

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

In the Matter of )  
 )  
 Contributions to the Telecommunications ) CG Docket No. 11-47  
 Relay Services Fund )  
 )

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: March 2, 2011**

**Released: March 3, 2011**

**Comment Date: (30 days after date of publication in the Federal Register).**

**Reply Comment Date: (45 days after date of publication in the Federal Register).**

By the Commission:

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## I. INTRODUCTION

1. With this Notice of Proposed Rulemaking (“NPRM”), we initiate a proceeding to adopt rules that will implement Section 103(b) of the “Twenty-First Century Communications and Video Accessibility Act of 2010” (“CVAA”).<sup>1</sup>

2. Section 103(b) of the CVAA<sup>2</sup> amends Title VII of the Communications Act of 1934, as amended<sup>3</sup> (the “Act”), by adding a new Section 715, which requires the following:

Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on the date of enactment of such Act, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.<sup>4</sup>

3. Currently, providers of interstate and international telecommunications services and interconnected voice over Internet protocol (“VoIP”) service contribute to the Telecommunications Relay Services Fund (“TRS Fund”).<sup>5</sup> Section 715 specifies a new category of VoIP providers who must contribute to the TRS Fund: providers of “non-interconnected VoIP service.” With this NPRM, we propose to: (1) amend Section 64.601(a)<sup>6</sup> of our TRS rules to conform the definition of “interconnected VoIP service” with the definition in the CVAA<sup>7</sup> and to define “non-interconnected VoIP service”; (2) amend Section 64.604(c)(5)(iii)(A)<sup>8</sup> to specifically require interconnected and non-interconnected VoIP service providers to contribute to the TRS Fund in a manner that is consistent with and comparable to the obligations of other contributors to the Fund; (3) amend Section 64.604(c)(5)(iii)(B)<sup>9</sup> to apply the \$25 per year minimum contribution requirement only to contributors who have subject revenues; and (4) make other

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<sup>1</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). See also 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 (S. 3828, 111<sup>th</sup> Cong.) making technical corrections to the CVAA. Hereinafter, all references to the CVAA will be to the CVAA as codified in the Communications Act of 1934, as amended, unless otherwise indicated.

<sup>2</sup> Pub. L. No. 111-260, § 103(b).

<sup>3</sup> 47 U.S.C. § 601 *et seq.*

<sup>4</sup> 47 U.S.C. § 615.

<sup>5</sup> 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and 64.601(b).

<sup>6</sup> 47 C.F.R. § 64.601(a).

<sup>7</sup> Pub. L. 111-260, § 101, adding definition of “interconnected VoIP service” to Section 3 of the Act, codified at 47 U.S.C. § 153(36)47 U.S.C. § 153(25).

<sup>8</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A).

<sup>9</sup> 47 C.F.R. § 64.604(c)(5)(iii)(B).

editorial changes deemed appropriate and necessary. As discussed below, we seek comment on issues relating to the provision of free services, administrative costs of providers, possible zero and *de minimis* contributions, registration requirements, the completion and submission of Telecommunications Reporting Worksheets (FCC Form 499-A), adopting an interim safe harbor percentage for calculating interstate end-user revenues, reporting billed or collected revenues, and the implementation deadline.

## II. BACKGROUND

### A. Telecommunications Relay Services

4. Title IV of the Americans with Disabilities Act of 1990 (“ADA”), which added Section 225 to the Act,<sup>10</sup> instructs the Commission to ensure that telecommunications relay services (“TRS”)<sup>11</sup> are available, “to the extent possible and in the most efficient manner,” to persons with hearing or speech disabilities in the United States.<sup>12</sup> The Act specifically requires each common carrier offering “telephone voice transmission services” to offer TRS to persons with hearing and speech disabilities that are “functionally equivalent” to voice telephone service.<sup>13</sup> When Section 225 of the Act was first implemented, TRS calls were placed using a TTY<sup>14</sup> connected to the public switched telephone network (“PSTN”).<sup>15</sup> Since then, the Commission has recognized other forms of TRS, including speech-to-speech and captioned

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<sup>10</sup> Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), codified at 47 U.S.C. § 225.

<sup>11</sup> TRS was originally defined as follows:

. . . telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

47 U.S.C. § 225(a)(3). As amended by Section 103(a) of the CVAA, TRS is defined as follows:

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

Pub. L. No. 111-260 § 103(a); 47 U.S.C. § 225(a)(3). This change expands the definition to allow the use of TRS for conversations between two or more persons with hearing or speech disabilities who use different forms of TRS. For brevity, we refer to “an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability” hereinafter as “a person with a hearing or speech disability” or, collectively, as “persons with hearing or speech disabilities” throughout this NPRM.

<sup>12</sup> 47 U.S.C. § 225(b)(1).

<sup>13</sup> 47 U.S.C. § 225(a)(3), (c).

<sup>14</sup> See 47 C.F.R. § 64.601(15) (defining TTY).

<sup>15</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479, ¶ 3 n.18 (2004) (“2004 TRS Report & Order”) (describing how a traditional TRS call works).

telephone service, as well as several Internet-based forms of TRS such as video relay service (“VRS”), Internet protocol (“IP”) relay, and IP captioned telephone service.<sup>16</sup>

5. Section 225 created a cost recovery regime under which providers of TRS are compensated for their reasonable costs of providing TRS.<sup>17</sup> Specifically, Section 225 provides that the “costs caused by” the provision of *interstate* TRS “shall be recovered from all subscribers for every interstate service,” and the “costs caused by” the provision of *intrastate* TRS “shall be recovered from the intrastate jurisdiction.”<sup>18</sup> With respect to *interstate* TRS, there are two components to the cost recovery framework set forth in the Commission’s rules: (1) collecting contributions, currently from carriers providing interstate telecommunications services and providers of interconnected VoIP services providing interstate telecommunications services, all of which are then put into the TRS Fund;<sup>19</sup> and (2) compensating eligible TRS providers from the TRS Fund for the costs of providing eligible TRS services.<sup>20</sup>

6. Under current Commission rules, carriers and interconnected VoIP service providers contribute to the TRS Fund “on the basis of interstate end-user telecommunications revenues.”<sup>21</sup> The contribution amount is the product of the service provider’s interstate end-user telecommunications revenues and a contribution factor determined annually by the Commission.<sup>22</sup> Contributors are required to file a completed Telecommunications Reporting Worksheet (FCC Form 499-A) with the Universal Service Administrative Company (“USAC”) by April 1 of each year.<sup>23</sup> The data reported on FCC Form 499-A is used to calculate the contribution to the TRS Fund, the Universal Service Fund (“USF”), and the cost recovery mechanisms for numbering administration and long-term number portability.<sup>24</sup>

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<sup>16</sup> See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379, 8381-82, ¶ 3 (2006) (describing various forms of TRS).

<sup>17</sup> 47 U.S.C. § 225(d)(3). Congress directed that TRS users cannot be required to pay rates “greater than the rates paid for functionally equivalent voice communication services.” 47 U.S.C. § 225(d)(1)(D).

<sup>18</sup> 47 U.S.C. § 225(d)(3)(B); see also 47 C.F.R. § 64.604(c)(5)(ii). The costs of intrastate TRS generally are recovered by the states through rate adjustments or surcharges on local phone bills. Currently, the costs of all Internet-based relay services are compensated from the TRS Fund.

<sup>19</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A); 47 C.F.R. § 64.601(b).

<sup>20</sup> 47 C.F.R. § 64.604(c)(5)(iii)(E).

<sup>21</sup> 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and (B); 47 C.F.R. § 64.601(b).

<sup>22</sup> 47 C.F.R. § 64.604(c)(5)(iii)(B). Each subject carrier is required to contribute to the Fund a minimum of \$25 per year. *Id.*

<sup>23</sup> See Telecommunications Reporting Worksheet, FCC Form 499-A (2010) available at <http://www.fcc.gov/formpage.html> (“FCC Form 499-A”). USAC serves as the Revenue Data Collection Agent for the Universal Service and TRS funds, as well as the support mechanisms for the North American Number Plan and local number portability administration.

<sup>24</sup> See Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2010), at 1 (“FCC Form 499-A Instructions”).

## B. Interconnected VoIP Services

7. On May 31, 2007, the Commission extended Section 225's TRS requirements<sup>25</sup> to interconnected VoIP service providers, including that such providers must contribute to the TRS Fund.<sup>26</sup> This was consistent with other Commission actions extending certain Title II obligations to interconnected VoIP service providers<sup>27</sup> and with our statutory obligation to ensure the availability of TRS "to the extent possible and in the most efficient manner" to persons with hearing or speech disabilities.<sup>28</sup> In addition to relying on its Title I ancillary authority, the Commission relied on the express authority of Section 225(d)(3)(B) of the Act, which specifically addresses funding of TRS, to expand these TRS requirements to interconnected VoIP service providers.<sup>29</sup> That provision directs the Commission to issue regulations that "shall generally provide that costs caused by interstate relay services shall be recovered *from all subscribers for every interstate service.*"<sup>30</sup>

8. *Safe Harbor.* Since 2006, interconnected VoIP service providers have been required to report their annual interstate end-user telecommunications revenue information on FCC Form 499-A for purposes of the USF contribution requirements.<sup>31</sup> In the *2006 Interim Contribution Methodology Order*, the Commission recognized that some interconnected VoIP service providers may have difficulty complying with this reporting requirement because they did not have the ability to identify which customer calls are interstate.<sup>32</sup> The Commission

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<sup>25</sup> 47 C.F.R. §§ 64.601 *et seq.*

<sup>26</sup> See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities*, Report and Order, 22 FCC Rcd 11275, 11291-97, ¶¶ 32-43 (2007) ("*VoIP TRS Order*").

<sup>27</sup> See, e.g., *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10246, ¶ 1 (2005) ("*VoIP 911 Order*"), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006) (requiring interconnected VoIP service providers to supply 911 emergency calling capabilities); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, ¶¶ 38-49 (2006) ("*2006 Interim Contribution Methodology Order*"), *aff'd sub nom., in relevant part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007) (establishing universal service contribution obligations for interconnected VoIP service providers); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking (2007) ("*CPNI Order*") (extending customer proprietary network information obligations to interconnected VoIP service providers); *VoIP TRS Order*, 22 FCC Rcd at 11283-91, ¶¶ 17-31 (extending Section 255 disability access requirements to interconnected VoIP service providers and equipment manufacturers).

<sup>28</sup> *VoIP TRS Order*, 22 FCC Rcd at 11293-94, ¶ 36, citing 47 U.S.C. § 225(b)(1).

<sup>29</sup> *Id.* 22 FCC Rcd at 11294, ¶ 37

<sup>30</sup> *Id.* 22 FCC Rcd at 11294, ¶ 37, citing 47 U.S.C. § 225(d)(3)(B) (emphasis added).

<sup>31</sup> See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544-47, ¶¶ 50-62 (discussing revenue reporting issues and requirements applicable to interconnected VoIP service providers' USF contribution obligation).

<sup>32</sup> See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7546, ¶ 56.

determined that the closest analogue to interconnected VoIP service was “wireline toll service,” which “similarly offers interstate, intrastate toll, and international services.”<sup>33</sup> Consequently, the Commission set an interim safe harbor for interconnected VoIP services at 64.9 percent of their annual telecommunications revenues, representing the average percentage of telecommunications revenues that wireline toll providers had reported to the Commission as interstate telecommunications revenues.<sup>34</sup> The Commission held, however, that if the safe harbor percentage overstates an interconnected VoIP service provider’s actual interstate revenues, the provider may instead contribute to the USF on the basis of actual revenue allocations or by conducting a traffic study.<sup>35</sup> Similarly, for purposes of contributions to the TRS Fund, an interconnected VoIP service provider may report its interstate end-user revenues on FCC Form 499-A by using actual revenues, using a traffic study, or by using the interim safe harbor percentage adopted in the *2006 Interim Contribution Methodology Order*.<sup>36</sup>

9. The TRS Fund contribution obligations adopted in the *VoIP TRS Order* became effective on October 5, 2007.<sup>37</sup> The Commission delegated authority to the Wireline Competition Bureau (“WCB”), in consultation with the Consumer & Governmental Affairs Bureau (“CGB”), to make any revisions to the FCC Form 499-A or its instructions that may be necessary to implement the *VoIP TRS Order*.<sup>38</sup> The FCC Form 499-A was revised accordingly in 2007.<sup>39</sup> Interconnected VoIP service providers were assessed on their fourth quarter 2006 revenues as reported on FCC Form 499-A, prorated for the 2007-2008 TRS Fund year.<sup>40</sup> Since then, interconnected VoIP service providers have been reporting revenues and contributing to the TRS Fund on an annual basis in this manner.

### C. Non-Interconnected VoIP Services

10. Unlike providers of interconnected VoIP service, providers of “non-interconnected VoIP service” have not been required to contribute to the TRS Fund. Nor have non-interconnected VoIP service providers been required to register or report revenues through the annual filing of FCC Form 499-A for any purpose.

## III. DISCUSSION

11. Not all VoIP services are “interconnected VoIP” services. Examples of VoIP services that are not within the Commission’s definition of “interconnected VoIP” include “one-

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<sup>33</sup> *Id.*, 21 FCC Rcd at 7545, ¶ 53.

<sup>34</sup> *Id.* At the same time, the Commission sought comment on whether to eliminate or modify this interim safe harbor. 21 FCC Rcd at 7551, ¶ 69.

<sup>35</sup> *Id.*, 21 FCC Rcd at 7545, ¶ 54.

<sup>36</sup> *VoIP TRS Order*, 22 FCC Rcd at 11295-96, ¶ 40.

<sup>37</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 23 FCC Rcd 1680, 1681, ¶ 4 n.10 (2008) (“*2007-08 TRS Rate Order*”).

<sup>38</sup> *VoIP TRS Order*, 22 FCC Rcd at 11295-96, ¶ 41.

<sup>39</sup> See Instructions to FCC Form 499-A (2007) (Form 499-A Revised November 2007) available at [http://www.usac.org/\\_res/documents/fund-administration/pdf/499/form-499a-FY2007-instructions.pdf](http://www.usac.org/_res/documents/fund-administration/pdf/499/form-499a-FY2007-instructions.pdf).

<sup>40</sup> *2007-08 TRS Rate Order*, 23 FCC Rcd at 1681, ¶ 4 n.12 (2008).

way” VoIP services (*i.e.* services that enable users to terminate calls to the PSTN but do not permit users to receive calls that originate on the PSTN, or enable users to receive calls from the PSTN, but do not permit the user to make calls terminating to the PSTN) and “IP-based voice services that do not require a broadband connection.”<sup>41</sup>

12. Section 715 specifies a new category of VoIP providers that must contribute to the TRS Fund: providers of “non-interconnected VoIP service.”<sup>42</sup> The CVAA defines “non-interconnected VoIP” service as a service that “enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and requires Internet protocol compatible customer premises equipment; and does not include any service that is an interconnected VoIP service.”<sup>43</sup>

## A. Definitions

### 1. Interconnected VoIP Service

13. For the purpose of determining which entities must comply with the TRS obligations and contribute to the TRS Fund, the Commission’s TRS rules define “interconnected VoIP service” as a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user’s location;
- (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.<sup>44</sup>

This definition is identical to that for “interconnected VoIP service” currently found in Section 9.3 of the Commission’s rules.<sup>45</sup>

14. Section 101 of the CVAA requires that the Commission adopt the definition of “interconnected VoIP service” contained in Section 9.3 of the Commission’s rules, but goes one step further, requiring that such definition apply in the TRS context “as such section may be amended from time to time.”<sup>46</sup> To ensure that the definition of “interconnected VoIP service”

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<sup>41</sup> *VoIP 911 Order*, 20 FCC Rcd at 10277, ¶ 58. *See also* 47 C.F.R. §§ 9.3 and 64.601(a)(10) (providing definition of “interconnected VoIP service”).

<sup>42</sup> 47 U.S.C. § 615.

<sup>43</sup> Pub. L. 111-260, § 101, adding definition of “non-interconnected VoIP service” to Section 3 of the Act, codified at 47 U.S.C. § 153(36).

<sup>44</sup> *See* 47 C.F.R. § 64.601(a)(10); 47 C.F.R. § 9.3 (same).

<sup>45</sup> 47 C.F.R. § 9.3.

<sup>46</sup> Pub. L. 111-260, § 101, adding definition of “interconnected VoIP service” to Section 3 of the Act, codified at 47 U.S.C. § 153(25). The Senate Report reiterates that this term “means the same as it does in title 47 of the Code of Federal Regulations, as such title may be amended from time to time.” S. Rep. No. 111–386, at 6 (2010) (“Senate Report”). The House Report is silent on this issue. H.R. Rep. No. 111-563 (2010) (“House Report”).

remains current and consistent with how that term is defined in Section 9.3 of the Commission's rules, as that definition may change, we propose to amend the TRS rules at Section 64.601(a)(10) to remove the actual text of the definition, and instead codify the following language provided in the CVAA: "The term 'interconnected VoIP service' has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time."<sup>47</sup> We seek comment on this proposal.

## 2. Non-Interconnected VoIP Service

15. The CVAA defines "non-interconnected VoIP service" as:

(A) ...a service that--

(i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(ii) requires Internet protocol compatible customer premises equipment; and

(B) does not include any service that is an interconnected VoIP service.<sup>48</sup>

16. We propose to amend the TRS rules at Section 64.601(a) to add the definition of "non-interconnected VoIP service," as set forth in the CVAA. We seek comment on this proposal.

## B. Participation in and Contribution to the TRS Fund

17. *FCC Form 499-A*. As described above, carriers and *interconnected* VoIP service providers are currently required to contribute to the TRS Fund. Since 2007, interconnected VoIP service providers have been reporting revenues for this purpose on FCC Form 499-A, as revised by WCB following the *VoIP TRS Order*. We propose to continue using FCC Form 499-A for interconnected VoIP service providers, as these providers already should be familiar with the TRS-specific portions of this Form and its accompanying instructions for TRS filings. We further propose requiring non-interconnected VoIP service providers who are newly covered under Section 715 to use FCC Form 499-A to report their revenues as these revenues are determined by our rules.<sup>49</sup> We seek comment on these proposals.

18. We note that the current FCC Form 499-A and instructions are not designed to collect revenue or other information from providers of non-interconnected VoIP services.<sup>50</sup> We further note that the Commission has delegated authority to WCB to amend the FCC Form 499-A whenever additional information is needed from filers.<sup>51</sup> We intend to direct WCB to exercise

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<sup>47</sup> Pub. L. 111-260, § 101, codified at 47 U.S.C. § 153(25).

<sup>48</sup> Pub. L. 111-260, § 101, adding definition of "non-interconnected VoIP service" to Section 3 of the Act, codified at 47 U.S.C. § 153(36); Senate Report at 6.

<sup>49</sup> We note that, although carriers and interconnected VoIP service providers also file FCC Form 499-Q in connection with the Commission's USF contribution requirements, FCC Form 499-Q is not required for purposes of the Commission's TRS Fund contribution requirements.

<sup>50</sup> See FCC Form 499-A Instructions.

<sup>51</sup> See 47 C.F.R. § 54.711(c).



its delegated authority to make any revisions to the FCC Form 499-A or its instructions that may be necessary to effectuate the requirements of Section 715.

19. *Revenue Base.* Currently, contributions to the TRS Fund are assessed based on “interstate end-user telecommunications revenues.”<sup>52</sup> For the purpose of timely implementation of Section 715, we propose to require non-interconnected VoIP services to report their interstate end-user revenues as “telecommunications revenues” on the FCC Form 499-A. We clarify that such reporting would be for the limited purpose of determining required TRS Fund contributions, and would in no way prejudice issues concerning the appropriate regulatory classification of VoIP services. Requiring providers of non-interconnected VoIP services to report interstate end-user revenues as “telecommunications revenues” would be consistent with how interconnected VoIP providers have been reporting assessable revenues on the FCC Form 499-A. Again, we note that WCB will be able to revise the FCC Form 499-A to the extent necessary in the future on delegated authority.

20. For interconnected VoIP providers, revenues reported on the FCC Form 499-A would continue to capture annual revenues generated by a service that enables real-time, two-way voice communications that require a broadband connection from the user’s location and IP-compatible CPE and that permits users to receive calls that originate on the PSTN and to terminate calls to the PSTN. For non-interconnected VoIP providers, this report would capture revenues generated by real-time voice communications originating from or terminated to the user’s location using IP or successor protocols and requiring IP-compatible CPE. The proposed rule change would specifically codify the addition of non-interconnected VoIP service providers as entities required to contribute to the TRS Fund.<sup>53</sup> We seek comment on this proposal.

21. The Senate Report and House Report direct the Commission to “ensure that contributions are made on an equitable basis, taking into account whether such services are offered free to the public.”<sup>54</sup> The Senate Report also suggests that the regulations prescribed by the Commission should be “for the purpose of ensuring that the obligations of VoIP service providers ‘are consistent with and comparable to’ those of other contributors to the TRS Fund.”<sup>55</sup> Section 225(d)(3)(B) of the Act requires the Commission to adopt regulations that “generally provide that costs caused by interstate telecommunications relay services shall be recovered from *all subscribers* for every interstate service.”<sup>56</sup> We seek input on how we can best ensure that the obligations of VoIP service providers that offer some or all of their interstate services free to the public are consistent with and comparable to the obligations of other contributors to the TRS Fund. Would it be necessary or appropriate to assess contributions from providers of free VoIP services based on revenues from sources other than the “interstate end-user revenues of such services”? For example, would assessing contributions based on revenues from advertisers, donors, or other revenue sources be appropriate? Would assessing contributions based on

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<sup>52</sup> 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and (B).

<sup>53</sup> See 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and 64.601(b).

<sup>54</sup> Senate Report at 6; House Report at 23.

<sup>55</sup> Senate Report at 7.

<sup>56</sup> 47 U.S.C. § 225(d)(3)(B) (emphasis added).

revenues from all sources be appropriate? Or would we achieve greater consistency with the obligations of other contributors if we base the TRS contributions of VoIP providers solely on interstate end-user revenues, even if this results in a zero contribution (because other providers are only basing their contributions on end-user revenues)? In addition, we seek guidance on how the Commission can ensure that the cost of interstate TRS is “recovered from all subscribers for every interstate service” when those services are offered free to the public? Finally, we seek input on whether and how to account for end-user revenues associated with VoIP services when those services are provided as part of or in combination with other services, such as Internet-based customer services, video games, or other non-VoIP services. Are VoIP services “free” when provided as part of or in combination with non-VoIP services that generate revenue, or can the revenues associated with the VoIP service be disaggregated from the revenue, if any, associated with the non-VoIP service?

22. *Administrative Costs to the Provider.* The Senate Report to the CVAA permits the Commission to “consider administrative costs to the provider when calculating contributions.”<sup>57</sup> Taking into account the possible need to discount contributions by administrative costs and the fact that certain VoIP services are offered for free to the public, the Senate Report goes on to permit “the Commission [to] determine that an obligation for any one provider could be zero or a *de minimis* amount.”<sup>58</sup> We seek comment on the types of “administrative costs to the provider” that could be reported and how these may be considered when calculating contributions. We also seek comment on how “administrative costs to the provider” might be considered when calculating contributions for a TRS Fund contributor that provides free services and therefore reports no subject revenues. Additionally, if administrative costs of interconnected or non-interconnected VoIP service providers are taken into consideration when calculating contributions, to what extent should these be considered any differently than the administrative costs of carriers or others required to contribute to the Fund under the Commission’s rules?

23. *Minimum Contribution Requirement.* The TRS rules presently impose a minimum \$25 contribution requirement on all covered entities, regardless of their reported revenues.<sup>59</sup> As noted above, if we determine that contributions to the TRS Fund are to be based solely on interstate end-user revenues, some VoIP providers may have a zero contribution calculation, either because they have not charged for end-user service during the reporting year, or because they have generated some end-user revenue but had administrative costs that canceled out that revenue. We now seek guidance on how we should treat such contributors for purposes of the minimum contribution requirement that presently applies to all TRS contributors. Insofar as the Commission has previously held that the \$25 minimum contribution requirement only “applies to all telecommunications carriers *that have end-user revenues*,”<sup>60</sup> if we do in fact,

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<sup>57</sup> Senate Report at 6.

<sup>58</sup> *Id.*

<sup>59</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A).

<sup>60</sup> See *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration, Fund Size Estimate, and Payment Formula, July 2001 Through June 2002)*, Order, 16 FCC Rcd 12895, ¶ 7 (2001) (“A minimum contribution requirement of \$25 applies to all telecommunications carriers that have end-user revenues”) (emphasis added).

determine that only these revenues will count toward a TRS contribution, it would seem that VoIP service providers that have no such revenue for the respective reporting year should not be subject to this minimum contribution amount. We seek comment on this proposal, as well as whether all other carriers who are now subject to TRS contribution requirements should also be assessed a zero contribution if they report no end-user revenue, to ensure “obligations that are consistent with and comparable to the obligations of other contributors to [the] Fund.”<sup>61</sup> Alternatively, we request comment on whether a VoIP service provider that reports no revenue for the reporting year should be assessed a “de minimis” contribution amount, as this term is referenced in the Senate Report.<sup>62</sup>

24. *Conforming Amendments to Rules.* There are now various categories of entities that are obligated to make contributions to the TRS Fund. In order to provide improved consistency and clarity across our TRS rules, we propose making a non-substantive change that would replace the terms “carrier,” “carriers,” and “service providers” in Section 64.604(c)(5)(iii)(B) with the term “contributor(s).” Similarly, we propose using the phrase “revenues subject to contributions” in Section 64.604(c)(5)(iii)(B) in lieu of “interstate end-user telecommunications revenues” and “interstate end-user revenues of such services” in Section 64.604(c)(5)(iii)(B). This would provide greater clarity regarding the type of end-user revenues assessable for TRS contributions. We seek input on these proposals.

25. *Meaning of “Participate In.”* Section 715 of the Act requires each interconnected VoIP service provider and each provider of non-interconnected VoIP service to “*participate in and contribute to the [TRS] Fund.*”<sup>63</sup> We seek comment on what the term “participate in” means in this context. We believe that the term “participate in” includes the requirement in Section 64.604(c)(5)(iii)(B) for contributors to complete and submit a Telecommunications Reporting Worksheet (FCC Form 499-A) annually. We also believe that such a requirement is consistent with the congressional mandate to ensure that the obligations of VoIP service providers are “consistent with and comparable to the obligations of other contributors to such Fund.”<sup>64</sup> We seek comment on the meaning of these terms. We also solicit input on other ways in which interconnected and non-interconnected VoIP service providers can comparably “participate in” the TRS Fund.

26. *Contributor Registration.* The process of completing and submitting the FCC Form 499-A requires registration by the filing entity.<sup>65</sup> All current TRS Fund contributors, including interconnected VoIP service providers, have completed this registration process.<sup>66</sup> We believe that requiring all providers of non-interconnected VoIP services to similarly register with the Commission and designate a District of Columbia agent for service of process using the FCC

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<sup>61</sup> See 47 U.S.C. § 615; Senate Report at 7.

<sup>62</sup> See Senate Report at 6.

<sup>63</sup> 47 U.S.C. § 615 (emphasis added).

<sup>64</sup> *Id.*

<sup>65</sup> See FCC Form 499-A; FCC Form 499-A Instructions at 17-18.

<sup>66</sup> See also 47 C.F.R. § 64.1195 (requiring telecommunications providers who provide or will provide interstate telecommunications service to file registration information).

Form 499-A will facilitate our enforcement of TRS Fund contribution obligations and is consistent with the congressional mandate for consistent and comparable obligations.<sup>67</sup> We seek comment on this issue. We further propose that the registration requirements for carriers and interconnected VoIP service providers, set out at Section 64.1195 of the rules, should be adapted as part of our TRS rules for all non-interconnected VoIP service providers.<sup>68</sup> We seek comment on this proposal and on the specific text of the proposed rule, set forth as new subsection 64.604(c)(5)(iii)(C) in Appendix A, as well as any other registration requirements, guidance, or rules that would be appropriate for non-interconnected VoIP service providers. We also seek comment on whether we should instead incorporate these registration requirements for non-interconnected VoIP providers into section 64.1195 of our rules. Lastly, we seek comment on whether to amend section 1.47(h) of our rules as set out in Appendix A to include providers of non-interconnected VoIP services among those required to designate a District of Columbia agent for service of process using the FCC Form 499-A in accordance with its instructions.

27. *Safe Harbor.* As noted above in Section II.B., the Commission recognized in the *2006 Interim Contribution Methodology Order* that some interconnected VoIP service providers may have difficulty complying with the end-user revenue reporting requirement because they did not have the ability to identify whether calls are interstate.<sup>69</sup> As a result, the Commission established an interim safe harbor for interconnected VoIP services, estimating the percentage of interconnected VoIP service revenues attributable to interstate calls to be 64.9 percent.<sup>70</sup> For purposes of TRS Fund contribution calculations, an interconnected VoIP service provider may report its interstate end-user revenues on the FCC Form 499-A by using actual revenues, using a traffic study, or using the interim safe harbor percentage adopted in the *2006 Interim Contribution Methodology Order*.<sup>71</sup>

28. We seek comment on whether the Commission should apply the safe harbor used for interconnected VoIP services to non-interconnected VoIP services. We also seek input on whether, for purposes of TRS Fund contribution calculations, a non-interconnected VoIP service provider should be permitted to report its interstate end-user revenues on the FCC Form 499-A by using actual revenues, using a traffic study, or using the interim safe harbor percentage (currently 64.9 percent).

29. *Billed or Collected Revenues.* FCC Form 499-A filers are instructed to provide information about interstate end-user telecommunications revenues that are “billed” (or “earned”) or “uncollectible”<sup>72</sup> rather than revenues “collected.” At present, contributors to the USF base their contribution calculations on each contributor’s collected, rather than billed, revenues. We request input on whether calculations of all TRS Fund contributions – whether made by common carriers or VoIP providers – similarly should be based on each contributor’s

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<sup>67</sup> 47 U.S.C. § 615.

<sup>68</sup> 47 C.F.R. § 64.601 *et seq.*

<sup>69</sup> See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7546, ¶ 56.

<sup>70</sup> See *id.*, 21 FCC Rcd at 7544-45, ¶ 53.

<sup>71</sup> *VoIP TRS Order*, 22 FCC Rcd at 11295-96, ¶ 40.

<sup>72</sup> See generally FCC Form 499-A; FCC Form 499-A Instructions at 17-18.

collected revenues rather than billed revenues. We believe that revising our calculations in this manner would achieve greater consistency in the administration of these Funds.

30. *Implementation Deadline.* Section 715 requires “[w]ithin one year after the date of enactment of the [CVAA]” (*i.e.*, before October 8, 2011), “each interconnected VoIP service provider and each provider of non-interconnected VoIP service to participate in and contribute to the TRS Fund “in a manner prescribed by the Commission by regulation.”<sup>73</sup> As discussed above in Section II.B, interconnected VoIP service providers have been reporting revenues and contributing to the TRS Fund on an annual basis since 2007. As to these providers, we believe the one-year statutory deadline has been met.

31. To meet the one-year statutory deadline with respect to non-interconnected VoIP service providers, we propose to require all such providers to register and designate a District of Columbia agent for service of process by September 30, 2011, using the FCC Form 499-A in accordance with its instructions. Also to meet the one-year statutory deadline, we propose to require all non-interconnected VoIP service providers to complete and submit the FCC Form 499-A by April 1, 2012, to report interstate end-user revenues for such services for the period from October 1 through December 31, 2011. We further propose to begin assessing non-interconnected VoIP service providers for TRS contributions based on revenues reported for the October-December 2011 period for the 2012-2013 TRS Fund year (July 1, 2012 through June 30, 2013). These implementation dates assume that the rules will be effective, and that all Paperwork Reduction Act requirements have been met and approved by the Office of Management and Budget. We seek comment on these proposals.

#### **IV. PROCEDURAL MATTERS**

##### **A. Regulatory Flexibility**

32. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Certification (“IRFC”) of the possible significant economic impact on small entities of the policies and rules addressed in this NPRM. The IRFC is set forth in Appendix B. Written public comments are requested on the IRFC. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the Notice and must have a separate and distinct heading designating them as responses to the IRFC.

##### **B. Paperwork Reduction Act**

33. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (“OMB”) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

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<sup>73</sup> 47 U.S.C. § 615.

### C. *Ex Parte* Presentations

34. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>74</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>75</sup> Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.<sup>76</sup>

### D. Comment Filing Procedures

35. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>77</sup> interested parties may file comments and reply comments regarding the NPRM on or before the dates indicated on the first page of this document.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers, which in this instance are CG Docket No. 11-47.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
  - In addition, parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street,

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<sup>74</sup> 47 C.F.R. §§ 1.1200–1.1216.

<sup>75</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>76</sup> 47 C.F.R. § 1.1206(b).

<sup>77</sup> 47 C.F.R. §§ 1.415, 1.419.

SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

36. Documents in CG Docket No. 11-47 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street SW, Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

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

#### **V. ORDERING CLAUSES**

38. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(i), 4(j), 225, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 225 and 615, that this Notice of Proposed Rulemaking IS ADOPTED.

39. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules

**The Federal Communications Commission proposes to amend Subpart A of Part 1 and Subpart F of Part 64 of Title 47 of the Code of Federal Regulations as follows:****Subpart A of Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:**

Section 1.47(h) of Subpart A is amended to read as follows:

Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, and non-interconnected VoIP provider, as defined in § 64.601(a)(15) of this chapter, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier, interconnected VoIP provider, or non-interconnected VoIP provider in any proceeding before the Commission. Such designation shall include, for the carrier, interconnected VoIP provider, or non-interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier, interconnected VoIP provider, or non-interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers, interconnected VoIP providers, and non-interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the *Federal Register*, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier, interconnected VoIP provider, or non-interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier, interconnected VoIP provider, or non-interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier, interconnected VoIP provider, or non-interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of



the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

**Subpart F of Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:**

1. An authority citation for Subpart F is added to read as follows:

AUTHORITY: 47 U.S.C. 151, 154, 225 and 615.

2. Section 64.601(a) of Subpart F is amended by revising the definition in subparagraph (10), as follows:

(10) Interconnected VoIP service. The term “interconnected VoIP service” has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

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3. Section 64.601(a) of Subpart F is amended by re-designating the definitions in subparagraphs (15)-(27) as subparagraphs (16)-(28), respectively; and adding a new definition in subparagraph (15), as follows:

(15) Non-interconnected VoIP service. The term “non-interconnected VoIP service” –

(A) means a service that –

- (i) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and
- (ii) requires Internet protocol compatible customer premises equipment; and

(B) does not include any service that is an interconnected VoIP service.

4. Section 64.604(c)(5)(iii)(A) of Subpart F is amended to read as follows:

(A) Contributions. Every carrier providing interstate telecommunications services (including interconnected VoIP service providers pursuant to §64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services. For purposes of this paragraph, telecommunications revenues include revenues from non-interconnected VoIP services.

4. Section 64.604(c)(5)(iii)(B) of Subpart F is amended to read as follows:

(B) Contribution computations. Contributors' contributions to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the

ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least \$25 per year. Contributors whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the Federal Register). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer & Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

5. Section 64.604(c)(5)(iii) is amended by re-designating subsection (C) as subsection (D); by deleting the "[Reserved]" notation from subsection (D); and by adding a new subsection (C) as follows:

(C) Registration Requirements for Providers of Non-Interconnected VoIP Service

*1) Applicability.* A non-interconnected VoIP service provider that will provide interstate service shall file the registration information described in paragraph (c)(5)(iii)(C)(2) of this section in accordance with the procedures described in paragraphs 3) and 4) of this section. Any non-interconnected VoIP service provider already providing interstate service on the effective date of these rules shall submit the relevant portion of its FCC Form 499-A in accordance with paragraphs (c)(5)(iii)(C)(2) and (3) of this section.

*2) Information required for purposes of TRS Fund contributions.* A non-interconnected VoIP service provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(1) of this section shall provide the following information: *i)* The provider's business name(s) and primary address; *ii)* The names and business addresses of the provider's chief executive officer, chairman, and president, or, in the event that a provider does not have such executives, three similarly senior-level officials of the provider; *iii)* The provider's regulatory contact and/or designated agent; *iv)* All names that the provider has used in the past; and *v)* The state(s) in which the provider provides

such service.

3) Submission of registration. A provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(1) of this section shall submit the information described in paragraph (c)(5)(iii)(C)(2) of this section in accordance with the Instructions to FCC Form 499-A. FCC Form 499-A must be submitted under oath and penalty of perjury.

4) Changes in information. A provider must notify the Commission of any changes to the information provided pursuant to paragraph (c)(5)(iii)(C)(2) of this section within no more than one week of the change. Providers may satisfy this requirement by filing the relevant portion of FCC Form 499-A in accordance with the Instructions to such form.

**APPENDIX B****Initial Regulatory Flexibility Certification****CG Docket No. 11-47**

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

2. In the Notice, the Commission seeks comment on its proposal to implement Section 103(b) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), signed into law by President Obama on October 8, 2010, that requires the Commission to establish rules requiring each interconnected voice over Internet protocol (“VoIP”) service provider and each provider of non-interconnected VoIP service to participate in and contribute to the interstate Telecommunications Relay Services Fund (“TRS Fund”) beginning within one year of the enactment of the CVAA.<sup>6</sup> The TRS Fund compensates providers of Telecommunications Relay Services for their reasonable costs of providing the service on an interstate basis. The Notice seeks comment on, and proposes rules, to implement Section 103(b) of the CVAA and to require providers of non-interconnected VoIP service to participate in and contribute to the TRS Fund in a manner that is consistent with and comparable to other contributors. The Notice also seeks comment on issues relating to the possible zero and *de minimis* contributions in connection with the provision of free services and the administrative costs of providers, registration requirements, the completion and submission of Telecommunications Reporting Worksheets (FCC Form 499-A), the adoption of an interim safe harbor percentage for calculating interstate end-user revenues, and the implementation deadline.

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

<sup>2</sup> 5 U.S.C. § 605(b).

<sup>3</sup> 5 U.S.C. § 601(6).

<sup>4</sup> 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.”

<sup>5</sup> 15 U.S.C. § 632.

<sup>6</sup> Currently, providers of interstate and international telecommunications services and interconnected VoIP service providers participate in, and contribute to, the TRS Fund.

3. Specifically, the NPRM proposes: to require providers of non-interconnected VoIP service to register with the Commission and designate a District of Columbia agent for service of process for purposes of contributing to the TRS Fund; to complete and file FCC Form 499-A annually; to permit providers of non-interconnected VoIP service to determine interstate end-user revenues by using actual revenues, a traffic study or to utilize a safe harbor; and to exempt service providers with no end user revenues for the reporting year from the \$25 minimum contribution requirement to the TRS Fund. It also seeks comment on whether sources of revenue other than interstate end-user revenues (*e.g.*, advertising, donations) should be considered when a service provider has no end-user revenues (*i.e.*, when services are provided to the public for free) and whether TRS Fund contributions should be based on each contributors' collected revenues rather than billed revenues.

4. The Commission proposes to require that non-interconnected VoIP service providers register and designate a District of Columbia agent for service of process by filling out Blocks 1, 2, and 6 of the FCC Form 499-A and to annually file the completed Form with the Commission. This is consistent with the Congressional mandate in Section 103(b) of the CVAA to require providers of non-interconnected VoIP service to participate in and contribute to the TRS Fund in a manner that is consistent with and comparable to the obligations of other contributors to the Fund. Such reporting would be for the limited purpose of determining required TRS Fund contributions and would not prejudice issues concerning the appropriate regulatory classification of VoIP services. It has previously been estimated that filling out the FCC Form 499-A takes 13.5 hours (*i.e.*, less than two work days of a single full-time employee) annually. Thus, filling out the form does not have a significant economic impact upon small entities.

5. The Notice seeks comment on how the Commission can best ensure that the obligations of VoIP service providers that offer some or all of their interstate services free to the public are consistent with and comparable to the obligations of other contributors to the TRS Fund. Section 225(d)(3)(B) of the Communications Act requires the Commission to adopt regulations that costs caused by interstate telecommunications relay service be recovered from "all subscribers" for every interstate service. The Notice seeks comment on whether it would be necessary or appropriate to assess contributions from providers of free VoIP services based on revenues from sources other than the "interstate end-user revenues of such services," such as advertising and donor contributions, or whether TRS Fund contributions of VoIP providers should be based solely on interstate end-user revenues, even if that results in a zero contribution. Because the typical contribution historically has been slightly less than 1% of revenues annually, this will not have a significant economic impact upon small entities.

6. Additionally, the TRS rules currently impose a minimum \$25 contribution on all entities, regardless of their reported revenues. The Notice proposes that if the Commission determines that contributions to the TRS Fund are to be based solely on interstate end-user revenues, VoIP providers and other carriers subject to TRS Fund contribution requirements with a zero contribution calculation (*i.e.*, they either did not charge for end-user service or generated some end-user revenue but it was offset by administrative costs that cancelled out the revenue) not be subject to the minimum \$25 contribution. If this proposal is not adopted, alternatively, the Notice seeks comment on whether a VoIP service provider that reports no revenue for the reporting year should be assessed a "*de minimis*" contribution amount. Even if the Commission applies the minimum \$25 annual contribution to the TRS Fund to providers with a zero

contribution calculation, it would not constitute a significant economic impact upon small entities.

7. The Commission has previously recognized that some interconnected VoIP service providers may have difficulty complying with the end-user revenue reporting requirements because they do not have the ability to identify whether calls are interstate. As a result, the Commission established a safe harbor which estimated the percentage of interconnected VoIP service revenues attributable to interstate calls to be 64.9%. These VoIP service providers may report their interstate end-user revenues on the FCC Form 499-A by using actual revenues, a traffic study or the safe harbor. The Notice seeks comment on whether the Commission should also apply the safe harbor to non-interconnected VoIP service providers. Because the safe harbor is used when it reduces TRS Fund contributions, application of it to non-interconnected VoIP services will not have any significant negative economic impact upon small entities.

8. The Notice also requests input on whether to modify the FCC Form 499-A to ask filers to provide information on “collected” (i.e. earned) revenues rather than, as currently, on “billed” (i.e., potentially uncollectible) revenues. This would harmonize the basis for TRS Fund contributions with those for the Universal Service Fund, which bases contributions on “collected” revenues. Because it would relieve providers of basing their contribution to the TRS Fund on billed revenues, it would reduce TRS Fund contributions and therefore would not have any significant negative economic impact upon small entities.

9. Finally, the CVAA requires that VoIP service providers begin participating in, and contributing to, the TRS Fund within one year of the date of the CVAA’s enactment. This deadline has been met with regard to interconnected VoIP service providers who have been participating in the Fund since 2007. To meet the statutory deadline, the Notice proposes to require non-interconnected VoIP service providers to register by September 30, 2011 by completing Blocks 1 and 2 of the FCC Form 499-A, and to complete and submit the Form by April 1, 2012, reporting their end-user revenues for the period from October 1 through December 31, 2011. This uniform registration deadline is mandated by statute and will not have a significant adverse economic impact upon small entities.

10. With regard to whether a *substantial number* of small entities may be economically impacted by the requirements proposed in this *Notice*, the Commission notes that a substantial number of small entities will be likely be affected; however, for the reasons stated above, the cumulative economic impact on such entities will be *de minimis*. Most participating entities are likely to meet the definition of a small entity as a “small organization.” VoIP service providers are included in the census business category “All Other Telecommunications.” This category comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry.”<sup>7</sup> For this category, Census

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<sup>7</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>8</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.<sup>9</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

11. Historically, the contributions to the TRS Fund have totaled slightly less than 1% of revenues. Moreover, many non-interconnected VoIP service providers offer their services for free and, unless revenue sources other than end-user interstate revenues are included, will have no annual contribution or the *de minimis* \$25 contribution, depending on the outcome of this proceeding. Accordingly, we conclude that a zero or \$25 contribution is a *de minimis* amount.

12. Therefore, based on the foregoing analysis of all foreseeable economic impacts, we certify that the proposals in this *Notice*, if adopted, will not have a significant economic impact on a substantial number of small entities.

13. The Commission will send a copy of the *Notice*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>10</sup> This initial certification will also be published in the Federal Register.<sup>11</sup>

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<sup>8</sup> U.S. Census [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>9</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>10</sup> 5 U.S.C. § 605(b).

<sup>11</sup> 5 U.S.C. § 605(b).