

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

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

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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## I. INTRODUCTION

1. In this Report and Order (*Order*), we adopt rules to detect and prevent fraud and abuse in the provision of video relay service (VRS), which allows users to communicate in sign language via a video link.<sup>1</sup> We recognize the valuable ways in which VRS fulfills the communication needs of persons who are deaf and hard of hearing.<sup>2</sup> The program’s structure, however, has made it vulnerable to fraud and abuse, which have plagued the current program and threatened its long-term sustainability. This *Order* takes a number of actions intended to substantially reduce and ultimately eliminate this fraud and abuse. These actions demonstrate the Commission’s commitment to ensuring that VRS remains a viable and a valuable communication tool for Americans who use it on a daily basis, while protecting the Telecommunications Relay Service Fund (TRS Fund or Fund) from abusive practices. Specifically, we take the following actions:<sup>3</sup>

- Require that VRS providers submit a statement describing the location and staffing of their

<sup>1</sup> VRS is described in greater detail in ¶2 below. Certain rules adopted in this *Order* also apply to other forms of TRS, as indicated herein. TRS is defined as “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.” 47 U.S.C. § 225(a)(3). For traditional TRS, an individual uses a TTY to communicate with a third party over the public switched telephone network through a communications assistant (CA). A TTY, also called a “text telephone,” is a text device that employs graphic communication in the transmission of coded signals through a wire or radio communication system. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act*, Report and Order and Request for Comments, 6 FCC Rcd 4657 at 4657, ¶1, n.1 (1991) (*First TRS Report and Order*). The CA converts everything that the TTY caller types into voice and types all of the responses back into text so that the two users can have a conversation with each other. See *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). As noted below, although traditional TRS was the only type of TRS available in 1990 when section 225 was first enacted, since that time, the Commission has approved several additional forms of this service, including services that use an Internet connection between the TRS user and the CA to enable greater real-time communication and other capabilities. See ¶2 *infra*.

<sup>2</sup> According to the TRS Fund Performance Status Report by the National Exchange Carrier Association, Inc. (NECA), VRS had approximately 8.5 million minutes of use for the month of October 2010, which is over three million more minutes of use than the combined minutes of use of all five of the other Internet Protocol (IP)-based and interstate forms of TRS in that month. See *NECA, TRS Fund Performance Status Report* (submitted for October 2010) [https://www.neca.org/cms400min/NECA\\_Templates/PublicInterior.aspx?id=1253](https://www.neca.org/cms400min/NECA_Templates/PublicInterior.aspx?id=1253).

<sup>3</sup> Unless otherwise indicated, the new rules adopted in this *Order* apply to all forms of TRS.

call centers twice a year, and a notification at least 30 days prior to any change in the location of such centers;

- Prohibit VRS communications assistants (CAs) from relaying calls from their homes;
- Prohibit VRS provider arrangements that involve tying minutes or calls processed by a CA to compensation paid or other benefits given to that CA, either individually or as part of a group;
- Adopt procedures for the resolution of disputed provider payment claims when payment has been suspended;
- Prohibit compensation for VRS calls that originate from IP addresses that indicate the individual initiating the call is located outside of the United States, with the exception of callers who pre-register with their default provider for a specified time and location of travel;
- Prohibit VRS CAs from using visual privacy screens; require VRS CAs to terminate a VRS call, after providing a warning announcement, if either party to the call: (1) enables a privacy screen or similar feature for more than five minutes, or (2) is unresponsive or unengaged for more than five minutes, unless the call is to 9-1-1 or one of the parties is on hold;
- Prohibit compensation for VRS calls for remote training when the provider is involved in any way with such training;
- Require automated recordkeeping of TRS minutes submitted to the Fund;
- Amend the rules governing data collection from VRS providers to add requirements for the filing of data associated with each VRS call for which a VRS provider is seeking compensation;
- Require that VRS be offered to the public only in the name of the eligible provider seeking compensation from the Fund, and when sub-brands are used, that these identify such eligible provider;
- Require that calls to any brand or sub-brand of VRS be routed through a single URL address for that brand or sub-brand;
- Prohibit revenue sharing agreements for CA or call center functions between entities eligible for compensation from the Fund and non-eligible entities;
- When an eligible provider has contracts with third parties for non-CA or call center functions, prohibit the third party subcontractor from holding itself out to the public as a VRS provider, and require such contracts to be in writing and made available to the Commission or TRS Fund administrator upon request;
- Prohibit compensation on a per minute basis for costs related to marketing and outreach costs performed through a subcontractor where such services utilize VRS;
- Adopt whistleblower protection rules for current and former employees and contractors of TRS providers;

- Require that VRS providers submit to audits annually or as deemed appropriate by the Fund administrator or the Commission;
- Require that all Internet-based TRS providers retain all records that support their claims for payment from the Fund for five years; and
- Make permanent the interim rule requiring the CEO, CFO, or another senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided to certify, under penalty of perjury, to the validity of minutes and data submitted to the Fund administrator.

In addition to the above actions, in the accompanying Further Notice of Proposed Rulemaking (*FNPRM*), we seek comment on ways to revise the current certification process to ensure that potential providers receiving certification are qualified to provide Internet-based relay service in compliance with the Commission's rules, and to improve the Commission's oversight of such providers.

## II. BACKGROUND

2. Title IV of the Americans with Disabilities Act (ADA), codified at section 225 of the Communications Act of 1934, as amended (Act), requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to persons with hearing or speech disabilities in the United States.<sup>4</sup> The Act specifically directs that TRS offer persons with hearing and speech disabilities the ability to engage in communication by radio or wire in a manner that is “functionally equivalent” to voice telephone service.<sup>5</sup> When section 225 was first enacted and implemented, there was only one type of TRS, which relayed calls between voice telephone users and individuals who used TTYs connected to the public switched telephone network (which we now call “traditional TRS”).<sup>6</sup> In March 2000, the Commission recognized several new forms of TRS, including VRS.<sup>7</sup> VRS requires the use of a broadband Internet connection between the VRS user and the CA, which allows users to communicate in sign language via a video link. A VRS call is initiated when a person using American Sign Language (ASL) connects to a VRS CA and the CA, in turn, places an outbound telephone call to the called party, typically a hearing person.<sup>8</sup> During the call, the CA relays the communications between the two parties, signing what the hearing person says to the deaf or hard of hearing user and responding in voice to the hearing person. In this manner, the conversation between the

<sup>4</sup> 47 U.S.C. § 225(b)(1); *see* Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990).

<sup>5</sup> 47 U.S.C. § 225(a)(3).

<sup>6</sup> *See* n. 2, *supra*.

<sup>7</sup> *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-54, ¶¶21-27 (2000) (*2000 TRS Order*).

<sup>8</sup> A VRS call can also be initiated by having the hearing person connect to the CA, and having the CA place the call to the ASL user. Note that the Twenty-First Century Communications and Video Accessibility Act (CVAA) revises the definition of TRS to also permit calls between VRS users and persons using other forms of relay services, in which case the called party may also have a hearing or speech disability. Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified at 47 U.S.C. § 715). 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 Act, unless otherwise indicated.

deaf person and the hearing person flows in near real-time. VRS therefore provides for persons who wish to communicate in ASL a degree of “functional equivalency” that is not attainable with text-based TRS.

3. Section 225 of the Act and its implementing regulations provide that TRS users cannot be required to pay rates that are greater than the rates paid for functionally equivalent voice telephone service.<sup>9</sup> To comply with this mandate, the costs for providing TRS are not charged to the consumers using these services; rather, these costs are passed on to all consumers of telecommunications services by intrastate and interstate common carriers, either as a surcharge on their monthly service bills or as part of the rate base for the state’s intrastate telephone services. Interstate relay calls and all calls made via Internet-based forms of TRS, including VRS, are funded through mandatory contributions made to the TRS Fund.<sup>10</sup> Providers of compensable TRS services are entitled to recover their reasonable costs of providing service in compliance with the Commission’s service rules.<sup>11</sup> Providers submit to the Fund administrator on a monthly basis the number of minutes of service provided, and the Fund administrator compensates them based on per-minute compensation rates.<sup>12</sup> TRS compensation rates are presently set annually by the Commission.<sup>13</sup>

4. Although VRS has proven to be extremely popular, this service also has been subject to fraud and abuse. For example, in November 2009, the U.S. Department of Justice indicted 26 people for allegedly manufacturing and billing the Fund for illegitimate calls, the vast majority of whom have either pleaded guilty or been convicted.<sup>14</sup> In addition, we continue to receive numerous allegations of abusive

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<sup>9</sup> See 47 U.S.C. § 225(d)(1)(D) (regulations must “require that users of [TRS] pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination”); 47 C.F.R. § 64.604(c)(4).

<sup>10</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(E) (implementing 47 U.S.C. § 225(d)).

<sup>11</sup> *Id.*; see also *2004 TRS Report & Order*, 19 FCC Rcd at 12543-45, ¶¶179-82.

<sup>12</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(E). The TRS Fund pays VRS providers for their cost of operations; users of VRS pay for their own Internet service to access VRS.

<sup>13</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 24 FCC Rcd 8628 (2009) (*2009 TRS Rate Order*) (annual rate order adopting compensation rates for the various forms of TRS, the Fund size, and the carrier contribution factor).

<sup>14</sup> See *Twenty-six Charged in Nationwide Scheme to Defraud the FCC’s Video Relay Service Program*, United States Department of Justice (DOJ) (Nov. 19, 2009) at <http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html>; see also *Two Former Executives of Indicted Relay Services Company Plead Guilty to Defrauding FCC Program*, DOJ (Jan. 13, 2010) at <http://www.justice.gov/opa/pr/2010/January/10-crm-031.html>; *Two Former Executives of Video Relay Services Company Plead Guilty to Defrauding FCC Program*, DOJ (Feb. 18, 2010) at <http://www.justice.gov/opa/pr/2010/February/10-crm-157.html>; *Four Former Owners and Employees of Three Video Relay Service Companies Plead Guilty to Defrauding FCC Program*, DOJ (March 5, 2010) at <http://www.justice.gov/opa/pr/2010/March/10-crm-229.html>; *Three Former Owners and Employees of Two Video Relay Service Companies Plead Guilty to Defrauding FCC Program*, DOJ (March 9, 2010) at <http://www.justice.gov/opa/pr/2010/March/10-crm-237.html>; *Owner and a Former Executive of Indicted Video Relay Services Company Plead Guilty to Defrauding FCC Program*, DOJ (Oct. 28, 2010) at <http://www.justice.gov/opa/pr/2010/October/10-crm-1223.html>; *Individual Pleads Guilty to Defrauding FCC Video Relay Service Program*, DOJ (Jan. 6, 2011) at <http://www.justice.gov/opa/pr/2011/January/11-crm-018.html>; *Two Individuals Plead Guilty to Defrauding FCC Video Relay Service Program*, DOJ (Jan. 24, 2011) at <http://www.justice.gov/opa/pr/2011/January/11-crm-100.html>; See also, *In the Matter of Hands On Video Relay Services, Inc., Go America, Inc., and Purple Communications, Inc.*, Order and Consent Decree, 25 FCC Rcd 13090 (2010) (*Purple Consent Decree*). As we noted in the *VRS Call Practices NPRM*, among the many individuals

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practices by VRS providers or their subcontractors.<sup>15</sup> Some of these allegations have resulted in criminal investigations of VRS practices, which in turn have been the subject of semi-annual reports that the Commission's Office of the Inspector General (OIG) has submitted to Congress.<sup>16</sup> The reports on these investigations have noted evidence of the following illicit VRS activities:

- VRS callers specifically requesting that their calls not be relayed by the CA to the parties that they call;<sup>17</sup>
- Calls placed to numbers that do not require any relaying, for example a voice-to-voice call;
- Calls initiated from international IP addresses<sup>18</sup> by callers with little or no fluency in ASL where the connection is permitted to “run” (*i.e.*, the line is simply left open without any relaying of the call occurring);<sup>19</sup>
- Implementation of “double privacy screens” (*i.e.*, where both users to the video leg of the call block their respective video displays, thus making communication impossible);
- VRS CAs calling themselves;

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indicted for illegal VRS activities were call center managers, paid callers, and VRS CAs. Fraud uncovered by the investigations associated with these indictments revealed tens of millions of dollars of payments that were illegitimately collected from the Fund. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012 at 6016, ¶6, n.22 (2010) (*VRS Call Practices NPRM*). Two primary sources of fraud uncovered through these investigations were illegitimate calls made to taped programs and calls ostensibly made for the purpose of marketing and outreach.

<sup>15</sup> We previously noted that these have included reports of the use of VRS for video remote interpreting services, the hosting or promotion of teleseminars for the express purpose of generating VRS minutes, and payment to individuals or organizations to place VRS calls using a particular provider's service. See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 at 8607, ¶31 (2010) (*2010 VRS NOI*).

<sup>16</sup> See, e.g., Office of Inspector General, Semi Annual Report to Congress, April 1-September 30, 2009, available at: [http://www.fcc.gov/oig/SAR\\_12-22-09.pdf](http://www.fcc.gov/oig/SAR_12-22-09.pdf) (*OIG Semi Annual Report*).

<sup>17</sup> In the *OIG Semi Annual Report*, the term “video interpreter,” or “VI,” is used to refer to a CA who handles VRS calls. In this *Order*, such individuals are referred to as CAs throughout.

<sup>18</sup> We define calls made from international IP addresses as those that come from an IP address that the Fund administrator detects as likely coming from a device associated with an individual initiating the call from a location outside the United States.

<sup>19</sup> See *United States v. John T.C. Yeh et al.*, Criminal No. 09-856, D.N.J. (Nov. 18, 2009). (“Defendants John Yeh, Joseph Yeh, and Viable would pay friends and acquaintances to generate VRS calls that Viable employees often referred to as ‘r calls’ or ‘run calls.’ These run calls would be made for the sole purpose of generating illegitimate VRS minutes for which NECA would be fraudulently billed.”); *United States v. Kim E. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009). (“Defendants L. Berke, D. Berke, and Goetz would generate and process certain illegitimate VRS calls at Master Communications and KL Communications for the purpose of submitting those VRS minutes to NECA, thus generating millions of dollars in revenue. These . . . ‘run calls’ would be calls made for the sole purpose of generating illegitimate VRS minutes for which NECA would be fraudulently billed.”)

- CAs connecting videophones/computers and letting them run with no parties participating in the call;
- Callers disconnecting from one illegitimate call and immediately calling back to initiate another; and
- Callers admitting that they were paid to make TRS calls.

5. These practices have resulted in fraudulent diversion of funds intended for TRS and threaten the sustainability of the VRS program. They cannot be tolerated in a program that is designed to deliver essential telecommunications services to persons who are deaf and hard of hearing. In addition to robbing the TRS Fund for illicit gain, they abuse a highly valued Federal program that, for the past twenty years, has been critical to ensuring that people with hearing and speech disabilities have the same opportunities to communicate over distances – with family, friends, colleagues, and others – as everyone else.

6. On a number of prior occasions, the Commission has attempted to curb the fraud pervading the VRS program by admonishing providers about improper call handling and other practices that generate VRS calls that would not otherwise be made by consumers, as well as arrangements and schemes that violate section 225 and our rules.<sup>20</sup> In addition, in a 2009 Declaratory Ruling, the Consumer and Governmental Affairs Bureau (CGB) identified certain calling practices that do not comply with our rules, as well as categories of calls that are not compensable from the Fund.<sup>21</sup> Other stakeholders have also come forward with their suggestions of ways to address and eliminate questionable provider call handling practices that threaten the viability of this program.<sup>22</sup>

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<sup>20</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd 1466 (2005) (*2005 Financial Incentives Declaratory Ruling*); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 20 FCC Rcd 12503 (2005) (stating that the offering of free or discount long distance service to TRS consumers as an incentive for a consumer to use a particular TRS provider's relay service, or as an incentive for a consumer to make more or longer TRS calls, constitutes an impermissible financial incentive in violation of section 225 of the Act); *Telecommunications Relay Services (TRS) Providers Must Make all Outbound Calls Requested by TRS Users and May Not "Block" Calls to Certain Numbers at the Request of Consumers*, Public Notice, 20 FCC 14717 (2005). See also *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 at 20173-76, ¶¶ 89-96 (2007) (*2007 TRS Rate Methodology Order*); *Purple Consent Decree*.

<sup>21</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 24 FCC Rcd 11985 (2009).

<sup>22</sup> See, e.g., National Association of the Deaf, et al., *Petition to Initiate a Notice and Comment Rulemaking Proceeding*, CG Docket No. 03-123, CC Docket No. 98-67 (filed Jan. 27, 2010) (requesting that the Commission initiate a rulemaking proceeding on the restriction of certain types of VRS calls); CSDVRS, LLC, *Petition for Rulemaking on Internal VRS Calls and VRS Conference Calls*, CG Docket No. 03-123, WC Docket No. 05-196 (filed Nov. 17, 2009) (requesting that the Commission seek comment on rules addressing VRS calls, including conference calls, by VRS provider employees); *Ex Parte* Notice of Snap Telecommunications, Inc., CG Docket No. 03-123 (Oct. 30, 2009) (urging the Commission to take enforcement actions against illegitimate call practices); Sorenson Communications, Inc., *Petition for Rulemaking*, CG Docket No. 03-123 (filed Oct. 1, 2009) (*Sorenson VRS Call Practices Petition*) (requesting that the Commission propose and seek comment on rules that will ensure that the Fund compensates only legitimate VRS calls); CSDVRS, LLC, *Request for Expedited Clarification on Marketing Practices*, CG Docket No. 03-123 (filed Sept. 1, 2009) (seeking clarification on the compensability of

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7. In this *Order* we address a range of issues in a further effort to stem the fraud and abuse that have plagued the VRS program. We consider this *Order* one of many steps designed to meet our goals of ensuring that VRS is available to, and used by, the full spectrum of eligible users, encourages innovation, and is provided efficiently so as to be less susceptible to the waste, fraud, and abuse that threaten its long-term viability.<sup>23</sup> In conjunction with this *Order*, we will also propose in the near future changes to the VRS program infrastructure that are necessary to further reduce the incentives for fraud and ensure that this service remains effective, efficient, and sustainable in the future.<sup>24</sup>

8. This *Order* follows a Declaratory Ruling, Order and Notice of Proposed Rulemaking (*VRS Call Practices NPRM*) released on May 27, 2010.<sup>25</sup> In the *VRS Call Practices NPRM*, we sought comment on a number of ways to reduce and ultimately eliminate fraud and abuse, and to improve the integrity and sustainability of the TRS Fund that pays for this program. Specifically, we sought comment on: (1) the location of VRS call centers; (2) VRS CAs working from home; (3) compensation for VRS CAs; (4) procedures for the suspension of payment from the TRS Fund; (5) the permissibility of specific call practices; and (6) ways to detect and stop the billing of illegitimate calls. Based on the record, the rules we adopt herein seek to clarify and strengthen our service and compensation rules to preserve the integrity of the VRS program.

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VRS calls placed by VRS providers for marketing and outreach); CSDVRS, LLC, *Petition for Rulemaking or Regulation of Provider Representations*, CG Docket No. 03-123 (filed Aug. 24, 2009) (seeking rulemaking to adopt rules that provide for monetary penalties for VRS provider misrepresentations); Purple Communications, Inc., *Petition for Rulemaking to Clarify Relay Rules* (filed Aug. 12, 2009) (seeking rules to make clear that multi-party deaf-to-deaf calls are compensable VRS calls and that address other provider marketing and call handling practices); *Reply Comments of the United States Telecom Association*, CG Docket No. 03-123 (filed July 20, 2009) (arguing that the Commission must increase efforts to stop waste, fraud, and abuse, and clarify all practices that are not reimbursable); Letter to Acting Chairman Copps from Ed Bosson, CG Docket No. 03-123 (filed May 28, 2009) (suggesting FCC enforcement action for certain call practices, including manufactured minutes); CSDVRS, LLC, *Petition for Clarification or Rulemaking on Automated Data Collection*, CG Docket No. 03-123 (filed May 22, 2009) (*Automated Call Data Petition*) (seeking clarification that the TRS rules require automated record keeping of TRS minutes submitted to the Fund for reimbursement); *Ex Parte* Notice of Snap Telecommunications, Inc., CG Docket No. 03-123 (May 12, 2009) (urging the Commission to take enforcement actions against illegitimate call practices); *Ex Parte* Notice of Sorenson Communications, Inc. (Sorenson), CG Docket No. 03-123 (filed May 12, 2009) (requesting that the Commission identify certain call practices as impermissible); Sorenson., *Comments and Petition for Declaratory Ruling of Sorenson Communications, Inc.*, CG Docket No. 03-123 (Filed April 24, 2009) (addressing provider revenue sharing agreements and possible revisions to the provider certification rules); GoAmerica, Inc., *Petition for Rule Making*, CG Docket No. 03-123 (filed Jan. 26, 2009) (seeking rulemaking to revise the provider certification rules and prohibit “white label” providers) (*GoAmerica VRS Certification Petition*); *Ex Parte* Comments of the National Association for State Relay Administration (NASRA), CG Docket No. 03-123 (filed Nov. 10, 2008) (seeking clarification on the permissibility of certain call practices).

<sup>23</sup> 2010 VRS NOI, 25 FCC Rcd at 6013, ¶1.

<sup>24</sup> See generally 2010 VRS NOI.

<sup>25</sup> See generally VRS Call Practices NPRM, 25 FCC Rcd 6012.



### III. REPORT AND ORDER

#### A. Location of VRS Call Centers

9. In the *VRS Call Practices NPRM*, we noted that VRS call centers that currently operate outside of the United States may not be appropriately suited to provide VRS.<sup>26</sup> Specifically, we expressed concerns that VRS providers may not be able to find qualified ASL interpreters in other countries where ASL generally is not the primary form of sign language.<sup>27</sup> We also pointed out that as a result of inadequate supervision, VRS call centers located outside the United States may not always operate in compliance with the Commission's rules and have become a source of illegitimate VRS calls.<sup>28</sup> Therefore, we tentatively concluded that we would amend the rules to require that all VRS call centers be located in the United States.<sup>29</sup>

10. Commenters responding to these proposals are divided on this issue. Several providers agree that limiting VRS call centers to locations in the United States would help to address VRS fraud.<sup>30</sup> In addition, the Canadian Association of the Deaf urges us to prohibit the location of VRS call centers in Canada that can claim reimbursement from the Fund because the employment of interpreters in these centers has "detrimentally affected the interpreting resources for deaf Canadians."<sup>31</sup> However, two major interpreter organizations, the Registry of Interpreters for the Deaf (RID) and the Association of Visual Language Interpreters of Canada, and several VRS providers oppose limiting call centers to United States locations because they claim there is no evidence that non-United States-based call centers are a source of fraud.<sup>32</sup> Other commenters recommend that the Commission instead focus its attention on addressing concerns about inadequate supervision of interpreters and centers that are susceptible to fraud, regardless of the centers' locations.<sup>33</sup> The Government of Canada asserts that a rule prohibiting VRS call centers outside the United States appears to be in contravention of the United States' obligations under the North American Free Trade Agreement (NAFTA), because the Cross-Border Trade in Services chapter of the NAFTA obligates the United States to treat Canadian-based service providers no less favorably than United States-based service providers.<sup>34</sup> Sorenson also requests an assurance from the Commission that the FCC will not prohibit call centers in Canada because Sorenson operates eight

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<sup>26</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6021, ¶17.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 6022, ¶18.

<sup>30</sup> *See, e.g.*, Convo Comments at 5, PAHVRS Comments at 1, CSDVRS Comments at 3, Hamilton Comments at 2; SnapVRS Comments at 3.

<sup>31</sup> *See* Canadian Association of the Deaf Comments at 1-2. SnapVRS similarly notes this reason as an appropriate basis for banning VRS call centers in Canada. SnapVRS Reply Comments at 3.

<sup>32</sup> RID Comments at 1; AT&T Comments at 3; Government of Canada Comments at 2-3; AVLIC Comments at 2-3; Purple Comments at 2-3; CODAVRS Comments at 1; Sorenson Comments (Sept. 7, 2010) at 9; GraciasVRS Comments at 1; Healinc Comments at 3-4; TDI Comments at 4; 258 Communications Comments at 1 (May 28, 2010).

<sup>33</sup> TDI Comments at 4; Purple Comments at 3; Sorenson Reply Comments (Sept. 16, 2010) at 9.

<sup>34</sup> Government of Canada Comments at 2-3.

centers there and the Commission's proposal would impose unnecessary obstacles to international trade.<sup>35</sup>

11. *Discussion.* We decline to adopt our tentative conclusion to require that all VRS call centers be located in the United States.<sup>36</sup> We are concerned about potential violations of international trade agreements, and also agree with those commenters that argue that we can effectively control fraud and ensure compliance with our mandatory minimum standards at any center, regardless of its location, in other ways. For example, knowing the locations of all VRS centers will facilitate more effective oversight of the VRS program. In particular, knowing the locations of these centers will assist in our efforts to identify sources of potential fraud, as well as identify potential witnesses to information that may eventually assist law enforcement authorities in their efforts to investigate such fraud and take appropriate enforcement actions. Several investigations in the past have involved alleged fraud committed at independently run or operated call centers that were not directly under the Commission's oversight, and therefore difficult to find.<sup>37</sup> It will assist our investigatory efforts to have information on where all current and future call centers are located. No commenters oppose requiring providers to report on these locations.<sup>38</sup>

12. Accordingly, we amend our rules to require all VRS providers to submit a written statement to the Commission and the TRS Fund administrator containing the locations of all of their call centers that handle VRS calls, including call centers located outside the United States, twice a year, on April 1<sup>st</sup> and October 1<sup>st</sup>.<sup>39</sup> In addition to the street address of each call center, we further direct that these statements contain (1) the number of individual CAs and CA managers employed at each call center; and (2) the name and contact information (phone number and email address) for the managers at each call center. We also amend our rules to require VRS providers to notify the Commission and the TRS Fund administrator in writing at least 30 days prior to any change to their call centers' locations, including the opening, closing, or relocation of any center. We believe that this new reporting obligation will provide us with critical information that will facilitate oversight, including immediate and effective investigations into suspicious activities.

## B. VRS CAs Working from Their Homes

13. In the *VRS Call Practices NPRM*, we sought comment on the extent to which VRS CAs should be permitted to handle VRS calls from their homes.<sup>40</sup> While noting the benefits that come from

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<sup>35</sup> See generally Sorenson Comments at 9-24; Sorenson Reply Comments (Sept. 16, 2010) at 9.

<sup>36</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6022, ¶18.

<sup>37</sup> For example, one indictment charged the following: "Defendants John Yeh, Joseph Yeh, and Viable would enter [into] agreements with independently owned call centers for the purpose of generating additional bogus VRS minutes for Viable. . . The subcontractor call centers would receive between approximately \$2 and \$3 per VRS call minute billed to NECA that was processed through the call center." *United States v. John T.C. Yeh et al.*, Criminal No. 09-856, D.N.J. (Nov. 18, 2009).

<sup>38</sup> But see AT&T Comments at 10-12 (recommending a less stringent reporting requirement that would require providers to file annually and update the call center information within 30 days of any change).

<sup>39</sup> In the *VRS Call Practices NPRM*, 25 FCC Rcd at 6030, ¶43, we considered a quarterly reporting requirement on the location of these centers. We now adopt a less burdensome semi-annual reporting requirement, which we conclude will enable us to achieve the desired oversight. See Appendix E for final rule, 47 C.F.R. § 64.604(c)(5)(iii)(N)(2).

<sup>40</sup> See generally *VRS Call Practices NPRM*, 25 FCC Rcd at 6022-6023, ¶¶19-21.

the flexibility of such arrangements, we raised concerns about a VRS provider's ability to comply with the TRS mandatory minimum standards, including standards pertaining to confidentiality,<sup>41</sup> emergency access,<sup>42</sup> and redundancy in call center operations,<sup>43</sup> when its CAs handle calls from a residence. Further, the Commission emphasized the need to ensure that VRS is provided in a manner that prevents fraud and abuse and questioned whether this can be achieved when calls are relayed from individuals' residences.<sup>44</sup> Finally, we asked about technologies that would allow for appropriate supervision of CAs who work from home, as well as specific examples of successful solutions that could serve as a model for any future rules that might permit this arrangement.

14. In response, AT&T and Purple contend that allowing VRS CAs to relay calls from their homes will help alleviate the shortage of interpreters because such working options will attract potential interpreters who seek flexible schedules.<sup>45</sup> Similarly, RID points out that this arrangement would benefit interpreters living in rural communities.<sup>46</sup> PAHVRS claims that not allowing VRS CAs to relay calls from their homes would be anti-competitive for new entrants and smaller providers because the costs associated with running call centers are unattainably high.<sup>47</sup> SnapVRS also supports permitting residential-based VRS, noting that its in-home CAs have the "full capacity to handle an emergency call and route it to the appropriate PSAPs."<sup>48</sup> SnapVRS further suggests that the Commission adopt stringent requirements for CAs working from their residences;<sup>49</sup> it is joined by PAHVRS and Purple in proposing the use of electronic video and audio monitoring to effectively supervise VRS CAs working from their homes.<sup>50</sup>

15. Although TDI's comments neither support nor oppose home-based VRS, it recommends that, if the Commission were to permit VRS CAs to relay calls in a residential environment, the safeguards currently in place for call centers should be applied.<sup>51</sup> In response, Sorenson points out that "the very need for complex new safeguards . . . highlights the susceptibility of at-home interpreting to waste, fraud, and abuse and, by contrast, the relative security of supervised interpreting centers."<sup>52</sup> Sorenson also notes that the lack of certain technical capabilities in the home environment (such as back-

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<sup>41</sup> 47 U.S.C. § 225(d)(1)(F); 47 C.F.R. § 64.604(a)(2) (prohibiting CAs from disclosing the content of any relayed conversation regardless of content).

<sup>42</sup> See 47 C.F.R. § 64.605(b)(2)(ii) (requiring a VRS providers to transmit all 9-1-1 calls to "the PSAP, designated statewide default answering point, or appropriate local emergency authority").

<sup>43</sup> See 47 C.F.R. § 64.604(b)(4)(ii) (requiring TRS providers to have "redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use").

<sup>44</sup> *VRS Call Practices NPRM*, 25 FCC Red at 6022-6023, ¶¶19-21.

<sup>45</sup> AT&T Comments at 5; Purple Comments (Sept. 7, 2010) at 6. Purple also supports CAs working from home because of its perceived benefits of reducing costs. Purple Comments (Sept. 7, 2010) at 6.

<sup>46</sup> RID Comments at 1.

<sup>47</sup> PAHVRS Comments at 2.

<sup>48</sup> SnapVRS Comments at 5.

<sup>49</sup> *Id.* at 6.

<sup>50</sup> SnapVRS Comments at 5; PAHVRS Comments at 2; Purple Comments (Sept. 7, 2010) at 6.

<sup>51</sup> TDI Comments at 5-6.

<sup>52</sup> Sorenson Reply Comments (Sept. 16, 2010) at 6.

up power and system redundancy to prevent call interruptions) can endanger the lives or safety of deaf callers who make emergency calls,<sup>53</sup> and further suggests that at-home working conditions are more prone to eavesdropping, random interruptions, and violations of a caller's confidentiality.<sup>54</sup> Hamilton argues against authorizing unsupervised CA activity for any form of TRS because it increases the potential for fraud.<sup>55</sup>

16. *Discussion.* We agree with commenters who suggest that allowing VRS CAs to work from their homes poses substantially more risks than benefits. Based on the evidence provided in the record, we have serious concerns about allowing CAs to handle VRS calls from their homes, where they do not have the direct supervision that is available in a call center environment. Specifically, we are concerned that an unsupervised home environment is more conducive to fraud than a supervised call center with on-site management. In the course of the Commission's ongoing investigations of fraud in the VRS industry, we have identified numerous incidents in which unsupervised VRS CAs may have been complicit in facilitating fraudulent calls.<sup>56</sup> We agree with Hamilton that on-site supervisors "serve as an additional layer of fraud protection [and that] removing the CA from the same workspace as the supervisor simply increases the potential for fraud."<sup>57</sup> Although some commenters suggest that we permit home-based call handling only as a supplement to call centers rather than the principal means of handling VRS calls,<sup>58</sup> we decline to permit situations that we know to be susceptible to fraud under any circumstances. As noted by Sorenson, although most CAs have high ethical standards, "if even a small percentage of [CAs] are predisposed to commit unscrupulous acts absent supervision, allowing [CAs] to work from home could cause a significant increase in waste, fraud, or abuse."<sup>59</sup>

17. Even were we to accept the argument that the fraud associated with the VRS program could be contained in home environments through off-sight supervision, we remain concerned about the ability of these arrangements to achieve full compliance with the Commission's TRS mandatory minimum standards. First, we are not convinced that call handling in a home environment can meet the Commission's TRS standard requiring strict confidentiality of all relay calls.<sup>60</sup> The functional equivalency principle dictates that a relay user has the same expectation of caller privacy as a non-relay

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<sup>53</sup> *Id.* at 4.

<sup>54</sup> *Id.*

<sup>55</sup> Hamilton Comments (September 7, 2010) at 4.

<sup>56</sup> For example, the Commission is aware of circumstances in which VRS CAs working from home handled lengthy relay calls solely on behalf of family members who placed these calls daily. In one situation, a family member regularly placed VRS calls to another family member through yet a third family member serving as a VRS CA, and spent the entirety of those calls reading from a book for hours at a time. See Transcript of Testimony at 197-199, *United States v. Pena*, D.N.J. (2010) (No. 09-858) (VRS CAs knew that caller was being paid to make bogus calls); See also *United States v. Hawkins et al.*, Criminal No. 857, D.N.J. (Nov. 18, 2009); *United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009).

<sup>57</sup> Hamilton Comments (Sept. 7, 2010) at 4. As Hamilton further explains, "[g]iven the fraud issues that are still prevalent in this industry . . . now is not the time to liberalize the CA workspace rules. *Id.*

<sup>58</sup> See, e.g., CSDVRS Comments at 4; Convo Comments at 6-7, suggesting permitting the use of CAs for night and weekend shifts, when the number of calls make call center operations less cost efficient. But even Convo notes that such practice should only be permitted if we "assume[] that security issues are resolved to the FCC's satisfaction." *Id.* at 7.

<sup>59</sup> Sorenson Comments (Sept. 7, 2010) at 5.

<sup>60</sup> 47 C.F.R. § 64.604(a)(2).

user. In the very First Report and Order issued on TRS in 1991, the Commission noted the importance of its prohibition against allowing CAs to divulge the content of any relayed conversation: “The ADA prohibition of disclosure furthers the statutory purpose that TRS be functionally equivalent to regular telephone service. We believe that confidentiality is essential to the service, and that users of TRS can have confidence in the basic privacy of their conversations.”<sup>61</sup> Although some commenters have recommended the use of cameras to prevent violations of our confidentiality rules, we are not convinced that either video or audio equipment is capable of completely preventing eavesdropping by others who may be present in the household. Even if a camera’s angle could capture the entirety of a VRS CA’s physical station, neither its video or audio capability would be able to capture the presence of a person standing just outside the door to that station, and therefore could not prevent someone from overhearing or intentionally listening in on a conversation in a home setting without the provider’s knowledge.<sup>62</sup> By contrast, provider call centers typically ensure structural or other arrangements that prevent sound from carrying from call station to call station.<sup>63</sup>

18. Second, we are concerned about potential violations of the Commission’s technical standards in a home environment. Commission rules require TRS facilities to have redundancy features, including uninterruptible power for emergency use,<sup>64</sup> and further require TRS providers to be able to handle all 9-1-1 calls.<sup>65</sup> The record does not contain evidence that these critical capabilities, routinely available in provider-operated call centers, are equally available in all home environments. For example, as Sorenson notes, it is not clear that CAs working from home have back-up power in the event of a power outage;<sup>66</sup> nor is it clear that home-sites have the same reliable Internet capabilities as do call centers, a problem that could especially pose problems in the event that the caller is seeking emergency assistance via 9-1-1.<sup>67</sup>

19. Finally, we have concerns about the ability to achieve service quality standards in a home environment. We note that provider-based call centers typically employ on-site supervisors who roam the call center floor or are otherwise available to instantly resolve problems that arise during a relay

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<sup>61</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act*, Report and Order and Request for Comments 6 FCC Rcd at 4659, ¶13 (1991). See also *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5164 ¶54 (2000).

<sup>62</sup> Convo notes that a VRS CA might have “a spouse, neighbor or friend who eavesdrops on relay calls,” and asks “[w]ithout on-site supervision, what is to stop VRSCAs from recording the calls?” Convo Comments at 5. Convo further notes that “there is a segment of the deaf and hard-of-hearing community that is against [VRS CAs] working from home because they are concerned that privacy [rules] may not be easily enforced at home offices.” *Id.* See also, Sorenson Reply Comments (Sept. 16, 2010) at 4 (possible eavesdropping from repair or delivery personnel or children could occur).

<sup>63</sup> For example, Sorenson reports that its call centers utilize white noise emitters to prevent a conversation from carrying outside the CA’s immediate call station. Sorenson Comments (Sept. 7, 2010) at 4.

<sup>64</sup> 47 C.F.R. §64.604(b)(4)(ii) requires that these features be functionally equivalent to the equipment assuring redundancy features in central office facilities.

<sup>65</sup> 47 C.F.R. §64.605 sets forth the Commission’s extensive emergency call handling requirements.

<sup>66</sup> Sorenson Comments (Sept. 7, 2010) at 5-6.

<sup>67</sup> *Id.* at 7, noting that the below-business grade relay service likely to be installed in a person’s home may result in latency or congestion, which could cause inefficiencies in the handling of 9-1-1 calls.

call.<sup>68</sup> This managerial staff, for example, can intervene in the event that a CA is having difficulty understanding someone's signs, assist with an emergency call to 9-1-1,<sup>69</sup> or relieve a CA in the middle of a call if the CA suddenly becomes ill. That is not the case in a home-based setting. Moreover, in a home environment, even when the CA's door is locked and surveillance cameras are used, there is little assurance that interruptions will not occur or that noises coming from outside the room, for example, from other family members, will not adversely affect the CA's ability to accurately and effectively interpret the call.<sup>70</sup> Given the use of VRS as a critical tool for communication in employment and other daily life activities, as well as our statutory mandate to ensure that functional equivalent relay services are available to the extent possible, we have an obligation to do all that we can to ensure that relay service enables communication that is as accurate and reliable as that of a direct voice telephone conversation.<sup>71</sup>

20. For the above reasons, we conclude that the potential benefits of having VRS CAs work from home are presently outweighed by concerns about potential fraud, confidentiality, reliability, safety, and service quality.<sup>72</sup> We agree with Convo that there are "simply too many privacy, security,

<sup>68</sup> Although there is no Commission standard requiring a specific level of relay call quality, there are various requirements contained in the Commission's rules to ensure that the quality of a relay call will be functionally equivalent to the quality of a voice telephone call with respect to its accuracy. These include requirements for qualified CAs who are trained to meet the specialized communications needs of people with hearing disabilities (47 C.F.R. §64.604(a)(1)(i)), are skilled in sign language (47 C.F.R. §64.604(a)(1)(iv)) and are familiar with hearing disability cultures (47 C.F.R. §64.604(a)(1)(ii)). In addition, there are requirements prohibiting CAs from intentionally altering a relayed conversation (47 C.F.R. §64.604(a)(2)(ii)), mandating that relay services handle any type of call typically provided by telecommunications carriers (47 C.F.R. §64.604(a)(3)(ii)) and directing relay providers to answer calls promptly so that the probability of a busy response due to CA unavailability is functionally equivalent to what a voice caller would experience over the voice telephone network (47 C.F.R. §64.604(b)(2)). Each of these speak to the need to ensure that the accuracy and reliability of a relay user's experience is as close as possible to the telephone experience of hearing persons who do not have speech disabilities.

<sup>69</sup> Sorenson notes that its call centers routinely handle 9-1-1 calls with a team of two interpreters to ensure that these are "interpreted with the utmost accuracy," a practice that can not be duplicated in the home environment. Sorenson Comments (Sept. 7, 2010) at 6; Sorenson *Ex Parte* (March 4, 2011) at 2.

<sup>70</sup> Sorenson Comments (Sept. 7, 2010) at 4 (if a CA is handling calls in her home, the provider cannot ensure that a family member or a refrigerator repairman will not interrupt or overhear those calls); Sorenson *Ex Parte* (March 4, 2011) at 1 (an off-site interpreter could be interrupted by unauthorized parties, such as family members, neighbors, or repairmen).

<sup>71</sup> See generally, 2000 TRS Order, 15 FCC Rcd at 5144, ¶7. (TRS is a critical tool for employment . . . Being able to place a phone call to a prospective employer, to answer an advertisement for a job, to receive training, and to advance one's career through formal and informal networks depends largely on one's ability to communicate with many different individuals and entities. Improving the quality of TRS will enhance employment opportunities for people with hearing and speech disabilities . . ." See also *id.* at 5143, ¶5 ("[t]elecommunications relay service is critical given the importance that telecommunications plays in a person's ability to participate in this information age").

<sup>72</sup> Although the National Broadband Plan recommended facilitating telework arrangements, see National Broadband Plan Connecting America: The National Broadband Plan (rel. Mar. 16, 2010) at 272 (Chapter 13.3: Promoting Telework) available at <http://www.broadband.gov/plan>, we believe that the specific concerns discussed above, especially those pertaining to the need to ensure the privacy of all VRS calls to the same extent that non-VRS users enjoy such privacy and fraud prevention, generally do not make working from a home environment appropriate for CAs. While other permissible telework arrangements may at times involve the exchange of confidential information, the employment duties in such other arrangements do not involve the transmission of an individual's *private conversations* as they do in the relay context. There is precedent for disallowing telework for certain forms

(continued....)

and [CA] performance issues to make [home-based VRS] a workable solution” at the present time,<sup>73</sup> and conclude that the record reflects serious concerns about the potential for fraud when CAs work in an unsupervised home environment. Accordingly, we adopt a rule to prohibit VRS CAs from handling relay calls from a location used primarily as their home, to take effect 120 days after publication of this order in the *Federal Register*.<sup>74</sup> We do not think that the rule we now adopt will have a significant adverse impact on the provision of VRS to consumers because nothing in the record suggests that a large number or significant percentage of CAs presently work from their homes. Further, we note that this prohibition will not apply to other individuals employed by VRS providers. We remain open to re-visiting this finding if, in the future, we determine that home-based VRS can be provided in a manner that meets all of the Commission’s requirements, achieves the Act’s objectives of functional equivalency, and can be monitored to prevent fraudulent practices.

### C. VRS CA Compensation

21. In the *VRS Call Practices NPRM*, the Commission sought comment on CA compensation arrangements that could provide incentives for CAs to place calls for the purpose of generating minutes in a way that could benefit either the VRS provider employing them or themselves.<sup>75</sup> Because the TRS Fund compensates providers based on a fixed rate per minute of calling, the number of minutes handled is the key variable affecting a VRS provider’s revenue. We sought input on how VRS CAs are typically compensated, and asked about the types of safeguards that can be adopted to deter and prevent practices that are designed solely to generate minutes. For example, some VRS CAs have been paid bonuses or otherwise been given preferential treatment for working through scheduled breaks or overtime in order to relay more minutes. We noted that these minute-based compensation arrangements and similar compensation incentives have resulted in fraudulent VRS calls.<sup>76</sup>

22. Commenters that responded to our inquiries on this issue generally agree that compensation arrangements that tie minutes processed by a CA to the compensation for that CA create incentives to fraudulently generate minutes. For example, CSDVRS states that CA compensation should never be allowed to incentivize a minute-pumping scheme, or otherwise be based on bonuses for extra call handling.<sup>77</sup> Similarly, Convo notes that providing an hourly rate to CAs guarantees a level of job security that encourages these individuals to work to the best of their abilities, without creating any

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of employment. For example, the Telework Enhancement Act of 2010 excludes from telework those federal employees “whose official duties require on a daily basis” the “direct handling of secure materials determined to be inappropriate for telework by the agency head.” Telework Enhancement Act of 2010, P.L. 111-292, 124 Stat. 3165 (2010); 5 U.S.C. § 6502(b)(4)(A). In addition, most employment positions do not present the same demonstrated potential for fraudulent activities as CA conduct. As noted above, we believe that only the type of on-sight supervision available in VRS call centers can ensure the full confidentiality of relayed conversations and prevent fraudulent practices at the present time.

<sup>73</sup> Convo Comments at 5.

<sup>74</sup> See Appendix E for final rule, 47 C.F.R. 64.604 § (b)(4)(iii). The delayed effective date of this rule is intended to allow providers time to reassign VRS CAs working from home where appropriate.

<sup>75</sup> See generally *VRS Call Practices NPRM*, 25 FCC Rcd at 6023, ¶21.

<sup>76</sup> See, e.g., *United States v. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009).

<sup>77</sup> CSDVRS Comments at 8.

incentives to earn additional compensation.<sup>78</sup> Purple also notes its support for compensation arrangements that promote productivity that “helps reduce the overall cost of the VRS program” but does not incentivize fraudulently generated minutes.<sup>79</sup> Some providers also suggest that such incentives, beyond promoting VRS misuse, can deteriorate work performance because they can result in overworking CAs.<sup>80</sup>

23. *Discussion.* The indictments resulting from criminal investigations into VRS fraud are replete with alleged instances in which CAs were rewarded for handling calls that otherwise would not have been made,<sup>81</sup> as well as alleged schemes directing VRS call center employees to make illegitimate calls.<sup>82</sup> In addition to being criminal, these arrangements do not support the goal of TRS, which is to provide a telephone service equivalent that allows people with hearing and/or speech disabilities to make or receive calls only when *they* want to do so. The Commission has previously made clear that the sole obligation of relay providers is to make themselves “available to handle calls consumers choose to make, when they choose to make them, *i.e.*, to be the ‘dial tone’ for a consumer that uses relay to call to a voice telephone user. . . .”<sup>83</sup> While it may be legitimate to reward VRS employees with bonuses and other forms of compensation for a job well done, or for extra hours worked, incentives based on the number of minutes or calls that these employees handle encourage such employees to generate minutes that would not otherwise have been made by individuals using VRS. Such incentives encourage CAs to process additional traffic, artificially lengthen the time of a call, or even engage in illicit schemes to create fictional calls where no relaying takes place.<sup>84</sup> As a consequence, these forms of compensation may be the cause of a substantial amount of the fraud that has occurred over the past few years. Accordingly, we now conclude that VRS CAs, either individually or as part of a group, are prohibited from receiving compensation, being given preferential work schedules, or otherwise benefiting in any way based on the number of minutes or calls that they relay.<sup>85</sup>

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<sup>78</sup> Convo Comments at 7.

<sup>79</sup> Purple Comments (Sept. 7, 2010) at 7.

<sup>80</sup> See, e.g., Convo Comments at 7; CSDVRS Comments at 8-9; TDI Comments at 6.

<sup>81</sup> See, e.g., *United States v. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009), in which “Defendants Hawkins and Simmons would direct Mascom VIs [video interpreters] and other employees to make run calls using Mascom’s services and cause many of these individuals to be remunerated for making illegitimate run calls [calls that are processed without the relaying of conversations].”

<sup>82</sup> See, e.g., *United States v. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009), in which “Defendants L. Berke and Goetz would distribute lists of telephone numbers to employees of Master Communications and KL Communications that highlighted numbers that would not be answered by live people, which the employees would call for the purpose of generating fraudulent VRS minutes.”

<sup>83</sup> See, e.g., *2004 TRS Report & Order* at 19 FCC Rcd at 12479-12480, ¶3 n.18; *2005 Financial Incentives Declaratory Ruling*, 20 FCC Rcd at 1469, ¶8. *VRS Call Practices NPRM*, 25 FCC RCD at 6015, ¶4.

<sup>84</sup> See, e.g., *United States v. John T.C. Yeh et al.*, Criminal No. 09-856, D.N.J. (Nov. 18, 2009) in which “Defendants John Yeh and Joseph Yeh would, in and about the fall of 2007, arrange with Viable employees Mowl and Tropp to recruit family members and friends, including other Viable employees, to be paid to make illegitimate VRS calls using Viable VRS.”

<sup>85</sup> See Appendix E, 47 C.F.R. § 64.604 (c)(5)(iii)(C)(5). For example, a provider would not be permitted to provide bonuses to a team or shift of CAs if they reach a certain number of VRS minutes or calls.



#### D. Procedures for the Suspension of Payment

24. In the *VRS Call Practices NPRM*, the Commission sought comment on whether it should implement specific procedures for the suspension, or withholding, of payments to providers for TRS minutes in circumstances in which the Fund administrator believes that the minutes tied to those payments may not be legitimate.<sup>86</sup> The Commission proposed that its rules regarding payment procedures should be amended to: (1) give timely notice to the providers of the minutes for which payment is being withheld, as well as the reason(s) for the withholding; (2) afford providers an opportunity to show why they believe the withheld minutes are in fact compensable; and (3) require that providers be given a final determination in a timely fashion of whether payment will be made for the disputed minutes with a supporting explanation.<sup>87</sup> The Commission also tentatively concluded that providers should have the burden of showing that the minutes in question are compensable and were handled in accordance with our rules.<sup>88</sup>

25. Most TRS providers and consumers urge the Commission to adopt transparent procedures to afford due process when payment is withheld for minutes submitted to the Fund administrator.<sup>89</sup> Some TRS providers and consumers also request that the Commission notify providers of certain types of calls for which the Fund administrator will withhold payments.<sup>90</sup>

26. *Discussion.* Delay or suspension of payment is expressly authorized by the TRS rules, which state that the Fund administrator “may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so.”<sup>91</sup> In the past, payment has been withheld either because the minutes have appeared to be non-compensable under our rules or because we have a basis for believing that fraud is associated with the minutes. To preserve the integrity of the TRS Fund, the Commission must continue withholding payments for TRS minutes, where justified, to ensure compliance with our rules and to prevent fraud and abuse of the TRS program.

27. However, to provide greater due process and transparency to TRS providers, we adopt a one-year time frame (starting with the date of the provider’s initial request for payment) for the evaluation and resolution of disputed payment claims. The time frames set forth below relate only to payment suspension or delay and not to the Commission’s investigatory processes used to determine whether a provider has violated the Act or any Commission rule or order. The procedures and time frames for investigation and enforcement will continue to be governed by the provisions of the Act relevant to the Commission’s investigative and enforcement functions. The time frames discussed below also are not intended to affect the investigatory processes of other law enforcement bodies, such as the U.S. Department of Justice, in determining whether a provider has violated any provision of law that such other law enforcement entity enforces.

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<sup>86</sup> See *VRS Call Practices NPRM*, 25 FCC Rcd at 6023-24, ¶¶22-26.

<sup>87</sup> *Id.* at 6023-24, ¶24.

<sup>88</sup> *Id.*

<sup>89</sup> See AT&T Comments at 6-7, TDI Comments at 6-8, Snap VRS Comments at 8, Hamilton Comments (Sept. 13, 2010) at 2-3; Convo Comments at 8-11, PAHVRS Comments at 14-15, GraciasVRS Comments at 2, and Sorenson Comments at 4-6.

<sup>90</sup> See SnapVRS Comments at 11, TDI Comments at 7, Sorenson Reply Comments (Sept. 27, 2010) at 2.

<sup>91</sup> 47 C.F.R. §64.604(c)(5)(iii)(E).

28. We amend our rules by adopting the following process for suspension or delay of payment to a TRS provider:<sup>92</sup>

- The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.
- If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, the TRS provider will be notified within two months from the date the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. The TRS provider then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If the TRS provider does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.
- If the TRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes of use in dispute, within eight months after submission of such additional justification.<sup>93</sup>
- If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use. Any payment from the Fund will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.
- If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the provider of this decision within one year of the initial request for payment.

29. We believe that adoption of this specific timeline to address payment claims will provide the regulatory certainty that TRS providers seek while allowing the Fund administrator and the Commission sufficient time to assess claims for compensation of TRS minutes, thus ensuring the integrity of the TRS Fund.

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<sup>92</sup> Note that the periods of time indicated in this section refer to calendar days. *See* Appendix E for final rule, 47 C.F.R. § 64.604(c)(5)(iii)(L).

<sup>93</sup> We note that the Commission may utilize the full one-year period to make a final determination as to the compensability of the minutes, even when the full amount of time allotted for each of the above steps is not needed.

30. At this time, we decline to attempt to identify and adopt an all-inclusive list of the types of calls for which payment may be withheld. Through fraud investigations and experience in managing the Fund, the Commission has found that measures previously taken to specifically classify types of calls as not compensable from the Fund have been met with attempts to circumvent such restrictions. When directed not to engage in certain calling activities, some providers have shifted their incentives to arrangements that are not specifically prohibited, and have engaged in attempts to make non-compliant calls in ways that have made them more difficult to detect.<sup>94</sup> For example, one provider instructed its subcontracted call centers to vary the length of “run” calls, the telephone numbers that they dialed, and the IP address that they used to make calls to avoid raising red flags with the FCC.<sup>95</sup> We therefore believe that providing such a list may be counterproductive to our efforts to improve the integrity of the TRS Fund.

#### E. International VRS Calls

31. At present, the Commission does not permit compensation for VRS calls that both originate *and* terminate outside the United States.<sup>96</sup> Nor does the Commission allow compensation for IP Relay calls that originate *or* terminate outside the United States.<sup>97</sup> In the *VRS Call Practices NPRM*, the Commission noted that a large volume of international VRS calls might be the product of schemes to create calls for the purpose of receiving payment from the Fund.<sup>98</sup> We sought comment on ways to address fraud and abuse associated with these calls, and, in particular, how to help ensure that only legitimate VRS calls are compensated.<sup>99</sup> In response, some commenters argue that the ability to make a VRS call that originates or terminates in another country is necessary to achieve functional equivalency.<sup>100</sup>

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<sup>94</sup> See, e.g., *United States v. Yosbel Buscaron et al.*, Criminal No. 09-810, D.N.J. (Nov. 18, 2009) in which individuals who were indicted for VRS fraud allegedly employed schemes to disguise activities that they knew were prohibited by the Commission: “Defendants Buscaron, Fernandez, and Valle would restart ICSD’s internet router every hour to disguise from NECA and the FCC the fact that the deaf and hard of hearing ICSD employees were making so many run calls. Restarting the router would have the effect of changing the IP address used by the callers and would disguise the source of the calls in the call detail records that would be submitted to NECA in support of reimbursement for VRS services.”

<sup>95</sup> As noted above, ¶4 *supra*, these are called “run” calls because the individuals or providers making these calls leave the VRS line open for a period of time (*i.e.*, let the call “run”) without any relaying of conversations occurring. See e.g., *United States v. John T.C. Yeh et al.*, Criminal No. 09-856, D.N.J. (Nov. 18, 2009); See Transcript of Testimony at 117, 188-189, *United States v. Pena*, D.N.J. (2010) (No. 09-858)

<sup>96</sup> *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, 25 FCC Rcd 1868 at 1872, ¶ 9 (2010) (*VRS Declaratory Ruling*).

<sup>97</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 19 FCC Rcd 12224, 12242, at ¶ 48, n.121 (2004) (noting that the Commission does not compensate for international IP Relay calls).

<sup>98</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6024-25, ¶ 28.

<sup>99</sup> *Id.* at 6025, ¶ 29.

<sup>100</sup> See, e.g., AT&T Comments at 9 (recommending that the Commission not take any additional preventive measure for VRS); and PAHVRS Comments at 3 (opposing the proposed rule that prohibits compensation of international VRS calls that either originate or terminate outside of the United States because it would be a violation of functional equivalency).

32. *Discussion.* In recent years, the TRS Fund call data has revealed a large number of VRS calls from international IP addresses (*i.e.*, wherein the originating party's IP address indicates that the call originated from outside of the United States).<sup>101</sup> In its 2009 Semi-Annual Report to Congress, the Commission's OIG noted that some of the allegations of conspiracy, fraud, and other criminal activity that have been associated with VRS minutes billed to the TRS Fund were based, among other things, on evidence of "run" calls<sup>102</sup> initiated by callers with little or no fluency in ASL from international IP addresses in which no conversations were relayed. As many of these minutes are likely attributable to fraudulent or abusive activities, we adopt rules to prohibit compensation for VRS calls that originate with Internet connections from international IP addresses, regardless of where those calls terminate<sup>103</sup> We adopt a limited exception to this prohibition for VRS calls originating from international IP addresses that are made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, so long as the provider has an accurate means of verifying the identity of such callers and their locations at the time such calls are made. When pre-registering, such individuals must specify the locations to which the individual will be traveling,<sup>104</sup> as well as a finite period of time during which they will be on travel. Only calls made from those locations and during the specified time period will be compensable if otherwise in compliance with the Commission's rules and not associated with fraudulent activities.<sup>105</sup> In addition, this prohibition against international calling does not apply to VRS calls initiated by voice callers located outside the United States to deaf users physically located in the United States.<sup>106</sup> Individuals placing these calls use a wireline or wireless network to do so, and therefore incur the costs of making these calls, thus eliminating much of the incentive to make calls to illicitly generate VRS minutes. Legitimate VRS calls originated by individuals with IP addresses associated with registered ten-digit numbers that are made from a location within the United States and terminating outside the United States also will continue to be compensable because there is no significant evidence of fraud associated with such calls.

33. Finally, some commenters suggest that we require providers to use geo-location software to detect calls from international IP addresses.<sup>107</sup> While we do not find it necessary to mandate a specific technology for this purpose, we do require that providers be able to identify the location of a call's

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<sup>101</sup> IP addresses are not inherently "international" or "domestic." However, determining the country in which an Internet user is located based simply on the user's IP address is very accurate, generally agreed to be in the range of 95-99%, because Internet address registration authorities require country name information when a block of Internet Protocol addresses is allocated. *See, e.g.*, FAQ "I want to have an IP to country conversion table; can I get it?" at <https://www.ripe.net/data-tools/db/faq/faq-db>. In addition, database services based on more sophisticated monitoring of IP addresses in traffic flows at key points of the Internet are available to confirm the national origin of an IP source address. *See, e.g.*, "Country Confidence Factor" at [http://developer.quova.com/docs/Data\\_Glossary#country\\_cf](http://developer.quova.com/docs/Data_Glossary#country_cf).

<sup>102</sup> *See OIG Semi Annual Report, supra*, n. 17.

<sup>103</sup> *See* Appendix E for final rule, 47 C.F.R. § 64.604 (a)(7).

<sup>104</sup> We understand that at times, travelers may alter their travel plans. However, at a minimum, pre-registered callers must provide the regions to which they will be traveling.

<sup>105</sup> We note that this exception is not intended to apply to calls made by individuals who remain outside the U.S. for extended periods of time, which we define as more than four weeks.

<sup>106</sup> All international IP Relay calls, regardless of where they originate or terminate, will continue to be noncompensable.

<sup>107</sup> *See* CSDVRS Comments at 12, Convo Comments at 12, GraciasVRS Comments at 2, and Sorenson Reply Comments (Sept. 27, 2010) at 3.

origination point in order to validate the call's legitimacy. Specifically, providers must be able to detect calls that originate from international IP addresses, to prevent minutes generated from such calls from being submitted for reimbursement if they do not fall within the exception noted above.

#### F. Use of Privacy Screens; Idle Calls

34. The primary intent of section 225 is to ensure that individuals who need relay services to communicate have a means of doing so that is functionally equivalent to voice telephone use. However, in recent years, some VRS providers have engaged or participated in practices that effectively "suspend" the communication that is supposed to be taking place between the parties to a relay call for what appears to be excessive amounts of time. Such practices result in the generation of illegitimate VRS minutes.

35. There are two such calling practices on which the Commission sought comment in the *VRS Call Practices NPRM*. The first of these practices concerns the use of visual privacy screens, which we define, for the purposes of VRS, as a visual screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call – the CA or the deaf or hard of hearing caller – from viewing the other party during a call.<sup>108</sup> Some VRS providers and VRS equipment allow either party on the video leg of a VRS call to enable these screens.<sup>109</sup> In the second of these calling practices, one or both parties of a VRS call stops communicating, either by physically getting up and walking away from the videophone, or by not responding to the other party to the call. For example, in some situations, CAs have been known to simply stop interpreting,<sup>110</sup> while in other situations, the deaf person simply has stopped responding.

36. In the *VRS Call Practices NPRM*, we tentatively concluded that "[w]hen the CA is confronted with only a blank screen, or a screen that otherwise does not display the face of the video caller (including when the caller is using a privacy screen), the CA may disconnect the call if the caller's face does not reappear on the screen within two minutes."<sup>111</sup> We asked if this was an appropriate length of time for a privacy screen to be used before the call is terminated, and further sought comment generally on any other issues relevant to the use and abuse of privacy screens, including ways to ensure that VRS users and providers do not use privacy screens to perpetuate illegitimate calls.<sup>112</sup> In addition, we tentatively concluded that calls should be terminated where a party to the call leaves the call or becomes unavailable or unresponsive, causing the call to become "idle" for more than two minutes.

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<sup>108</sup> See Appendix E for the definition of visual privacy screen in the final rule. 47 C.F.R. §64.601(27).

<sup>109</sup> We note that when both parties communicating via video use a privacy screen (*i.e.*, the CA and the caller using ASL), communication is no longer possible, and therefore the call is no longer a legitimate TRS call and should be terminated. *VRS Call Practices NPRM*, 25 FCC Rcd at 6025, ¶30, n.61.

<sup>110</sup> *United States v. Kim E. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009) ("[P]aid callers frequently called podcasts which were prerecorded messages, like a recording of a radio program or a person reading a novel—and would routinely instruct the VIs not to actually interpret the calls."); See *e.g.*, *United States v. Yosbel Buscaron et al.*, Criminal No. 09-810, D.N.J. (Nov. 18, 2009) ("[C]allers would routinely instruct the VIs not to interpret the calls."); *United States v. Irma Azrelyant et al.*, Criminal No. 09-811, D.N.J. (Nov. 18, 2009) ("[C]allers would routinely instruct the VIs not to actually interpret the calls, allowing the VIs to 'rest.'").

<sup>111</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6026, ¶31.

<sup>112</sup> *Sorenson VRS Call Practices Petition* at App. A, page 17; *VRS Call Practices NPRM*, 25 FCC Rcd at 6026, ¶31.

<sup>112</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6026, ¶31.

37. Commenters were divided as to the extent to which a VRS CA should be permitted to terminate calls when the caller's face does not appear on the screen because a privacy screen is used or because the call has become idle. No commenters oppose prohibiting the CA from using a privacy screen, but GraciasVRS does support allowing the deaf or hard of hearing caller to use a privacy screen for a limited amount of time.<sup>113</sup> Although CSDVRS believes that the "VRS user should have access to the CA at all times,"<sup>114</sup> it opposes terminating idle calls after two minutes because it states there may be legitimate reasons for idle calls, such as answering the door or searching for a document while on a call.<sup>115</sup> According to CSDVRS, "functionally equivalent [service] demands that only the parties to a call should be permitted to disconnect."<sup>116</sup> TDI further urges the Commission not to take any action with respect to the use of privacy screens or idle calls because doing so would violate the VRS caller's functionally equivalent right to make the decision as to the use of a privacy screen and "how long he or she is willing to wait on hold."<sup>117</sup>

38. Several providers support a permissive rule that would grant VRS CAs authority to disconnect calls, rather than a mandatory rule that would require them to terminate communications.<sup>118</sup> CSDVRS proposes a supplemental rule disallowing CAs from placing outbound calls to voice users unless a video connection is fully established.<sup>119</sup> Sorenson agrees, but suggests a modified proposal that would prohibit a CA from placing an outbound audio call until "a video connection has been established of sufficient quality to enable the VI (CA) to interpret the call accurately, and a deaf caller's face is visible on the CA's screen."<sup>120</sup> Sorenson contends that such a rule is necessary to combat fraud involving "interminable VRS calls" that contain no actual conversation.<sup>121</sup> We note that some of the commenters further support disconnection after a five-minute period.<sup>122</sup>

39. *Discussion.* When used appropriately – *i.e.*, by a deaf VRS user for brief periods of time and for valid purposes (such as answering a doorbell, finding a document, etc.) – use of privacy screens is functionally equivalent to the ability of a voice telephone user to put a call on hold or to mute the telephone line. However, recently we have seen an abuse of this VRS feature, with illegitimate use of

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<sup>113</sup> GraciasVRS Comments at 2.

<sup>114</sup> CSDVRS Comments at 13.

<sup>115</sup> *Id.* at 14.

<sup>116</sup> *Id.* at 15.

<sup>117</sup> TDI Comments at 9-10.

<sup>118</sup> CSDVRS Comments at 14; Convo Comments at 13; Sorenson Comments (Sept. 10, 2010) at 10. *But see* BISVRS Comments at 3 (cautions the Commission from putting a CA in the position of making judgment calls).

<sup>119</sup> CSDVRS Comments at 14.

<sup>120</sup> Sorenson Reply Comments (Sept. 27, 2010) at 4. Convo and Sorenson specifically propose that a VRS VCO call should be terminated when the VCO user steps out of the screen and a hearing party steps in because such arrangement becomes a call between two hearing persons, a violation of the February 25, 2010 Declaratory Ruling. (Convo Comments at 13; Sorenson Comments (Sept. 13, 2010) at 8). We agree that the CA should terminate the call in this situation because the call is no longer a TRS call. *See VRS Declaratory Ruling*, 25 FCC Rcd at 1872, ¶8. "...VRS VCO may be used only when a person who is deaf or hard of hearing wants to use his or her own voice to speak to the hearing party during the VRS call. If it becomes clear that what was initially set up as a VRS VCO call is in fact a call between two voice telephone users, the call is no longer a TRS call compensable from the Fund."

<sup>121</sup> Sorenson Reply Comments (Sept. 27, 2010) at 4.

<sup>122</sup> AT&T Comments at 10; PAHVRS Comments at 4.

these screens for extended periods by both VRS callers and VRS CAs. When a privacy screen is enabled for a long period by a caller, there is no way for the CA to know whether a call has ended. In recent years, the practice of some providers has been to engage in fraudulent activities that allow such calls to continue running, accruing what are illegitimate minutes that are then billed to the Fund. Even without privacy screens, long absences from a phone conversation – whether because the caller is physically gone from the video monitor or because that individual simply stops communicating – suggest that the caller never intended to make a legitimate relay call to begin with, and instead is fraudulently generating minutes for the provider, who may in turn be kicking back illegitimate payments to that caller or to the CA handling the call.

40. The Commission has an obligation to put a stop to the growing incidence of these planned and illicit schemes that result in calls “running” without any communication between the parties for the sole purpose of fraudulently billing the Fund.<sup>123</sup> Accordingly, we adopt two rules to reduce the frequency of these schemes. First, we adopt a rule prohibiting CAs from enabling privacy screens from their side of the call at any time.<sup>124</sup> There is no justification for a CA to ever prevent a caller from seeing him or her, because the precise and sole function of the CA is to interpret the call using sign language, a *visual* language. We agree with Convo that allowing the CA to put up a privacy screen “is contrary to the communication culture of many deaf and hard of hearing persons for whom constant visual connection with [VRS CAs] is needed.”<sup>125</sup>

41. Second, we adopt a rule requiring CAs to terminate VRS calls if either or both the calling or called party: (1) enables a privacy screen for more than five minutes; or (2) is completely unresponsive or unengaged (creating an idle call) for longer than five minutes.<sup>126</sup> Prior to disconnecting a call, a CA must first announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates that he or she is still actively participating on the call. Although we initially proposed that this period be two minutes, and that the CA be permitted, but not required, to terminate such calls, we believe that a longer period without any communication whatsoever by either party to the call is a clearer indication of abuse of the VRS program. We are convinced that there are legitimate activities, such as searching for a document, that could take a caller away from the screen for more than two minutes without suggesting fraudulent intent. We also believe that this rule will provide clarity that would not be afforded were we to give each CA the discretion to determine when it is appropriate to disconnect calls; such a discretionary rule would require CAs to make judgment calls, would engender a lack of uniformity in the treatment of calls, and would be ineffective to halt fraudulent activity in which the CA is complicit. This rule will not apply to 9-1-1 calls. Nor will it apply to relay calls that are legitimately placed on hold (*e.g.*, by a customer service agent), where at least one of the parties to the call is still actively present and waiting for the other party to return to the phone. To avoid any ambiguity as to the ongoing nature of the call, we expect that at least one of the parties to the call will check in with the CA periodically, so that the CA knows the call has not ended or become idle, requiring the CA to terminate the call.<sup>127</sup>

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<sup>123</sup> See, *e.g.*, Transcript of Testimony at 129, 189, and 198, *United States v. Pena*, D.N.J. (2010)(No. 09-858).

<sup>124</sup> See Appendix E for final rule. 47 C.F.R. §64.604(a)(6).

<sup>125</sup> Convo Comments at 14.

<sup>126</sup> See Appendix E for final rule, 47 C.F.R. § 64.604 (a)(6).

<sup>127</sup> As noted earlier, the relay program is only designed to handle calls that individuals otherwise would make in the ordinary course of their daily lives, not to build minutes in order to fraudulently bill the Fund. See *e.g.*, ¶¶4, 23 *supra*.

42. In adopting these restrictions we are aware that we are striking a careful balance between the need to preserve the ability to make relay calls in a manner that is functionally equivalent to voice telephone communication service, and the need to curtail the pervasive fraud that has invaded the VRS program. We believe that we have achieved this balance appropriately. Where parties stop participating in a call by either disappearing from sight or failing to communicate, there is no legitimate relay call and the call should not be compensable. Because our rule will allow a call to proceed for longer periods when either party indicates that the call is on hold, or when the call is placed to 9-1-1, we believe that functional equivalency will still be achieved.<sup>128</sup> These new limitations will help curb a growing trend of illicit schemes to generate minutes through the use of calls or segments of calls in which no actual telephone communication takes place.<sup>129</sup>

### G. Provider–Involved Remote Training

43. The Commission noted in the *VRS Call Practices NPRM* that a significant number of VRS minutes submitted for compensation from the TRS Fund are attributable to remote training.<sup>130</sup> For the purposes of this *Order*, we define remote training to include any training session, such as a classroom lesson, tutorial lesson, seminar, speaker’s conference or other event to which an individual connects from a remote distance via a telephone or Internet-based connection. In the *VRS Call Practices NPRM*, the Commission noted that CGB has already made it clear that schemes in which providers initiate or promote the use of VRS for remote training for the purpose of generating minutes as a source of revenue are prohibited under the Act and our rules.<sup>131</sup> However, because this prohibition has never been codified in a rule, the *VRS Call Practices NPRM* tentatively concluded that a rule specifically barring compensation for remote training calls initiated or promoted by or on behalf of a provider would provide an additional deterrent against such fraudulent behavior.<sup>132</sup>

44. Providers filing comments uniformly agree with this tentative conclusion.<sup>133</sup> For example, Sorenson notes that such a rule would “make clear that training is not a rationale that allows providers to skirt the prohibitions on minute-pumping . . .”<sup>134</sup> Similarly, Convo says that a way to remove incentives to defraud the Fund is to not let VRS providers have any connection with entities providing remote training, and that where such training does occur, providers should not be permitted to be reimbursed for calls to such training.<sup>135</sup> CSDVRS and SnapVRS generally suggest that the Commission define the

<sup>128</sup> Accordingly, we believe that the rule adopted herein addresses the concerns raised by CSDVRS and TDI in ¶37, *supra*, with respect to the need to maintain functional equivalency .

<sup>129</sup> Transcript of Oral Argument at 129, 189, and 198, *United States v. Pena*, D.N.J. (2010)(No. 09-858). VRS calls made or arranged, in whole or in part, for the purpose of generating compensable minutes of use are not and have never been compensable from the TRS Fund. *VRS Call Practices NPRM*, 25 FCC Rcd at 1870-71, ¶6. We note that elsewhere in this *Order*, we adopt whistleblower protections for the employees and contractors of TRS providers in ¶¶56-63 *infra*, and encourage individuals to report information about schemes like these, that they reasonably believe evidence a violation of the Communications Act or TRS regulations.

<sup>130</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6026, ¶33.

<sup>131</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6027, ¶34, citing in part the *VRS Declaratory Ruling*, 25 FCC Rcd at 1870, ¶6.

<sup>132</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6027, ¶35.

<sup>133</sup> Convo Comments at 15; PAHVRS Comments at 18; Sorenson Comments (Sept. 13, 2010) at 11.

<sup>134</sup> Sorenson Comments (Sept. 13, 2010) at 11.

<sup>135</sup> Convo Comments at 15.



parameters of the new rule to apply this restriction to those calls where a VRS provider, its affiliates, or subcontractors, are involved in the scheduling, hosting, generating, and/or promoting of the remote training.<sup>136</sup>

45. *Discussion.* The function of a VRS provider is to provide communication for people with hearing and/or speech disabilities that is functionally equivalent to voice telephone communications.<sup>137</sup> It is not common practice for a voice telephone user to receive promotions from his or her telephone company to participate in seminars and other events that are designed to encourage greater telephone use. Similarly, VRS providers should not create or promote remote training sessions that are designed to encourage VRS users to place calls that they would not otherwise make. When a VRS provider engages in activities that are designed to attract VRS users to remote training sessions, it is highly likely that the provider is doing so for the sole purpose of generating minutes. For example, when a VRS provider arranges for a remote training session to educate people about insurance options or how to file their taxes and then instructs or encourages multiple participants to access such training through the provider's VRS, it raises questions about whether such calls would have been made at the caller's own initiative. Similarly, when a provider uses a hearing person to provide on-line training to several of its deaf employees, all of whom work in the same location – and then instructs all of these employees to participate in these sessions using VRS – rather than conduct this session in person using on-site sign language interpreters, it is highly likely that the provider is engaging in these activities to pump minutes to its service. In the *VRS Call Practices NPRM*, we noted that the as many as 232,000 VRS minutes stemmed from these and similar types of remote training sessions in the second half of 2009, resulting in at least \$1.4 million billed to the Fund.<sup>138</sup>

46. Accordingly, we adopt a rule providing that where a VRS provider is involved, in any way, with remote training, VRS calls to such training sessions are not reimbursable from the Fund.<sup>139</sup> Non-compensable arrangements shall include any program or activity in which a provider or its affiliates of any kind, including, but not limited to, its subcontractors, partners, employees and sponsoring organizations or entities, have any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities to VRS users. We believe the adoption of this rule will serve as a deterrent against fraud, and will further deter providers from using remote training as a substitute for video remote interpreting (VRI) services, which are also not compensable from the Fund.<sup>140</sup>

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<sup>136</sup> CSDVRS Comments at 15; SnapVRS Comments at 18.

<sup>137</sup> 47 U.S.C. §225(a)(3).

<sup>138</sup> We explained in the *VRS Call Practices NPRM* that these totals represented only those calls that the Fund administrator had been able to identify for that period and that the actual amount may have been higher. *VRS Call Practices NPRM*, 25 FCC Rcd at 6026, ¶33.

<sup>139</sup> See Appendix E for final rule. 47 C.F.R. §64.604(c)(5)(iii)(N)(4).

<sup>140</sup> VRI is used when an interpreter cannot be physically present to interpret for two or more persons who are together at the same location. This service uses a video connection to provide access to an interpreter who is at a remote location. As with “in-person” interpreters, VRI services are generally contracted, arranged in advance, and paid for on a fee-for-service basis. See *Reminder that Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot Be Used As A Substitute For “In-Person” Interpreting Services or Video Remote Interpreting (VRI)*, Public Notice, 20 FCC Rcd 14528, 14529 (2005) (“VRS cannot be used as a substitute for using an in-person interpreter or VRI in situations that would not, absent one of the parties’ hearing disability, entail the use of the telephone”). See also *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May Not be Used as a Video Remote Interpreting Service*, Public Notice, 20 FCC Rcd 1471 (2005) (2005 TRS (continued...))

## H. Ineligible Providers; Revenue Sharing Schemes

47. Our rules define the means for entities to become eligible to receive payment from the TRS Fund.<sup>141</sup> These rules permit eligibility for four types of entities: (1) a certified state TRS provider or an entity operating relay facilities under contract with a certified state TRS program; (2) an entity that owns or operates relay facilities under contract with a common carrier providing interstate services; (3) interstate common carriers offering TRS; and (4) video relay service and IP relay providers certified by the Commission.<sup>142</sup>

48. Notwithstanding these rules, there are now approximately fifty companies that are not directly eligible for payment from the Fund but that nevertheless independently market or offer VRS under their own names. This is accomplished through subcontracting/revenue sharing agreements with a provider that has obtained eligibility through one of the above means. Although only the eligible provider is able to receive reimbursement directly from the Fund, under these arrangements, the eligible provider acts as the billing agent for the non-eligible entity. In some of these arrangements, the ineligible provider has its own call center operations, and the eligible provider simply bills for calls handled by that ineligible entity. In these situations, after getting reimbursed, the eligible provider retains a small portion of the revenues paid from the Fund and gives the remainder to the non-eligible entity that actually handled the calls through its call center operations. Because the ineligible entities have not gone through the state review process or FCC certification process required to become an eligible provider, they have no direct accountability to any state or to the FCC.

49. In other arrangements, eligible providers use ineligible entities to provide one or more other components in the handling of VRS calls and then reimburse such entities for those services from the money they receive from the Fund. Many such revenue sharing arrangements are created so that the eligible provider can use ineligible entities to market their VRS services under a variety of brand names and websites.<sup>143</sup> For example, the eligible provider may pay an ineligible entity a portion of the reimbursement it receives from the TRS Fund for marketing or branding the eligible provider's relay services under one or more of a variety of names (e.g., "DeafVRS"). Under many such arrangements, the ineligible entity only markets or brands the service, but provides no core components of the service at all.

50. Where an ineligible entity uses names or URLs for its services that are different from those used by the eligible provider with whom it contracts, consumers placing VRS calls using such an

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*Marketing Practices PN*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, 20 FCC Rcd 13140, at 13154, n.109 (2005); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478, 5482-83, ¶10 (2006).

<sup>141</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4)(provider eligibility rules); see generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (2005).

<sup>142</sup> *Id.*

<sup>143</sup> For example, some certified providers have subcontracted with local consumer groups to market and brand VRS under their own names and websites, but it is the certified provider that does the actual interpreting and maintains and operates the infrastructure for the service. The Commission understands that there are several such arrangements throughout the United States.

ineligible entity generally do not know that the “brand” or service through which they are making calls is really just a different marketing name linked to the eligible provider that is actually processing the call. Nor do these callers generally have a way to determine which eligible provider is actually responsible for their calls. Evidence also demonstrates that some providers have used multiple URL addresses as a tool to generate illicit minutes. Specifically, the providers engage callers to make illicit calls through one of several URL addresses, track these callers’ minutes through the different URL addresses to which they have been assigned, and then reward these callers financially.<sup>144</sup>

51. In the *VRS Call Practices NPRM*, we sought comment on a proposal to disallow compensation from the Fund unless the provider seeking compensation “clearly identified itself to the calling parties at the outset of the calls as the TRS provider for those calls.”<sup>145</sup> We also sought comment on prohibiting uncertified (or ineligible) entities from billing the TRS Fund through certified providers, as well as other ways to ensure that the entities that actually relay calls are accountable for compliance with our rules and that relay users know, on a call-by-call basis, which eligible provider is providing their service. We asked whether any entity receiving payments from the Fund, either directly or indirectly, should be required to register with the Commission. We further sought input on what limitations should be placed on subcontracting, to the extent it is allowed. For example, we sought comment on whether to adopt rules requiring that any subcontractor be disclosed to the Fund administrator before calls generated by that subcontractor are compensable, and whether we should require all subcontractors or entities actually handling calls to be identified in a provider’s monthly submission of minutes for payment.<sup>146</sup>

52. In its comments, CSDVRS (which acts as billing agent for many ineligible providers or “white labels”<sup>147</sup>) argues that banning such “white label” arrangements would be harmful to the deaf and hard of hearing community and would diminish competition in the VRS market.<sup>148</sup> CSDVRS proposes that the Commission allow subcontracting arrangements as long as the subcontractor is a facility-based entity, identifies itself as a subcontractor, and registers with the Commission or the Fund administrator.<sup>149</sup> BISVRS and PAHVRS (two “white labels”) also oppose banning “white-label”

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<sup>144</sup> Indictments have alleged that some providers have assigned unique URLs to individuals who have received payments for making calls to those URLs. This provides incentives for callers to increase the number of calls that they make to the URL to which they are assigned. *See, e.g., United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009) (“Defendants Velasquez, Thompson, and Martinez would arrange with Company 1 for each of the defendants’ paid callers to be assigned a unique URL—an internet web address such as AKLLVRS.com—that the caller could use to make VRS call through Company 1. The defendants and Company 1 referred to each URL as a separate ‘queue.’ Identifying each caller by his or her URL, or queue, allowed the defendants to track how many VRS minutes were generated by each paid caller.”); *See also United States v. John T.C. Yeh et al.* Criminal No. 09-856, D.N.J. (Nov. 18, 2009) (“Defendants John Yeh and Joseph Yeh would track the number of VRS call minutes generated by paid callers using the callers’ IP addresses or their Viable screen names that Mowl and Tropp would provide.”)

<sup>145</sup> *VRS Call Structure and Practices NPRM*, 25 FCC Rcd at 6031, ¶ 47 .

<sup>146</sup> *Id.* at 6021-32, ¶¶ 47-48.

<sup>147</sup> “White label” is a term coined by GoAmerica (which merged into Purple) and used by some commenters to refer to entities that are not eligible relay providers offering relay service, yet bill the Fund through an eligible provider. *See GoAmerica VRS Certification Petition* at 2.

<sup>148</sup> CSDVRS Comments at 21.

<sup>149</sup> *Id.* at 22.

arrangements because they say that such arrangements are vital to their businesses, allowing them to be competitive and make the service of their high-quality interpreters available.<sup>150</sup>

53. Convo recommends that one way of addressing problems with fraud would be to require “white label” providers to either apply for provisional certification or leave the VRS market; in this way Convo suggests that the Commission would have a vehicle to track these providers.<sup>151</sup> TDI supports Convo’s proposal for provisional certification as it would allow start-ups to provide service. TDI further suggests that all providers be certified by the Commission prior to offering VRS, and that a provider should become eligible for certification only after it has handled a minimum number of minutes, to be determined by the Commission.<sup>152</sup> Purple agrees that all entities wishing to offer VRS should have to apply for certification.<sup>153</sup> Finally, Sorenson proposes allowing subcontracting if the eligible provider seeking compensation from the Fund actually provides the core components of the relay service, and that such entity is “clearly identified...to the calling parties at the outset of the calls as the TRS provider for those calls.”<sup>154</sup>

54. *Discussion.* As described above, the Commission’s VRS eligibility requirements provide several avenues for entities to become eligible to receive compensation from the Fund, including interstate common carrier status, a contractual relationship with a state or interstate common carrier, and certification by the Commission. These eligibility requirements and service mandates are intended to ensure an adequate level of governmental oversight over relay providers, compliance with the Commission’s rules, and accountability in the operations of all VRS providers. Yet, virtually none of the fifty or so ineligible carriers that are now providing VRS have been vetted through any of these processes or are accountable for compliance with our rules, even though each has held itself out to the public as providing VRS service.

55. The proliferation of ineligible VRS providers that are providing VRS has had substantial adverse consequences. Most significantly, in addition to effectively rendering our eligibility process meaningless, it has hampered the Commission’s ability to exercise oversight over the provision of VRS and to prevent fraud. Several of the indictments have involved alleged illicit activities by individuals associated with or employed by ineligible providers.<sup>155</sup> Because these ineligible providers circumvent

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<sup>150</sup> BISVRS Comments at 4; PAHVRS Comments at 5.

<sup>151</sup> Convo Comments at 17.

<sup>152</sup> TDI Comments at 10, 12.

<sup>153</sup> Purple Comments (Sept. 13, 2010) at 13.

<sup>154</sup> Sorenson Comments (September 13, 2010) at 14-15.

<sup>155</sup> See, e.g., *United States v. John T.C. Yeh et al.* Criminal No. 09-856, D.N.J. (Nov. 18, 2009). (“On or about September 20, 2006, defendant John Yeh signed an agreement with Company 1, in which Company 1 agreed to bill NECA for Viable VRS services provided by Viable and that Viable would receive approximately 90% of the NECA reimbursement. On or about September 20, 2006, Defendant John Yeh signed a Memorandum of Understanding with a Las Vegas, Nevada based call center to provide VRS call center services for Viable and which provided that the call center would receive 55% of all money billed by or through Viable to NECA for VRS calls processed by the Las Vegas call center.”); (“On or about September 15, 2007, defendants John Yeh and Joseph Yeh signed a contract with a New York, New York based call center to provide VRS call center services for Viable in return for \$2.25 per VRS call minute processed by the call center. On or about February 29, 2008, defendant John Yeh signed a contract with a Round Rock, Texas based call center to provide VRS call center services for Viable in return for \$2.00 per VRS call minute processed by the call center. On or about October 10, 2008, defendant Joseph Yeh signed a contract with a Miami Lakes, Florida based call center to provide VRS call center services for Viable in return for \$2.00 per VRS call minute processed by the call center.”)

our eligibility requirements, proper oversight by the Commission and the Fund administrator is nearly impossible. Because the providers neither hold a Commission license, permit, certificate or other authorization, nor are they interstate common carriers, the Commission, as well as other investigatory authorities, often has a difficult time identifying who these entities are or what services they provide. This, in turn, has impacted the ability of the Commission to take swift and effective enforcement action when such action is deemed necessary.<sup>156</sup> Although the eligible provider is responsible for ensuring that the calls it bills to the Fund are legitimate, we are concerned that in many instances, the eligible provider may exercise very little oversight over the call handling operations of these affiliates and subcontractors. We note that the majority of all the fraud that has been reported to the Commission has been through the use of these ineligible providers, and that all of the individuals indicted to date in the ongoing criminal investigations of fraud in the VRS industry worked for ineligible providers.<sup>157</sup> We believe that this behavior will continue in the absence of affirmative Commission action.<sup>158</sup>

56. The record before us reveals other abuses involving schemes in which VRS providers paid others to use their service for the sole purpose of generating VRS minutes in order to inflate the compensation that the provider received from the TRS Fund. Criminal investigations have revealed that tens of millions of dollars have been fraudulently billed to the TRS Fund. Several of the fraudulent schemes perpetrated by individuals who have already pled guilty to the charges involved schemes whereby callers were paid ostensibly to make marketing calls to potential customers and outreach calls to entities that interact with deaf or hard-of-hearing callers.<sup>159</sup> In reality, these calls were made for the sole purpose of generating minutes of use. We are also aware of schemes whereby VRS providers engaged in revenue-sharing arrangements with entities acting as marketing firms, which hired people to make calls using the provider's VRS service for the sole purpose of generating billable minutes.<sup>160</sup> The VRS provider then paid the "marketing firm" a percentage of the compensation it received from the TRS Fund. Only when the Commission learned, usually through information provided by a whistleblowing

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<sup>156</sup> See 47 U.S.C. §503.

<sup>157</sup> See the series of indictments and guilty pleas listed in n.14 *supra*, along with the list of questionable VRS practices in the *OIG Semi Annual Report* of the criminal investigations to Congress, ¶17, *supra*.

<sup>158</sup> These arrangements also have made reliable ratemaking more challenging because it is difficult, if not impossible, to ascertain the actual cost of providing VRS when these entities are not required (and therefore do not) report their cost and demand data to the Commission; nor is such data necessarily reflected, in requisite detail, in the eligible providers' rate filings. While it may be that the Commission could require each VRS eligible provider that submits claims for these entities to gather such data and submit it to the Fund administrator, we are not convinced, given the track record to date of these ineligible companies, that such data would always be reliable. Many of these entities consist of only a handful of individuals who lack expertise in the field of relay services, and are hired by the eligible provider solely to publicize that provider's service.

<sup>159</sup> See, e.g. *United States v. Kim E. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009) ("Defendant Hawkins would establish a marketing company to employ deaf individuals to make calls to hearing individuals through Mascom for the stated purpose of 'marketing' Mascom, but with the actual purpose of generating illegitimate VRS minutes that would be billed to NECA."); *United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009) ("Deaf Studio 29 contracted with Company 1 to provide 'marketing services' using Company 1's VRS service. In return for providing the purported 'marketing services,' Deaf Studio 29 would receive approximately 25% of the money paid by NECA to Company 1 for the VRS call minutes generated by Deaf Studio 29."); See also Transcript of Testimony at 281-285, *United States v. Pena*, D.N.J. (2010)(No. 09-858).

<sup>160</sup> For example, individuals were paid by the marketing firm on a per-call or hourly basis to make calls, often following a script, to individuals and businesses (sometimes by just getting names from a phone book) with no intention of actually marketing the provider's VRS service, but rather to generate billable minutes on behalf of the provider.

employee, that such calls were made as part of a deliberate scheme to manufacture minutes, were they revealed as being illegitimate.

57. In order to reduce fraud and establish better oversight of the VRS program, and address the unauthorized revenue sharing arrangements that have escalated in the VRS program, we amend our rules in the following ways.<sup>161</sup> First, we require that *only* entities determined to be eligible to receive compensation from the TRS Fund under section 64.604(c)(5)(iii)(F) of our rules will be eligible to provide VRS and hold themselves out as providers of VRS to the general public. To ensure that this is achieved, we further require that VRS service be offered under the name by which the provider became certified and in a manner that clearly identifies that provider of the service. The foregoing requirement will not prevent a VRS provider from also utilizing sub-brands, such as those dedicated to particular states, communities or regions in which it provides service, but requires that each sub-brand clearly identify the eligible entity as the actual provider of the service. We further require that calls to any brand or sub-brand of VRS be routed through a single URL address for that brand or sub-brand.<sup>162</sup> Consumers have been hindered in making informed choices when selecting their VRS companies because of the complex branding and commercial relationships that have existed between white labels and eligible providers. Moreover, the use of multiple URLs facilitates fraud by enabling providers to track minutes of calls made by users assigned to specific URLs, as described above.<sup>163</sup>

58. Second, we amend our rules to make clear that an eligible provider is prohibited from engaging any third party entity to provide VRS CAs or call center functions (including call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration), on its behalf, unless that third party entity also is an eligible provider under our rules.<sup>164</sup> This provision will ensure that an eligible provider is responsible for providing the core components of VRS, rather than subcontracting out these responsibilities to third party entities, whose operations are not under the direct supervision of the Commission.

59. Third, to the extent an eligible provider contracts with or otherwise authorizes a third party to provide any other services or functions related to the provision of VRS other than interpretation services or call center functions, that third party entity must not hold itself out to the public as a provider of VRS and must clearly identify the eligible VRS provider to the public. This will make it easier for consumers, the Commission and the Fund administrator to tie service to the company providing that service.

60. Fourth, to provide effective oversight, we require that all third-party contracts or agreements be executed in writing and that copies of these agreements be available to the Commission and the TRS Fund administrator upon request. Such contracts or agreements shall provide detailed information about the nature of the services to be provided by the subcontractor.

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<sup>161</sup> See Appendix E for final rule, 47 C.F.R. 64.604(c)(5)(iii)(N)(I).

<sup>162</sup> For example, to the extent that an eligible provider offers Spanish-to-ASL VRS service, the provider may add a separate URL address dedicated to this particular version of service that nevertheless still identifies the eligible provider.

<sup>163</sup> See ¶50, *supra*.

<sup>164</sup> This exception will allow eligible VRS providers to contract with other entities who are also eligible providers to provide core components of its VRS. We are satisfied that because eligible entities have already met the Commission's eligibility requirements, they pose less risk to the integrity of the program. This prohibition against subcontracting also does not preclude eligible providers from directly hiring VRS CAs on a part-time basis, so that they may continue some of their community interpreting assignments. In addition, this does not preclude eligible providers from purchasing licensing rights to use certain technologies necessary to support call center functions.

61. Lastly, we seek to reduce the risk that marketing and outreach efforts will continue to be vehicles for manufacturing fraudulent minutes, such as those described above. To the extent an eligible VRS provider contracts with a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, the costs for such services cannot be compensated from the TRS Fund on a per-minute basis.<sup>165</sup> In addition, we require that all agreements in connection with marketing and outreach activities, including those involving sponsorships, financial endorsements, awards, and gifts made by the provider to any individual or entity, be described in the providers' annual submissions to the TRS Fund administrator.<sup>166</sup> We note that because purported outreach and marketing efforts have been a significant source of fraud<sup>167</sup> we caution providers that the Commission will scrutinize carefully all marketing and outreach efforts, including any contracts providing such services. We are hopeful that the above actions will go a long way toward reducing the fraud and abuse that has pervaded the VRS program.

62. We recognize that some companies currently offering VRS through an arrangement with an eligible provider may wish to continue providing this service on their own, yet may require additional time to make adjustments to their operations in order to come into compliance with the new requirements adopted in this *Order*. To give these entities an opportunity to continue to provide VRS as a subcontractor with an eligible provider until such time as they obtain certification under new procedures to be adopted pursuant to the accompanying FNPRM, we will consider requests for a temporary waiver of the new requirements.<sup>168</sup> A company requesting a waiver of the rules adopted in this *Order* will have the burden of showing that the waiver is in the public interest, that grant of the waiver request will not undermine the purposes of the rules that we adopt today, and that it will come into compliance with those rules within a short period of time.

63. Accordingly, we require applicants requesting a temporary waiver to provide, in writing, a description of the specific requirement(s) for which it is seeking a waiver, along with documentation demonstrating the applicant's plan and ability to come into compliance with all of these requirements (other than the certification requirement) within a specified period of time, which shall not exceed three

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<sup>165</sup> We remind providers that if the marketing is performed in-house, rather than through third parties, they cannot be compensated for VRS calls associated with such marketing on a per-minute basis because the calls would then be considered internally generated, and thus noncompensable. They may, however, include the expenses associated with in-house marketing in their cost submissions to the Fund administrator, to the extent these costs are reasonable and permissible. *See generally VRS Declaratory Ruling*.

<sup>166</sup> At present, such annual submissions are only required by providers that have become eligible to provide VRS through the Commission's certification program. 47 C.F.R. §64.606(g). However, in the accompanying *Notice*, we seek comment on a proposal to require all VRS providers to receive certification from the Commission, to better verify their qualifications before they begin providing service and to improve the Commission's oversight over their operations after service is initiated.

<sup>167</sup> *See, e.g. United States v. Kim E. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009); *United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009); *See e.g.*, Transcript of Testimony at 281-285, *United States v. Pena*, D.N.J. (2010)(No. 09-858).

<sup>168</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

months from the date on which the rules become effective.<sup>169</sup> In addition, the waiver applicant must file for certification within thirty days after the final certification rules become effective. Evidence of the applicant's plan and ability to come into compliance with the new rules shall include the applicant's detailed plan for modifying its business structure and operations in order to meet the new requirements, along with submission of the following relevant documentation to support the waiver request: (1) a copy of each deed or lease for each call center the applicant currently owns or plans to acquire; (2) a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, partners, and members of its board of directors; (3) a list of the applicant's full-time and part-time employees; (4) proofs of purchase or license agreements for the use of equipment and/or technologies that the applicant currently uses or intends to use for its call center functions, including but not limited to, call distribution, routing, call setup, mapping, call features, billing for compensation from the Fund and user registration; (5) copies of employment agreements for the provider's executives and CAs; and (6) a list of financing arrangements pertaining to the provision of VRS, including documentation for financing of equipment, inventory, and other property. If the waiver applicant has not yet employed CAs, the applicant should provide a complete description of its plan for hiring new CAs within a specific period of time. The Commission will grant waivers only after a rigorous showing that the applicant has workable plans and the ability to continue providing VRS in a manner that will not undermine the measures adopted in this *Order* to eliminate the fraud and abuse that have plagued the VRS program.

#### I. Whistleblower Protections

64. As stated in the *VRS Call Practices NPRM*, we recognize that CAs and other employees of providers are often in the best position to detect possible fraud and misconduct by providers.<sup>170</sup> At the same time, we recognize that employees are often reluctant to report possible wrongdoing because they fear they may lose their jobs or be subject to other forms of retaliation. For this reason, there are numerous federal and state whistleblower laws that protect employees who report misconduct by their employers.<sup>171</sup>

65. Given the evidence of substantial relay fraud associated with the billing of illegitimate VRS minutes,<sup>172</sup> we sought comment on the following tentative conclusions: (1) that we should adopt a specific whistleblower protection rule for the employees and subcontractors of TRS providers; (2) that such a rule should protect any employee or subcontractor of any TRS provider who reports possible wrongdoing to his or her employer or to the Commission, the Fund administrator, or any federal or state law enforcement entity from retaliation by the employer; (3) that the rule should require providers to inform their employees that they can report fraud and misuse to the Commission's OIG; and (4) that given the importance of detecting and deterring fraud, this rule should become effective immediately.

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<sup>169</sup> We believe that the rules we adopt today are necessary to prevent fraud and abuse of the Fund, and we find that three months is an adequate time for companies to come into compliance with the new requirements.

<sup>170</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6032 ¶49.

<sup>171</sup> See, e.g., Whistleblower Protection Act of 1989, P.L. 101-12, 103 Stat. 16 (1989).

<sup>172</sup> See n.14, *supra*.



The *VRS Call Practices NPRM* also sought comment on any other issues related to whistleblower protections under the VRS program.<sup>173</sup>

66. Commenters in this proceeding generally support whistleblower protections for VRS CAs and other employees and contractors. Although some commenters express concern that whistleblower protections may be misused by disgruntled employees,<sup>174</sup> others indicate that VRS CAs are the “front line” and “key line of defense” when it comes to fraudulent practices.<sup>175</sup> CSDVRS asks the Commission to make sure that interpreters who make whistleblower claims are protected from possible violations of any ethical rules imposed by their certifying organizations and of the confidentiality rules imposed by the Act.<sup>176</sup> Sorenson disagrees that whistleblower rules should exonerate VRS CAs and providers for violating confidentiality rules since any whistleblower rules should not conflict with these rules, and, in most cases, call content would not need to be disclosed in a complaint.<sup>177</sup>

67. *Discussion.* Much of the information collected during the investigations of fraud and abuse in the VRS industry has come from current and former employees of VRS providers. Many of these individuals have expressed their belief that more relay employees would report activity that seems to run afoul of the Act and the TRS rules were they not afraid of retaliation from their employers. We note that most commenters focused on VRS CAs as potential whistleblowers, but that our questions in the *VRS Call Practices NPRM*, and the protections we adopt now, apply to all employees and contractors of all relay providers.

68. We herein adopt specific whistleblower protections for the employees and contractors of TRS providers.<sup>178</sup> Notwithstanding the existence of other federal and state whistleblower regulations, establishing a specific TRS whistleblower protection rule here will provide an explicit layer of protection for employees who are interested in disclosing information necessary to combat waste, fraud, and abuse with respect to relay services, and thus encourage them to do so. We further note that individuals always have been able to confidentially and anonymously provide to the Commission’s OIG or Enforcement Bureau information that they believe evidences a violation of the TRS statutory or regulatory requirements, including activity that could result in the improper billing of minutes to the Interstate TRS Fund.<sup>179</sup>

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<sup>173</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6032, ¶¶49-50.

<sup>174</sup> PAHVRS Comments at 23. BISVRS Comments at 1 (indicating that there should be consequences for those who file “false, inaccurate, or frivolous” complaints).

<sup>175</sup> PAHVRS Comments at 22; CSDVRS Comments at 24. Although in its comments, Hamilton notes that current federal and state whistleblower regulations already protect these individuals, Hamilton Comments (Sept. 7, 2010) at 4-6, in a subsequent communication with the Commission, Hamilton notes that it does not oppose an FCC whistleblower rule if it is not inconsistent with state rules, and is designed to protect CAs and deter TRS fraud. Hamilton *Ex Parte* Letter at 2. (October 6, 2010).

<sup>176</sup> CSDVRS Comments at 24.

<sup>177</sup> Sorenson Reply Comments (Sept. 16, 2010) at 2, n.9.

<sup>178</sup> This rule applies to all TRS providers and their subcontractors, not only Internet-based forms of TRS. These protections also apply to any companies that may be phasing out their VRS operations, per other requirements in this order.

<sup>179</sup> The OIG Hotline may be reached at (202) 418-0473 (voice), (888) 863-2244 (toll free voice), e-mail: [hotline@fcc.gov](mailto:hotline@fcc.gov), or FCC – OIG, 445 12th Street, S.W., Room 2-C762, Washington, D.C. 20554. The Enforcement (continued....)

69. Current or former employees of TRS providers or any contractors (“covered individuals”) will be protected from reprisal in the form of a personnel action if they disclose information they reasonably believe evidences a violation of the Act or TRS regulations (including any activities that could result in the improper billing of minutes to the TRS Fund) to a designated manager of the eligible TRS provider billing for those minutes, the Commission, the Interstate TRS Fund administrator, or any federal or state law enforcement entity.<sup>180</sup> For a disclosure to be protected, the covered individual must have a reasonable belief that the information is true.<sup>181</sup> The actual veracity of any disclosure, however, will not affect whether a disclosure is protected. If a TRS provider violates the TRS whistleblower protection rule, as with any rule violation, the Commission may take enforcement action.

70. We agree with those commenters who say that providers should be required to inform and notify their employees of the whistleblower protections,<sup>182</sup> and amend our rules accordingly.<sup>183</sup> Providers shall provide an accurate and complete description of these TRS whistleblower protections, including the right to notify the Commission’s OIG or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to their employees in writing (*e.g.* in employee handbooks, policies and procedures manuals, or bulletin board postings – either online or in hard copy) must include an accurate and complete description of these TRS whistleblower protections in those written materials. The Commission will also take steps to disseminate information about the TRS whistleblower protection rule.

71. With respect to the concern by some commenters that certified VRS CAs who make whistleblower claims be protected from potential ethical violations that are related to their community interpreter responsibilities, we note that the Commission does not have jurisdiction over organizations that certify sign language interpreters or any actions these organizations may initiate over an interpreter holding their certifications. Moreover, although the TRS rules define “qualified interpreter,”<sup>184</sup> and require CAs who handle VRS calls to meet those qualifications, the role of a CA during a VRS call is different than the role assumed by “interpreters” in community settings.<sup>185</sup> Unlike interpreters, CAs are

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Bureau may be reached at: (202) 418-7320, or FCC – EB, 445 12th Street, S.W., Room 4-C224, Washington, D.C. 20554.

<sup>180</sup> For purpose of this new rule, we define a personnel action as any significant change in duties, responsibilities, performance evaluations, working conditions, benefits, or pay that is inconsistent with a covered individual’s professional qualifications, training, or rank.

<sup>181</sup> We have no reason to believe that this rule will be misused by disgruntled employees. Individuals have always been allowed to disclose such information, many have done so, and we have not seen instances of misuse or frivolous claims.

<sup>182</sup> *See, e.g.*, BISVRS Comments at 1; RID Comments at 2; PAHVRS Reply Comments at 9 (whistleblower protections should be easy to understand and widely disseminated). Purple suggests that providers be required to have an internal compliance plan for whistleblower protections. Purple Comments (Sept. 7, 2010) at 8-9.

<sup>183</sup> *See* Appendix E for final rule, 47 C.F.R. § 64.604 (c)(5)(iii)(M).

<sup>184</sup> 47 C.F.R. § 64.601(a)(16).

<sup>185</sup> On previous occasions, the Commission has attempted to clarify the VRS CA’s role as compared to the role of a community interpreter. *See 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 at 12532-12537, ¶¶149-162 (2004) (*2004 TRS Report & Order*). The fundamental  
(continued....)

strictly bound by the standards set forth in our regulations. Thus, whatever ethical codes may be imposed upon these individuals by their certifying bodies in community interpreting situations do not necessarily govern VRS situations; rather the specific rules, including those dealing with confidentiality, that are contained in the Commission's mandatory minimum standards are the governing standards for CAs who handle VRS calls. We do not see any potential conflict between the TRS whistleblower protections and the TRS confidentiality rules. We also agree with Sorenson that, in most cases, call content will not need to be disclosed in a complaint.<sup>186</sup> Rather, disclosure will most likely entail "behind the scenes" schemes to generate relay calls that are made or arranged, in whole or in part, for the purpose of generating compensable minutes of use as a source of revenue. We note that these calls are not, and have never been, considered relay calls to which TRS confidentiality protections apply.<sup>187</sup>

## J. Data, Audits and Record Retention Requirements

### 1. Data Filed with the Fund Administrator to Support Payment Claims

72. In 2008, the Fund administrator instructed VRS providers that, beginning with May 2008 usage, monthly minutes of use submitted for payment must be supported by call data records that include the following information: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number or IP address; (6) outbound telephone number or IP address; (7) total conversation minutes; and (8) total session minutes.<sup>188</sup> In the *VRS Call Practices NPRM*, the Commission asked what other call-related data should be required to support payment claims.<sup>189</sup> In response, NECA suggests that all call detail records (CDRs) also be required to contain both ten-digit numbers and IP addresses for incoming and outgoing calls, and that the ID number of the call center that handles the call be included as well.<sup>190</sup>

73. *Discussion.* We agree with the approach recommended by NECA. The data that NECA requests is necessary to properly detect anomalies in submitted minutes, which can alert the Fund administrator and the Commission on the need to inquire further about, and if necessary, conduct an investigation into the legitimacy of such minutes. For example, with this expanded information, the Fund administrator will be better able to detect patterns of calls made to or from a particular IP address

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differences between the roles of a VRS CA and an interpreter should not be confused simply because both situations involve interpreting. *Id.*, 19 FCC Rcd 12535 at ¶157.

<sup>186</sup> Sorenson Comments (Sept. 16, 2010) at 2, n.9.

<sup>187</sup> See *VRS Declaratory Ruling*, 25 FCC Rcd at 1870-1871, ¶6. These calls do not meet the definition of a "TRS call" and are not subject to the same statutory and regulatory restrictions as are compensable TRS calls. See also *VRS Call Practices NPRM*, 25 FCC Rcd at 6025, ¶30, n.61 ("[W]hen both parties communicating via video use a privacy screen . . . communication is no longer possible, and therefore the call is no longer a TRS call and should be terminated").

<sup>188</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6028-29, ¶38 (citing Letter from Cathy Seidel and Kris Monteith to NECA (Nov. 26, 2008) (NECA Letter)).

<sup>189</sup> *Id.*

<sup>190</sup> NECA Letter at 2. CSDVRS suggests that CDRs be required to contain ten-digit numbers as well as IP addresses for each call. CSDVRS Comments at 17. We note that Convo supports this with the caveat that this information should be required "if available" because it may not be available if a user calls through Apple's iChat video. Convo Comments at 16.

or telephone number, as well as patterns related to the length of calls made to or from certain locations. Once investigations are initiated, this data will further prove useful in locating specific instances of illegitimate calling practices. Accordingly, the Commission now expands the data collection rules to require the filing of the following data associated with each VRS call for which a VRS provider seeks compensation:<sup>191</sup> (1) the call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handles the call; and (10) the URL address through which the call was initiated. As recommended, these data collection requirements will be codified.<sup>192</sup>

74. The Commission also amends its functional TRS mandatory minimum standards to require VRS and IP Relay providers to submit speed of answer compliance data, as proposed in the *VRS Call Practices NPRM*.<sup>193</sup> Under the Commission's rules, VRS providers are required to answer 80 percent of all calls within 120 seconds.<sup>194</sup> The provision of this data will enable the Commission to ensure compliance with this mandatory minimum standard, which is critical to ensuring that VRS providers promptly answer the calls that come into their centers. Although providers have been submitting such data at the request of the Fund administrator for the past several years, we believe that this obligation should be reflected in our rules to make clear that VRS and IP Relay providers must submit such data in order to be compensated from the Fund.

75. Finally, in the *VRS Call Practices NPRM*, the Commission tentatively concluded that its rules should be amended to require that the call record and speed of answer data be submitted electronically and in a standardized format in order to reduce the burden associated with compiling and filing this data and to facilitate the collection and analysis of this data by the Fund administrator and the Commission.<sup>195</sup> Commenters generally support this proposal.<sup>196</sup> We now amend our rules accordingly, to require such standardized electronic filings, which we believe will reduce the burden on TRS providers and facilitate efforts by the Fund administrator and the Commission to efficiently analyze the incoming data.<sup>197</sup>

## 2. Automated Call Data Collection

76. During the course of a VRS call, CAs must report call data at four intervals: (1) when the call session begins; (2) when the conversation begins; (3) when the conversation ends; and (4) when the call session terminates. In the *VRS Call Practices NPRM*, we sought comment on CSDVRS's petition requesting the Commission to clarify that our TRS rules require VRS providers to utilize an automated

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<sup>191</sup> The current data collection rules are at 47 C.F.R. § 64.604(c)(5)(iii)(C).

<sup>192</sup> See SnapVRS Comments at 20 (recommending that filing requirements be codified).

<sup>193</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6029, ¶40.

<sup>194</sup> 47 C.F.R. §64.604(b)(2)(iii).

<sup>195</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6029, ¶41.

<sup>196</sup> See, e.g., CSDVRS Comments at 18, SnapVRS Comments at 20, and Sorenson Comments (Sept. 13, 2010) at 13, and Sorenson Reply Comments (Sept. 27, 2010) at 4-5.

<sup>197</sup> See Appendix E for final rule, 47 C.F.R. § 64.604

system of tracking these start and end times of minutes submitted to the Fund for payment.<sup>198</sup> A similar petition subsequently submitted by Sorenson agreed that compliance with our rules requires submission of “true and adequate data” that can only be accomplished by automated record keeping of TRS minutes.<sup>199</sup> The *VRS Call Practices NPRM* tentatively concluded that the TRS rules should be modified to make clear that providers must automatically capture the conversation time, to the nearest second, for each call submitted for payment from the Fund.<sup>200</sup>

77. Commenters unanimously support a requirement for providers to use an automated system of keeping records of TRS minutes for submission to the Fund administrator.<sup>201</sup> Several providers support the Commission’s proposal to require VRS providers to automatically capture the conversation and session time to the nearest second, though both Hamilton and Sorenson urge that this be set as a minimum only, to allow more accurate recording times.<sup>202</sup> BISVRS further proposes that the Commission define the required data elements, classification of time, reporting of time increments, rounding methodology and reporting format.<sup>203</sup> CSDVRS asks the Commission to define an automated system as a system that prohibits human intervention in the start or termination of data collection for a call detail record, to prevent an “automated” system from being manipulated by the CA.<sup>204</sup>

78. *Discussion.* As noted in CSDVRS’ petition, at the start of a VRS call, a CA must obtain the telephone number of the party being called, acquaint him or herself with the sign language style of the caller, and then establish contact with the called party and explain the nature of the call, if necessary. These various tasks can distract CAs, and cause errors in tracking the initiation of session and conversational minutes where these are manually recorded. Moreover, all such tasks must be completed within seconds, in order to swiftly get the call connected and enable the conversation to begin. CSDVRS further notes that “[t]he likelihood of making mistakes when the reporting of such data is performed manually by the VI is further exacerbated by the need for the interpreter to systematically capture precise minutes to the nearest tenth of a second, all the while giving his or her undivided attention to the call in

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<sup>198</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6027-28, ¶ 36. See also CSDVRS, LLC, *Petition for Clarification or Rulemaking on Automated Data Collection*, CG Docket No. 03-123, at 2 (filed May 22, 2009) (*Automated Call Data Petition*) (seeking clarification that the TRS rules require automated record keeping of TRS minutes submitted to the Fund for reimbursement).

<sup>199</sup> *Sorenson VRS Call Practices Petition* at 18 (requesting that the Commission propose and seek comment on rules that will ensure that the Fund compensates only legitimate VRS calls). Sorenson cited to 47 C.F.R. § 64.604(c)(5)(iii)(C), which states, in part: “*Data collection from TRS providers.* TRS providers shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested by the administrator, necessary to determine TRS Fund revenue requirements and payments.”

<sup>200</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6028, ¶37.

<sup>201</sup> BISVRS Comments at 2; CSDVRS Comments at 16; GraciasVRS Comments at 2; Hamilton Comments (Sept. 13, 2010) at 4; Purple Comments (Sept. 13, 2010) at 10; Sorenson Comments (Sept. 13, 2010) at 11.

<sup>202</sup> CSDVRS Comments at 16; Hamilton Comments (Sept. 13, 2010) at 3-4 (recommending that providers be permitted to use a stricter measurement of less than a second if the Commission adopts a requirement to automatically capture data to the nearest second.); Sorenson Comments (Sept. 13, 2010) at 12 (recommending adoption of a rule that requires providers to automatically record session and conversation time to “at least the nearest second, with more accurate recordings permitted”). See also Sorenson Comments (Sept. 13, 2010) at 11; Sorenson Reply Comments (Sept. 27, 2010) at 4-5.

<sup>203</sup> BISVRS Comments at 2.

<sup>204</sup> CSDVRS Comments at 17.

progress.”<sup>205</sup> We agree with CSDVRS and other commenters that when such minute tracking is done manually, it is ripe for unintentional errors. Moreover, we agree that allowing the CA to manually determine start and end times can also facilitate fraud through the manipulation of such records.<sup>206</sup> Accordingly, we modify our rules to specifically require automated record keeping of all TRS minutes submitted to the Fund administrator.<sup>207</sup> As Hamilton notes, this will provide a method to help ensure the accuracy and integrity of minutes submitted to the Fund administrator.<sup>208</sup>

79. The rule that we now adopt requires all TRS providers to use an automated record keeping system to capture the following data when seeking compensation from the Fund: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times, at a minimum to the nearest second; (4) conversation start and end times, at a minimum to the nearest second;<sup>209</sup> (5) incoming telephone number (if call originates with a telephone) and IP address (if call originates with an IP-based device) at the time of the call; (6) outbound telephone number and IP address (if call terminates to an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.<sup>210</sup> We define automated recordkeeping system for purposes of these rules as a system that captures data in a computerized and electronic format in a manner that does not allow human intervention during the call session (for either conversation or session time). An electronic system that requires the CA or provider’s employee to manually press a start and/or end command key in order to capture the required data or to terminate the data recording does not constitute an automated system under this requirement.

### 3. Transparency and the Disclosure of Provider Financial and Call Data

80. In 2009, in response to the *2009 Rate NPRM* seeking comment on whether the VRS rates should be modified for the 2009-2010 Fund year,<sup>211</sup> a consumer group filed a Motion for Protective Order seeking access to VRS providers’ cost data.<sup>212</sup> The consumer group argued that, absent access to

<sup>205</sup> See *Automated Call Data Petition* at 3.

<sup>206</sup> *Id.* at 2.

<sup>207</sup> See Appendix E for final rule. 47 C.F.R. § 64.604 (c)(5)(iii)(C)(4)

<sup>208</sup> Hamilton Comments (Sept. 13, 2010) at 3.

<sup>209</sup> The Interstate TRS Fund compensates for conversation minutes, which begin when the called party answers the outbound telephone call from the CA and end when either party to the call hangs up. See generally 47 C.F.R. § 64.604(c)(5)(iii)(E). Conversation minutes do not include time for call set-up, ringing, waiting for an answer, and wrap-up, or calls that reach a busy signal or no answer. This is compared to session minutes, which do include these tasks, to the extent they are necessary to dial and set up a call. We note that the requirement we adopt above to capture conversation and session start and end times to the nearest second are minimum thresholds only, and that providers are free to exceed this measurement by automatically capturing shorter periods of time for these start and end times, for example to the nearest 10<sup>th</sup>, 100<sup>th</sup>, or even thousandth of a second.

<sup>210</sup> These requirements apply to all forms of TRS calls, including VRS, traditional TRS, speech-to-speech, IP Relay, captioned telephone relay service, and IP captioned telephone relay service, whether the calls originate by a voice caller or by an individual using a video device or any type of specialized customer premises equipment.

<sup>211</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Public Notice and Notice of Proposed Rulemaking, 24 FCC Rcd 6029 (May 14, 2009) (*2009 VRS Rate NPRM*).

<sup>212</sup> *Telecommunications for the Deaf and Hard of Hearing, Inc., Motion for Protective Order*, CG Docket No. 03-123 (May 20, 2009). Specifically, the consumer group proposed that it have access to the cost data associated with

(continued....)

the underlying cost data, it could not meaningfully comment on the appropriateness of any particular VRS rates.<sup>213</sup> Several providers filed oppositions to that Motion, arguing that there would be no way to guarantee that sensitive proprietary data could be sufficiently protected by a protective order that grants access to their data to consumers.<sup>214</sup> In the *VRS Call Practices NPRM*, we sought comment on the need for the type of transparency that had been requested in the consumer group's Motion. Specifically we asked whether we should require that all VRS provider cost and demand data be made available to the public and, if so, how such a requirement should be implemented.<sup>215</sup> Most VRS providers strongly oppose requiring full disclosure of a provider's financial and call detail data because they say doing so would harm innovation and competition.<sup>216</sup>

81. *Discussion.* We conclude that the information requested for disclosure in the Motion for Protective Order is proprietary, and therefore, should not be subject to public scrutiny. The Commission recognizes consumer advocates' interests in obtaining this type of data in order to provide effective advice to the Commission. However, public disclosure of such data is not typically required under Freedom of Information Act (FOIA) rules.<sup>217</sup> We believe that access to individual provider cost data should be limited to the Commission, the Fund administrator, and designated auditors because of its highly proprietary nature, and in light of the significant fraud and abuse that has taken place in this industry. The Commission must consider cost and demand data as part of the VRS compensation rate-setting process, and we will work in conjunction with the Fund administrator to carefully scrutinize data submitted by providers.

#### 4. Provider Audits

82. In the *VRS Call Practices NPRM*, we sought comment on whether we should amend the TRS mandatory minimum standards to include more specific and stringent auditing rules in order to better safeguard the integrity of the Fund.<sup>218</sup> Commenters generally support more specific and stringent auditing rules but several providers stress that the Commission already has the power to enforce and

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the VRS compensation rates noted in the *2009 VRS Rate NPRM*, subject to a protective order, so that it could more meaningfully comment on the appropriate VRS rate.

<sup>213</sup> *Id.*

<sup>214</sup> See, e.g., Sorenson Opposition, CG Docket No. 03-123 (June 1, 2009); AT&T, Inc. *et al.*, Opposition to Motion for a Protective Order (June 1, 2009).

<sup>215</sup> See *VRS Call Practices NPRM*, 25 FCC Rcd at 6034, ¶54.

<sup>216</sup> See AT&T Comments at 14 (pointing out that “no other competitive industry, regardless of whether the members of that industry receive public funding, is required to disclose competitively sensitive information”). See also Hamilton Comments (Sept. 13, 2010) at 6; PAHVRS Comments at 24; CSDVRS Comments at 25; Sorenson Comments (Sept. 13, 2010) at 17. Convo recommends a partial disclosure whereby providers would be required to disclose certain expenses to the Commission, such as the costs of outreach, research and development, regulatory compliance, and so forth, which then would be available to the public in an aggregated format. Convo Comments at 20. Hamilton suggests that increasing transparency on the scheduling and progress of audits would improve public confidence that the submitted data is being scrutinized to ensure the integrity of the TRS Fund. Hamilton Comments (Sept. 13, 2010) at 76.

<sup>217</sup> See 47 C.F.R. §§0.441-0.470.

<sup>218</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6034, ¶55.

exercise its existing audit authority and that adopting new rules is not necessary.<sup>219</sup> Providers agree that frequent and effective audits will help alleviate some problems of cost miscalculation, abuse and fraud that “plague the relay” program.<sup>220</sup> With respect to the timing and frequency of auditing, CSDVRS suggests that audits be scheduled at the provider’s convenience so that these do not “coincide with their annual tax deadlines or conflict with their annual accounting cycles.”<sup>221</sup> Convo suggests that audits be scheduled every five years, unless an audit is needed to address repeated incidences of minor violations or upon noting a pattern of minutes needing to be withheld for payment.<sup>222</sup> Hamilton and SnapVRS each propose a similar approach.<sup>223</sup> Verizon recommends conducting an annual audit of newly certified providers for the first few years and doing so periodically thereafter.<sup>224</sup>

83. Several providers suggest that the Fund administrator conduct audits as it is familiar with the TRS rules and compensation process.<sup>225</sup> Providers recommend that the scope of audits should be as broad as possible to include provider data, practices, and procedures, as well as compliance, regular revenue, call records, and the call system.<sup>226</sup> Commenters further suggest that providers be subject to substantial financial penalties and withholding of compensation for failure to comply with the Commission audits.<sup>227</sup>

84. *Discussion.* We strongly believe in the importance of conducting regular audits to ensure the integrity of the TRS Fund. In order to provide the Commission the flexibility and discretion it needs in determining when audits are necessary, we amend the TRS mandatory minimum standards to require that all TRS providers submit to audits annually or, if necessary, at any other time deemed appropriate by the Commission, the Fund administrator, or by the Commission’s OIG.<sup>228</sup> We also conclude that providers that fail to fully cooperate in audits, for example, by failing to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of TRS payments until sufficient documentation is provided. We believe that this policy will promote greater transparency and accountability in the compensation process.

## 5. Record Retention

85. In the *VRS Call Practices NPRM*, we sought comment on a proposed rule to require Internet-based TRS providers, which includes all VRS providers, to retain their call detail records, other records that support their claims for payment from the Fund, and records used to substantiate the costs

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<sup>219</sup> Hamilton Comments (Sept. 13, 2010) at 7; Purple Comments (Sept. 13, 2010) at 14; Sorenson Comments (Sept. 13, 2010) at 20.

<sup>220</sup> CSDVRS Comments at 27; Hamilton Comments (Sept. 13, 2010) at 7; Verizon Comments at 3.

<sup>221</sup> CSDVRS Comments at 27. CSDVRS also proposes that providers be required to submit to an audit within 60 days of the request. *Id.* at 28.

<sup>222</sup> Convo Comments at 21.

<sup>223</sup> Hamilton Comments (Sept. 13, 2010) at 7; SnapVRS Comments at 26-27.

<sup>224</sup> Verizon Comments at 4.

<sup>225</sup> Convo Comments at 21; SnapVRS Comments at 27.

<sup>226</sup> *See, e.g.*, Sorenson Comments (Sept. 13, 2010) at 20; SnapVRS Comments at 27.

<sup>227</sup> CSDVRS Comments at 28; Verizon Comments at 3.

<sup>228</sup> We note that such audits may, as necessary, include on-site visits to the provider. *See* Appendix E for final rule.



and expense data submitted in the annual relay service data request form, for five years.<sup>229</sup> We also sought comment on how we might define more specifically the scope of the records subject to the proposed rule.<sup>230</sup>

86. No providers oppose our proposed rule for record retention.<sup>231</sup> BISVRS suggests that if this is for auditing purposes, then it should be included in the auditing requirements.<sup>232</sup> Sorenson proposes that records specifically include “conversation dates and start and end times, session dates and start and end times, incoming and outgoing telephone numbers or IP addresses for each call, CA IDs for each call, and total monthly conversation minutes and total monthly session minutes.”<sup>233</sup>

87. *Discussion.* We amend the TRS rules to require that providers of all forms of Internet-based TRS retain all required call detail records, other records that support their claims for payment from the Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form for a minimum of five years, in an electronic format that is easily retrievable for the Commission and Fund administrator for possible future use, including audits.<sup>234</sup> We conclude that the retained records must include the following data that is used to support payment claims submitted to the Fund administrator: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call. The records subject to this rule are critical to providing information necessary for effective oversight of all Internet-based TRS services, including VRS, and for conducting audits of individual providers. In addition, the data identified above may be necessary for the Commission or law enforcement agencies to investigate violations of the Commission’s rules and orders or civil or criminal statutes. Because the time required to complete comprehensive reviews and possible investigations into the operations of VRS providers may be significant, we believe it is reasonable to require retention of these records for a period of five years.

## 6. Provider Certification Under Penalty of Perjury

88. In the *VRS Call Practices Order*, the Commission adopted an interim rule requiring the CEO, CFO, or other senior executive of a relay service provider for all forms of TRS to certify, under penalty of perjury that: (1) minutes submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Act and the Commission’s rules and orders, and are not the result of impermissible financial incentives, payments or kickbacks to generate calls, and (2) cost and demand

<sup>229</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6035, ¶57. Five years is the amount of time E-Rate eligible entities are required to retain records in accordance with section 54.516(a)(2) of the Commission’s rules. 47 C.F.R. § 54.516(a)(2). We find these entities to be similarly situated to VRS providers seeking compensation from the Fund, and therefore conclude that we should adopt an analogous document retention time requirement.

<sup>230</sup> *Id.* We did not see the need to apply this requirement to traditional TRS providers because these providers are subject to rigorous recording and reporting requirements under their contracts with the states.

<sup>231</sup> Convo Comments at 21; Purple Comments at 14; SnapVRS Comments (Sept. 13, 2010) at 27; Verizon Comments at 4.

<sup>232</sup> BISVRS Comments at 3.

<sup>233</sup> Sorenson Comments (Sept. 13, 2010) at 20-21; *see also* Sorenson Reply Comments (Sept. 27, 2010) at 4-5.

<sup>234</sup> *See* Appendix E for final rule, 47 C.F.R. § 64.604 (c)(5)(iii)(C).

data submitted to the Fund administrator in connection with the determination of compensation rates or methodologies are true and correct.<sup>235</sup> We sought comment on whether the Commission should make this interim rule permanent<sup>236</sup>

89. All commenters support provider certification, but some differ as to who should be the certifying individual.<sup>237</sup> For example, AT&T suggests that, rather than rely on a designated executive officer, any “mandated officer” be permitted to certify as to a provider’s submissions on an annual basis, and that either that officer or an “authorized employee of the TRS provider” be allowed to certify as to the monthly submissions submitted to the Fund administrator. Similarly, AT&T claims that this arrangement would be similar to other Commission filings in other areas,<sup>238</sup> and that requiring a designated executive officer to certify as to their submissions on a monthly basis would be burdensome and therefore cause delays.<sup>239</sup> Several other providers also note that the provider certification rule will not necessarily reduce the risk of fraud because the executives listed do not always have full knowledge about or control over the information contained in their submissions; rather, they rely on their staff for the collection of this information.<sup>240</sup> Nevertheless, two providers – CSDVRS and PAHVRS – agree that this requirement will help meet the Commission’s goal of holding providers accountable for their submissions.<sup>241</sup> SnapVRS further recommends that the Commission develop standardized certification language to ensure that the certifying officer not be held personally liable for “undiscovered information, either a minor error or a more serious issue being purposefully concealed by someone” else.<sup>242</sup>

90. *Discussion.* We note that the interim provider certification rule became effective on February 15, 2011, when OMB approved the new information collection requirement. In compliance therewith, VRS providers’ senior executive officers have been certifying their submissions under penalty of perjury on a monthly basis. The Commission and the Fund administrator have not received any reports on the record of problems, delays with these submissions or further complaints that submission of this form is at all burdensome for providers. We determine that the continuance of this practice is a critical component of our efforts to curtail fraud and abuse. Requiring a signed statement sworn to be true under penalty of perjury is a vehicle long and regularly used in a myriad of legal contexts to guarantee the veracity of the declarations, as well as to provide a means for civil enforcement and criminal prosecution to hold high level officials accountable for the actions of their companies.<sup>243</sup> Providers’ suggestions in their comments that their executives may not have full knowledge about, or clear control over, the information submitted to the Fund administrator illustrates why the rule is necessary. It would be irresponsible for the Commission, which is charged with maintaining the

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<sup>235</sup> *VRS Call Practices Order*, 25 FCC Rcd at 6013-21, ¶¶1-16. In light of evidence of fraud against the Fund and in order to protect the integrity of the Fund, the Commission found that it was consistent with the public interest to adopt an immediate interim rule without notice and comment, pursuant to 5 U.S.C. §553(b)(3)(B).

<sup>236</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6035, ¶58.

<sup>237</sup> CSDVRS Comments at 29; PAHVRS Comments at 6; Purple Comments (Sept. 13, 2010) at 14; Sorenson Comments (Sept. 13, 2010) at 21; SnapVRS Comments at 27-28.

<sup>238</sup> AT&T Comments at 14-15.

<sup>239</sup> AT&T Comments at 15.

<sup>240</sup> BISVRS Comments at 4; CSDVRS Comments at 29; PAHVRS Comments at 6; SnapVRS Comments at 27-28.

<sup>241</sup> CSDVRS Comments at 29; PAHVRS Comments at 6.

<sup>242</sup> SnapVRS Comments at 28.

<sup>243</sup> *See, e.g.*, 47 C.F.R. §1.16.

integrity of the VRS Fund, to continue to remit hundreds of millions of dollars annually to providers who admit that their chief executives are unable, or chose not, to attest to the veracity of their claims for compensation.

91. The Commission therefore permanently adopts the rule set forth in the NPRM, requiring the CEO, CFO, or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, to make the required certifications under penalty of perjury.<sup>244</sup> We concur with SnapVRS's recommendation to include standardized language in this certificate that addresses the liability of the certifying officer and the provider. Accordingly, we adopt the following language for the necessary certificate:

I swear under penalty of perjury that (1) I am \_\_ (name and title), \_an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate; and (2) the TRS calls for which compensation is sought were handled in compliance with Section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

The Commission believes that this certification will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the compensation data submitted to the Fund administrator.

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

92. As noted in the attached *Order*,<sup>245</sup> our rules establish that four types of entities are eligible to provide Internet-based TRS and receive payment from the interstate TRS Fund:<sup>246</sup> (1) a certified state TRS provider or an entity operating relay facilities operated under contract with a certified state TRS program; (2) an entity that owns or operates relay facilities under contract with a common carrier providing interstate services; (3) interstate common carriers offering TRS; and (4) VRS and IP Relay providers certified by the Commission. In the *2010 VRS NOI*, we raised concerns about the extent to which the Commission's current eligibility requirements are effective to ensure that potential VRS providers are qualified to provide VRS in accordance with our rules, and in particular, what due diligence we should exercise prior to granting certification to a VRS provider.<sup>247</sup> Specifically, we noted that some providers seeking to receive compensation from the Fund may not have had prior TRS or telecommunications experience, and asked about the extent to which such experience should be a requirement for certification.<sup>248</sup> We also asked about the extent to which entities that do not own or

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<sup>244</sup> See Appendix E for final rule, 47 C.F.R. § 64.604(c)(5)(iii)(C)(5).

<sup>245</sup> See ¶47, *supra*.

<sup>246</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4) (provider eligibility rules); see generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (2005).

<sup>247</sup> *2010 VRS NOI*, 25 FCC Rcd at 8605-8606, ¶¶25-26.

<sup>248</sup> *Id.* at 8605, ¶25.

operate any TRS facilities, but merely subcontract out the call center functions needed to handle VRS calls, should be eligible for VRS certification.<sup>249</sup>

93. In addition to seeking comment on ways to improve the VRS program, the *NOI* sought comment on ways to strengthen our oversight of certified carriers to ensure that, once certified, providers operate in accordance with our rules.<sup>250</sup> For example, we sought comment on whether we should conduct on-site visits to the provider's physical VRS facilities before and after certification.<sup>251</sup> We also asked about the extent to which states are effectively exercising oversight over the VRS providers with which they contract, and whether Commission certification of all VRS providers is necessary to ensure that only qualified providers are certified and that all eligible providers are subject to effective supervision by the Commission.<sup>252</sup> In addition, we sought input on whether re-certification should be required on an annual basis, and whether demonstration of common carrier status should continue to be a condition of certification.<sup>253</sup>

94. Commenters generally support revising the certification process to ensure that all VRS providers are qualified and held accountable for both their own and their subcontracted operational practices and activities.<sup>254</sup> Several commenters suggest that the key to improving the Commission's oversight of certified providers is to discontinue the provision of services by uncertified (or "white label") providers.<sup>255</sup> Convo specifically urges that certified providers be required to own, operate and manage facilities, including owning or leasing an automatic call distribution (ACD) platform.<sup>256</sup> Nearly all commenting parties recommend that providers not be eligible to receive compensation from the Fund based on their status as providers under a certified state program, and propose that all VRS providers instead be certified directly by the Commission.<sup>257</sup> For example, Purple indicates that the states lack the incentive to properly oversee VRS providers because they do not pay for the service.<sup>258</sup> Many commenters similarly point out that effective oversight can only be accomplished by Commission adoption of rigorous compliance requirements, including frequent auditing and reporting, as well as a revised certification process.<sup>259</sup>

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<sup>249</sup> *Id.* The accompanying *Order* explains that such call center functions, include call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration. See ¶56, *supra*.

<sup>250</sup> *Id.* at 8606, ¶26. Rules governing the current certification process are at 47 C.F.R. §64.606 *et. seq.*

<sup>251</sup> *Id.* at 8605, ¶25.

<sup>252</sup> *Id.* at 8606, ¶¶25, 26.

<sup>253</sup> *Id.*

<sup>254</sup> AT&T Comments at 16; Convo Comments at 21-23; CSDVRS Comments at 26-27; PAHVRS Comments at 25-28; Purple Comments at 24 and 35; Sprint Comments at 13; SkyVRS Comments at 1; TDI Comments at 15; Verizon Reply Comments at 4-5.

<sup>255</sup> Convo Comments at 22-23; Purple Comments at 24; TDI Comments at 15. We have addressed this concern in the accompanying *Order*. See ¶¶47-57 *supra*.

<sup>256</sup> Convo Comments at 22-23.

<sup>257</sup> AT&T Comments at 16; Purple Comments at 35; Sprint Comments at 13; Verizon Reply Comments at 4. *But see* Sorenson Reply Comments at 6, asserting that there is "no evidence that providers that participate in state programs are more prone to misconduct than are FCC-certified providers."

<sup>258</sup> Purple Comments at 35.

<sup>259</sup> Convo Comments at 22; CSDVRS Comments at 26-27; Purple Comments at 24; TDI Comments at 15.

95. In this *FNPRM*, we seek comment on a number of proposed modifications to our certification process for all Internet-based relay providers, including VRS providers,<sup>260</sup> to ensure that all entities seeking certification in the future – or currently certified entities seeking re-certification – are fully qualified to provide Internet-based relay service in compliance with our rules and requirements, including all of the new obligations adopted in the accompanying *Order*, to reduce waste, fraud and abuse, and improve oversight.<sup>261</sup> To the extent that we have procedures in place to effectively verify the qualifications of an entity prior to allowing that entity to become certified as an eligible provider, we will be better able to limit fraud and minimize our oversight burden once such entities are providing service. We approach this process with the goal of establishing clear criteria for granting certification to qualifying entities for a limited period of time, and adopting measures that will enable us to exercise the oversight needed to determine whether we should revoke such certification when a provider is not complying fully with our rules. At the outset, we note that any modifications to our certification process that we adopt in this proceeding will be only one part of the Commission’s larger plans to reform the structure of the VRS program.<sup>262</sup> Accordingly, such modifications may be transitional until a more comprehensive, permanent structure for the VRS program is established by the Commission.<sup>263</sup>

96. We make the following proposals to ensure that the certification process enables the Commission to identify providers that are qualified to provide Internet-based relay services in accordance with our rules. First, we propose that all Internet-based relay providers be required to receive certification from the Commission, under the procedures and guidelines proposed herein, to be eligible to receive compensation from the TRS Fund. Under this proposal, certification by the Commission would be the sole method by which an Internet-based TRS provider could become eligible to receive compensation from the TRS Fund. An Internet-based relay provider would no longer be permitted to receive compensation from the TRS Fund merely: (1) by virtue of its contract with a certified state TRS program; (2) through its contract with an interstate common carrier; (3) because it is an interstate common carrier; or (4) because it is certified by a state. Eligibility through these methods has failed to ensure that providers are qualified to provide VRS or to provide the Commission with the requisite information to determine whether providers are complying with our TRS rules. We believe that these alternative eligibility methods have facilitated participation in the VRS program by unqualified, non-compliant providers.<sup>264</sup> Moreover, they have hampered the Commission’s efforts to exercise stringent Commission oversight over entities providing service. For example, although an entity currently may become eligible to seek reimbursement from the TRS Fund for its provision of Internet-based relay services through a state contract, states generally do not have their own rules governing Internet-based relay services; nor do they directly compensate Internet-based relay providers. Therefore, they generally have little or no incentive to either verify the qualifications of the providers with which they contract or exercise the oversight needed to ensure full compliance with the Commission’s TRS

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<sup>260</sup> We note that although the *2010 VRS NOI* asked only about the certification for VRS providers, this *FNPRM* extends our proposals to all Internet-based relay providers, including providers of VRS, IP Relay and IP-based captioned telephone relay service.

<sup>261</sup> Under the new rules, all certified providers will also be subject to stringent auditing requirements, including possible on-site visits. See ¶71, *supra*.

<sup>262</sup> See generally *2010 VRS NOI*.

<sup>263</sup> At such time, the certification process that we adopt initially in this proceeding may be superseded.

<sup>264</sup> We note, for example, that CAC, a VRS provider certified under a state program, served as a billing agent for Viable, whose executives and associates pled guilty for defrauding the FCC. Transcript of Testimony at 47, 48, and 74, *United States v. Pena*, D.N.J. (2010)(No. 09-858).

rules once those contracts are executed and service commences.<sup>265</sup> In short, because the Commission bears the responsibility for managing the TRS Fund, it must have the exclusive responsibility to certify providers as eligible to collect from the Fund; this will ensure that Internet-based TRS is provided by qualified providers and will enable the Commission to exercise effective oversight over these providers. We seek comment on this proposal.

97. We propose that all providers that are not already certified by the Commission, be required to apply to the Commission for certification to provide Internet-based TRS. We seek comment on this proposal. We further propose that an applicant be certified or be permitted to renew its certification<sup>266</sup> only upon a determination by the Commission that such applicant has adequately demonstrated its ability to comply with all of the Commission's rules, including those adopted in the accompanying *Order*. We propose that mere attestations be inadequate to satisfy this standard. Instead, we propose requiring evidence of an applicant's ability to comply with our rules governing the qualifications of CAs, including speed of answer, facility redundancy to ensure continuance of the service, and other operational and technical standards designed to assure provision of a service that is functionally equivalent to voice telephone service.<sup>267</sup> Specifically, we propose that applicants provide documentary and other evidence demonstrating that the applicant owns and operates facilities associated with TRS call centers, and employs interpreters, on a full or part-time basis, to staff such call centers at the date of the application.<sup>268</sup> Such evidence shall include, but is not limited to:

- a copy of each deed or lease for each call center operated by the applicant;
- a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational

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<sup>265</sup> The rationales for allowing interstate TRS providers to become eligible to provide compensable TRS through a state contract do not apply to Internet-based TRS providers. In fact, when the Commission first adopted rules in 1991 allowing TRS providers to obtain eligibility to receive compensation from the TRS Fund through a state contract, there were no Internet-based relay services. At that time, it was determined that TRS providers, all of whom provided TRS over the public switched telephone network (PSTN), should be permitted to receive direct compensation from the TRS Fund for the services they provided under contract with a state, so that the state could select a single provider to offer both intrastate and interstate TRS for that state and pay the provider for the intrastate portion of the provider's TRS minutes. Under these arrangements, which still exist for the traditional forms of TRS, a provider is selected by a state to handle PSTN-based relay services for the state, and is then subject to the direct supervision of that state for both the intra- and interstate relay services that it provides. This is not the case for Internet-based relay, where the provider is reimbursed directly by the TRS Fund for *all* services provided, and the state has no real connection to the provider. Indeed it is somewhat of a fiction that an Internet-based relay provider is "operating under contract" with the state (even when it otherwise also has a relay contract with a state for non-Internet-based relay services) because the state conducts no monitoring of the provider's Internet-based relay activities, and is generally not even aware of the extent to which the provider is handling Internet-based relay calls for its residents.

<sup>266</sup> Currently, certified providers must renew their certifications once every five years. 47 C.F.R. §64.606(c)(2).

<sup>267</sup> 47 C.F.R. §§64.604(a); (b).

<sup>268</sup> See ¶56, *supra*, requiring a provider to be responsible for providing the core components of Internet-based TRS, rather than subcontracting out these responsibilities to a third party.

structure, and the names of its executives, officers, partners, and members of its board of directors;<sup>269</sup>

- a list of all of the names of applicant’s full-time and part-time employees;
- proofs of purchase or license agreements for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, ACD, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;
- copies of employment agreements for all of the provider’s executives and CAs;
- copies of any subcontracting agreements for services not directly essential for the provision of Internet-based relay (such as maintenance and transportation services);
- a list of all financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;
- copies of all other agreements associated with the provision of Internet-based relay service; and
- a list of all sponsorship arrangements (*e.g.*, those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated agreements.<sup>270</sup>

98. In addition, we propose that the certification process include, at the Commission’s discretion, other measures, including on-site visits to the premises of applicants, to assess the merits of certification applications; we seek comment on this proposal as well as what those measures may be. We believe that these requirements will enable the Commission to determine applicants’ qualifications and enable the Commission and the Fund administrator to oversee the providers’ operations and activities so as to ensure that they are in compliance with the new TRS rules adopted in the accompanying *Order*. We seek comment on the extent to which the detailed information set forth above is necessary to achieve our objectives. We further seek input on what other types of documentation we should require, including the level of detail we should require, to ensure that we are able to assess whether an applicant is fully qualified to provide Internet-based relay service in compliance with our rules and requirements.

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<sup>269</sup> We believe that individuals or entities with a smaller ownership or voting interest would not have sufficient control or influence over the applicant to warrant reporting unless they exercise de jure or de facto control by other means. This 10 percent threshold has been applied in other contexts. See, e.g., 47 C.F.R. §52.12(a)(1)(i)(A)&(B) (defines when the North American Numbering Plan Administrator and its agent would be considered an “affiliate” of a telecommunications service provider or interconnected VoIP provider because these entities are supposed to be impartial and not aligned with telecommunications industry segments); 47 C.F.R. §63.04(a)(4) (requires a carrier seeking approval of a transfer of control under section 214 of the Act to report the name of any entity with 10 percent or more equity in such carrier). *Cf.* 47 C.F.R. § 73.3555 note 2 (broadcast attribution standards).

<sup>270</sup> Providers could request confidential treatment of information submitted that they believe should not be made routinely available for public inspection under our rules. See 47 C.F.R. §§ 0.457, 0.459.

99. We also note that our rules require providers to file annual reports containing evidence that they are in continued compliance with section 64.604 of our rules.<sup>271</sup> We propose that providers be required to submit updates to the information listed above with these annual reports, and seek comment on this proposal. We also seek comment on whether the provision of this information on an annual basis would eliminate the need for renewal of certification every five years, as is now required by our rules.<sup>272</sup>

100. At present, our rules require providers to notify the Commission of substantive changes in their TRS programs within 60 days of when these changes occur, and to further certify that their service continues to meet mandatory minimum standards after implementing such changes.<sup>273</sup> However, our rules do not specify what constitutes a “substantive change.” For example, would the use of new equipment and/or technologies to facilitate the manner in which relay services are provided constitute a substantive change? Should providing relay services from a facility that we have not specifically authorized trigger this requirement to notify the Commission? Should a change in a provider’s management, name branding of its product, or marketing and outreach activities be considered a substantive change that warrants notification? We seek comment on what types of changes should trigger this requirement to notify the Commission.

101. In order to be entitled to compensation from the TRS Fund for providing Internet-based TRS, the TRS provider’s facilities must have redundancy features in the event of call center or network outages, as well comply with the other minimum standards that apply to all TRS.<sup>274</sup> At present, however, our rules do not explicitly address the obligations associated with a provider’s decision to temporarily cease its operations. Such interruptions of service are of concern to the Commission, given the impact that these might have on relay users. To avoid future interruptions in service that may hamper the ability of relay customers to place Internet-based TRS calls, we propose requiring that each certified provider seek prior Commission authorization of any voluntary interruption in the provision of Internet-based TRS. In order to comply with this requirement, we propose that a provider be directed to submit a written request to the Commission’s CGB at least 60 days prior to any planned interruption, with detailed information of (1) its justification for such service interruption; (2) its plan to notify customers about the impending interruption; and (3) its plans for resuming service, so as to minimize the impact of such interruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption.<sup>275</sup> We further propose

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<sup>271</sup> 47 C.F.R. § 64.606(g).

<sup>272</sup> Currently, providers must re-apply for a renewal of their certification after five years by filing documentation with the Commission at least 90 days prior to the expiration of such certification. 47 C.F.R. § 64.606(c)(2).

<sup>273</sup> 47 C.F.R. § 64.606(f)(2).

<sup>274</sup> See 47 C.F.R. § 64.604(b)(4)(i),(ii). See *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, at 7789, 7790, ¶¶29, 33 (2002) (“In order to be certified and eligible for reimbursement, IP Relay must meet these minimum standards, or request and receive waivers of the standards.”); See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, Declaratory Ruling, 22 FCC Rcd 379, at 391, ¶29 (2007) (“We do not mandate the provision of IP captioned telephone service at this time. Nevertheless, to be eligible for compensation from the Fund, providers must offer service in compliance with all applicable TRS mandatory minimum standards.”).

<sup>275</sup> This proposed rule is comparable to the section 214(a) process that domestic telecommunications service providers must follow with respect to having to apply for and obtain permission for a planned discontinuance or reduction in its service. Section 214(a) requires that a domestic interstate common carrier apply for service discontinuance, as well as notify its customers of such planned discontinuance to ensure minimal or no service

(continued....)



delegating authority to CGB to grant or deny such requests for service interruption, and to provide a response to the provider within 30 days of the proposed interruption, in order to afford an adequate period of notification to consumers. We propose to direct that CGB, in deciding whether to grant or deny such requests, consider, among other things, the length of time for the proposed interruption, the reason for such interruption, the frequency with which such requests have been made by the same provider in the past, the potential impact of the interruption on consumers, and the provider's plans for a smooth service restoration. We seek comment on these criteria and whether any others should be considered in making such determinations. Finally, we propose that providers be subject to revocation of their certifications by the Commission.

102. With respect to brief, unforeseen service interruptions due to circumstances beyond a provider's control, we propose that the affected provider submit a written notification to CGB within two business days of when the service disruption first occurred, with an explanation of how the provision of its service had been restored or will be restored imminently. Finally, we propose taking enforcement action against certified providers, including, but not limited to, the revocation of certification and/or suspension of payment, in the event that a voluntary interruption of service occurs without obtaining authority from the CGB or in the event that the requested cessation proceeds notwithstanding CGB's denial of the provider's request. We seek comment on these proposals.

103. In order to ensure the seamless delivery of Internet-based TRS during any transition period following Commission establishment of new eligibility requirements and certification procedures, we propose that any provider currently eligible to receive compensation from the TRS Fund via a means other than FCC certification,<sup>276</sup> be permitted, concurrently with the submission of its application for Commission certification, to seek temporary waiver of any new requirements to obtain certification from the Commission prior to offering Internet-enabled TRS, while its application is pending.<sup>277</sup> This will enable the provider to continue to receive compensation from the Fund and to continue providing Internet-based TRS during this interim period.<sup>278</sup> We request comment on these proposals generally, as well as a time frame for these providers to seek Commission certification and a temporary waiver. In addition, we seek feedback on what an applicant seeking such a waiver should have to demonstrate in order to establish that a temporary waiver of the certification requirement would serve the public interest? Further, in the event that an applicant's request for temporary waiver and/or application for certification is denied, we propose that the applicant be given at least 30 days to discontinue its service in order to allow its affected consumers sufficient time for transition to another eligible provider's service.

(Continued from previous page) \_\_\_\_\_

disruption for its customers. See 47 U.S.C. §214; 47 C.F.R. §63.71. The Commission applied those rules to interconnected VoIP in 2009. See *IP-Enabled Services*, Report and Order, 24 FCC Rcd 2039 (2009).

<sup>276</sup> As noted above, this will include Internet-based TRS providers that are presently [eligible] because they are operating relay facilities under contract with a certified state TRS program, own or operate relay facilities under contract with a common carrier providing interstate services, or are an interstate common carrier

<sup>277</sup> Persons seeking waiver of a Commission rule must show good cause, and that waiver would be in the public interest. 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>278</sup> This proposed application and waiver process would also pertain to those providers whose Commission certifications are due to expire before the new certification requirements go into effect.

## V. PROCEDURAL MATTERS

### A. Congressional Review Act

104. 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. 279 See 5 U.S.C. § 801(a)(1)(A).

### B. Regulatory Flexibility

105. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>280</sup> the Commission has prepared a Final Regulatory Flexibility Certification in which it concludes that, under the terms of the RFA, there is no significant economic impact on small entities as a result of the policies and rules addressed in this document. The certification is set forth in Appendix C.

106. *Initial Regulatory Flexibility Certification.* With respect to this *FNPRM*, an Initial Regulatory Flexibility Certification (IRFC) is contained in Appendix B. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFC of the expected impact on small entities of the proposals contained in the *FNPRM*. Written public comments are requested on the IRFC. Comments must be identified as responses to the IRFC and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including the IRFC, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>281</sup>

### C. Paperwork Reduction Act

107. *Final Paperwork Reduction Act of 1995 Analysis.* The *Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>282</sup> we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

108. In this present document, we have assessed the effects of imposing various requirements on VRS providers as well as providers of other forms of TRS. We recognize that these requirements are necessary to detect and prevent fraud, abuse and waste in the VRS program. We take these actions to ensure the sustainability of the program upon which individuals of hearing and speech disabilities have come to rely for their daily communication needs. In doing so, we have balanced preserving the integrity of the VRS program and minimizing the information collection burden for small business concerns, including those with fewer than 25 employees. For example, in adopting procedures for the

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<sup>279</sup> See 5 U.S.C. § 801 (a)(1)(A).

<sup>280</sup> The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>281</sup> See 5 U.S.C. § 603(a). In addition, the *FNPRM* and IRFC (or summaries thereof) will be published in the *Federal Register*.

<sup>282</sup> See 44 U.S.C. § 3506(c)(4).

resolution of disputed provider payment claims when payment has been suspended, the Order allows providers, including small businesses, to submit claims for payment in a process that is uniform, predictable and equitable for all providers, thereby reducing burdens associated with disputed payments. The Commission also requires automated recordkeeping of TRS minutes submitted to the Fund. The Commission believes that providers automatically receiving records of TRS minutes and submitting them in an electronic format should entail minimal burden and will prove critical to ensuring that submitted data for compensation is accurate. The Commission also finds that requiring providers to provide reports and retain records in an electronic format that is retrievable will provide a seamless transaction for the purpose of compensation from the TRS Fund, which will alleviate burdens on providers, including small businesses. Further, the Commission believes that the whistleblower protection rule adopted in this *Order* will benefit all providers, including small businesses, because it provides their employees with guidance that will reduce uncertainty associated with employee's rights. Finally, the Commission concludes that all TRS providers, including small entities, will be eligible to receive compensation from the Interstate TRS Fund for their reasonable costs of complying with the requirements adopted in this Order. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

109. *Initial Paperwork Reduction Act of 1995 Analysis.* The *NPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>283</sup> we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### **D. Ex Parte Presentations**

110. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>284</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>285</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.<sup>286</sup>

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<sup>283</sup> See 44 U.S.C. 3506(c)(4).

<sup>284</sup> 47 C.F.R. §§ 1.1200–1.1216.

<sup>285</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>286</sup> 47 C.F.R. § 1.1206(b).

## E. Comment Filing Procedures

111. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>287</sup> interested parties may file comments and reply comments regarding the *FNPRM* 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 number, which in this instance is CG Docket No. 10-51.
- 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.

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

113. Documents in CG Docket No. 10-51 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th 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).

114. 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). This *Report and Order and Further Notice of Proposed Rulemaking* can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

## VI. ORDERING CLAUSES

115. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), (j) and (o), 225, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j) and (o), 225, and 303(r), this *Report and Order and Further Notice of Proposed Rulemaking* IS ADOPTED.

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<sup>287</sup> 47 C.F.R. §§ 1.415, 1.419.

116. IT IS FURTHER ORDERED that, pursuant to Section 1.427(a) of the Commission's rules, 47 C.F.R. § 1.427(a), this *Report and Order* and the rules adopted herein shall be effective 30 days after date of publication of a summary in the *Federal Register*, except for rule, 64.604(b)(4)(iii), which shall be effective 120 days after publication in the *Federal Register*, and except for the rules containing information collections, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters****Comments:**

258 Communications, Inc.

Association of Visual Language Interpreters of Canada (AVLIC)

AT&T, Inc. (AT&T)

Birnbaum Interpreting Services (BIS)

CallCODAVRS

Canada Association of the Deaf (CAD)

Convo Communications, Inc. (Convo)

Government of Canada

CSDVRS, LLC

GraciasVRS

Hamilton Relay, Inc. (Hamilton)

Healinc Telecom, LLC (Healinc)

PAH!VRS and Interpretel, LLC (PAH and Interpretel)

Purple Communications, Inc. (Purple)

Registry of Interpreters for the Deaf (RID)

SKYVRS

Snap!VRS (Snap)

Sorenson Communications, Inc. (Sorenson)

Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; California Coalition of Agencies Serving the Deaf and Hard of Hearing; and American Association of the Deaf-Blind (Consumer Groups)

Verizon and Verizon Wireless

Whitaker, Michelle

**Individual Comments:**

Individual commenters (approximately 175) can be found in CG Docket No. 10-51 at:  
[http://fjallfoss.fcc.gov/ecfs/comment\\_search/input?z=l4yai](http://fjallfoss.fcc.gov/ecfs/comment_search/input?z=l4yai)

**Reply Comments:**

GraciasVRS

PAH and Interpretel

Sorenson

**Ex Parte Filings:**

CSDVRS

Florida Public Service Commission (Florida PSC)

Hamilton

HKNC

National Exchange Carrier Association (NECA)

Snap

## APPENDIX B

## Initial Regulatory Flexibility Certification

## Docket No. 10-51

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 *FNPRM*, the Commission seeks further comment on a number of proposed modifications to our current eligibility requirements for Internet-based TRS providers, including VRS providers, that seek certification from the Commission to be eligible for compensation from the TRS Fund. The Commission seeks comment on these proposals to ensure that all entities seeking certification in the future – or currently certified entities seeking re-certification – are fully qualified to provide Internet-based relay service in compliance with our rules and requirements, including all of the revised obligations adopted in the accompanying Report and Order, to reduce waste, fraud and abuse, and improve oversight.

3. Specifically, the *FNPRM* seeks comment on whether the Commission should require that all Internet-based TRS providers be certified by the Commission to become eligible to receive compensation from the TRS Fund. In addition, the Commission seeks comment on whether new and renewing applicants should provide specific documentary evidence of their ability to comply with our TRS rules. The Commission seeks comment on whether the certification process should include, at the Commission’s discretion other measures, on-site visits to the premises of applicants, to assess the merits of certification applications. The Commission also proposes to revise its annual report filing guidelines to require further documentation.<sup>6</sup>

4. The Commission further proposes to require that providers seek approval from the Commission for voluntary interruption of service, and to require providers to notify the Commission of

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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> See ¶¶ 95-96, *supra*.



unforeseen service interruptions in the provision of Internet-based TRS. Finally, the Commission proposes to allow a provider that is currently eligible to receive compensation from the TRS Fund via a means other than FCC certification, to file an application for certification under the Commission's new rules. While such a provider's application is pending, the Commission proposes to permit the applicant to seek a temporary waiver of any new requirements to obtain certification from the Commission prior to offering Internet-enabled TRS, to enable the provider to continue to receive compensation from the Fund and to continue providing Internet-based TRS while such provider's application is pending.

5. With regard to the criterion of the economic impact of this *FNPRM*, the Commission notes that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA's standard, would be entitled to receive prompt reimbursement for their reasonable costs of compliance. Therefore, the Commission concludes that the *FNPRM*, if adopted, will not have a significant economic impact on any entities. In addition, even if there were an adverse economic impact, no more than five of the eleven providers impacted by the proposed rules meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.<sup>7</sup>

6. Therefore, we certify that the proposals in this *FNPRM* if adopted, would not have a significant economic impact on a substantial number of small entities.

7. The Commission will send a copy of the *FNPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>8</sup> This initial certification will also be published in the Federal Register.<sup>9</sup>

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

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<sup>7</sup> 13 C.F.R. § 121.201, NAICS code 517110. According to Census Bureau data for 2007, there were 3,188 firms in this category which operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and an additional 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.")

<sup>8</sup> 5 U.S.C. § 605(b).

<sup>9</sup> 5 U.S.C. § 605(b).

## APPENDIX C

## Final Regulatory Flexibility Certification

## Docket No. 10-51

1. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> requires that a regulatory flexibility analysis be prepared for 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 "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 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).<sup>5</sup>

2. This *Report and Order* adopts rules to minimize fraud, waste, and abuse in the TRS industry, particularly for VRS. Specifically, this *Report and Order* takes the following measures: It adopts rules requiring that VRS providers submit a statement describing the location and staffing of their call centers twice a year, and a notification at least 30 days prior to any change in the location of such centers. It prohibits VRS CAs from relaying calls from their homes. It prohibits VRS provider arrangements that involve tying compensation paid or other benefits given to CAs to minutes or calls processed by that CA, either individually or as part of a group. In addition, the Commission adopts procedures for the resolution of disputed provider payment claims when payment has been suspended.<sup>6</sup>

3. In addition to the above, in this *Report and Order*, the Commission adopts a rule prohibiting compensation for VRS calls that originate from IP addresses that indicate the individual initiating the call is located outside of the United States. Under new rules, VRS CAs will be required to terminate a VRS call if either party to the call: (1) enables a privacy screen or similar feature for more than five minutes, or (2) is unresponsive or unengaged for more than five minutes, unless the call is to 9-1-1 or one of the parties is on hold. In addition compensation for VRS calls for remote training when the provider is involved in any way with such training will be prohibited. The Report and Order also requires automated recordkeeping of TRS minutes submitted to the Fund, and amends the rules governing data collection from VRS providers to add requirements for the filing of data associated with each VRS call for which a VRS provider is seeking compensation.

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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 Small Business Act, 15 U.S.C. S § 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> Small Business Act, § 15 U.S.C. S 632.

<sup>6</sup> See ¶¶24-30, *supra*.

4. The *Report and Order* prohibits revenue sharing agreements between entities eligible for compensation from the Fund and non-eligible entities. Providers will be prohibited from engaging third party entities to provide CAs or call center functions unless the third party is also an eligible provider. Where providers contract with or otherwise authorize other entities to provide other services or functions related to the provision of VRS, the third party may not hold itself out to the public as a service provider. Any such third party contracts must be in writing and available to the Commission and Fund administrator upon request. In addition, each VRS provider will be required to offer VRS only under the name by which the provider became certified and in a manner that clearly identifies that provider of the service, or a sub-brand name that identifies that provider. All calls to any brand or sub-brand of TRS must be routed through a single URL for that brand or sub-brand.

5. The Commission adopts whistleblower protection rules for current and former employees and contractors of TRS providers. The Commission also will require that VRS providers submit to audits annually or as deemed appropriate by the Fund administrator or the Commission. Internet-based TRS providers will be required to retain all records that support their claims for payment from the Fund for five years. Finally, the Commission makes permanent the emergency rule that requires the CEO, CFO, or another senior executive of a TRS provider with first-hand knowledge of the accuracy and completeness of the information provided to certify, under penalty of perjury, to the validity of minutes and data submitted to the Fund administrator.

6. In order to be compensated, TRS providers are required to comply with all of the Commission's rules governing the provision of TRS. All reasonable costs of providing service in compliance with this *Report and Order* are compensable from the Fund. Thus, because the providers will recoup the costs of compliance within a reasonable period, the Commission asserts that the providers will not be detrimentally burdened. Therefore, the Commission certifies that the requirements of the *Report and Order* will not have a significant adverse economic impact on any entities, large or small.

7. The Commission has previously limited its RFA considerations to those entities collecting money directly from the TRS Fund. Although there may be various impacted entities that subcontract with providers eligible for direct compensation from the TRS Fund, the Commission does not have oversight of such entities. Therefore, in addressing only those entities currently eligible to receive compensation from the TRS Fund, the Commission also notes that, of the fourteen providers affected by the *Report and Order*, no more than five meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.<sup>7</sup> Currently, fourteen providers receive compensation from the Interstate TRS Fund for providing any form of TRS. Because no more than five of the providers will be affected by this *Report and Order*, if adopted, are deemed to be small entities under the SBA's small business size standard, the Commission concludes that the number of small entities potentially affected by our proposed rules is not substantial. In addition, because those providers that meet the definition of small entity will be promptly compensated within a reasonable period for complying with this *Report and Order*, the Commission concludes that the financial impact of the Commission's decisions in this *Report and Order* is not substantial.

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<sup>7</sup> 13 C.F.R. § 121.201, NAICS code 517110. According to Census Bureau data for 2007, there were 3,188 firms in this category which operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and an additional 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.")

8. Therefore, we certify that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>8</sup> In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>9</sup>

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

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<sup>8</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>9</sup> See 5 U.S.C. § 605(b).

## APPENDIX D

## Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. part 64 as follows:

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

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

**Authority:** 47 U.S.C. 154, 254 (k); secs. 403 (b)(2) (B), (c), Public Law 104-104,

110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254 (k) unless otherwise noted.

**SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES**

2. The authority citation for subpart F continues to read as follows:

**Authority:** 47 U.S.C. 151-154; 225, 255, and 303(r).

3. Amend § 64.604 of subpart F to re-number paragraph (c)(5)(iii)(F) and revise to read as follows:

**§64.604 Mandatory minimum standards.**

\*\*\*\*\*

(c)\*\*\*

(5)\*\*\*

(iii)\*\*\*

(F) *Eligibility for Payment from the TRS Fund*

(1) TRS providers, **except Internet-based TRS providers**, eligible for receiving payments from the TRS Fund must be:

(i) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to §64.606; or

(ii) TRS facilities owned or operated under contract with a common carrier providing interstate services operated pursuant to §64.604; or

(iii) Interstate common carriers offering TRS pursuant to §64.604.

*(section omitted)*

**(2) Internet-based TRS providers eligible for receiving payments from the TRS fund must be certified by the Commission pursuant to §64.606.**

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4. Revise § 64.606 of subpart F to read as follows:

**§ 64.606 TRS certification.**

\* \* \* \* \*

(a) (2) **Internet-based TRS provider.** Any entity desiring to provide **Internet-based TRS** and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned “**Internet-based TRS Certification Application.**” The documentation shall include, in narrative form:

(i) A description of the forms of Internet-based TRS to be provided (i.e., VRS, **IP Relay, and/or IP captioned telephone relay service**);

(ii) A **detailed** description of how the applicant will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, **including documentary and other evidence that the applicant owns and operates facilities associated with TRS call centers and employs interpreters, on a full or part-time basis, to staff such call centers at the date of the application.** Such evidence shall include, but not be limited to:

(A) a copy of each deed or lease for each call center operated by the applicant;

(B) a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant’s organizational structure, and the names of its executives, officers, partners, and members of its board of directors;

(C) a list of all of the names of applicant’s full-time and part-time employees on payroll;

(D) proof of purchase or license agreement for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;

(E) copies of employment agreements for all of the provider’s executives and CAs;

(F) copies of any subcontracting agreements pertaining to the provision of the Internet-based relay service other than services not directly essential for the provision of Internet-based relay (such as maintenance and transportation services);

(G) a list of all major financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;

(H) copies of all other agreements associated with the provision of Internet-based relay service; and

(I) a list of all sponsorship arrangements (e.g., those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated written agreements;

- (iii) A description of the provider's complaint procedures;
- (iv) Demonstration of **the provider's** status as a common carrier; and
- (v) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

**(a)(3) *Assessment of Internet-based TRS Provider Certification Application.* In order to assess the merits of a certification application submitted by an Internet-based TRS provider, the Commission may conduct one or more on-site visits of the applicant's premises, to which the applicant must consent.**

\* \* \* \* \*

**(b)(2) Requirements for Internet-based TRS Provider FCC certification.** After review of certification documentation, the Commission shall certify, by Public Notice, that the Internet-based TRS provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

- (i) Establishes that the provision of Internet-based TRS will meet or exceed all non-waived operational, technical, and functional minimum standards contained in §64.604;
- (ii) Establishes that the Internet-based TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in §64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

*(section omitted)*

\* \* \* \* \*

**(c)(2) Internet-based TRS Provider FCC certification period.** Certification granted under this section shall remain in effect for five years. An Internet-based TRS provider may apply for renewal of its certification by filing updated documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in paragraph (a)(2) of this section.

\* \* \* \* \*

**(e)(2) Suspension or revocation of Internet-based TRS Provider FCC certification.** The Commission may suspend or revoke the certification of an Internet-based TRS provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified Internet-based TRS provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified Internet-based TRS provider may not be in compliance with the minimum standards.

\* \* \* \* \*

**(g) Internet-based TRS providers certified under this section shall file with the Commission, on an annual basis, a report demonstrating that they are in compliance with §64.604. Such reports must include the information required in subsection (a)(2) supported by current documentation.**

5. Revise §64.606 of subpart F to add a new subsection as follows:

(h) Unauthorized service interruptions.

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- (1) Each certified Internet-based service provider must provide Internet-based TRS without unauthorized voluntary service interruptions.**
- (2) An Internet-based service provider seeking to voluntarily interrupt service must first obtain Commission authorization by submitting a written request to the Commission's Consumer and Governmental Affairs Bureau (CGB) at least 60 days prior to any planned service interruption, with detailed information of: (1) its justification for such interruption; (2) its plan to notify customers about the impending interruption; and (3) its plans for resuming service, so as to minimize the impact of such disruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption. CGB will grant or deny such a request and provide a response to the provider within 30 days of the proposed interruption, in order to afford an adequate period of notification to consumers. In evaluating such a request, CGB will consider such factors as the length of time of the proposed interruption, the reason for such interruption, the frequency with which such requests have been made by the provider in the past, the potential impact of the interruption on consumers, and the provider's plans for a smooth service restoration.**
- (3) In the event of a brief, unforeseen service interruption due to circumstances beyond a provider's control, the provider must submit a written notification to CGB within two business days of the commencement of the service interruption, with an explanation of how it has restored service or its plan to do so imminently.**
- (4) A certified provider that fails to obtain prior Commission authorization for a voluntary service interruption, or fails to provide written notification after the commencement of a service interruption in accordance with this subsection, may be subject to revocation of certification, suspension of payment from the TRS Fund, or other enforcement action by the Commission, as appropriate.**



## APPENDIX E

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. part 64 as follows:

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

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

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

**SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER****PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES**

2. The authority citation for subpart F continues to read as follows:

**Authority:** 47 U.S.C. 151-154; 225, 255, and 303(r).

3. Revise § 64.601 to add the following new paragraph (27) and to re-number the subsequent paragraphs accordingly:

(27) *Visual privacy screen.* A screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call.

4. Revise § 64.604(a) of subpart F to add paragraphs (6)(7) to read as follows:

**§ 64.604 Mandatory Minimum standards.**

\*\*\*\*\*

(a)\*\*\*

(6) *Visual privacy screens/idle calls.* A VRS CA may not enable a visual privacy screen or similar feature during a VRS call. A VRS CA must disconnect a VRS call if the caller or the called party to a VRS call enables a privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes, unless the call is a 9-1-1 emergency call or the caller or called party is legitimately placed on hold and is present and waiting for active communications to commence. Prior to disconnecting the call, the CA must announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates continued engagement with the call.

(7) *International calls.* VRS calls that originate from an international IP address will not be compensated, with the exception of calls made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States.

5. Revise § 64.604(b)(4) of subpart F to add paragraph (iii) to read as follows:

(b) \*\*\*

(4) \* \* \*

(iii) A VRS CA may not relay calls from a location primarily used as his or her home.

5. Revise § 64.604(c)(5)(iii)(C) of subpart F to read as follows:

(c) \*\*\*

(5) \*\*\*

(iii) \*\*\*

(C) *Data Collection and Audits from TRS Providers.* (1) TRS providers **seeking compensation from the TRS Fund** shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS investment in general **in** accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. ~~The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of TRS Fund payments.~~

(2) *Call data required from all TRS providers.* In addition to the data requested by section 64.604(c)(5)(iii)(C)(1), TRS providers seeking compensation from the TRS Fund shall submit the following specific data associated with each TRS call for which compensation is sought: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times noted at a minimum to the nearest second; (4) conversation start and end times noted at a minimum to the nearest second; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of the call; (6) outbound telephone number (if call terminates to a telephone) and IP address (if call terminates to an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handled the call; and (10) the URL address through which the call is handled.

(3) *Additional call data required from Internet-based Relay Providers.* In addition to the data required by section 64.604(c)(5)(iii)(C)(2), Internet-based Relay Providers seeking compensation from the Fund shall submit speed of answer compliance data.

(4) Providers submitting call record and speed of answer data in compliance with sections 64.604(c)(5)(iii)(C)(2) and (3) shall (i) employ an automated record keeping system to capture such data required pursuant to section 64.604(c)(5)(iii)(C)(2) for each TRS call for which minutes are submitted to the fund administrator for compensation; and (ii) submit such data electronically, in a standardized format. For purposes of this subparagraph, an automated record keeping system is a system that captures data in a computerized and electronic format that does not allow human intervention during the call session for either conversation or session time

(5) *Certification.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, when submitting a request for compensation from the TRS Fund must, with each such request, certify as follows:

I swear under penalty of perjury that (1) I am \_\_ (name and title), \_\_ an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate;

and (2) the TRS calls for which compensation is sought were handled in compliance with Section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

(6) *Audits.* The fund administrator and the Commission, including the Office of Inspector General, shall have the authority to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments. TRS providers must submit to audits annually or at times determined appropriate by the Commission, the fund administrator, or by an entity approved by the Commission for such purpose. A TRS provider that fails to submit to a requested audit, or fails to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of payment until it submits to the requested audit or provides sufficient documentation.

(7) *Call data record retention.* Internet-based TRS providers shall retain the data required to be submitted by this section, and all other call detail records, other records that support their claims for payment from the TRS Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form, in an electronic format that is easily retrievable, for a minimum of five years.

6. Revise § 64.604(c)(5)(iii) of subpart F to add paragraphs L, M, and N, to read as follows:

(L) *Procedures for the suspension/withholding of payment.*

(1) The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.

(2) If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, a TRS provider will be notified within two months from the date for the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. TRS providers then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If a TRS provider does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.

(3) If, the VRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes of use in dispute, within eight months after submission of such additional justification.

(4) If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use. Any payment by the Commission will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.

(5) If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the provider of this decision within one year of the initial request for payment.

(M) *Whistleblower protections.* Providers shall not take any reprisal in the form of a personnel action against any current or former employee or contractor who discloses to a designated manager of the provider, the Commission, the TRS Fund administrator or to any federal or state law enforcement entity, any information that the reporting person reasonably believes evidences known or suspected violations of the Communications Act or TRS regulations, or any other activity that the reporting person reasonably believes constitutes waste, fraud, or abuse, or that otherwise could result in the improper billing of minutes of use to the TRS Fund and discloses that information to a designated manager of the provider, the Commission, the TRS Fund administrator or to any federal or state law enforcement entity. Providers shall provide an accurate and complete description of these TRS whistleblower protections, including the right to notify the FCC's Office of Inspector General or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to its employees in writing (e.g. in employee handbooks, policies and procedures manuals, or bulletin board postings – either online or in hard copy) must include an accurate and complete description of these TRS whistleblower protections in those written materials.

(N) In addition to the provisions set forth above, VRS providers shall be subject to the following provisions:

(1) *Eligibility for reimbursement from the TRS Fund.*

(i) Only an eligible VRS provider, as defined in subsection (c)(5)(iii)(F), may hold itself out to the general public as providing VRS.

(ii) VRS service must be offered under the name by which the eligible VRS provider offering such service became certified and in a manner that clearly identifies that provider of the service. Where a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider. Providers must route all VRS calls through a single URL address used for each name or sub-brand used.

(iii) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible provider.

(iv) To the extent that an eligible VRS provider contracts with or otherwise authorizes a third party to provide any other services or functions related to the provision of VRS other than interpretation services or call center functions, that third party must not hold itself out as a provider of VRS, and must clearly identify the eligible VRS provider to the public. To the extent an eligible VRS provider contracts with or authorizes a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, those VRS minutes are not compensable on a per minute basis from the TRS fund.

(v) All third-party contracts or agreements entered into by an eligible provider must be in writing. Copies of such agreements shall be made available to the Commission and to the TRS Fund administrator upon request.

(2) *Call center reports.* VRS providers shall file a written report with the Commission and the TRS Fund administrator, on April 1 and October 1 of each year for each call center that handles VRS calls that the provider owns or controls, including centers located outside of the United States, that includes: (a) the complete street address of the center; (b) the number of individual CAs and CA managers; and (c) the name and contact information (phone number and email address) of the manager(s) at the center. VRS providers shall also file written notification with the Commission and the TRS Fund administrator of any change in a center's location, including the opening, closing, or relocation of any center, at least 30 days prior to any such change.

(3) *Compensation of CAs.* VRS providers may not compensate, give a preferential work schedule or otherwise benefit a CA in any manner that is based upon the number of VRS minutes or calls that the CA relays, either individually or as part of a group.

(4) *Remote training session calls.* VRS calls to a remote training session or a comparable activity will not be compensable from the TRS Fund when the provider submitting minutes for such a call has been involved, in any manner, with such a training session. Such prohibited involvement includes training programs or comparable activities in which the provider or any affiliate or related party thereto, including but not limited to its subcontractors, partners, employees or sponsoring organizations or entities, has any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities.

7. Revise § 64.606(g) of subpart F to read as follows:

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604. VRS providers shall include within these annual submissions a description of all agreements in connection with marketing and outreach activities, including those involving sponsorship, financial endorsements, awards, and gifts made by the provider to any individual or entity.

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