(a)(1)(A).

29. *Final Regulatory Flexibility Certification.* With respect to this *Order*, a Final Regulatory Flexibility Certification ("FRFC") is contained in the Appendix. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an FRFC of the expected impact on small entities of the requirements adopted in this *Order*. The Commission will send a copy of the *Order*, including the FRFC, to the Chief Counsel for Advocacy of the Small Business Administration.

(...continued from previous page)
[79] *See 2011 TRS Rate Filing* at 17-18 and Exh. 2. The revenue data collection agent is the Universal Service Administrative Company (USAC), which collects revenue data for all programs administered by the Commission, including the TRS Fund, whose contribution base relies on revenue information reported on the FCC Form 499-A. USAC assesses each of the program administrators a fee based on a percentage of USAC's data collection costs.

[80] *See id.* at 18 and Exh. 2.

[81] *See id.*

[82] *See id.* at 16 and Exh. 2. The iTRS database administrator distributes iTRS numbers to VRS and IP Relay providers, and maintains location information associated with each number for E911 purposes.

[83] *See id.* at 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 individuals who are deaf-blind to access telecommunications service, Internet access service, and advanced communications. 47 U.S.C. § 620(c); *see 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).

[84] *See* n. 7, *supra* for an explanation of the difference between this year and last year's funding requirement.

[85] *See 2011 TRS Rate Filing* at 18-19 and Exh. 2, revised by *Supplement* at 3.

[86] *See* ¶¶ 13-17, 19, *supra.*

[87] 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. IP Relay and VRS demand projections are based on the providers' projected minutes of use for the 2011-12 Fund year. *See id.* at 15-16.

[88] *Id.* at 18-19 and Exh. 2.

[89] *See id.*

30. 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

31. 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.

32. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate traditional TRS, for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $1.8611 per completed interstate conversation minute.

33. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate Speech-to-Speech service, for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $2.9921 per completed interstate conversation minute.

34. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate captioned telephone service and intrastate and interstate IP captioned telephone service, for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $1.7630 per completed conversation minute.

35. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of intrastate and interstate IP Relay service, for the July 1, 2011 through June 30, 2012 Fund year, at the rate of $1.2920 per completed conversation minute.

36. IT IS FURTHER ORDERED that, beginning July 1, 2011, 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.

37. IT IS FURTHER ORDERED that the Interstate TRS carrier contribution factor shall be 0.01058, and the funding requirement shall be $740,399,393.56, for the July 1, 2011 through June 30, 2012 Fund year.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Final Regulatory Flexibility Certification

CG Docket No. 10-51
CG Docket No. 03-123

1. The Regulatory Flexibility Act of 1980, as amended ("RFA")[1] requires that a final regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[5]

2. In this *Order*, the Commission adopts per-minute compensation rates for the Interstate Telecommunications Relay Services Fund for the 2011-2012 Fund year for all forms of TRS except for video relay service ("VRS").[6] The current interim VRS rates adopted for the 2010-2011 Fund year will be extended based on the proposal of the Fund administrator,[7] as well as the record in the *VRS Rate NPRM* proceeding.[8] As of July 1, 2011, 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 rates for the other forms of TRS shall be: $1.8611

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 605(b).

[3] 5 U.S.C. § 601(6).

[4] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

[5] 15 U.S.C. § 632.

[6] VRS is a form of TRS that enables the VRS user to access the nation's telephone system and communicate in American Sign Language by using a video-to-video link with a communications assistant (CA); the CA relays the call between a voice telephone user and the VRS user. See 47 C.F.R. § 64.601(26) (defining VRS).

[7] NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123 and CG Docket No. 10-51, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed Apr. 39, 2011) (*2011 TRS Rate Filing*). *See National Exchange Carrier Association Submits the Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services Fund for the July 2011 Through June 2012 Fund Year,* CG Docket No. 03-123, Public Notice, DA 11-826 (May 4, 2011) (*2011 TRS Rate PN*) (seeking public comment on *2011 TRS Rate Filing*).

[8] *Structure and Practices of the Video Relay Service Program* and *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CB Docket Nos. 10-51 and 03-123, Notice of Proposed Rulemaking, 26 FCC Rcd 6496 (April 15, 2011) (*VRS Rate NPRM*).

[9] *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 (Nov. 19, 2007) (*2007 TRS Rate Methodology Order*).

for interstate traditional TRS; $2.9921 for Speech-to-Speech service ("STS"); $1.7630 for captioned telephone service ("CTS") and Internet Protocol ("IP") CTS; and $1.2920 for IP Relay.

3. The VRS rates adopted in this *Order* are interim rates, and the Commission will continue to examine VRS compensation as part of the *2010 VRS NOI* proceeding.[10] Based on the adoption of these rates for VRS as well as for the other forms of TRS, and NECA's proposals for additional funding requirements, the Commission adopts a carrier contribution factor of 0.01058[11], and a funding requirement of $740,399,393.56 for the 2011-2012 Fund year.

4. In regard to VRS, the Commission sought comment on extending the current VRS rates for the upcoming Fund year in the *VRS Rate NPRM* proceeding.[12] In the attached initial regulatory flexibility certification, the Commission concluded that its proposal would not impose a financial burden on entities, including small businesses, because eligible entities would continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently reimbursed for VRS. No commenters opposed this proposal or the associated initial regulatory flexibility certification.

5. In this Order, the Commission adopts its proposal to extend VRS rates, and determines that this extension will not place any financial burden on VRS entities, including small VRS businesses, because these entities will continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently reimbursed.

6. In addition, with respect to 2011-2012 rates adopted in this Order to apply to entities other than VRS, i.e. to TRS, STS, CTS, IP CTS, and IP Relay entities, the rates for the latter group of entities are based on the same methodology used in adopting rates for the last Fund year.[13] Therefore, the Commission determines that there is no financial burden caused by the adoption of the rates for TRS, STS, CTS, IP CTS, and IP Relay for entities, including small businesses, because these entities will also continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently reimbursed.

7. Therefore, we certify that the proposal in this *Order* does not have a significant economic impact on a substantial number of small entities.

8. The Commission will send a copy of the *Order*, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[14] This final certification will also be published in the *Federal Register*.[15]

9. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.[16]

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[10] *See Structure and Practices of the Video Relay Service Program,* CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 (June 28, 2010) (*2010 VRS NOI*).

[11] *See, supra* ¶ 26, for an explanation of how the carrier contribution factor is calculated.

[12] *VRS Rate NPRM.*

[13] Although seven months of data from California is included, the overall methodology for calculating the TRS, STS, and CTS rates is the same as for last year. *See* ¶ 14, *supra*.

[14] 5 U.S.C. § 605(b).

[15] 5 U.S.C. § 605(b).