

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
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

**REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING**

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By the Commission: Acting Chairwoman issuing a statement.

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**I. INTRODUCTION**

1. This Report and Order and Further Notice of Proposed Rulemaking is an important step in the Commission’s continuing effort to reform the video relay service (VRS) program,<sup>1</sup> which for many years has been beset by waste, fraud, and abuse,<sup>2</sup> and by compensation rates that have become inflated well above actual cost.<sup>3</sup> In this Report and Order (Order), we adopt further measures to improve the structure, efficiency, and quality of the VRS program, reducing the noted inefficiencies in the program, as well as reducing the risk of waste, fraud, and abuse, and ensuring that the program makes full use of advances in commercially-available technology. In the Further Notice of Proposed Rulemaking (FNPRM), we solicit further comment on options and proposals to ensure that VRS continues to offer functional equivalence to all eligible users and is as immune as possible from any additional waste, fraud, and abuse. The steps we take today and the further steps proposed herein are designed to ensure that this vital program fulfills the goals set in section 225 of the Communications Act (“the Act”)<sup>4</sup> for the benefit of all consumers, and is an effective, efficient, and sustainable program for the future.

**A. Video Relay Service**

2. Under Title IV of the ADA, the Commission must ensure that telecommunications relay services (TRS) “are available, to the extent possible and in the most efficient manner” to persons in the United States with hearing or speech disabilities.<sup>5</sup> Section 225 defines TRS as a service enabling

<sup>1</sup> See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 (2010) (*2010 VRS NOI*); *Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51, 03-123, 26 FCC Rcd 17367 (2011) (*2011 VRS Reform FNPRM*).

<sup>2</sup> See *id.* at 17372-73, ¶ 6.

<sup>3</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8694, ¶ 9 (2010) (*2010 TRS Rate Order*), *aff’d Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035 (10th Cir. 2011) (*Sorenson II*) (finding that in each of the years 2006, 2007, 2008, and 2009, VRS compensation rates were more than \$2.00 per minute higher than actual costs).

<sup>4</sup> 47 U.S.C. § 225.

<sup>5</sup> *Id.* § 225(b)(1); see also H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129 (1990) (*House Report*) (the “goal of universal service has governed the development of the nation’s telephone system for over fifty years” and “the inability of over 26 million Americans to access fully the Nation’s telephone system poses a serious threat to the full attainment of [this goal]”).

communication in a manner that is “functionally equivalent” to voice telephone services<sup>6</sup> and directs the Commission to prescribe regulations that establish functional requirements, minimum standards, and other requirements to carry out the statutory mandate.<sup>7</sup> In addition, the Commission’s regulations must encourage the use of existing technology and must not discourage the development of new technology.<sup>8</sup> Finally, the Commission must ensure that TRS users “pay rates no greater than the rates paid for functionally equivalent voice communication services.”<sup>9</sup> To this end, the costs of providing TRS on a call are supported by shared funding mechanisms at the state and federal levels. The federal fund supporting TRS is the Interstate Telecommunications Relay Services Fund (TRS Fund or Fund).<sup>10</sup>

3. In March 2000, the Commission recognized VRS as a reimbursable relay service.<sup>11</sup> VRS allows persons with hearing or speech disabilities to use American Sign Language (ASL) to communicate in near real time through a communications assistant (CA), via video over a broadband Internet connection.<sup>12</sup>

4. As discussed in the *2010 VRS NOI*, VRS communications require the interaction of three separate yet interlinked components: VRS access technologies (*e.g.*, a videophone like Sorenson’s VP-200), video communication service (the “platform” that providers use to route calls to and from their users), and relay service provided by ASL-fluent CAs.<sup>13</sup> To initiate a VRS call, a consumer uses a VRS access technology to connect to an ASL-fluent CA over the Internet via a broadband video communication service.<sup>14</sup> The CA, in turn, places an outbound telephone call to the called party.<sup>15</sup> During the call, the CA relays the communications between the two parties, signing what the hearing person says to the ASL user and conveying the ASL user’s responses in voice to the hearing person. In this manner, a conversation between an ASL user and a hearing person can flow in near real-time. The

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<sup>6</sup> 47 U.S.C. § 225(a)(3) (defining TRS 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”).

<sup>7</sup> *Id.* § 225(d)(1).

<sup>8</sup> *Id.* § 225(d)(2).

<sup>9</sup> *Id.* § 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”).

<sup>10</sup> 47 C.F.R. § 64.604(c)(5)(iii).

<sup>11</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-54, ¶¶ 21-27 (2000) (*2000 TRS Order*).

<sup>12</sup> See 47 C.F.R. § 64.601(a)(27)(2012). In this Order, references to people with “hearing or speech disabilities” includes people who are hard of hearing, deaf, or deaf-blind, as well as people with speech disabilities. See 47 U.S.C. § 225(a)(3).

<sup>13</sup> *2010 VRS NOI*, 25 FCC Rcd at 5608, ¶ 32.

<sup>14</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 03-123, WC Docket No. 05-196, 23 FCC Rcd 11591, 11593, ¶ 2 (2008) (*First Internet-Based TRS Numbering Order*).

<sup>15</sup> Alternatively, a VRS call can be initiated by a hearing person connecting to the CA, and the CA, in turn, placing the call to a deaf or hard-of-hearing ASL user.

Commission remains committed to fulfilling the intent of Congress to ensure the provision of VRS that is functionally equivalent to conventional voice telephone services.

## B. VRS Reform

5. The Commission has taken a number of steps in recent years to improve the efficiency and effectiveness of the VRS program, including addressing some of the issues that had the potential to harm the viability of the program, in order to maintain and enhance this valuable service to individuals who are deaf and hard of hearing.<sup>16</sup> On December 15, 2011, the Commission released the *2011 VRS Reform FNPRM*, seeking comment on wide-ranging proposals to improve the structure and efficiency of the VRS program, to ensure that the program is as immune as possible from the waste, fraud, and abuse that threaten its long-term viability, and to revisit the rate methodology used for compensating VRS providers. As the Commission noted then, the FCC's implementation of section 225 of the Act has relied heavily on competition in order to allow VRS users to choose among providers who compete on factors such as quality of service, customer service, and technological development.<sup>17</sup> There are several shortcomings, however, to this approach. First, multiple providers offer substantially similar services with no opportunity for price competition, as end users receive the service at no cost.<sup>18</sup> The result is that the rates paid for VRS will be efficient solely insofar as the Commission can itself determine and mandate appropriate rates, which has been a matter of particular controversy.<sup>19</sup> Further, the record clearly

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<sup>16</sup> See, e.g., *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, 25 FCC Rcd 1868 (CGB 2010) (*Compensable VRS Calls Declaratory Ruling*) (reiterating the scope of compensable VRS calls and curbing certain abusive practices); see also *Hands On Video Relay Services, Inc., Go America, Inc., and Purple Communications, Inc.*, Order and Consent Decree, 25 FCC Rcd 13090 (2010) (approving settlement for in excess of \$22 million of alleged rule violations involving abuse of the TRS Fund); *2010 TRS Rate Order*, 25 FCC Rcd 8689 (changing the basis for per-minute compensation from provider projected costs to an average of the Fund administrator's proposed per-minute rates, calculated as a measure of actual, historical provider costs, and existing rates based on providers' projected costs); *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (*VRS Call Practices R&O*) (adopting rules to detect and prevent fraud and abuse in the provision of VRS); *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, CG Docket No. 10-51, 26 FCC Rcd 10898 (2011) (*2011 iTRS Certification Order*) (revising the provider certification process to ensure that providers of Internet-based TRS (iTRS), including VRS, receiving certification are qualified to provide services in compliance with the Commission's rules); *Structure and Practices of the Video Relay Service Program; Healinc Telecom, LLC, Request for Reimbursement of July 2011 and August 2011 Video Relay Service Minutes*, Order, CG Docket No. 10-51, 27 FCC Rcd 9314 (2012) (denying payment to Healinc, a VRS provider, of amounts withheld by the TRS Fund administrator for non-compliance with the TRS rules).

<sup>17</sup> See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17378, ¶ 14; 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 Order on Reconsideration, 20 FCC Rcd 20577, 20588, ¶ 21, 20590, ¶ 26 (2005) (*2005 TRS Certification Order*); *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*, CC Docket Nos. 90-571, 98-67, 03-123, 19 FCC Rcd 12475, 12523, ¶ 121 (2004) (*2004 TRS Order*). We note that all VRS providers must comply with the mandatory minimum standards, including those related to quality of service, set forth in the TRS rules.

<sup>18</sup> *2010 VRS Reform NOI*, 25 FCC Rcd at 8612, ¶ 48.

<sup>19</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20145, ¶ 6 (2007) (*2007 TRS Rate Methodology Order*); see also *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17373-74, ¶¶ 7-9 (discussing the history of compensation rates for VRS). Indeed, the Commission long has noted the significant difficulty of determining a "reasonable" per-minute compensation rate for VRS due to issues concerning CA staffing, labor costs, and engineering costs particular to VRS. See *Telecommunications Services for Individuals with* (continued...)

indicates that the FCC's existing rate-setting process inefficiently supports providers that have failed to achieve economies of scale.<sup>20</sup> In addition, rates are based on cost information supplied by providers, and the FCC historically has not had a meaningful opportunity to measure providers' self-interested claims against facts or cost information from neutral or independent sources.<sup>21</sup>

6. Second, providers' self-interest in maximizing their compensation from the Fund may make them less effective at carrying out the Commission's TRS policies. The vulnerability of the program to waste, fraud, and abuse by providers (as well as Commission attempts to reduce that vulnerability) has been well established.<sup>22</sup> For example, the Commission and various stakeholders repeatedly have raised concerns about the effectiveness of outreach efforts on the national level, and the extent to which providers have characterized as "outreach" actions that would better be described as "branded marketing," both for TRS in general and for VRS in particular.<sup>23</sup> Also, despite encouragement for VRS providers "to work together to develop systems and standards that will facilitate compliance with our rules," the VRS industry has not fully achieved the standardization needed for full interoperability and portability; a result that is perhaps not surprising given that effective interoperability and portability rules increase the risk that a provider will lose the revenue generated by an existing user.<sup>24</sup>

7. The *2011 VRS Reform FNPRM* and the subsequent *VRS Structure and Rates PN*<sup>25</sup> sought comment on a range of possible solutions to these problems. At one end of the spectrum of policy solutions, the Commission sought comment on whether to fundamentally depart from the historical approach and shift to bidding contracts for one or a few VRS providers to provide service subject to more direct Commission supervision.<sup>26</sup> At the other end of the spectrum, the Commission sought comment on leaving the existing structure fundamentally intact and attempting incremental improvements as it has done in prior reforms.<sup>27</sup>

8. We believe there is merit in exploring an approach that is less dependent on the actions of providers operating in an environment where their self-interested decisions may not align—at least fully—with Commission policies. At the same time, the existing structure has been in place for many years, and it is not clear that the disruption that would be caused by a wholesale abandonment of that structure is appropriate at this time. Consequently, as an important first step in our reforms, we have

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*Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948, 22956-57, ¶ 23 (2001) (*2001 TRS Cost Recovery MO&O*); *2004 TRS Report and Order*, 19 FCC Rcd at 12490, ¶ 23, 12565-67, ¶¶ 234-240.

<sup>20</sup> See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17382-83, ¶¶ 24-25.

<sup>21</sup> See, e.g., *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, CG Docket No. 10-51, 25 FCC Rcd 6012, 6018-21, ¶¶ 11-16 (2010) (*VRS Call Practices NPRM*); *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17422-23, ¶¶ 154-155.

<sup>22</sup> See *id.* at 17372-73, ¶¶ 6-8.

<sup>23</sup> See *infra* section II.B.2.a, which details concerns raised by consumers and the Commission about the failures of provider-initiated outreach for more than a decade.

<sup>24</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17441-44, Appendix B ¶¶ 11-18.

<sup>25</sup> *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, CG Docket Nos. 03-123, 10-51, 27 FCC Rcd 12959 (2012) (*VRS Structure and Rates PN*).

<sup>26</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17380, ¶ 18; *VRS Structure and Rates PN*, 27 FCC Rcd at 12961-64.

<sup>27</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17417-19, ¶¶ 138-142.

identified certain discrete areas in which we can explore a new approach of relying on the efforts of one or more non-provider third parties, either in whole or in part, to carry out the Commission's VRS policies. Specifically, we:

- Direct the Managing Director, in consultation with the Chief Technology Officer (CTO), the Chief of the Office of Engineering and Technology (OET), and the Chief of the Consumer and Governmental Affairs Bureau (CGB), to determine how best to structure, fund, and enter into an arrangement with the National Science Foundation (NSF) (or cause the TRS Fund administrator to enter into such an arrangement) to enable research designed to further the Commission's multiple goals of ensuring that TRS is functionally equivalent to voice telephone services and improving the efficiency and availability of TRS;
- Direct the Managing Director, in consultation with the Chief of CGB, to establish a two-to-three year pilot iTRS National Outreach Program (iTRS-NOP) and to select one or more independent iTRS Outreach Coordinators to conduct and coordinate IP Relay and VRS outreach nationwide under the Commission's (or the TRS Fund administrator's) supervision;
- Promote the development and adoption of voluntary, consensus interoperability and portability standards, and facilitate compliance with those standards by directing the Managing Director to contract for the development and deployment of a VRS access technology reference platform;
- Direct the Managing Director to contract for a central TRS user registration database (TRS-URD) which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, to achieve more effective fraud and abuse prevention, and to allow the Commission to know, for the first time, the number of individuals that actually use VRS; and
- Direct the Managing Director to contract for a neutral party to build, operate, and maintain a neutral video communication service platform, which will allow eligible relay interpretation service providers to compete without having to build their own video communication service platforms.

9. Because we are not yet fully departing from the historical regulatory approach for VRS, we accompany these actions with more targeted, incremental measures to improve the efficiency of the program, help protect against waste, fraud, and abuse, improve our administration of the program, and generally ensure that VRS users' experiences reflect the policies and goals of section 225. Specifically, we:

- Clarify responsibility for disability access policy and TRS program administration within the Commission;
- Adopt a general prohibition on practices resulting in waste, fraud, and abuse;
- Require providers to adopt regulatory compliance plans subject to Commission review;
- More closely harmonize the VRS speed of answer rules with those applicable to other forms of TRS by reducing the permissible wait time for a VRS call to be answered to 30 seconds, 85 percent of the time, and by requiring measurement of compliance on a daily basis;
- Adopt rules to protect relay consumers against unauthorized default provider changes, also known as "slamming," by VRS and Internet Protocol Relay Service (IP Relay) providers;<sup>28</sup>

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<sup>28</sup> See 47 C.F.R. § 64.601(a)(13)(2012) (defining IP Relay).

- Adopt rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers;
- Adopt permanently the interim rules adopted in the *2011 iTRS Certification Order*<sup>29</sup> requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under section 64.606 of the Commission's rules are truthful, accurate, and complete.<sup>30</sup>

10. In addition to seeking comment on the need for incremental or structural reforms to the VRS program, the *2011 VRS Reform FNPRM* sought comment on how and whether to modify the current compensation methodology for VRS and the rates paid within that structure.<sup>31</sup> The Commission subsequently sought comment in the *VRS Structure and Rates PN* on a proposal submitted by the TRS Fund administrator to establish modified VRS compensation rates for the remainder of the 2012-13 Fund year and for subsequent years and other ratemaking issues.<sup>32</sup> Consistent with the Commission's incremental approach to reform of the structure of this program, we initiate in this Order a step-by-step transition from existing, tiered TRS Fund compensation rates for VRS providers toward a unitary, market-based compensation rate.

11. Although we seek comment in the accompanying FNPRM on the final end point for those rates, we know enough about the flaws in the existing rates to begin reforming them today. We note that our inquiry will be informed by the valuable independent evidence of the underlying costs of VRS service that will be provided by the structural reforms we adopt today. We also seek comment in the FNPRM on whether, or to what extent, it is appropriate to more fundamentally depart from the historical approach to the Commission's implementation of section 225. The two discrete sets of reforms we adopt today will facilitate this process by allowing the Commission to evaluate the areas where it is departing from the historical approach of relying primarily on projected cost data from self-interested providers, while at the same assessing the success of our more incremental efforts.

### C. Legal Authority

12. Section 225 sets forth several overarching principles governing the provision and regulation of TRS. First, section 225 defines TRS as a service that allows persons with hearing or speech disabilities to communicate in a manner that is "functionally equivalent" to voice telephone service.<sup>33</sup> Second, section 225 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>34</sup> Third, the statute requires that the Commission's regulations encourage the use of existing technology and not

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<sup>29</sup> *2011 iTRS Certification Order*, 26 FCC Rcd at 10923-25, ¶¶ 62-67.

<sup>30</sup> 47 C.F.R. §§ 64.606(a)(2)(v), (g).

<sup>31</sup> See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17394-98, ¶¶ 53-63, 17417-19, ¶¶ 138-142. Under the current approach, the Fund compensates VRS providers on a per-minute basis, employing a three-tier rate structure that allows smaller providers to receive a higher average per-minute rate than larger providers. See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20164-70, ¶¶ 47-56, 20173-75, ¶¶ 67-72; *2010 TRS Rate Order*, 25 FCC Rcd at 8697-98, ¶¶ 16-17. Tier I rates apply to a provider's first 50,000 monthly VRS minutes; Tier II rates apply to a provider's monthly call volumes between 50,001 and 500,000 minutes; and Tier III rates apply to a provider's monthly call volumes above 500,000 minutes. *Id.* at 8697, ¶ 16.

<sup>32</sup> *VRS Structure and Rates PN*, 27 FCC Rcd at 12964-68.

<sup>33</sup> 47 U.S.C. § 225(a)(3).

<sup>34</sup> *Id.* § 225(b)(1); see also House Report at 129.



discourage the development of new technology.<sup>35</sup> Section 225 further requires that the Commission prescribe regulations that, among other things, “establish functional requirements, guidelines, and operations procedures for telecommunications relay services”<sup>36</sup> and “establish minimum standards that shall be met in carrying out [the provision of TRS].”<sup>37</sup> Each of the actions we take today is grounded in one or more of our obligations under section 225.

13. *Functional Equivalence.* Our obligation to ensure the functional equivalence of TRS is a continuing one. As the Commission previously stated:

TRS is required by statute to provide telecommunication services which are functionally equivalent to voice services to the extent possible. Functional equivalence is, by nature, a continuing goal that requires periodic reassessment. The ever-increasing availability of new services and the development of new technologies continually challenge us to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service.<sup>38</sup>

14. As discussed in greater detail below, our decision to promote research and development in VRS and other forms of TRS in cooperation with the NSF will allow the Commission to better assess whether VRS and other forms of TRS are functionally equivalent to voice telephone services and to take measures to enhance these services as needed. Our actions to improve the effectiveness of the TRS outreach program will help to ensure that all Americans are familiar with the TRS program, and thus increase the likelihood that TRS calls are completed regularly. The establishment of well-defined interoperability and portability standards and the deployment of the VRS access technology reference platform will ensure that VRS users actually experience the functional equivalency upon which the Commission’s interoperability rules were predicated.<sup>39</sup> Harmonizing the VRS speed of answer rules with

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<sup>35</sup> 47 U.S.C. § 225(d)(2).

<sup>36</sup> *Id.* § 225(d)(1)(A).

<sup>37</sup> *Id.* § 225(d)(1)(B).

<sup>38</sup> *2000 TRS Order*, 15 FCC Rcd at 5144, ¶ 4; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67 and CG Docket No. 03-123, 18 FCC Rcd 12379, 12426, ¶103 (2003) (*Second Improved TRS Order & NPRM*) (“More broadly, we recognize that the functional equivalency standard itself contemplates the periodic reassessment of our TRS regulations.”). We note that the Commission’s obligation to conduct a periodic reassessment does not govern the obligations or services of providers or the costs for which they may claim compensation from the Fund. The Commission has stated, and the 10th Circuit has agreed, that “[f]or a particular provider, the requirement of functional equivalency is met when the service complies with the mandatory minimum standards applicable to the specific service.” *Sorenson II*, 659 F.3d at 1042, *citing 2004 TRS Order*, 19 FCC Rcd at 12548, ¶ 189. The Commission explained its logic in the *2004 TRS Order*: “For a particular provider, the requirement of functional equivalency is met when the service complies with the mandatory minimum standards applicable to the specific service. In this way, the Interstate TRS Fund does not become an unbounded source of funding for enhancements that go beyond these standards, but which a particular provider nevertheless wishes to adopt.” *Id.*

<sup>39</sup> *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5456, ¶ 34 (2006) (*VRS Interoperability Declaratory Ruling*) (“[C]onsistent with functional equivalency, all VRS consumers must be able to place a VRS call through any of the VRS providers’ service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. Therefore, a provider may not block calls so that VRS equipment cannot be used with other providers’ service. In addition, a provider may not take other steps

(continued...)

those applicable to other forms of TRS and adopting anti-slamming and CPNI rules all will make the VRS user's experience more functionally equivalent to voice telephone service.

15. *"Availability" and "Efficiency."* Our actions today also will help to ensure that TRS is "available, to the extent possible and in the most efficient manner."<sup>40</sup> Research will be conducted more efficiently under an arrangement with the NSF than it would be if conducted by individual providers with disparate incentives. Our changes to the outreach program will improve the efficiency of our outreach efforts while simultaneously improving the availability of TRS through education of TRS users and the hearing population alike. The establishment of well-defined interoperability and portability standards and the deployment of the VRS access technology reference platform are consistent with our obligation to establish minimum standards for provider performance, and will promote efficiency in VRS provider operations. Establishment of a neutral video communication service provider will promote the availability of VRS by allowing the entrance of new, eligible, "standalone" VRS CA service providers, and will promote efficiency through a reduction in duplicative expenditures on video communication service platforms and through provider compliance with our interoperability mandates. The TRS-URD and the eligibility certification and identity verification requirements we adopt today will help to reduce the potential for waste, fraud, and abuse, improving the efficiency of the program and the availability of TRS.<sup>41</sup>

16. *Fund Expenditures.* Our authority to establish compensation rates for TRS providers is well established. Congress determined that the Commission should ensure that compensation is provided for the costs caused by interstate TRS.<sup>42</sup> As a result, for interstate TRS calls,<sup>43</sup> the Commission adopted a cost recovery framework that entails collecting contributions from providers of interstate telecommunications services to create a fund from which eligible TRS providers are compensated for the costs of eligible TRS services.<sup>44</sup> Contributions to the fund are based on the carrier's interstate end-user revenues. All contributions are placed in the TRS Fund, which is administered by the TRS Fund administrator.<sup>45</sup>

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that restrict a consumer's unfettered access to other providers' service. This includes the practice of providing degraded service quality to consumers using VRS equipment or service with another provider's service.").

<sup>40</sup> 47 U.S.C. § 225(b)(1); *see also House Report* at 129.

<sup>41</sup> As the Commission has previously found, fraudulent diversion of funds robs the TRS Fund for illicit gain and "abuses 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." *VRS Call Practices R&O*, 26 FCC at 5551. Moreover, such practices unlawfully shift improper costs to consumers of other telecommunications services, including local and long distance voice subscribers, interconnected VoIP, and others.

<sup>42</sup> 47 U.S.C. § 225(d)(3)(B).

<sup>43</sup> Section 225 distinguishes between intrastate and interstate TRS services, and provides that states are responsible for the reimbursement of the costs of intrastate TRS and the Interstate TRS Fund is responsible for the reimbursement of the costs of interstate TRS. *Id.* § 225(d)(3)(B). Presently, however, all VRS calls are compensated from the Fund because it is not possible to determine when a particular call is intrastate or interstate. *See 2004 TRS Order*, 19 FCC Rcd at 12565-67, ¶¶ 234-242.

<sup>44</sup> *See* 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5). The regulations, addressing these matters separately, characterize contributions to the Fund as "cost recovery" (*id.* §§ 64.604(c)(5)(ii), (iii)(A)–(D)) and payments from the Fund as "payments to TRS providers" (*id.* §§ 64.604(c)(5)(iii)(E), (F)).

<sup>45</sup> *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, 8 FCC Rcd 1802 (1993) (*TRS II*); *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, 8 FCC Rcd 5300 (1993) (*TRS* (continued...))

17. The Commission often must balance the interests of contributors to the Fund, who are ratepayers, with the interests of *users* of TRS. Our obligation to ensure that the goals of the statute are met “in the most efficient manner”<sup>46</sup> necessitates adopting reasonable compensation rates that do not overcompensate entities that provide TRS. As noted earlier, the Commission has had four years of data demonstrating that VRS providers were significantly overcompensated, evidenced by a comparison of the best available data concerning their actual costs per minute to the per minute compensation they have been receiving based on their projected costs per minute. Because the rates we adopt herein are demonstrably sufficient to cover the costs caused by VRS as reflected in the VRS providers’ reported average actual and projected costs, we conclude that these are consistent with the requirements in section 225, and are consistent with the Commission’s commitment to further the goals of functional equivalency through strengthening and sustaining VRS.

18. Our authority for the other expenditures from the TRS Fund described in this Order is likewise grounded in section 225(d)(3)(B) of the Act.<sup>47</sup> As discussed above, each of the actions we take in this Order will fulfill our statutory mandate by making VRS, and the TRS program more generally, more available, efficient, and technologically advanced, and therefore the costs associated with these actions are “caused by interstate telecommunications relay services.”<sup>48</sup> This conclusion is consistent with Commission decisions to disallow recovery of certain costs incurred by providers or end users from the Fund.<sup>49</sup> By directly authorizing these Fund expenditures, we can ensure that Fund resources are directed towards fulfilling our statutory responsibilities while at the same time continuing to ensure that the Fund does not “become an unbounded source of funding for enhancements that go beyond these standards.”<sup>50</sup>

## II. STRUCTURAL REFORMS

19. The wide-ranging proposals set forth in the *2011 VRS Reform FNPRM* and the *VRS Structure and Rates PN* elicited an equally wide range of responses from providers, consumers, and other stakeholders interested in helping the Commission fulfill its goal of improving the VRS program and, more generally, TRS programs.<sup>51</sup> The reforms set forth in this section implement a new approach of

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III). The amount of each carrier’s contribution is the product of the carrier’s interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission. 47 C.F.R. § 64.604(c)(5)(iii).

<sup>46</sup> 47 U.S.C. § 225(b)(1)

<sup>47</sup> *Id.* § 225(d)(3)(B).

<sup>48</sup> *Id.*

<sup>49</sup> *See, e.g., 2004 TRS Order*, 19 FCC Rcd at 12547-48, ¶¶ 188-190 (stating that “costs directed at providing advanced VRS features that fall outside the functional equivalency mandate of section 225 are not compensable from the Interstate TRS Fund as a ‘reasonable’ cost”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, ¶ 17 (2006 *MO&O*) (“[C]ompensable expenses must be *the providers’* expenses in making the service available and not the customer’s costs of receiving the service. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or any necessary software.”) (emphasis in original, footnote omitted).

<sup>50</sup> *See 2004 TRS Order*, 19 FCC Rcd at 12548, ¶ 190. Various portions of this Order address systems and service requirements related to the Order’s reforms. All contract actions necessitated by the requirements of this Order shall be conducted in accordance with Federal procurement requirements, including the provisions of the Federal Acquisition Regulation (FAR).

<sup>51</sup> In this document, comments filed in response to the *2011 VRS Reform FNPRM* are cited as “FNPRM Comments” or “FNPRM Reply Comments,” and comments filed in response to the *VRS Structure and Rates PN* are cited as “PN Comments” or “PN Reply Comments.”

relying primarily on the efforts of one or more non-provider third parties to carry out the Commission's policies. These reforms are designed to improve our administration of VRS and the TRS program as a whole, to ensure compliance with our interoperability and portability requirements, and to further minimize the potential for waste, fraud, and abuse.

#### A. Research and Development

20. In the past, the Commission has disallowed expenses associated with research and development (R&D) except to the extent that such expenses are necessary to meet our mandatory minimum standards.<sup>52</sup> Recognizing that there may be a broader role for the TRS Fund to play in supporting R&D, the Commission sought comment in the *2010 VRS NOI* on how and whether to revise its rules regarding compensation for R&D, including how to ensure that the results of any research and development supported by the Fund are fairly shared so that all providers and ultimately all users are able to enjoy the results.<sup>53</sup> In addition, the Commission asked in the *2011 VRS Reform FNPRM* what other steps the Commission could take to promote research and development in VRS and other forms of TRS.<sup>54</sup>

21. Commenters generally argue that that the Commission should provide additional compensation to providers for research and development, insisting that additional funding is required to ensure “innovations and improvements in technology for people with disabilities.”<sup>55</sup> We agree that additional research and development on VRS and other TRS issues will help to further our statutory mandate to ensure the availability and encourage technological advancement of these services.<sup>56</sup> We do not, however, believe that providing such support through a per-minute compensation rate by allowing providers to claim individual R&D costs as a cost of providing TRS—which potentially could allow such funding to be unlimited and only end up benefitting that individual provider—is the most effective or efficient means of supporting such R&D.<sup>57</sup> Such a mechanism would allow spending in a duplicative way, because multiple providers would be able to expend R&D funds on similar or identical enhancements and would not share the results with existing or potential competitors.<sup>58</sup>

<sup>52</sup> See, e.g., *2004 TRS Order*, 19 FCC Rcd at 12547-48, ¶ 189.

<sup>53</sup> *2010 VRS NOI*, 25 FCC Rcd at 8603-04, ¶ 20.

<sup>54</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17389, ¶ 40.

<sup>55</sup> Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), National Association of the Deaf (“NAD”), Association of Late-Deafened Adults, Inc. (“ALDA”), *et al.*, Consumer Groups’ TRS Policy Statement at 8 (Goal 3.1) (filed April 12, 2011) (Consumer Groups’ TRS Policy Statement). This policy statement was submitted on behalf of a coalition of consumer organizations, the composition of which overlaps with but is not identical to the composition of the coalition that filed joint comments in response to the *2011 VRS Reform FNPRM*. See also TDI and NAD, *Ex Parte* Letter (filed Oct. 17, 2012); Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA) PN Comments at 4 (identifying open research areas); *but see* CSDVRS LLC (CSDVRS), *Ex Parte* Letter at 1 (filed Apr. 11, 2013) (CSDVRS Apr. 11, 2013 *Ex Parte*) (asserting that “the open market has succeeded in developing a robust range of innovative products which work well in VRS”).

<sup>56</sup> 47 U.S.C. §§ 225(b)(1), (d)(2).

<sup>57</sup> *2004 TRS Order*, 19 FCC Rcd at 12547-48, ¶¶ 189-190.

<sup>58</sup> *Id.* at 12548, ¶ 190 (“We believe that this conclusion best reconciles the Commission’s interest in avoiding placing undue burdens on the Interstate TRS Fund with the statutory mandate that the Commission’s regulations ‘do not discourage or impair the development of improved technology.’”). We disagree that efficiently conducted research and development of the sort contemplated here, on issues beyond the scope of what an individual VRS provider finds necessary to meet our mandatory minimum standards, is “wasteful.” See CSDVRS Apr. 11, 2013 *Ex Parte* at 1.

22. In order to ensure that R&D on TRS not directly related to provider compliance with our mandatory minimum standards is conducted in an efficient manner, and that the results of that research benefit the public, we direct the Managing Director, in consultation with the CTO, the Chief of OET, and the Chief of CGB, to determine how best to structure and fund research designed to further the Commission's multiple goals of ensuring that TRS is functionally equivalent to voice telephone services and improving the efficiency and availability of TRS. We direct the Managing Director to enter into an arrangement (or contract with the TRS Fund administrator to enter into an arrangement, if appropriate) with the National Science Foundation (NSF) to conduct the research. After the arrangement is in place, the CTO (or, in the absence of a CTO, the Chief of OET, or the OET Chief's designee), shall serve as the Commission's primary point of contact with the NSF. In the accompanying FNPRM, we seek comment on the appropriate budget and funding mechanism for research conducted pursuant to the arrangement.<sup>59</sup> We further propose to restructure and redefine the TRS Advisory Council and seek comment on what role the new advisory body should have with respect to providing input on the types of research it believes should be funded under the arrangement.<sup>60</sup>

## **B. Outreach**

23. For the reasons discussed below, we conclude that relying on iTRS providers to conduct program outreach has not been effective and that an independent national outreach program is necessary to educate the general public about IP Relay and VRS. We therefore revise our rules to initiate a pilot national program to conduct TRS outreach, and as a result we will no longer allow IP Relay and VRS providers to include the cost of outreach in their yearly cost submissions.

### **1. TRS Broadband Pilot Program**

24. In the *2011 VRS Reform FNPRM* the Commission sought comment on two methods by which the availability of VRS could be expanded. First, the Commission sought comment on a proposal to implement a TRS Broadband Pilot Program (TRSBPP) that would offer discounted broadband to potential VRS users who could not otherwise afford the costs of Internet access service “[t]o the extent that the record shows that there is unaddressed demand for VRS.”<sup>61</sup> The data in our record are insufficient to produce an accurate estimate of the number of Americans with hearing or speech disabilities who are fluent enough in ASL to use VRS, or the subset of those individuals who do not subscribe to VRS due to the expense of a broadband connection.<sup>62</sup> Without better data on whether or to what extent broadband affordability constrains the availability of VRS, and without relevant demographic data on the number of Americans fluent in ASL, it is difficult to determine the demand or need for a TRSBPP.<sup>63</sup> We therefore decline to implement a TRSBPP at this time.

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<sup>59</sup> See *infra* section V.C.

<sup>60</sup> See *infra* section V.F.

<sup>61</sup> See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17384, ¶ 28, 17426-39, Appendix A ¶¶ 1-46. Specifically, the proposal sought to provide such assistance to “low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication.” *Id.* at 17438, Appendix A ¶ 44.

<sup>62</sup> Communication Service for the Deaf, Inc. provided data regarding the size of the population of individuals living in American who have hearing and speech disabilities. See Communication Service for the Deaf, Inc. FNPRM Reply Comments at 2. That data did not, however, include figures regarding ASL fluency. See *id.*; see also Video Relay Services Consumer Association (VRSCA) FNPRM Comments at 4 (“The number of individuals with hearing or speech disabilities who use ASL and have access to broadband is unknown.”).

<sup>63</sup> The *2011 VRS Reform FNPRM*'s request for comment on the costs of implementing a TRSBPP generated no response. See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17438-39, Appendix A ¶ 45.

25. We will continue to work to ensure the availability and affordability of broadband to individuals who are deaf, hard of hearing, deaf-blind, and speech disabled not only to enable access to VRS, but generally to facilitate integration into and participation in various aspects of society. To the extent there are individuals with hearing or speech disabilities for whom difficulty in affording broadband prevents their use of VRS, we are hopeful that the Commission's existing, wider-reaching broadband adoption initiatives will offer avenues for obtaining the necessary Internet access service.<sup>64</sup> In order to promote awareness of these opportunities, we direct CGB to include within its national outreach plan efforts to build such awareness of these ongoing broadband adoption initiatives for this community.<sup>65</sup> In addition, we note that our decision to implement a TRS user registration database in this Order will allow us to identify the actual number of current VRS users, thereby helping us to properly assess the need for a standalone TRSBPP in the future.

## 2. National Outreach

### a. Background

26. Second, the *2011 VRS Reform FNPRM* sought comment on a proposal to cease reimbursing providers for marketing and outreach based on their individual expenses for these activities, and to instead implement a one-time, fixed incentive payment to VRS providers from the TRS Fund for each new-to-category VRS user they sign up.<sup>66</sup> We decline to adopt new-to-category incentives for the same reason we decline to implement a TRSBPP: given the available data, we cannot effectively determine whether there are sufficient potential new-to-category VRS customers to warrant the creation of such an incentive.<sup>67</sup> In lieu of these approaches, we act to improve the efficiency of TRS outreach, to ensure that potential TRS users and the general public are aware of the program and its role in providing functionally equivalent service to individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability.

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<sup>64</sup> In 2011, the Commission created the Connect America Fund to help “make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband.” *Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-377, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, 26 FCC Rcd 17663, 17673, ¶ 20 (2011). In January 2012, the Commission created a universal service-funded broadband pilot program to provide discounted broadband service to low-income Americans through the Lifeline program. *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, 27 FCC Rcd 6656, 6794, ¶ 322 (2012) (*Lifeline and Link Up Reform and Modernization Order*). In March 2012, Chairman Genachowski announced a Public-Private Initiative through which the Commission will “drive collaboration among government and private sector entities, including non-profit organizations, on broadband-related national priorities,” including broadband adoption goals outlined in the National Broadband Plan. Press Release, Federal Communications Commission, *FCC Chairman Julius Genachowski Announces Public-Private Initiative to Help Drive FCC Broadband Agenda* (Mar. 7, 2012), available at <http://www.fcc.gov/document/chairman-genachowski-announces-public-private-initiative-broadband>. This Initiative builds on ongoing efforts to foster broadband adoption through Connect to Compete, a program that, through the collaboration of government and private-sector (including non-profit) organizations, is now providing digital literacy and low-cost broadband offerings. *Id.*; see also Our Mission, <http://www.connect2compete.org/about-us> (last visited Mar. 1, 2013).

<sup>65</sup> See *infra* section II.B.2.

<sup>66</sup> *2011 VRS Reform FNPRM*, 25 FCC Rcd at 17385, ¶ 31.

<sup>67</sup> See *supra* section II.B.21.

27. The Commission's rules currently require all common carriers to provide the public with information to ensure that "callers in their service areas are aware of the availability and use of all forms of TRS."<sup>68</sup> While this obligation is on common carriers, and not directly on all TRS providers, outreach on TRS has been an important component of this program since the Commission's adoption of TRS rules in 1991.<sup>69</sup> At that time, TRS was a relatively novel service, unknown to most of the American public. Although various states had initiated their own TRS programs, the state programs were generally limited in scope, and little had been done to make either potential TRS users or the general public aware of their existence. The Commission sought to correct this, to ensure that both the general public and people who were deaf, hard of hearing, or speech disabled gained sufficient familiarity with TRS to meet Congress's goal of making available, to the extent possible and in the most efficient manner, a nationwide relay service that was functionally equivalent to conventional voice telephone services.

28. Notwithstanding various state efforts to implement this directive,<sup>70</sup> the Commission and various stakeholders repeatedly have raised concerns about the effectiveness of outreach efforts on the national level, and the extent to which providers have characterized as "outreach" actions that would better be described as "branded marketing," both for TRS in general and for VRS in particular.<sup>71</sup> The failure to effectively educate the general public about the nature of TRS calls has had a negative effect on consumers' ability to use these services, as TRS calls are often rejected, frequently because of mistaken assumptions about their purpose.<sup>72</sup> At various times the Commission has had to remind merchants who

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<sup>68</sup> 47 C.F.R. § 64.604(c)(3) ("Public access to information").

<sup>69</sup> See *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4663, ¶ 28 (1991) (*TRS I*) (adopting the outreach requirement).

<sup>70</sup> For example, in the 1990s, Maryland's outreach campaign included television advertisements and other targeted efforts to inform businesses about the need to accept relay calls. See, e.g., Comment by Gil Becker, Maryland Department of Management and Budget (MD DBM), FCC Public Forum on 711 Access to Telecommunications Relay Services, CC Docket No. 92-105 (Sep. 8, 1999).

<sup>71</sup> For example, when it initially approved VRS as a reimbursable form of TRS, the Commission concluded that its outreach rule "has not effectively ensured that callers are aware of TRS, and that the lack of awareness adversely affects the quality of TRS," as evidenced by the "alarming number of hang-ups by people receiving the TRS call who are not familiar with, and do not understand, the service." *2000 TRS Order*, 15 FCC Rcd at 5161-62, ¶ 104. At the time, TRS users reported finding it difficult to communicate with callers who were unaware of the existence of TRS, noting in particular the reluctance of employers to use this service for business transactions. *Id.* The Commission reiterated its concerns about the failure of existing outreach measures to effectively inform the general public about TRS in 2003. *Second Improved TRS Order & NPRM*, 18 FCC Rcd at 12441-42, ¶¶ 130-133. In the *2004 TRS Order*, the Commission again noted, in response to a recommendation from its Consumer Advisory Committee (CAC), that outreach "is an issue of recurring and serious importance for TRS users . . . [t]hose who rely on TRS for access to the nation's telephone system, and thereby for access to family, friends, businesses, . . . gain little from the mandate of Title IV if persons receiving a TRS call do not understand what a relay call is and therefore do not take the call, or if persons desiring to call a person with a hearing or speech disability do not know that this can easily be accomplished through TRS. . . ." *2004 TRS Order*, 19 FCC Rcd at 12514, ¶ 95. Yet again, in 2006, the Commission expressed frustration with the manner in which provider-conducted outreach was occurring, and tentatively concluded that provider-specific "branded" marketing was inappropriate for compensation, because "the Fund should not be used to promote any particular provider's service over the service of competing providers, or to encourage consumers to switch providers." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket No. 13-123, 21 FCC Rcd 8379, 8395, ¶36 (2006) (*2006 TRS Cost Recovery FNPRM*).

<sup>72</sup> For example, in 2003, the CAC reported that many members of the public associated TRS calls with telemarketing-type calls, and that as much as 10 percent of relay calls result in "hang-ups . . . from a lack of  
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accept telephone orders that they are prohibited from hanging up on calls made through TRS because of their obligation under the Americans with Disabilities Act of 1990 to provide people with disabilities with access to their services.<sup>73</sup> In light of these concerns, on several occasions, the Commission sought comment on whether to create a coordinated national outreach effort.<sup>74</sup> Commenters generally were supportive of a migration to such a national campaign.<sup>75</sup> However, the Commission in the past declined to take such action, in part because it believed that it was more appropriate for state TRS programs and providers to take “the lead in providing meaningful outreach” at a time when the majority of TRS calls were intrastate.<sup>76</sup> In addition, on at least one occasion, the Commission noted that before shifting outreach efforts to a national program, it needed to balance the amount of money needed from the TRS Fund for such a campaign with the Commission’s efforts “to more precisely define and manage the costs that determine the compensation rates from the TRS Fund in an effort to safeguard the integrity of the Fund,” taking into consideration other outreach costs already supported by the Fund.<sup>77</sup>

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 understanding of the service.” CAC Letter of Recommendation, CG Docket No. 03-123 (filed Dec. 15, 2003) (*CAC Letter*).

<sup>73</sup> See e.g., *FCC Alerts Public and Merchants of Fraudulent Credit Card Purchases Through Internet Protocol (IP) Relay Service, a Form of Telecommunications Relay Service (TRS)*, Public Notice, 22 FCC Rcd 8554 (2007); *Telecommunications Relay Service (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 Rcd 14717 (2005) (reminding businesses and other members of the general public who request TRS providers to block their telephone numbers, that TRS providers cannot refuse to make an outbound call requested by a TRS user, because it is “fundamentally inconsistent with . . . the functional equivalency principle . . . for TRS providers to decline to make the outbound call requested by a TRS user, even if the called party has requested that the relay provider not make relay calls to his or her number”). *Misuse of Internet Protocol (IP) Relay Service*, First Report and Order, CG Docket Nos. 12-38 & 03-123, 27 FCC Rcd 7866, 7867, ¶2 (2012) (*2012 IP Relay Misuse Order*) (noting that misuse of IP Relay by fraudsters has caused many merchants to reject TRS calls).

<sup>74</sup> For example, in a 2000 Notice of Proposed Rulemaking, the Commission proposed to establish “a nationwide awareness campaign that would reach potential TRS users, consumers with disabilities, senior citizens, speech-to-speech users, and the general public. *2000 TRS Order*, 15 FCC Rcd at 5195, ¶134. The Commission again sought comment on implementing a national outreach program in 2003. *Second Improved TRS Order & NPRM*, 18 FCC Rcd at 12441-42, ¶¶130-133. More recently, in the *2010 VRS NOI*, the Commission queried whether it should impose definitional safeguards or caps on funded outreach activities or whether it would be more effective to conduct a TRS outreach program through a coordinated, nationwide effort, in place of individual provider efforts. *2010 VRS NOI*, 25 FCC Rcd at 8603, ¶19. This suggestion was made in response to comments submitted by various parties that provider-sponsored outreach was too similar to marketing, and that only the Commission or the Fund administrator would be sufficiently neutral to effectively conduct an outreach program.

<sup>75</sup> See e.g., *2000 TRS Order*, 15 FCC Rcd at 5195, ¶134 (noting commenters’ support for a nationwide outreach effort to more effectively reach and educate consumers and the general public about TRS); *2004 TRS Order*, 19 FCC Rcd at 12513, ¶91 (noting consumer group’s view that “despite the Commission’s exhortations for carriers to voluntarily engage in outreach, adequate successful outreach is not occurring”), n. 269 (noting, among other favorable comments, a state program administrator’s assertion that a national non-branded outreach effort would allow for consistency in providing information to the general public, and benefit all relay users), 12513-14, ¶92 (noting commenter’s recommendation that Commission procure vendors for a coordinated and comprehensive outreach program to promote universal access to all forms of TRS and to avoid duplication occurring across state programs); *CAC Letter* (urging adoption of a “coordinated information and outreach program” funded by monies approved by the Commission).

<sup>76</sup> *2004 TRS Order*, 19 FCC Rcd at 12515, ¶97.

<sup>77</sup> *Id.*



29. In the *2011 VRS Reform FNPRM*, the Commission reiterated the importance of providing outreach to the hearing community, again noting the refusal of some businesses to accept relay calls, perhaps due to a failure to understand the nature of TRS.<sup>78</sup> Adding that it did not believe that relying on VRS providers to conduct effective outreach had been effective, the Commission sought comment on whether to establish an independent outreach program to educate the general public about TRS, including VRS.<sup>79</sup> In addition, the Commission again sought comment on whether to terminate reimbursement for marketing and outreach activities based on individual provider expenses,<sup>80</sup> noting that the appropriateness of certain marketing and outreach costs claimed by providers has been the source of controversy.<sup>81</sup> Specifically, the Commission explained that providers have had a greater incentive to target existing VRS users than to focus outreach either on “new-to-category users,” *i.e.*, potential VRS users that are not yet registered with any provider as a VRS user, or on members of the general public.<sup>82</sup>

30. The Commission also sought comment on whether a national outreach program should be conducted specifically by the Commission, a specialized contractor, consumer organizations, state and local governments, or some other entity or combination of entities.<sup>83</sup> Noting that the Commission had recently authorized the expenditure of \$500,000 annually from the TRS Fund to allow entities that have significant experience with and expertise in working with the deaf-blind community to conduct outreach to deaf-blind individuals to make them aware of the availability of specialized CPE to low-income individuals who are deaf-blind, the Commission inquired whether that effort would serve as a model for VRS.<sup>84</sup>

#### b. Discussion

31. In light of our continued concerns regarding the effectiveness of IP Relay and VRS providers’ outreach efforts, we conclude that an iTRS National Outreach Program (iTRS-NOP)<sup>85</sup> that does not rely on the efforts of individual IP Relay and VRS providers is necessary and appropriate to achieve the purposes of section 225 of the Act; that is, to fulfill Congress’s intent to make TRS available

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<sup>78</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17405-06, ¶ 90.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 17386, ¶ 33. The Commission further asked about ways to provide incentives for providers to ensure, among other things, that VRS is available to more potential users, and to build familiarity about VRS within the general public. *Id.*, ¶ 32. Specifically, the Commission asked whether to provide incentive payments for providers to direct their promotional activities at the recruitment of new-to-category VRS consumers in conjunction with a possible transition to a per-user rate methodology. *Id.*, ¶ 33. Because we have declined to adopt this rate mechanism, we no longer consider such an incentive program to be necessary.

<sup>81</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17385-86, ¶ 31, *citing 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20175-76, ¶¶ 92-96; *VRS Call Practices R&O*, 26 FCC Rcd at 5575-76, ¶¶ 61-63; *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, CG Docket No. 10-51, 25 FCC Rcd 1868, 1869-70, ¶¶ 3-5 (2010) (*2010 VRS Declaratory Ruling*).

<sup>82</sup> *Id.*

<sup>83</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17405-06, ¶ 90.

<sup>84</sup> *Id.* at 17406, ¶ 90, *citing Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, CG Docket No. 10-210, 26 FCC Rcd 5640, 5675-76, ¶ 80 (2011) (*NDBEDP Pilot Program Order*).

<sup>85</sup> Although the name of this program uses the term “iTRS,” we again clarify that for the time being, the focus of this program will be only on two forms of Internet-based TRS, namely IP Relay and VRS.

to the extent possible and in the most efficient manner.<sup>86</sup> The vast majority of iTRS Fund monies expended for “outreach” to date appears to have been devoted to individual branded marketing campaigns, which—rather than inform the general public about the nature and functions of relay services or even attract new-to-category users—focus primarily on efforts to win back TRS users from competitors, often in conjunction with expensive and enticing giveaways of free products, such as iPads and TV sets.<sup>87</sup> As a consequence, outreach as conducted by individual providers continues to be ineffective as a means to effectively educate the general public about the purpose and functions of TRS.<sup>88</sup> Additionally, as noted in the *2010 VRS NOI*, it remains difficult to determine the extent to which any outreach expenditures by iTRS providers that have been directed to the general public have overlapped with one another, and therefore, the extent to which the funds devoted for this purpose have been reasonable or excessive.<sup>89</sup> Accordingly, we believe that section 225’s directive for the Commission to prescribe regulations that ensure relay services are “available . . . in the most efficient manner”<sup>90</sup> both makes it appropriate to take new steps to better educate the public about the purpose and functions of TRS, and provides us with sufficient authority to direct that the iTRS-NOP be funded for this purpose from TRS contributions as a necessary cost caused by TRS.<sup>91</sup>

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<sup>86</sup> 47 U.S.C. §§ 225(a)(3), (b)(1). We include within this nationwide effort outreach for IP Relay along with VRS, in response to the ongoing resistance of retailers to accept IP Relay calls—resulting from individuals without hearing or speech disabilities calling merchants to place orders using fake, stolen, or otherwise invalid credit cards. *See 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*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478 (2006) (*2006 IP Relay Misuse FNPRM*); *2012 IP Relay Misuse Order*, 27 FCC Rcd 7866. Because similar resistance by retailers or other called parties has not come to the Commission’s attention with respect to IP CTS, and because the Commission has an open proceeding on IP CTS issues, at this time we will reserve any decision on how to handle the provision and financing of outreach for IP CTS. *See Misuse of Internet Protocol Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 03-123, Order and Notice of Proposed Rulemaking, 28 FCC Rcd 703 (2013) (*IP CTS Interim Rules Order*).

<sup>87</sup> This particularly has been the case with respect to VRS “outreach.” *See, e.g.* Purple Communications, Inc. (Purple) FNPRM Comments at 21, 28; CSDVRS, *Ex Parte* Letter (filed Aug. 27, 2012) (CSDVRS Aug. 27, 2012 *Ex Parte*).

<sup>88</sup> *See, e.g.*, Washington Relay, Don’t Hang Up Washington, <http://www.washingtonrelay.com/hangup.html> (last visited March 5, 2013); Alaska Relay, Don’t Hang Up!, <http://www.akrelay.com/hangup.aspx> (last visited March 5, 2013); New York Relay, Please, Don’t Hang Up, <http://www.nyrelay.com/donthangup.htm> (last visited March 5, 2013); NAD, Message to Businesses: Don’t Hang Up!, <http://www.nad.org/issues/telephone-and-relay-services/relay-services/message-businesses-dont-hang> (last visited March 5, 2013). *See also Settlement Agreement between the United States of America and Wells Fargo & Company under the Americans with Disabilities Act*, DJ # 202-11-239, found at [http://www.ada.gov/wells\\_fargo/wells\\_fargo\\_settle.htm](http://www.ada.gov/wells_fargo/wells_fargo_settle.htm). Wells Fargo acknowledged that, fearful of fraudulent activities taking place via the relay program, some of its call centers stopped accepting calls made through relay services. Thus, we do not agree that “the VRS industry does [outreach] very well today.” CSDVRS Apr. 11, 2013 *Ex Parte* at 2.

<sup>89</sup> *2010 VRS NOI*, 25 FCC Rcd at 8603, ¶ 17; *see also 2006 TRS Cost Recovery FNPRM*, 21 FCC Rcd at 8394-95, ¶ 36 (suggesting that marketing or outreach campaigns conducted by each provider “may largely be duplicative and directed at the same audience”).

<sup>90</sup> *See* 47 U.S.C. §§ 225(b)(1) (directing the Commission to “ensure that . . . telecommunications relay services are available, to the extent possible and in the most efficient manner . . .”), (d)(1) (directing the Commission to “prescribe regulations to implement this section”).

<sup>91</sup> We see less need to handle outreach for PSTN-based relay services (*i.e.*, traditional TRS, CTS, and STS) at the national level because such outreach is addressed by, tailored to, and financed by individual states through their contracts with TRS providers. *See* 47 U.S.C. § 225(d)(3) (jurisdictional separation of TRS costs caused by interstate  
(continued...)

32. As the Commission has stated previously, the Commission intended that TRS outreach “mak[e] the public aware of the use and availability of TRS generally and encourag[e] hearing persons and merchants to stay on the line and accept relay calls.”<sup>92</sup> According to the TRS Policy Statement submitted by the Consumer Groups, however, countless Americans on fixed incomes may not be aware of resources for accessing TRS, or the capabilities and features that TRS has to offer.<sup>93</sup> Consumer Groups note that “[r]elay services are . . . just as useful and critically important for those with or without hearing and speech disabilities,” and so TRS promotional activities should acquaint the public and private sectors, including employers, educational institutions, and businesses, about TRS to “build familiarity and acceptance of TRS nationwide.”<sup>94</sup> The iTRS-NOP will achieve these objectives by educating merchants and other businesses in a neutral fashion about the importance of accepting legitimate relay calls<sup>95</sup> and by eliminating duplicative outreach efforts by multiple providers. The record in this proceeding— as well as the records developed in various TRS proceedings preceding this one— provides considerable support for the Commission to establish a program to handle and coordinate non-branded national outreach and education for IP Relay and VRS, and to support such outreach efforts with monies from the Fund.<sup>96</sup>

33. We believe that our first efforts to coordinate IP Relay and VRS outreach on a nationwide basis are best carried out through a pilot program of limited duration and that the outreach directives under the NDBEDP provide a useful model for such efforts.<sup>97</sup> The Commission designated a

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versus intrastate services). We continue to believe that states are best equipped to handle outreach in their localities through their individual programs. In addition, unlike in the iTRS market, there are fewer or no incentives for providers operating under state programs to use outreach funds for branded marketing campaigns and other marketing efforts to win back customers because all states but one (California) have contracted with a single TRS vendor.

<sup>92</sup> *2006 TRS Cost Recovery FNPRM*, 21 FCC Rcd at 8394-95, ¶36; 47 C.F.R. § 64.604(c)(3) (“Public access to information”).

<sup>93</sup> Consumer Groups’ TRS Policy Statement at 4.

<sup>94</sup> *Id.* at 4, 8 (Objective 2.2).

<sup>95</sup> To the extent that merchants have fallen prey to fraudulent schemes that have taken advantage of the anonymity of certain forms of iTRS, such national outreach efforts can also help to educate these businesses on ways to prevent them from becoming victims of such misuse.

<sup>96</sup> Deaf and Hard of Hearing Consumer Advocacy Network, TDI, NAD, ALDA, California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc., American Speech-Language Hearing Association, Registry of Interpreters for the Deaf, Deaf Seniors of America, National Black Deaf Advocates, Inc., Alexander Graham Bell Association for the Deaf and Hard of Hearing (Consumer Groups) FNPRM Comments at 34 (recommending that “the Commission contract a third-party unaffiliated with any VRS provider to engage in education and outreach activities and to fund the activities from the Interstate TRS Fund,” and “to build trust and confidence for all businesses to use relay service for transactions” and *citing* Consumer Groups’ TRS Policy Statement (Objective 2.6)); CSDVRS FNPRM Comments at 47 (“the FCC should sponsor a nationwide outreach campaign to inform the public that relay calls are a legitimate means for deaf and hard of hearing persons to use telecommunications services, that they are not necessarily telemarketing calls, and that businesses must accept such calls”). Even parties who advocate for continued funding support for individual provider outreach see a benefit to a coordinated approach that will inform the public more generally about the availability and use of VRS. *See e.g.*, Purple FNPRM Comments at 21 (recommending an outreach campaign that includes televised public service announcements to educate the nation about the availability of iTRS and to remind the public not to hang up on relay calls); Sorenson Communications, Inc. (Sorenson) FNPRM Reply Comments at 57-58 (supporting creation of an independent outreach entity to educate the general public, though claiming that VRS providers are best situated permitted to conduct outreach to users who have disabilities).

<sup>97</sup> *See generally* 47 C.F.R. § 64.610, implementing 47 U.S.C. § 620.

portion of funding appropriated for implementation of the NDBEDP to support an independent, third party entity with significant experience with and expertise in working with the deaf-blind community to inform potential program users, service providers, and the general public about the NDBEDP.<sup>98</sup>

34. Accordingly, for each of the next two Fund years, with an option to extend the program for one additional year, we direct the TRS Fund administrator to set aside a portion of the TRS Fund, as discussed below, to be available for VRS outreach. We direct the Managing Director, in consultation with the Chief of CGB, to (i) select one or more iTRS Outreach Coordinators to conduct and coordinate IP Relay and VRS outreach nationwide and be compensated through the Fund or (ii) contract with the TRS Fund administrator to enter into such arrangements under objectives and factors determined by the Managing Director in consultation with the Chief of CGB. The iTRS Outreach Coordinators shall not be affiliated with any iTRS provider and shall disseminate non-branded information to potential new-to-category users and to the general public about IP Relay and VRS, their purposes and benefits, and how to access and use these services. We direct CGB to oversee outreach activities, which may include, but are not limited to:

- Consulting with consumer groups, IP Relay and VRS providers, the TRS Fund administrator, other TRS stakeholders, and other iTRS Outreach Coordinators, if any;
- Establishing clear and concise messaging about the purposes, functions, and benefits of IP Relay and VRS;
- Educating the deaf, hard of hearing, and speech disability consumers about the broadband adoption programs available to low-income families without access to broadband and VRS;
- Determining media outlets and other appropriate avenues for providing the general public and potential new-to-category subscribers with information about IP Relay and VRS;
- Preparing for and arranging for publication, press releases, announcements, digital postcards, newsletters, and media spots about IP Relay and VRS that are directed to retailers and other businesses, including trade associations;
- Creating electronic and media tool kits that include samples of the materials listed in the previous bullet, and which may also include templates, all of which will be for the purpose of facilitating the preparation and distribution of such materials by consumer and industry associations, governmental entities, and other TRS stakeholders;
- Providing materials to local, state, and national governmental agencies on the purposes, functions, and benefits of IP Relay and VRS; and
- Exploring opportunities to partner and collaborate with other entities to disseminate information about IP Relay and VRS.

35. The iTRS Outreach Coordinator(s) will be expected to submit periodic reports to the Managing Director and the Chief of CGB on the measures taken pursuant to the directives above. In addition, the iTRS Outreach Coordinator(s) will be expected to work with and assist the Chief of CGB and Managing Director, as appropriate, to measure and report on the effectiveness of the outreach efforts taken under the iTRS-NOP.

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<sup>98</sup> The Commission has directed funding in the amount of \$500,000 for a national outreach campaign (out of the overall amount of \$10 million annually allocated for the NDBEDP) from the TRS Fund during each year of the pilot program. See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675-76, ¶ 80; *Perkins School for the Blind to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, CG Docket No. 10-210, Public Notice, 27 FCC Rcd 6143 (2012).

36. The iTRS Outreach Coordinator(s) selected to conduct such outreach must have experience in conducting nationwide promotional and informational programs and experience with and expertise in working with the deaf, hard of hearing and speech disability communities. We direct the Chief of CGB, in consultation with the Managing Director, to further define the selection criteria and the nature and scope of the IP Relay and VRS outreach program. In addition, we direct the Chief of CGB, in consultation with the Managing Director, to assess the reasonableness and appropriateness of individual outreach expenses proposed by the selected iTRS Outreach Coordinator(s).

37. We believe that in the first year, a maximum expenditure of \$2 million is reasonable and sufficient funding for the iTRS-NOP. We note that because this amount is only a fraction of the amounts spent in recent years on provider outreach activities, the action we take today will achieve greater efficiency in making TRS available and usable by more Americans. For example, from 2010-2012, VRS providers reported spending more than \$80 million on outreach.<sup>99</sup> Recognizing that these provider expenditures probably involved substantial overlap and duplication of effort on the part of the providers, and were, in large part, devoted to branded marketing activities, we believe it is reasonable to expect that a far more effective educational impact can be achieved by the careful allocation and expenditure of \$2 million to an independent entity or entities.<sup>100</sup>

38. Because of the novel nature of these national outreach efforts, we establish a two-year pilot program that we may extend for up to an additional one year, for a total of three years. We are hopeful that the experience gained during this pilot program will help inform future Commission action to establish a permanent national outreach program for IP Relay and VRS, and potentially other forms of iTRS.<sup>101</sup> We expect that this 24- to 36-month period will give the Commission sufficient time to conduct and analyze the effectiveness of the pilot program, and determine next steps to make such program permanent, or take such other actions that are necessary to ensure effective education on IP Relay and VRS to the American public. In determining such next steps, we will consider the extent to which the

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<sup>99</sup> See 47 U.S.C. § 225(b)(1). We note that the \$2 million allocated for the pilot program is about 7 percent of the roughly \$28 million reportedly spent in Fund year 2012 on compensable outreach activities by iTRS providers. The approximate amount reportedly spent on outreach by iTRS providers is derived as follows. Providers' projected costs of VRS outreach for 2012 averaged \$0.2594 per minute. See Rolka Loubé Saltzer Associates, LLC (RLSA), Supplemental Filing of the Telecommunications Relay Services Administrator Regarding Reasonable Rates for VRS Service, CG Docket Nos. 03-123, 10-51, at 3, Table 2 (filed October 15, 2012) (*2012 VRS Rate Filing*). With 2011-2012 VRS demand projected to be 105,971,457 minutes and 2012-13 VRS demand projected to be 110,950,144 minutes, a rough estimate of 2012 VRS demand would be the average of those two figures, or 108,460,800.5 minutes. See RLSA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket No. 03-123, Exhibit 2 (filed April 30, 2012) (*2012 TRS Rate Filing*). Multiplying the projected 2012 VRS outreach cost of \$0.2594 per minute by 2012 VRS demand of 108,460,800.5 minutes yields \$28,134,732, or about \$28 million. We note, however, that these are the amounts *reported* by VRS providers; it is unclear to what extent such expenditures actually resulted in the type of outreach activities contemplated by our rules. In addition to costs associated with outreach, VRS providers reported spending over \$15 million on marketing, advertising and free equipment. *2012 VRS Rate Filing* at 3, Table 2, 5, Table 5; *2012 TRS Rate Filing*, Exhibit 2.

<sup>100</sup> While \$2 million is more than the amount allocated for the NDBEDP, that program is specifically targeted to a discrete group of individuals and the \$500,000 for outreach is apportioned from a very restricted funding pool of \$10 million that must be divided among 53 certified local equipment distribution programs. We believe that a greater amount is necessary and appropriate in this case, in order to effectively reach not only potential iTRS subscribers but also retailers and other segments of the general public that are still not acquainted with IP Relay and VRS.

<sup>101</sup> Among other things, we hope to develop a practical understanding of how to best apply the funding that we allocate under this program for the intended program goals.

iTRS-NOP is meeting our goals of ensuring that all Americans are familiar with the TRS program, and increasing the likelihood that TRS calls are accepted by third parties.

39. We recognize that the creation of the iTRS-NOP will impose costs that are covered by the TRS Fund, and we believe that the resultant improvement in outreach, which will better acquaint the American public with the use and function of IP Relay and VRS in a more efficient manner, justifies the imposition of these costs. We also note that the action we take today in directing the selection of iTRS Outreach Coordinator(s) does not prohibit IP Relay or VRS providers from otherwise providing the public with information about their individual relay service features, but also note that the cost of such efforts may no longer be included in their cost submissions used to determine per minute compensation for IP Relay and VRS as “outreach” costs.<sup>102</sup> In addition, the Commission will consider using its Accessibility Clearinghouse, created pursuant to the CVAA, as a central repository for providers who wish to provide information about any such features designed to address specific communication needs.<sup>103</sup>

### C. Interoperability and Portability Requirements

40. In this section, we act to improve the effectiveness of our interoperability and portability rules. These rules, first adopted in 2006, are intended to (i) allow VRS users to make and receive calls through any VRS provider, and to choose a different default provider,<sup>104</sup> without changing the VRS access technology they use to place calls, and (ii) ensure that VRS users can make point-to-point calls to all other VRS users, irrespective of the default provider of the calling and called party.<sup>105</sup> Providers also must ensure that videophone equipment that they distribute retains certain, but not all, features when a user ports her number to a new default provider.<sup>106</sup> For example, a default provider that furnishes videophone equipment to a consumer need not ensure that all the videophone equipment’s “enhanced

<sup>102</sup> Several providers have expressed an interest in providing information about their products and services to the public. *See, e.g.*, CSDVRS FNPRM Comments at 22 (marketing and outreach are necessary to provide the public with information on services and product availability of individual providers); Purple FNPRM Comments at 20 (the failure to fund provider marketing and outreach is counterintuitive to a competitive process). Nor does the action we take today prohibit states from conducting their own outreach programs or from directing outreach by their contracting providers with respect to their state-operated PSTN-based TRS.

<sup>103</sup> 47 U.S.C. § 618(d). The Accessibility Clearinghouse is a web-based repository of information about accessibility solutions for telecommunications and advanced communications services and equipment. The Commission launched its Accessibility Clearinghouse, available at <http://apps.fcc.gov/accessibilityclearinghouse/index.html>, in October 2011.

<sup>104</sup> Every VRS provider is required to provide its users with the capability to register with that VRS provider as a “default provider.” *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11609, ¶ 42. Such registration is required: (1) to allow the VRS provider to take steps to associate the VRS user’s telephone number with their IP address to allow for the routing and completion of calls; (2) to facilitate the provision of 911 service; and (3) to facilitate the implementation of appropriate network security measures. *Id.*

<sup>105</sup> 47 C.F.R. 64.611(e); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd. 791, 818-20, ¶¶ 60-64 (2008) (*Second Internet-Based TRS Numbering Order*); *see generally VRS Interoperability Declaratory Ruling*, 21 FCC Rcd 5442. A point-to-point call is one where TRS equipment is used by individuals with speech or hearing disabilities to communicate directly with each other, without the assistance of an interpreter.

<sup>106</sup> *See First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11615, ¶ 60; *Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 822, ¶ 68; 47 C.F.R. § 64.611(c)(1). This requirement was waived until July 1, 2010. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, WC Docket No. 05-196, Order, 25 FCC Rcd 3331 (2010).

features” can be used when the consumer ports the number to and uses the videophone equipment with the new provider.<sup>107</sup>

41. The Commission noted in the *2011 VRS Reform FNPRM* that despite encouragement for VRS providers “to work together to develop systems and standards that will facilitate compliance with our rules,”<sup>108</sup> the VRS industry has not fully achieved the standardization needed for full interoperability and portability.<sup>109</sup> The Commission further noted that the record indicates that ineffective interoperability rules appeared to be hindering competition between VRS providers and frustrating VRS users’ access to off-the-shelf VRS access technology.<sup>110</sup> The Commission therefore sought comment in the *2011 VRS Reform FNPRM* “on the effectiveness of our current interoperability and portability requirements, and the role that existing VRS access technology standards—or the lack thereof—may play in frustrating the effectiveness of those requirements.”<sup>111</sup>

42. The record uniformly supports the need for action to improve the effectiveness of our interoperability and portability requirements.<sup>112</sup> As an initial step, we codify the existing interoperability and portability requirements in new section 64.621 of our rules.<sup>113</sup> In the following sections, we (i) adopt the proposal from the *2011 VRS Reform FNPRM* to clarify the scope of providers’ interoperability and portability obligations by eliminating use of the term “CPE” in the iTRS context in favor of “iTRS access technology;” (ii) take steps to support the development of voluntary, consensus standards to facilitate interoperability and portability; and (iii) direct that a “VRS access technology reference platform” be developed to provide a benchmark for interoperability.<sup>114</sup>

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<sup>107</sup> We note that the Commission previously rejected a request that the Commission require “a default provider that furnishes CPE to a consumer must ensure that the CPE’s enhanced features (*e.g.*, missed call list, speed dial list) can be used by the consumer if the consumer ports his or her number to a new default provider and uses the CPE with the new default provider,” on the grounds that “[p]roviders may offer such features on a competitive basis, which will encourage innovation and competition.” *Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 819-20, ¶ 63. Our actions today do not disturb this prior decision, but instead are designed to ensure that our existing interoperability and portability requirements are fully implemented and effective. *See generally* Sorenson FNPRM Reply Comments at 8-32 (arguing that other commenters appear to be requesting an expansion of the interoperability and portability rules). As explained in paragraph 50 below, we do require that standards for address book and speed dial list portability be developed.

<sup>108</sup> *See Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 822, ¶ 68.

<sup>109</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17451-54, Appendix B ¶¶ 11-18.

<sup>110</sup> *Id.* at 17378, ¶ 15.

<sup>111</sup> *Id.* at 17380, ¶ 18.

<sup>112</sup> *See, e.g.*, Purple FNPRM Comments at 13 (“[o]pen technical standards are necessary for marketplace balance”); Sorenson FNPRM Comments at 63 (“a lack of standards has made it impossible for any provider fully to meet them, and frustrated the effectiveness of those requirements”); Convo Communications, LLC (Convo) PN Comments at 18, n. 46 (“VRS interoperability policy is sufficiently vague that it has proven difficult for the Commission to timely enforce”).

<sup>113</sup> *See* Appendix A.

<sup>114</sup> CSDVRS’ proposed “default provider selection” is, at best, premature pending completion of our actions to improve the effectiveness of our interoperability and portability rules. *See* CSDVRS Apr. 11, 2013 *Ex Parte* at 2 (urging the Commission to require VRS providers “to sustain all features and functions of CPEs even when the number associated with the CPE is ported or the call routed to a different provider”).

43. The Commission adopted interoperability and portability requirements to ensure that TRS is provided in a functionally equivalent manner,<sup>115</sup> and our actions to improve the effectiveness of those requirements are likewise grounded in section 225 of the Act.<sup>116</sup> Our actions also will improve the availability of VRS by ensuring that consumers have ready access to all VRS providers without the need to switch equipment.<sup>117</sup> Further, the development of interoperability and portability standards and the availability of a VRS access technology reference platform will improve the efficiency of the program by making it far easier for providers to design VRS access technologies to the appropriate standard, and to test their compliance with those standards prior to deployment.

44. Although we recognize that these actions, particularly the development and deployment of the VRS access technology reference platform, will impose costs to be covered by the TRS Fund, we believe that the resultant improvement in functional equivalence and VRS availability for consumers, ease of compliance by providers, and overall efficiency in the operation of the TRS program justifies these imposition of these costs.

### 1. Defining iTRS Access Technologies

45. We adopt the proposal from the *2011 VRS Reform FNPRM* to clarify the scope of providers' interoperability and portability obligations by eliminating use of the term "CPE" in the iTRS context in favor of "iTRS access technology." The Commission in the *Internet-based TRS Numbering Order* used the defined term "CPE" to describe "TRS customer premises equipment," or the technology used to access Internet-based TRS.<sup>118</sup> The Commission proposed in the *2011 VRS Reform FNPRM* to amend sections 64.605 and 64.611 of its rules<sup>119</sup> by replacing the term "CPE" where it appears with the term "iTRS access technology."<sup>120</sup> The Commission further proposed to define "iTRS access technology" as "any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call." Under this definition, any software, hardware, or other technology issued, leased, or otherwise provided to VRS or IP Relay users by Internet-based TRS providers, including "provider distributed equipment" and "provider based software," whether used alone or in conjunction with "off-the-shelf software and hardware," would qualify as "iTRS access technology." Given the potential differential treatment of VRS and IP Relay proposed by the *2011 VRS Reform FNPRM*, the Commission further proposed to refer separately to iTRS access technology as "VRS access technology" and "IP Relay access technology" where appropriate. Only Purple responded to this proposal with specificity, stating that it agreed with the Commission's proposal, and suggesting that the Commission further divide "iTRS Access Technology" into four sub-categories.<sup>121</sup>

46. We adopt the original proposal, with one modification. "iTRS access technology" will be defined as "any equipment, software, or other technology issued, leased, or otherwise provided by an Internet-based TRS provider that can be used to make *and* receive an Internet-based TRS call" to make

<sup>115</sup> See also *VRS Interoperability Declaratory Ruling*, 21 FCC Rcd at 5454, ¶ 29 (stating that the failure to provide interoperability is "inconsistent with the functional equivalency mandate, the public interest, and the TRS regime as intended by Congress"); *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17378-80, ¶¶ 16-17.

<sup>116</sup> 47 U.S.C. § 225(a)(3).

<sup>117</sup> *Id.* § 225(b)(1); *VRS Interoperability Declaratory Ruling*, 21 FCC Rcd at 5455, ¶¶ 31-32.

<sup>118</sup> *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11614, ¶ 55.

<sup>119</sup> 47 C.F.R. §§ 64.605, 64.611.

<sup>120</sup> See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17389-90, ¶ 41.

<sup>121</sup> Purple FNPRM Comments at 14.



clear that iTRS access technologies must provide both inbound and outbound functionality.<sup>122</sup> This modification is consistent with existing Commission policies which require that Internet-based TRS users have the ability to make and receive calls.<sup>123</sup> Given the differential treatment of VRS and IP Relay, we further adopt the proposal to refer separately to iTRS access technology as “VRS access technology” and “IP Relay access technology” where appropriate, but decline to further disaggregate iTRS access technology into further sub-categories of iTRS access technology at this time.

## 2. Promoting Standards to Improve Interoperability and Portability

47. The Commission previously has noted the importance of developing voluntary, consensus interoperability and portability standards as a means for meeting the Commission’s policy objectives for VRS,<sup>124</sup> and noted that “that this work would best be undertaken by VRS providers and equipment suppliers under the umbrella of an existing organization open to such members and dedicated to interoperability, in which a Working Group focused on VRS can be established.”<sup>125</sup>

48. There is universal support in the record for the development of voluntary, consensus standards to facilitate interoperability and portability.<sup>126</sup> Commenters specifically urge the Commission to support the work being conducted by the SIP Forum’s VRS Task Group.<sup>127</sup> We note with favor the progress being made under the auspices of the SIP Forum, and believe the public interest is best served by allowing that process to continue. We also continue to believe that the Commission should play the role of an active observer in this process.<sup>128</sup> We therefore direct the CTO and the Chief of OET, in consultation with the Chief of CGB, to coordinate Commission support of and participation in that process in order to ensure the timely development of voluntary, consensus standards to facilitate interoperability and portability.<sup>129</sup>

<sup>122</sup> Calls that are completed using a technology that does not provide both inbound and outbound functionality are not compensable from the TRS Fund.

<sup>123</sup> See *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11593, ¶ 2.

<sup>124</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17462-3, Appendix D ¶¶ 2-8.

<sup>125</sup> *Id.* at 17464, Appendix D ¶ 21.

<sup>126</sup> See generally, e.g., Sorenson, *Ex Parte* Letter (filed Feb. 12, 2012) (Sorenson Feb. 12, 2012 *Ex Parte*); ASL Services Holdings, LLC (ASL Services Holdings) FNPRM Comments at 15; CSDVRS FNPRM Comments at 39; Purple FNPRM Comments at 16; Sorenson FNPRM Comments at 8; Consumer Groups FNPRM Reply Comments at 4-5; Convo FNPRM Reply Comments at 12-13.

<sup>127</sup> See, e.g., Sorenson, *Ex Parte* Letter (filed July 31, 2012) (Sorenson July 31, 2012 *Ex Parte*); ASL Services Holdings PN Comments at 8; RERC-TA PN Comments at 7, 11; Sorenson PN Comments at 8; Purple PN Reply Comments at 4. The Consumer Groups object “to the development of standards by any group that does not include consumers.” Consumer Groups PN Reply Comments at 4. We note that the SIP Forum has three categories of membership, including “[p]articipant membership,” which “is open to individuals and is free.” See SIP Forum, Membership Overview, available at <http://www.sipforum.org/content/view/17/47/>. In addition, the input afforded to consumers through participation in Commission proceedings allows consumers significant input on VRS mandatory minimum requirements, which ultimately drive the standards process. Convo expressed concerns regarding the suitability of the SIP Forum due to questions about its treatment of disclosure of participant intellectual property rights. Convo FNPRM Reply Comments at 14, n. 57. We note that the SIP Forum is developing an Intellectual Property Right Recommendation, and urge those participating in the process to ensure that the draft IPR Recommendation is updated and adopted as appropriate. See SIP Forum, Documents, available at [http://www.sipforum.org/component/option,com\\_docman/task,cat\\_view/gid,48/Itemid,261/](http://www.sipforum.org/component/option,com_docman/task,cat_view/gid,48/Itemid,261/).

<sup>128</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17464, Appendix D ¶ 21.

<sup>129</sup> Such support and participation shall be consistent with the guidance set forth in OMB Circular No. A-119, § 7 (setting out the policy for federal participation in voluntary consensus bodies).

49. We also delegate to the Chief of CGB, after consultation with the CTO and the Chief of OET, the authority to conduct rulemaking proceedings to incorporate into our rules by reference any interoperability and portability standards developed under the auspices of the SIP Forum, now or in future, or such other voluntary, consensus standard organization as may be formed to address these issues. Recognizing that the scope of the SIP Forum VRS Task Group charter extends beyond our current mandatory minimum standards,<sup>130</sup> we also delegate to Chief of CGB, after consultation with the CTO and the Chief of OET, the authority to conduct rulemaking proceedings to incorporate into our rules by reference as new or updated mandatory minimum standards any standards or recommended standards developed by the SIP Forum (or such other voluntary, consensus standard organization as may be formed to address these issues) that the Chief of CGB finds will advance the statutory functional equivalency mandate or improve the availability of TRS, in the most efficient manner. In conducting such rulemakings, the Chief of CGB shall provide guidance on implementation, including the need for a transition period for existing VRS access technologies, complaint resolution, or other actions necessary to ensure full interoperability and portability.

50. We find that VRS interoperability and portability standards should include the portability of address book and speed dial list features. In the *2011 VRS Reform FNPRM* the Commission proposed, among other things, that “[t]he VRS access technology and VRS Provider will support a standard data interchange format for exporting and importing the following user private data between VRS access technologies and VRS Providers. . . . [.] (a) User personal contacts list (also referred to as an address book); (b) User speed dial list.”<sup>131</sup> We conclude that the proposal in the *2011 VRS Reform FNPRM* should be adopted because the record demonstrates that the portability of such features is indeed critical to effective competition and the provision of consumer choice in VRS.<sup>132</sup> If the standards developed and incorporated into our rules by reference pursuant to paragraphs 48 and 49 above do not require that VRS access technology and VRS providers support a standard data interchange format for exporting and importing user personal contacts lists (*i.e.*, address books) and user speed dial lists between VRS access technologies and VRS providers, we direct the Chief of CGB, after consultation with the CTO and Chief of OET, to conduct an accelerated rulemaking to adopt such standards.

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<sup>130</sup> See SIP Forum, VRS Task Group Charter, <http://www.sipforum.org/content/view/404/291/> (last visited Apr. 1, 2013) (designating items such as “Visual messaging waiting feature” and “Session security” as “other features for investigation”).

<sup>131</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17447-48, Appendix B ¶ 30 (proposing to adopt a standard format for transferring address book and speed dial data). See also *id.* at 17449, Appendix B ¶ 32 (listing “personal contact list” and “speed dial list” as among the features for which VRS access technology standards were proposed). Noting that the development of standards for interoperability and portability “may help to resolve the issue of VRS user lock by giving VRS users assurance . . . that they will not lose access to enhanced features that have proven to be of particular importance to end users” (*id.* at 17390, ¶ 43), the *2011 VRS Reform FNPRM* stated that the proposal for such standards “is intended to develop an open, competitive VRS market, and is designed to facilitate interoperability, portability, affordability, supportability and compatibility goals that the Commission has long pursued and consumers have requested. Establishing VRS access technology standards may give providers a fair chance to compete and grow and could resolve the problem of users being locked in to their existing providers because of iTRS access technology constraints” (*id.* at 17391, ¶ 44).

<sup>132</sup> See Sorenson FNPRM Comments at 63, 64, 68 (stating that initial efforts should also focus on defining a standard format allowing VRS consumers to transfer personal data they had inputted, such as contact lists and speed-dial lists, to another provider); VRSCA FNPRM Comments at 4 (stating that videophone should allow consumers to easily transfer information such a list of contacts from one videophone to another videophone); Sorenson FNPRM Reply Comments at 32 (proposing that the VRS industry “work together in the near term to define standards and processes to ensure that consumers can obtain their personal data such as their speed-dial lists and personal contacts list (*i.e.*, address book) when they change providers”).

51. Pending action to incorporate interoperability and portability standards into our rules by reference by the Chief of CGB, we will accept a demonstration that a provider is fully compliant with completed SIP Forum standards or recommended standards as *prima facie* evidence of compliance with our interoperability and portability requirements. Compliance with any standards incorporated into our rules by reference or otherwise shall be a prerequisite for compensation from the Fund. No VRS provider shall be compensated for minutes of use generated by non-standards compliant VRS access technologies or otherwise generated in a manner inconsistent with our rules. If a provider cannot reliably separate minutes of use generated through standards compliant VRS access technologies from those generated through non-standards compliant VRS access technologies, the provider will not receive compensation for any of the minutes.

52. As discussed above, the Commission has previously urged the industry to develop interoperability and portability standards, but such efforts have proven ineffective. We strongly encourage the SIP Forum's VRS Task Group to adhere to its proposed schedule, and to take any further steps identified as necessary by the Task Group with alacrity.<sup>133</sup> Given the critical importance of this issue, we will take such steps as are necessary to ensure the development and promulgation of interoperability and portability standards—including the adoption of standards developed outside the context of the SIP Forum—if it becomes apparent that the current effort has bogged down or is unlikely to produce the desired results.

### 3. VRS Access Technology Reference Platform

53. The record indicates that the lack of clearly defined interoperability and portability standards has made it difficult for providers to determine whether VRS access technologies—their or a competitor's—are, in fact, compliant with our requirements, and what steps must be taken to resolve interoperability and portability issues.<sup>134</sup> We address this in part, as discussed above, through efforts to promote standards for interoperability and portability and, as appropriate, incorporate them by reference in our rules.<sup>135</sup> In addition, RERC-TA has suggested that our interoperability goals would be furthered by the development of a VRS access technology reference platform.<sup>136</sup> A reference platform compliant with standards developed consistent with section II.C.2 above will provide a concrete example of a standards specific VRS access technology implementation and will allow providers to ensure that any VRS access technology they develop or deploy is fully compliant with our interoperability and portability requirements. In particular, as described by RERC-TA, the VRS access technology reference platform “would provide a known-good implementation of the detailed set of specifications and standards agreed on for VRS interoperability, against which providers could test their own devices and apps to ensure that

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<sup>133</sup> See SIP Forum, Video Relay Service (VRS) Task Group Charter, available at <http://www.sipforum.org/content/view/404/291/> (last visited Apr. 4, 2013) (identifying November 2013 as latest target publication date).

<sup>134</sup> Compare Sorenson FNPRM Reply Comments at 19 (stating that “the VP-200 currently complies with the Commission’s VRS interoperability requirements”) with CSDVRS, *Ex Parte* Letter (Mar. 13, 2013) (CSDVRS Mar. 13, 2013 *Ex Parte*) (alleging interoperability issues were created by Sorenson’s introduction of new firmware to the VP-200 in late 2012).

<sup>135</sup> See *supra* section II.C.2.

<sup>136</sup> RERC-TA PN Comments at 8-9 (supporting “the provision of a reference platform for VRS functionality”).

they meet the VRS interoperability standards.”<sup>137</sup> We agree with RERC-TA and note that there was universal support for this proposal in the record.<sup>138</sup>

54. We further agree with the RERC-TA that the reference platform should be developed and maintained by a neutral third party.<sup>139</sup> Given the history of disputes over whether a given VRS access technology does, in fact, comply with the Commission’s interoperability requirements,<sup>140</sup> it is important that all parties be assured that the developer is not biased in favor of a particular VRS provider. We therefore direct the FCC’s Managing Director, in consultation with the CTO and the Chief of OET, to select, consistent with our neutrality criteria discussed in section II.F.1 below, a neutral party (or have the TRS Fund administrator select a neutral party) to develop a VRS access technology reference platform under contract to the Commission (or the TRS Fund administrator) and compensated through the Fund.

55. The VRS access technology reference platform shall be a software product that is compliant with the standards developed consistent with section II.C.2 above, and useable on commonly available off the shelf equipment and operating systems.<sup>141</sup> We recognize that this process will take time to conclude, and therefore direct the Managing Director to allow the neutral party chosen to develop the VRS access technology reference platform to release “beta” versions of this platform at appropriate points in the development process, so long as procedures are in place to update the application as standards are established. The neutral party chosen to develop the VRS access technology reference platform also shall be required to provide appropriate levels of technical support during the term of the contract to entities, including developers, that license the VRS access technology reference platform and to end users, including troubleshooting technical issues that may arise in the placing or processing of VRS or point-to-point calls.<sup>142</sup>

56. The VRS access technology reference platform will be fully functioning VRS access technology; that is, it will function as current provider-specific products function to provide the ability to

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<sup>137</sup> *Id.* at 8.

<sup>138</sup> *Id.* at 8-9; *see also* Consumer Groups PN Comments at i (recommending “adoption of a VRS ‘reference platform’ that will serve as a basis for interoperability testing among multiple VRS applications and for third-party tests to ensure that VRS services are compatible with the reference platform and are interoperable”); Purple PN Comments at 4-5; VRSCA PN Comments at 2; ASL Services Holdings PN Reply Comments at 6 (“...development of a standard platform would serve as a base line test for platform and application interoperability.”); Sorenson PN Reply Comments at 50.

<sup>139</sup> RERC-TA FNPRM Comments at 9.

<sup>140</sup> *See, e.g., supra* n. 137.

<sup>141</sup> Desktop operating systems with greater than five percent market share include Microsoft Windows and the Apple MacOS desktop operating systems and Apple iOS. *See* Netmarketshare, Desktop Operating System Market Share, <http://www.netmarketshare.com/operating-system-market-share.aspx?qprid=10&qpcustomd=0> (last visited Apr. 2, 2013) (worldwide shares); StatCounter GlobalStats, Top 7 Operating Systems on W14 2013, <http://gs.statcounter.com/#os-ww-weekly-201314-201314-bar> (last visited Apr. 2, 2013) (United States market). Mobile operating systems with greater than five percent market share include the Google Android and Apple iOS operating systems. *See* Netmarketshare, Mobile/Tablets Operating System Market Share, <http://www.netmarketshare.com/operating-system-market-share.aspx?qprid=8&qpcustomd=1> (last visited Apr. 2, 2013) (worldwide shares); StatCounter GlobalStats, Top 8 Mobile Operating Systems on W14 2013, [http://gs.statcounter.com/#mobile\\_os-US-weekly-201314-201314-bar](http://gs.statcounter.com/#mobile_os-US-weekly-201314-201314-bar) (last visited Apr. 2, 2013) (United States market).

<sup>142</sup> We direct the Managing Director to ensure that that the initial term of the contract is for a period of time sufficient to attract the interest of a broad range of qualified applicants (*e.g.*, three years) and can be extended by agreement. We further direct the Managing Director to periodically recompute the contract as required.

place VRS and point-to-point calls, including dial-around functionality, the ability to update the users registered location, and such other capabilities as are required by our rules.<sup>143</sup> In order to maximize the benefit of this investment from the TRS Fund, the VRS access technology reference platform shall be available for use by the public and by developers.<sup>144</sup> Therefore, the Managing Director shall ensure that the VRS access technology reference platform, in addition to being compliant with standards developed consistent with section II.C.2 above, performs consistently with the Commission's rules, including allowing users to select any VRS provider as their default provider and providing dial around capability and such other rules as may be adopted in future.<sup>145</sup>

57. RERC-TA also suggests that the reference platform be “licensed under fair, reasonable, and non-discriminatory terms to any interested party.”<sup>146</sup> We defer to the Managing Director to determine the terms under which the VRS access technology reference platform will be licensed, but direct that he or she consider “open source” licensing to ensure the widest possible distribution of and use of the VRS access technology reference platform and, to the extent possible, underlying developed code.<sup>147</sup> We also direct that the Managing Director consider licensing the VRS access technology reference platform consistent with the tiered approach suggested by ASL Services Holdings, which would allow VRS providers and other developers to tailor the appearance and interface of the VRS access technology reference platform while ensuring that its core functionality remains fully standards compliant.<sup>148</sup> In any event, the VRS access technology reference platform shall be made available to the public and to interested developers.

58. We decline at this time to designate an entity responsible for certifying interoperability among VRS providers' VRS access technologies.<sup>149</sup> The availability of the VRS access technology reference platform should enable providers to test their own products prior to introducing them into the market or issuing upgrades. However, interoperability with the VRS access technology reference platform will be a minimum condition for a provider's VRS access technology to be in compliance with our rules and thus will be a minimum condition for receiving compensation from the Fund for calls using such technology. In other words, once the VRS access technology reference platform is available for use, and after completion of a reasonable testing period that will be announced in advance, no VRS provider shall be compensated for minutes of use generated by the provider's VRS access technologies that are found to be non-interoperable with the reference platform. To the extent the Commission receives complaints regarding a VRS provider or application developer's failure to comply with standards

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<sup>143</sup> We define VRS access technology in section II.C.1 above.

<sup>144</sup> The public availability of this reference platform, taken in combination with the other actions we take to improve the effectiveness of our interoperability and portability standards, will facilitate the use of off-the-shelf equipment to access VRS, and may well affect consumer behavior with respect to their choice of VRS access technology. We therefore decline to mandate “a requirement to transition to off-the-shelf hardware to access video relay service . . . within a synchronized time period” at this time. See Convo, CSDVRS, and Hancock, Jahn, Lee & Puckett, LLC, d/b/a Communication Access Ability Group (CAAG), *Ex Parte* Letter at 1 (filed Apr. 29, 2013).

<sup>145</sup> See 47 C.F.R. § 64.611(f).

<sup>146</sup> RERC-TA FNPRM Comments at 9.

<sup>147</sup> See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17440-55, Appendix B. See also RERC-TA PN Comments at 11 (“[w]hether the components are open-source or not is less important than having fair, reasonable, and non-discriminatory licensing terms for any interested party, including third parties not affiliated with the VRS industry”).

<sup>148</sup> ASL Services Holdings PN Comments at 6.

<sup>149</sup> See, e.g., Purple PN Comments at 5; RERC-TA PN Comments at ii, 12; CSDVRS Mar. 13, 2013 *Ex Parte* (urging that a “a third party test and certification system be established to have the CPE (hardware and software) and gateways tested and certified as interoperable”).

developed consistent with section II.C.2 above, we will rely on our existing processes to determine whether compliance with our rules is being achieved, whether it is appropriate to withhold payments, initiate an enforcement proceeding, or take other appropriate actions.

59. We note three concerns regarding the development of a VRS access technology reference platform raised by Sorenson.<sup>150</sup> Sorenson first urges that “care should be taken to choose the best possible platform” and that “choice of reference platform should be chosen by industry consensus through the SIP Forum VRS Task Group currently in operation.”<sup>151</sup> We agree that it is important to choose the best possible platform and, to this end, believe that the Commission, in its role as custodian of the Fund and the enforcer of our interoperability rules, must ensure that the platform is developed and released in an expeditious manner, can be updated and/or modified at the Commission’s direction as standards and regulations evolve, is licensed in an appropriate manner, and otherwise is developed and maintained in a manner consistent with our statutory obligations and the public interest. In the interest of avoiding the same conflicts and delays that have hindered the development of consensus industry standards to date,<sup>152</sup> we believe the best possible platform will be procured through our contracting process.

60. We also agree with Sorenson that the VRS access technology reference platform should “set a baseline for interoperability and should in no way impede future innovation.”<sup>153</sup> The VRS access technology reference platform will help to ensure interoperability and portability as required by our mandatory minimum standards, but should be considered only a floor, not a ceiling on functionality. To the extent providers wish to provide additional features and functions beyond those required by the industry standards process discussed in paragraph 56 above or by our rules, the VRS access technology reference platform should not serve as barrier.

61. Finally, we disagree with Sorenson that “the reference platform should be used to test for interoperability between providers’ endpoints, but should have no impact on the ways that a provider chooses to structure its own internal network.”<sup>154</sup> If a VRS provider’s network and the VRS access technology reference platform do not interoperate properly, the problem may be with the provider’s network architecture—if only at the edge where the provider’s network and the reference platform interface. While we do not dictate how providers are to comply with our interoperability and portability requirements, they are nevertheless obligated to meet them—and to achieve this, they may have to alter the operation of their networks to ensure compatibility with the VRS access technology reference platform and the standards-based features of other VRS access technologies.<sup>155</sup>

#### **D. TRS User Registration Database and Eligibility Verification**

62. In this section, we act to improve the mechanism used to register and verify the eligibility of VRS users through creation of a TRS user registration database (TRS-URD) and implementation of centralized eligibility verification requirements. The creation of a centralized TRS-URD will facilitate Commission efforts to reduce waste, fraud, and abuse and improve our ability to efficiently manage the program.

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<sup>150</sup> Sorenson PN Reply Comments at 50-51.

<sup>151</sup> *Id.*

<sup>152</sup> *See supra* ¶¶ 41-42.

<sup>153</sup> Sorenson PN Reply Comments at 51.

<sup>154</sup> *Id.*

<sup>155</sup> *See* RERC-TA PN Reply Comments at 5-6 (noting that “proprietary back office information” can serve as a barrier to interoperability with standards based VRS access technologies).

63. Ensuring that the VRS program is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates has been a core goal of this proceeding. To the extent that VRS providers discriminate in the manner in which they handle calls (*e.g.*, the type of call or caller), except as provided for in the Commission's rules, they create inefficiencies in the VRS call processing system.<sup>156</sup> Likewise, when a VRS provider engages in fraudulent practices by, *e.g.*, encouraging or causing VRS calls to be made that would not otherwise be made, or ineligible VRS users to be enrolled, simply to drive up compensation from the TRS Fund, the VRS system is made inefficient. These types of unlawful practices also artificially tie up CAs and limit the availability of VRS to legitimate users contrary to section 225 of the Act.<sup>157</sup>

64. Unlawful VRS provider practices not only allow dishonest providers to obtain a competitive advantage over providers that operate in compliance with the Act and our rules, but undermine the key goals of Congress in enacting section 225. VRS provider practices that result in waste, fraud, and abuse threaten the sustainability of the TRS Fund and are directly linked to the efficiency and effectiveness of the TRS Fund support mechanisms upon which VRS providers rely for compensation. As the Commission has previously found, fraudulent diversion of funds robs the TRS Fund for illicit gain and “abuses 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.”<sup>158</sup> Moreover, such practices unlawfully shift improper costs to consumers of other telecommunications services, including local and long distance voice subscribers, interconnected VoIP, and others.<sup>159</sup>

65. To help combat such fraud, the Commission proposed in the *2011 VRS Reform FNPRM* to implement a user database that “would provide a reliable source of data on the number of VRS users – data the Commission does not currently possess, . . . [and] would facilitate efforts by the TRS Fund Administrator and the Commission to conduct audits, determine compliance with the Commission's rules, and minimize the possibility of waste, fraud, and abuse.”<sup>160</sup> The Commission also proposed to adopt other regulations prohibiting VRS providers from engaging in practices that result in waste, fraud, and abuse of the TRS Fund, including discriminatory practices.

66. There is widespread record support for a user registration database; commenters agree that a user registration database will provide the Commission, for the first time, a definitive count of the number of unique, active VRS users, and a tool that will allow for more effective auditing and compliance procedures.<sup>161</sup> Commenters also asserted that a centralized eligibility verification system would help to

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<sup>156</sup> See 47 C.F.R. § 64.605(a)(2)(ii) (iTRS providers shall “[i]mplement a system that ensures that the provider answers an incoming emergency call before other non-emergency calls (*i.e.*, prioritize emergency calls and move them to the top of the queue)”).

<sup>157</sup> 47 U.S.C. § 225(b)(1).

<sup>158</sup> *VRS Call Practices FNPRM*, 26 FCC Rcd at 5551, ¶ 5.

<sup>159</sup> VRS users are not charged for use of the service. Rather, these costs are passed on to all consumers of telecommunications service 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. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466, 1468, ¶ 6 (CGB 2005) (*2005 Financial Incentives Declaratory Ruling*). When a VRS provider engages in fraudulent practices, the costs are unlawfully passed on to the public.

<sup>160</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17462, Appendix D ¶ 5.

<sup>161</sup> See, *e.g.*, CSDVRS, Convo, Sorenson, and Snap Telecommunications, Inc. (Snap), *Ex Parte* Letter at 1 (filed March 6, 2012) (Joint Providers *Ex Parte*); ASL Services Holdings FNPRM Comments at 18; Convo FNPRM (continued...)

prevent the registration of fraudulent users and therefore ensure the compensability of VRS calls handled and increase the efficiency of the VRS program.<sup>162</sup> On the basis of this record, we (i) direct the development and implementation of a TRS user registration database and (ii) adopt a centralized eligibility verification requirement to ensure that registration for VRS is limited to those who have a hearing or speech disability. We note that the benefits of a user registration database are likely to be applicable to forms of TRS other than VRS, and therefore seek comment in the accompanying FNPRM on how and whether to expand the scope of and obligations associated with the TRS-URD.<sup>163</sup>

67. Development and deployment of the TRS-URD, including the ability to conduct eligibility verification, will impose costs that are covered by the TRS Fund. We note that the price for startup and implementation of the TRS numbering directory database and a one year base operating period was \$1,541,000.<sup>164</sup> The cost of the TRS-URD is likely to be comparable, if not significantly less.<sup>165</sup> We believe that the resultant improvement in functional equivalence and VRS availability for consumers, ease of compliance by providers, and overall efficiency in the operation of the TRS program justifies imposition of these costs.

### 1. TRS-URD

68. We direct the FCC's Managing Director, in consultation with the CTO, the Chief of OET, and Chief of CGB, to select (or have the TRS Fund administrator select under objectives and factors determined by the Managing Director in consultation with the CTO, the Chief of OET, and Chief of CGB), consistent with our neutrality criteria discussed in section II.F.1 below,<sup>166</sup> a neutral party to build, operate, and maintain a user registration database under contract to the Commission (or the TRS Fund administrator) and compensated through the Fund.<sup>167</sup> Each VRS provider shall be required to

(Continued from previous page) \_\_\_\_\_  
 Comments at 24; Purple FNPRM Comments at 3, 11; Sorenson FNPRM Comments at 30, 63-65; Convo PN Comments at 18.

<sup>162</sup> See CAAG FNPRM Comments at 4; CDSVRS FNPRM Comments at 32; Consumer Groups FNPRM Comments at 17; Convo FNPRM Comments at 18-20; Purple FNPRM Comments at 9-10; Purple PN Comments at 5 (“Centralizing [registration and verification functions] would provide significant administrative benefits and audit capabilities to both the Commission and the TRS Fund Administrator while allowing VRS providers to focus on innovation and service quality for the benefit of consumers.”); Convo PN Reply Comments at 13-15.

<sup>163</sup> We note that the 2011 *VRS Reform FNPRM* referred to the proposed user registration database as the “VRS user registration database” or “VRSURD.” See, e.g., *2011 VRS Reform FNPRM*, 26 FCC Rcd at 12402, ¶ 80, 12462-66, Appendix D. Given the possibility that we will expand the use of the user registration database, we prefer to identify the database as the “TRS user registration database” or “TRS-URD.”

<sup>164</sup> See FCC, Post-Award: Information on Awarded Contracts, available at <http://transition.fcc.gov/omd/contracts/post-award/> (last visited Apr. 4, 2013) (describing award of RFQ08000022—Internet Based Telecommunications Relay Service).

<sup>165</sup> See Neustar, Inc. (Neustar) FNPRM Comments at 2-3 (arguing that the existing TRS numbering directory contract could be modified to perform TRS-URD functions for less than the cost of two databases).

<sup>166</sup> Commenters generally supported use of an independent, neutral third party to administer a registered user database. See, e.g., Purple FNPRM Comments at 11, 16; Experian Information Solutions, Inc. (Experian) FNPRM Comments at 3 (filed Mar. 30, 2012).

<sup>167</sup> We direct the Managing Director to consider whether modifying and/or rebidding the TRS numbering directory contract to include the features and functions of the TRS-URD is the most effective and efficient way to “build, operate and maintain” the TRS-URD, and to conduct its contracting process accordingly. See Neustar FNPRM Comments at 2-3.



register each of its users, populate the database with the necessary information for each of its users, and query the database to ensure a user's eligibility for each call.

69. The TRS-URD must have certain capabilities to allow the TRS Fund administrator and the Commission to: (a) receive and process subscriber information provided by VRS providers sufficient to identify unique VRS users and ensure each has a single default provider; (b) assign each VRS user a unique identifier; (c) allow VRS providers and other authorized entities to query the database to determine if a prospective user already has a default provider; (d) allow VRS providers to indicate that a VRS user has used the service; and (e) maintain the confidentiality of proprietary data housed in the database by protecting it from theft, loss, or disclosure to unauthorized persons.<sup>168</sup>

70. The TRS-URD cannot serve its intended purpose unless VRS providers populate the database with the necessary information and query the database to ensure a user's eligibility for each call. We therefore adopt a rule requiring each VRS provider to submit to the TRS-URD administrator the following information for each of the users for which it serves as the default provider:<sup>169</sup>

- Full name, full residential address, ten-digit telephone number assigned in the TRS numbering directory, last four digits of the Social Security number, and date of birth,<sup>170</sup>
- The user's registered location information for emergency calling purposes,<sup>171</sup>
- VRS provider name and dates of service initiation and termination,<sup>172</sup>
- A digital copy of the user's self-certification of eligibility for VRS and the date obtained by the provider;<sup>173</sup>

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<sup>168</sup> We note that the Commission recently established a National Lifeline Accountability Database as part of its efforts to reform and modernize the Universal Service Fund's Lifeline program, and we rely on the Commission's experience in that proceeding here. *See Lifeline and Link Up Reform and Modernization Order*, 27 FCC Rcd at 6734-54, ¶¶ 179-225.

<sup>169</sup> Throughout this Order, the phrase "to the TRS-URD" means to the third party administering the database and/or the database itself.

<sup>170</sup> The Commission's experience in the Lifeline context indicates that this basic identifying information is necessary to ensure that the validation process discussed below is effective. *See id.* at 6737-38, ¶ 191, n. 495. We acknowledge commenters' concerns that users will react negatively to being required to provide personal information. *See, e.g.,* Consumer Groups FNPRM Comments at 45; Convo FNPRM Comments at 25. While we are cognizant of these concerns, the collection of such information is consistent with our practices in the Lifeline context, and the privacy and security practices we mandate below should be sufficient to allay such concerns. *See infra* ¶¶ 75-76. Consistent with the *Lifeline and Link Up Reform and Modernization Order*, for those consumers living on Tribal lands who lack a Social Security number, an official Tribal identification card number may be provided in lieu of the last four digits of a Social Security number. This is the case everywhere noted in the Order where a consumer is required to provide the last four digits of a Social Security number. The database and related processes also must be able to accommodate non-traditional addresses, such as addresses on Tribal lands not recognized by the U.S. Postal Service. *See Lifeline and Link Up Reform and Modernization Order*, 27 FCC Rcd at 6728, ¶¶ 165-66, in which we note record support for the fact that residential addresses are frequently non-existent on Tribal lands and, where present, often differ significantly from residential addresses off Tribal lands.

<sup>171</sup> *See* 47 C.F.R. § 64.605(b)(4). Maintaining users' registered location data in the TRS-URD will allow users to switch providers without having to reenter that data.

<sup>172</sup> In addition to helping the Commission and the TRS Fund administrator fight waste, fraud, and abuse by providing the ability to detect and track calling patterns associated with a particular provider, this information also will allow the Commission to track market share and churn in the VRS market, and should be retained after a user switches providers so as to provide time series data.

- The date on which the user's identification was verified;<sup>174</sup> and
- The date on which the user last placed a point-to-point or relay call.<sup>175</sup>

Furthermore, prior to providing subscriber information to the database, the VRS provider must obtain consent from the subscriber. In doing so, the VRS provider must describe to the subscriber in writing using clear and easily understandable language the specific information being provided, that the information is being provided to the TRS-URD to ensure the proper administration of the TRS program, and that failure to provide consent will result in the registered user being denied service. VRS providers must obtain and keep a record of affirmative acknowledgment by every registered user of such consent.

71. All personally identifying information will only be accessible for access and modification via network connections using commercially reasonable encryption. VRS providers must submit this information for existing registered users to the TRS-URD within 60 days of notice from the Commission that the TRS-URD is ready to accept such information. Calls from existing registered users that have not had their information populated in the TRS-URD within 60 days of notice from the Commission that the TRS-URD is ready to accept such information shall not be compensable. VRS providers must submit this information (except for the date on which the user last placed a point-to-point or relay call, which is not required for newly registered users) for users registered after the TRS-URD is operational upon initiation of service. We require that the TRS-URD be capable of receiving and processing data provided by VRS providers both in real-time and via periodic batches. We direct the Managing Director to ensure that the TRS-URD administrator specifies how VRS providers must submit data to the database subject to both real-time and batch processes.

72. *Per-Call Validation.* In order to ensure the compensability of each call, VRS providers shall validate the eligibility of a user by querying the TRS-URD on a per-call basis. Such validation shall occur during the call setup process, prior to the placement of the call.<sup>176</sup> If a caller's eligibility cannot be validated using the TRS-URD, the call shall not be placed, and the VRS provider shall either terminate the call or, if appropriate, offer to register the user if they are able to demonstrate eligibility. Calls that are not completed because the user's eligibility cannot be validated shall not be included in speed of answer calculations.<sup>177</sup> In order to ensure that emergency calls are processed as expeditiously as possible, we except emergency calls from this requirement.<sup>178</sup>

73. *Unique User Identifiers.* The TRS-URD shall assign a unique identifier to each user in the TRS-URD.<sup>179</sup> In the absence of suggestions in the record on this point, we decline to specify the nature of that unique identifier, and instead direct the TRS-URD administrator to determine the form that

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<sup>173</sup> See *infra* ¶ 79.

<sup>174</sup> See *infra* section II.D.2.b.

<sup>175</sup> This data will enable identification of individuals who are registered in the database but are no longer using VRS. See *infra* ¶ 74.

<sup>176</sup> See *infra* ¶ 140.

<sup>177</sup> See *infra* section III.D.

<sup>178</sup> For the sake of clarity, emergency calls are calls to the appropriate Public Safety Answering Point (PSAP), designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location. See 47 C.F.R. § 64.605.

<sup>179</sup> See Convo FNPRM Comments at 25; Purple FNPRM Comments at 12.

this unique identifier should take, and the standards and practices associated with assigning and managing the unique identifier, in connection with the contracting process.

74. *Ensuring Data Integrity.* In order to ensure the integrity of the data in the TRS-URD, it is important to periodically remove information for users who are no longer using VRS (e.g., due to death of the user). The Commission proposed in the *2011 VRS Reform FNPRM* to define an active user as “a VRS user who makes at least two minutes of outbound calls to parties that are not affiliates of any VRS provider” in a given month.<sup>180</sup> Sorenson proposed that the definition be broadened to include inbound and outbound calls over a six month period.<sup>181</sup> Given that we retain a compensation mechanism based on usage rather than subscribership,<sup>182</sup> it reasonable to take an even more cautious approach in this context, and find it reasonable for the Managing Director to ensure that the TRS-URD administrator removes users from the TRS-URD if they have neither placed nor received a VRS or point to point call in a one year period. Users that are removed from the TRS-URD may, of course, reregister at a later time. If a VRS provider is notified by one of its registered users that the user no longer wants use of a ten-digit number or the provider obtains information that the user is not eligible to use the service, the VRS provider must request that the TRS-URD administrator remove the user’s information from the database and may not seek compensation for providing service to the ineligible user. The TRS-URD administrator shall honor such requests.

75. *Security.* We acknowledge that the data housed in the TRS-URD may include sensitive personal information.<sup>183</sup> There is widespread consensus that the information in the database must be subject to the highest protections.<sup>184</sup> The TRS-URD must, therefore, have sufficient safeguards to maintain the proprietary or personal nature of the information in the database by protecting it from theft or loss.<sup>185</sup>

76. An important component of maintaining the appropriate level of privacy and data security will be limiting access to the database to authorized entities and then only for authorized purposes.<sup>186</sup> The TRS-URD is not to be used for purposes that do not further the efficient operation and administration of the VRS program, and we authorize use by providers only for the reasons specified herein, and to determine whether information with respect to its registered users already in the database is correct and

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<sup>180</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17456, Appendix C ¶ 9.

<sup>181</sup> Sorenson FNPRM Comments at 49 (“two minutes of VRS usage initiated by the user over the trailing six months or any 911 call in the trailing six months”).

<sup>182</sup> See *infra* section IV.B.

<sup>183</sup> See Consumer Groups FNPRM Comments at 6, 45; see also *Lifeline and Link Up Reform and Modernization Order*, 27 FCC Rcd at 6745, ¶ 207.

<sup>184</sup> See, e.g., Consumer Groups FNPRM Comments at 22, 45; Neustar FNPRM Comments at 3 (maintains a high level of security for the iTRS Directory and would extend such security to additional data); Sorenson FNPRM Comments at 61 (Commission should appoint a skilled and reputable entity with a long track record of fastidious data management as database administrator); CSDVRS PN Comments at 32; RERC-TA PN Comments at 17; Sorenson PN Comments at 85-86; Dean DeRusso PN Reply Comments at 3; VRSCA PN Reply Comments at 4. No commenter suggested that there are other pre-existing regulatory or statutory requirements pertaining to data collection that must be addressed in this proceeding. See *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17422, ¶ 152.

<sup>185</sup> See Consumer Groups FNPRM Comments at 22, 45; Neustar FNPRM Comments at 3; Sorenson FNPRM Comments at 61; CSDVRS PN Comments at 32; RERC-TA PN Comments at 17; Sorenson PN Comments at 85-86; Dean DeRusso PN Reply Comments at 3; Sorenson PN Reply Comments at 65-66; VRSCA PN Reply Comments at 4.

<sup>186</sup> See Neustar FNPRM Comments at 3; Sorenson FNPRM Comments at 61; Consumer Groups FNPRM Reply Comments at 6-7; Sorenson FNPRM Reply Comments at 56-57; Dean DeRusso PN Reply Comments at 3.

complete. Moreover, we specifically prohibit providers from conducting lookups in the TRS-URD to identify other VRS providers' customers for marketing purposes, including win-back efforts.<sup>187</sup> The Managing Director shall ensure that the minimum number of entities has access to the TRS-URD, that such access is utilized only for authorized purposes, and that the data available to a provider in a given circumstance is limited to the minimum necessary.<sup>188</sup>

77. The exact form of the data elements in the database, the structure of the database, and other detailed implementation issues shall be specified during the contracting process. Our experience with the TRS numbering directory has taught us that it may become necessary, over time, to modify the data that is to be stored in the database or otherwise make changes to the way the database is administered, structured, or interacted with so as to ensure the efficient administration of the program. To facilitate the ability to respond to such necessary changes efficiently, we delegate to the Managing Director (or the TRS Fund administrator, if appropriate with the approval of the Managing Director) the authority to modify the TRS-URD contract as necessary to implement changes that are necessary to ensure the efficient administration of the program.

## 2. Certification of Eligibility and Verification of Identity

78. Consistent with the Commission's actions in the context of IP CTS and reform of the Lifeline program,<sup>189</sup> we require every VRS provider to obtain from each registered user a self-certification of eligibility and to implement a centralized identity verification requirement to ensure that registration for VRS is limited to those who have a hearing or speech disability.

79. We decline to relieve VRS providers of their obligation to register users for whom they are the default provider by centralizing that process as some commenters suggest.<sup>190</sup> VRS providers identify and sign up users through their marketing efforts, and have staff who are trained in ASL and customer registration, and are therefore well equipped to gather from users and potential users the information necessary to register, certify, and verify the eligibility of registrants.<sup>191</sup> We agree with

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<sup>187</sup> See, e.g., Sorenson FNPRM Reply Comments at 60 (stating that the user registration database should "secure name and address information so that it could not be used by competing VRS providers with access to the database as a source of marketing leads").

<sup>188</sup> For example, a VRS provider processing a dial-around call may need to validate the caller's unique identifier against the TRS-URD, but should not need to access the user's address or the last four digits of their social security number. Several commenters suggested compartmentalizing access to the database so that querying entities are only able to view the data they are authorized to see. See, e.g., Neustar FNPRM Comments at 3 (can compartmentalize access to the iTRS Directory); Sorenson FNPRM Comments at 61 (allow complete access only to appropriate Commission staff, the Fund administrator, and the database administrator; only a limited number of employees with each provider should be permitted to access only that provider's default subscriber information); Consumer Groups FNPRM Reply Comments at 6-7 (adopt a rule setting forth the general principle of limited access and memorialize the details in an agreement between the database administrator and each VRS provider); Sorenson FNPRM Reply Comments at 56-57 (include robust protections, including data firewalls that prevent providers from obtaining information about another provider's customers; prohibit providers from conducting reverse number look-ups); Dean DeRusso PN Reply Comments at 3.

<sup>189</sup> See *Lifeline and Link Up Reform and Modernization Order*, 27 FCC Rcd at 6734-54, ¶¶ 179-225; *IP CTS Interim Rules Order*.

<sup>190</sup> See e.g., Convo PN Reply Comments at 13; Purple PN Reply Comments at 5-6. The Commission's iTRS registration requirements are set forth in section 64.611 of our rules. See 47 C.F.R. § 64.611.

<sup>191</sup> *Id.*

Sorenson that it would be difficult, if not impossible, to find a third party with the incentive and ability to conduct those tasks effectively.<sup>192</sup>

**a. Certification of Eligibility**

80. In order to be eligible for compensation from the TRS Fund for providing service to their registered VRS users,<sup>193</sup> each provider is required to obtain from each registered user and submit to the TRS-URD a written self-certification that the user has a hearing or speech disability that makes them eligible to use VRS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, described in greater detail below.

81. We decline at this time to require VRS providers to obtain from end users a certification of eligibility issued by an independent third party. By definition, a VRS call originates with or terminates to a party with a hearing or speech disability who uses sign language to communicate.<sup>194</sup> Thus, unlike other forms of TRS, VRS requires users to communicate with a CA in ASL during each call. CAs therefore can help to ensure that the service is used only by eligible users.<sup>195</sup> Specifically, VRS providers shall require their CAs to terminate any call that does not involve an individual that uses ASL or that otherwise, pursuant to the provider's policies, procedures, and practices as described in its annual compliance plan,<sup>196</sup> does not appear to be a legitimate VRS call, and VRS providers may not submit such calls for compensation from the Fund.<sup>197</sup>

82. VRS providers shall submit to the TRS-URD a properly executed certification of eligibility for each of their existing registered users within 60 days of a public notice from the Managing Director providing notice that the TRS-URD is ready to accept information. VRS providers shall submit a properly executed certification for "new to category" users at the time of registration. When registering a user that is transferring service from another VRS provider, VRS providers shall obtain and submit a properly executed certification if a query of the TRS-URD shows a properly executed certification has not been filed.<sup>198</sup> We also require each VRS provider to maintain the confidentiality of such registration and certification information obtained by the provider, and to not disclose such registration and certification information, as well as the content of such information, except upon request of the FCC, the TRS Fund administrator, or the TRS-URD administrator or as otherwise required by law.

83. The user self-certification mandated by these rules must adhere to several requirements. In particular, a VRS provider must obtain from each user self-certification that: (1) the user has a hearing or speech disability that makes the user eligible to use VRS; and (2) the user understands that the cost of the VRS calls is paid for by contributions from other telecommunications users to the TRS Fund.<sup>199</sup> In

<sup>192</sup> See Sorenson PN Comments at 90.

<sup>193</sup> We note that VRS providers already are required to register their users, and so do not adopt a duplicative requirement here.

<sup>194</sup> See 47 C.F.R. § 64.601(a)(27)(2012).

<sup>195</sup> See CSDVRS FNPRM Comments at 32.

<sup>196</sup> See *infra* section III.C.

<sup>197</sup> We note that a VRS CA is a "covered individual" under the Commission's TRS whistleblower protections and may bring the ineligible caller to the attention of his/her designated manager, the Commission, the Interstate TRS Fund administrator, or any federal or state law enforcement entity. See 47 C.F.R. § 64.604(c)(5)(iii)(M).

<sup>198</sup> Consistent with the security requirements described in ¶¶ 75-76, *supra*, the TRS-URD should not provide access to a copy of the certification provided, but instead return a simple "yes" or "no" response.

<sup>199</sup> Hearing Loss Association of America (HLAA) states in its comments filed in regard to IP CTS: "[W]e suggest that plain language should be used. For example, 'the user has a hearing loss that necessitates IP CTS to

(continued...)

addition, this self-certification must be made on a form separate from any other user agreement (such as on a separate page), and requires a separate signature specific to the self-certification.<sup>200</sup> The first of these requirements is intended to highlight important information that may be relevant to the consumer's decision to use the service. The requirement to obtain a separate signature on a standalone document—opposed to the method currently used by some providers of simply adding a check box to a lengthy service agreement—will highlight the importance of providing a true and accurate certification.

**b. Verification of Identity**

84. Commenters also note that a centralized process by which the identity of users is verified would help to prevent the registration of fraudulent users and therefore ensure the compensability of VRS calls handled and increase the efficiency of the VRS program.<sup>201</sup> We agree.

85. Consistent with our actions regarding the user registration process, we believe that VRS providers are in the best position to gather information necessary to verify user identity.<sup>202</sup> That said, conducting all verifications through a single, centralized process will ensure that all users meet the verification standards mandated by the Commission.<sup>203</sup> Further, it is highly likely that requiring all VRS providers to conduct identity verification through a central process will result in cost savings. The Fund will almost certainly be able to negotiate a contract for verification services for all providers that is less expensive than the sum of the individual contracts that would need to be negotiated by each VRS provider. Consistent with the Commission's actions in the *Lifeline Reform Order*,<sup>204</sup> and given that VRS providers already are required to submit user information to the TRS-URD,<sup>205</sup> the TRS-URD is a logical central point from which user verification can be conducted.

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communicate in a manner that is functionally equivalent to communication by conventional voice telephone users' will not be understood by many if not most consumers. We suggest instead language such as 'the user has a hearing loss and needs captions to be able to fully understand phone conversations.'" HLA Comments at 11, CG Docket Nos. 13-24, 03-123 (filed February 26, 2013). We agree that the certification should use plain language to ensure that consumers understand the nature of their required certification, and therefore require the following language for VRS: "The consumer has a hearing or speech disability and needs VRS to be able to communicate with other people." We will address the issue of the language to be used for consumers in the IP CTS context when we adopt final rules for IP CTS registration and certification.

<sup>200</sup> For the purposes of this requirement, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature. *Cf.* 47 C.F.R. § 54.419(a) (allowing electronic signatures under the Lifeline program).

<sup>201</sup> *See* CAAG FNPRM Comments at 4; CDSVRS FNPRM Comments at 32; Consumer Groups FNPRM Comments at 17; Convo FNPRM Comments at 18-20; Purple FNPRM Comments at 9-10; Convo PN Reply Comments at 13-15; Purple PN Reply Comments at 5. We also agree with Sorenson that centralizing the verification function with the TRS-URD is unlikely to have an impact on video mail messages left for inactive ten-digit numbers, and that there is no evidence in the record of consumer confusion related to registration and verification. Convo PN Comments at 18-19; Sorenson PN Reply Comments at 61-62. However, the reduction in the potential for fraud and increased efficiency of program are sufficient to justify implementation a verification process.

<sup>202</sup> *See supra* ¶ 79. Given that we require VRS providers to gather and submit registration and verification information, Sorenson is correct that each provider will need to maintain their systems for gathering and submitting registration and verification information. *See* Sorenson PN Reply Comments at 63-64.

<sup>203</sup> *See supra* ¶ 70. *See also* Consumer Groups PN Comments at 21; Convo PN Comments at 19; Purple PN Comments at 10.

<sup>204</sup> *See Lifeline and Link Up Reform and Modernization Order*, 27 FCC Rcd at 6743, ¶ 201.

<sup>205</sup> *See supra* section II.D.1.

86. We therefore direct the Managing Director to ensure that the TRS-URD has the capability of performing an identification verification check when a VRS provider or other party submits a query to the database about an existing or potential user.<sup>206</sup> The criteria for identification verification (e.g., information to be submitted, acceptable level of risk, etc.) shall be established by the Managing Director on consultation with the CTO and the Chief of OET.<sup>207</sup> VRS providers shall not register individuals that do not pass the identification verification check conducted through the TRS-URD, and shall not seek compensation for calls placed by such individuals.

#### **E. Neutral Video Communication Service Provider**

87. As discussed in the *2010 VRS NOI*, VRS communications require the interaction of three separate yet interlinked components: VRS access technologies, video communication service, and relay service provided by ASL-fluent CAs.<sup>208</sup> In the *VRS Structure and Rates PN*, the Commission sought comment on specific proposals to disaggregate these components,<sup>209</sup> including a proposal by CSDVRS to require an industry structure in which all providers of VRS CA services would utilize an enhanced version of the TRS numbering directory to provide features such as user registration and validation, call routing, and usage accounting. In effect, the CSDVRS proposal would separate the video communication service component of VRS from the VRS CA service component by providing the functions of the former from an enhanced database (“enhanced iTRS database”).<sup>210</sup>

88. Commenters generally opposed the CSDVRS proposal, arguing that requiring all providers to use a single VRS access technology and a single video communication service platform would, among other things, reduce competition, inhibit innovation, reduce quality of service, create consumer confusion, and threaten consumer privacy.<sup>211</sup> While we do not necessarily find these objections

<sup>206</sup> The Commission required that the National Lifeline Accountability Database have the same functionality. *See Lifeline and Link Up Reform and Modernization Order*, 27 FCC Rcd at 6743, ¶ 201.

<sup>207</sup> One company, Experian, filed comments in this proceeding describing how their product offerings might support such a function. *See* Experian FNPRM Comments. Our citation of Experian’s comments in no way indicates a preference for use of their products for this function.

<sup>208</sup> *See 2010 VRS NOI*, 25 FCC Rcd at 8608, ¶¶ 32-33. The *2010 VRS NOI* identified the first of these interlinked components as “videophone equipment.” In the *2011 VRS Reform FNPRM*, the Commission proposed to adopt a broader term, “iTRS access technology,” defined as “any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call.” *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17389, ¶ 41. In the *2010 VRS NOI*, the Commission also noted that “the video communication service component of VRS consists of both a transmission medium (i.e., a broadband connection) as well as a service (audio and video) that is provided over that transmission medium.” *2010 VRS NOI* at 8608, ¶ 32 n. 42.

<sup>209</sup> *VRS Structure and Rates PN*, 27 FCC Rcd at 12961.

<sup>210</sup> *See* CSDVRS FNPRM Comments at 15-22; CSDVRS, *Ex Parte* Letter at 2, Attachment (filed May 9, 2012). CSDVRS also proposed that all VRS provider be required to use a single VRS access technology. *See* CSDVRS, *Ex Parte* Letter, Attachment 2 (filed July 10, 2012); CSDVRS, Aug. 27, 2012 *Ex Parte* at 2-3. We decline to mandate that all providers use the same VRS access technology, and note that the VRS access technology reference platform discussed in section II.C.3 above should help to address the concerns CSDVRS raised regarding interoperability and portability.

<sup>211</sup> *See generally* Convo PN Comments at 15-16; Purple PN Comments at 9-11; RERC-TA PN Comments at 19; Sorenson PN Comments at 46-98; ASL Services Holdings PN Reply Comments at 3; Purple PN Reply Comments at 5; Sorenson PN Reply Comments at 56-69; VRSCA PN Reply Comments at 4; *but see* CAAG PN Comments at 12.

persuasive,<sup>212</sup> we choose not to require that all providers utilize a single video communication service provider at this time.

89. We find merit, however, in the concept of disaggregating VRS CA service from video communication service. In lieu of requiring all VRS providers to use a single video communication service platform, we establish, by contract, a neutral video communication service provider that will allow consumers to connect to the “standalone” VRS CA service provider of their choice.<sup>213</sup> As discussed in greater detail below, the neutral video communication service provider will provide user registration and validation, authentication, authorization, ACD platform functions,<sup>214</sup> routing (including emergency call routing), call setup, mapping, call features (such as call forwarding and video mail), and such other features and functions not directly related to the provision of VRS CA services.<sup>215</sup>

90. The creation of a neutral video communication service provider will have multiple beneficial effects, the most obvious being in the promotion of more efficient and effective VRS CA service competition. The availability of a neutral platform will eliminate a significant barrier to entry: the cost of building and maintaining a video communication service platform. Standalone VRS CA service providers are likely to focus their efforts on distinguishing themselves through innovation in the provision of high-quality ASL interpretation and the hiring of interpreters who can meet a wide variety of VRS user communication needs.<sup>216</sup> A neutral video communication service provider also will provide the Commission direct insight into the operation of the video communication service component of VRS. In addition to allowing the Commission to assess some of the claims made by VRS providers in opposition to the CSDVRS proposal,<sup>217</sup> the Commission will be better able to assess the costs of operating a platform and to develop platform related performance metrics, potentially including metrics that go beyond simple “speed of answer” requirements.

91. Further, a neutral video communication service provider will serve, at least in part, the same functions as the VRS access technology reference platform with respect to ensuring interoperability between providers. As discussed above, the interface between VRS access technologies and video communication service platforms can be the source of barriers to interoperability.<sup>218</sup> The neutral video communication service provider contract will mandate full compliance with industry established interoperability standards, thereby providing a neutral platform against which interoperability issues can be tested.<sup>219</sup> The availability of this neutral video communication service provider also will allow the Commission to be better able to assess claims that independent products or services are not compliant

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<sup>212</sup> Given that we do not choose to adopt the CSDVRS proposal at this time, we do not need to respond to each objection raised in the record.

<sup>213</sup> A “standalone VRS CA service provider” is a VRS CA service provider that relies on the neutral video communication service platform for the non-VRS CA service components of VRS.

<sup>214</sup> By the term “ACD platform,” the Commission means the hardware and/or software that comprise the essential call center function of call distribution, and that are a necessary core component of iTRS. *See 2011 iTRS Certification Order*, 26 FCC Rcd at 10906, n. 44.

<sup>215</sup> For the sake of clarity, standalone VRS CA service providers are responsible for their own billing for compensation from the TRS fund.

<sup>216</sup> The accompanying FNPRM seeks input on the eligibility criteria that should be used to determine whether a standalone VRS CA service provider qualifies for Commission certification to receive compensation from the Fund for the provision of VRS. *See* section V.JJ, *infra*.

<sup>217</sup> *See supra* n. 213.

<sup>218</sup> *See supra* ¶ 61.

<sup>219</sup> *See infra* ¶ 95.



with our interoperability rules. As with the VRS access technology reference platform, all providers' VRS access technologies and (in the case of vertically integrated providers) video communication service platforms must be interoperable with the neutral video communication service provider's service platform, including for point-to-point calls. After completion of a reasonable testing period that will be announced in advance, the neutral video communication service provider will begin providing service to standalone VRS CA service providers, and from that point on, no VRS provider shall be compensated for minutes of use involving VRS access technologies or video communication service platforms that are not interoperable with the neutral video communication service provider's platform.

92. Aside from this interoperability obligation, existing, vertically integrated providers of VRS are in no way obligated to utilize the neutral video communication service provider, and may continue to deliver VRS over their existing platforms consistent with our rules.<sup>220</sup> Indeed, given the complexity that would result from allowing vertically integrated providers to process calls both over their own video communication service platforms and the neutral video communication service platform we adopt today, only providers choosing to operate as standalone VRS CA service providers will be permitted to utilize the neutral video communication service platform to process VRS calls. Existing, vertically integrated VRS providers that wish to transition to operation as a standalone VRS CA service provider may do so upon 60 days notice to the Commission.

### 1. Neutral Video Communication Service Provider Performance Requirements

93. We direct the FCC's Managing Director, in consultation with the CTO, the Chief of OET, and the Chief of CGB, to select, consistent with our neutrality criteria discussed in section II.F.1 below, a neutral party to build, operate, and maintain a neutral video communication service platform under contract to the Commission and compensated through the Fund.<sup>221</sup> We recognize that this is a complicated undertaking that will require significant interaction between the Commission and the neutral video communication service provider. We therefore direct the Managing Director to take the following guidance into account when contracting for the neutral video communication service provider.

94. *Quality of service.* The Managing Director, in consultation with the Chief of CGB, shall specify appropriate benchmarks for service quality, including benchmarks for availability, dropped calls, and call signaling delay, consistent with existing Commission requirements.

95. *Standards compliance.* The neutral video communication service platform must conform to all standards incorporated into our rules by reference.<sup>222</sup> By extension, the neutral video communication service platform must be interoperable with the VRS access technology platform and other standards compliant VRS access technologies. To the extent the neutral video communication service provider develops and releases iTRS access technology, that iTRS access technology must comply with our rules.<sup>223</sup>

96. *Backwards compatibility.* The neutral video communication service platform should provide a reasonable level of backwards compatibility with the installed base of existing VRS access technologies.

<sup>220</sup> The benefits identified in paragraphs 90-91 of this section are sufficient justification for the creation of a neutral video communication service platform, regardless of whether existing providers choose to take advantage of its availability. See CSDVRS Apr. 11, 2013 *Ex Parte* at 2.

<sup>221</sup> Commenters generally supported use of an independent, neutral third party to administer a registered user database. See Experian FNPRM Comments at 3; Purple FNPRM Comments at 11, 16. We discuss our neutrality requirements in greater detail in section II.F.1 below.

<sup>222</sup> See *supra* section II.C.1.

<sup>223</sup> See 47 C.F.R. § 64.611(f).

97. *Functionality.* The Managing Director shall ensure that the neutral video communication service provider provides all of the operational, technical, and functional capabilities specified in our rules that are not otherwise fulfilled by VRS access technology or a standalone VRS CA service provider. Such requirements include, but are not limited to, routing and delivery of VRS calls to and from the PSTN with interpretation from the user's registered provider, , routing of point-to-point calls,<sup>224</sup> and delivery of calling party identifying information.<sup>225</sup> The neutral video communication service platform shall be available 24 hours a day.

98. Of particular importance, the neutral video communication service platform shall ensure appropriate processing of emergency calls,<sup>226</sup> using the user's registered standalone VRS CA service provider for interpretation services. Specifically, the technical requirements shall specify that the neutral video communication service provider provides each standalone VRS CA service provider with the functionality necessary to comply with section 64.605(b) of our rules.<sup>227</sup>

99. The neutral video communication service provider also shall provide such functionality as is required to allow standalone VRS CA service providers to fulfill their registration obligations under section 64.611 of our rules. Specifically, the neutral video communication service provider will act on behalf of standalone VRS CA service providers to obtain and assign ten digit telephone numbers to consumers during the user registration process,<sup>228</sup> route and deliver inbound and outbound calls,<sup>229</sup>

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<sup>224</sup> The Commission has historically required the provision of point-to-point functionality by VRS providers, holding that “any loss of such basic functionality is simply not acceptable.” *See Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 820-21, ¶ 65. *See also, e.g.*, GoAmerica, Comments, WC Docket No. 05-196, at 15 (filed Aug. 8, 2008) (GoAmerica August 8, 2008 Comments) (asserting that point-to-point calls are “often the most functionally equivalent form of telecommunications for many individuals”). (In this document, comments filed in response to the Commission’s 2008 Notice of Proposed Rulemaking on TRS numbering issues are cited as “August 8, 2008 Comments.”) Insofar as the Commission has stated that point-to-point calls are not “compensable from the Fund,” we interpret that simply to mean that providers were not entitled to compensation at the per-minute rates established by the Commission for the minutes of point-to-point calls VRS providers transmitted. *See Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 820-21, ¶ 65. To comply with the requirement that each VRS provider route point-to-point calls, such providers of necessity must ensure that their networks are capable of doing so. We thus believe that the associated cost of provisioning a network capable of routing point-to-point calls is a cost sufficiently “caused by interstate TRS” to justify funding it from the TRS Fund. 47 U.S.C. § 225(d)(3)(B). We continue to believe it is not appropriate to provide compensation for each minute of point-to-point traffic carried based on existing TRS rates, which include many costs that do not arise in the case of point-to-point calls. We do, however, allow compensation from the TRS Fund for the neutral video communication platform provider to provide a network that includes that capability, just as we understand providers likewise historically have included the costs of provisioning a network capability of routing point-to-point calls in the costs submitted to the TRS Fund administrator for purposes of developing TRS rates.

<sup>225</sup> 47 C.F.R. § 64.604(b)(6).

<sup>226</sup> *Id.* § 64.605.

<sup>227</sup> *Id.* § 64.605(b) (setting forth specific requirements for routing emergency calls placed by registered users to the appropriate PSAP or other authorized answering point and for transmitting callers’ registered locations and other information with emergency calls). As described below, however, standalone VRS CA service providers shall be responsible for ensuring that the neutral video communication service provider has the information it needs to fulfill these obligations (*e.g.*, by obtaining from each registered user, prior to the initiation of service, the physical location at which the service will first be utilized and providing that information to the neutral video communication service provider pursuant to 47 C.F.R. § 64.605(b)(4)(i)).

<sup>228</sup> *Id.* § 64.611(a)(1).

<sup>229</sup> *Id.* § 64.611(a)(2).

interface with the TRS Numbering Directory,<sup>230</sup> interface with the TRS-URD,<sup>231</sup> and facilitate any necessary actions as pertain to toll-free numbers.<sup>232</sup>

100. The neutral video communication service provider shall provide standard interfaces and protocols through which standalone VRS CA service providers will provide interpretation services and send and receive such information as is necessary to ensure compliance with our rules. The neutral video communication service provider shall deliver to standalone VRS CA service providers such information as is necessary for the standalone VRS CA service provider to process the call and maintain such records (e.g., usage accounting) as are necessary to allow them to seek compensation from the TRS Fund. The neutral video communication service platform also shall provide advanced capabilities as specified by CGB including, for example, video mail and address book capabilities.

101. *Scalability.* The neutral video communication service platform will necessarily carry few minutes of use at the initiation of its operations, but is likely to attract additional minutes of use over time. The neutral video communication service platform provider therefore must ensure that the platform, in addition to having the capacity to process initial levels of call volume, be scalable (i.e., be able to handle increasing amounts of traffic over time as demand warrants) on a reasonable timeline.

102. *Customer service.* The neutral video communication service provider shall provide appropriate levels of customer service both to standalone VRS CA service providers and to end users, including troubleshooting technical issues that may arise in the placing or processing of VRS or point-to-point calls.

## 2. Stakeholder Concerns

103. Given that no VRS provider will be required to utilize the neutral video communication service provider, we need not address general concerns expressed by commenters regarding a “command and control” approach to VRS that would disrupt existing business models and putatively damage competition, innovation, and customer satisfaction.<sup>233</sup> Nevertheless, to the extent that some of these concerns could be applicable to the approach we adopt today, we address each in turn.

104. *Privacy and Security.* Sorenson argues that “centralized” network operations could result in increased risks to customer privacy.<sup>234</sup> While it is not clear how the neutral video communication service provider would pose any greater (or lesser) risk to consumer data than does an integrated provider like Sorenson, we acknowledge that the neutral video communication service provider may possess or have access to sensitive personal information. The neutral video communication service provider must, therefore, have sufficient safeguards to maintain the proprietary or personal nature of the information in its possession by protecting it from theft or loss.

105. *Fraud.* Sorenson argues that the availability of a centralized communication service platform increases the risk that “fly-by-night” VRS CA service providers will seek to defraud the TRS Fund.<sup>235</sup> As discussed below, standalone VRS CA service providers must go through a certification process like other VRS providers before they are eligible to seek compensation from the TRS Fund.<sup>236</sup>

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<sup>230</sup> *Id.* §§ 64.611(c), 64.613(a).

<sup>231</sup> *See supra* section II.D.1.

<sup>232</sup> 47 C.F.R. §§ 64.611(d), (e).

<sup>233</sup> *See generally* Sorenson Reply Comments at 56-59, Purple PN comments at 9.

<sup>234</sup> *See, e.g.,* Sorenson PN Reply Comments at 64-66.

<sup>235</sup> *Id.* at 66-67.

<sup>236</sup> *See infra* section II.E.3.

We are confident that this certification process, taken in combination with our improved ability to audit data on VRS calls processed by the neutral video communication service provider, will be sufficient to protect the Fund against this kind of waste, fraud, and abuse.

106. *Service quality.* Sorenson argues that a centralized provider will not be incented to provide quality services.<sup>237</sup> The services of the neutral video communication service provider are essentially “mechanical” in nature and can be quantified using well-understood industry-standard metrics such as call signaling delay and availability. We believe that appropriately developed service quality benchmarks specified by contract are sufficient to ensure that the neutral video communication service provider will provide an appropriate level of performance.<sup>238</sup> Any neutral video communication service provider that hopes to win a renewal of its contract will be strongly incented to perform.

107. *Compensation.* Sorenson expresses concern that changes to the structure of the VRS program will require changes to the existing compensation system, which it argues is working as intended.<sup>239</sup> We disagree that the existing compensation system is working as intended, and, as described in section IV of this Order, modify the way that vertically integrated providers are compensated and set in place a reasonable glide path to market based rates—a process the Commission began years ago. Further, as we discuss in the FNPRM in section V below, we propose to transition to a ratemaking approach that makes use of competitively established pricing, *i.e.*, contract prices set through a competitive bidding process, where feasible.

108. *Customer confusion.* Finally, Purple and Sorenson argue that the provision of VRS through disaggregated service providers will result in customer confusion and poor customer service, stemming primarily from the fact that “consumers will frequently have no idea whom to contact to resolve problems and technical difficulties. . . .”<sup>240</sup> We believe this concern is overstated, as Americans obtain service from disaggregated providers every day, whether they use an “over the top” voice service provider like Vonage over their separately acquired broadband connection, or if they download an application onto their smart phone. In any event, this Order ensures that consumers may choose to obtain service from an integrated provider *or* from a standalone VRS CA service provider utilizing the neutral video communication service platform. To the extent consumers are dissatisfied with their existing registered provider, they may choose a different one.

### 3. Standalone VRS CA Service Provider Standards

109. The availability of a neutral video communication service platform will lower the barriers to entry in the provision of VRS CA service—an issue that Commenters have raised in past proceedings.<sup>241</sup> This will promote more effective and efficient competition on the basis of service quality, including interpreter quality and the capabilities to handle the varied needs of VRS users. We believe that this can be accomplished consistently with maintaining strong certification criteria and service standards and without affording additional opportunities for fraud, abuse, or waste. To this end, the accompanying FNPRM seeks comment on whether and how to modify our VRS certification rules to *ensure* that standalone VRS CA service providers meet high standards of service and to eliminate incentives for waste, fraud, and abuse by such providers.

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<sup>237</sup> See Sorenson PN Reply Comments at 67.

<sup>238</sup> See *supra* ¶ 94.

<sup>239</sup> See Sorenson PN Reply Comments at 67-68.

<sup>240</sup> *Id.* at 69; see also Purple PN Comments at 10.

<sup>241</sup> 2011 *Certification Order*, 26 FCC Rcd at 10905, ¶ 14.

110. *General obligations.* Standalone VRS CA service providers shall be providers of VRS and shall be obligated to comply fully with the Commission's TRS regulations, with one general exception: a standalone VRS CA service provider must utilize the neutral video communication service platform to fulfill those obligations not directly related to the provision of VRS CA service.<sup>242</sup> We therefore revise section 64.604(c)(5)(iii)(N)(1)(iii) of our rules to allow standalone VRS CA service providers to utilize the neutral video communication service platform for the provision of platform functions.<sup>243</sup> The functionality we will require to be available from the neutral video communication service provider is described in section II.E.1 above. Standalone VRS CA service providers shall be responsible for providing VRS CA service and ensuring that the neutral video communication service provider has the information it needs to fulfill these obligations on its behalf.<sup>244</sup> We will not, however, hold a standalone VRS CA service provider responsible for any action, or failure to act, by the neutral video communication service provider involving the non-CA service functions for which the neutral video communication service provider is responsible.<sup>245</sup>

111. *Certification.* As noted above, the Commission has taken significant steps in recent years to reduce waste, fraud, and abuse through the adoption of rigorous rules governing iTRS provider practices and eligibility, certification, and oversight.<sup>246</sup> As is the case with any other iTRS provider, standalone VRS CA service providers must comply with these rules. In complying with the certification requirements set forth in section 64.606 of our rules,<sup>247</sup> standalone VRS CA service providers shall, in their description of the technology and equipment used to support their call center functions, describe (a) how they provide connectivity to the neutral video communication service provider, and (b) how they internally route calls to CAs and then back to the neutral video communication service provider.<sup>248</sup> Standalone VRS CA service providers need not describe ACD functionality if it is not used for these purposes, as standalone VRS CA service providers will not operate their own video communication service platforms.

112. *Registration.* For the purposes of the registration and call routing requirements set forth in section 64.611 of our rules,<sup>249</sup> a standalone VRS CA service provider shall fulfill its obligations under 64.611(a), (c), (d), and (e) through the Commission-contracted neutral video communication service provider.<sup>250</sup> The standalone VRS CA service provider shall be responsible for providing interpretation

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<sup>242</sup> To be clear, standalone VRS CA service providers may not provide VRS except through the neutral video communication service provider. Allowing a single entity to provide CA service on both an integrated and a standalone basis would severely complicate both the implementation of the reforms set forth in this Report and Order and the administration of the TRS Fund.

<sup>243</sup> See Appendix A.

<sup>244</sup> *E.g.*, by obtaining from each registered user, prior to the initiation of service, the physical location at which the service will first be utilized and providing that information to the neutral video communication service provider pursuant to 47 C.F.R. § 64.605(b)(4)(i).

<sup>245</sup> See *infra* section II.E.4. Violations attributable to the neutral video communication service provider will be addressed through contract enforcement provisions.

<sup>246</sup> See *supra* section I.B.

<sup>247</sup> 47 C.F.R. § 64.606.

<sup>248</sup> See Appendix A, § 64.606(a)(4).

<sup>249</sup> 47 C.F.R. § 64.611.

<sup>250</sup> *Id.* §§ 64.611(a) (requiring providers to facilitate number porting or number assignment for newly registered users and to route calls to and from registered users), (c) (requiring providers to obtain routing information from registered users and to provision and maintain such information in the TRS numbering directory), (d) (prohibiting  
(continued...))

service and gathering and delivering such information from its users to the neutral video communication service provider as is necessary to ensure the obligations set forth in 64.611 are fulfilled. We will not, however, hold a standalone VRS CA service provider responsible—with respect to registration requirements—for any action, or failure to act, by the neutral video communication service provider involving the non-CA service functions for which the neutral video communication service provider is responsible.<sup>251</sup> For the sake of clarity, standalone VRS CA service providers also must comply with sections 64.611(f) and (g).<sup>252</sup>

113. *Speed of Answer.* Standalone VRS CA service providers shall be responsible for meeting our speed of answer requirements as measured from the time a VRS call reaches the signaling servers or user agents operated by the standalone VRS CA service provider.

114. *TRS Facilities.* Standalone VRS CA service providers shall fulfill their obligations regarding TRS facilities, except that they are not required to provide a copy of a lease or licensing agreement for an ACD unless it is used in the provision of CA service.<sup>253</sup>

#### 4. Delineating Responsibility Between the Neutral Video Communication Service Provider and Standalone VRS CA Service Providers

115. In the absence of evidence to the contrary, we will generally delineate responsibility based on ownership or control of the network elements responsible for a failure. For example, a standalone VRS CA service provider will not be responsible for a service interruption pursuant to section 64.606(h) of our rules if that interruption results from an outage of the neutral video communication service provider's network.<sup>254</sup> Violations attributable to the neutral video communication service provider will be addressed through contract enforcement provisions. Violations attributable to the provision of CA service, *e.g.*, violations of the speed of answer rules, will be addressed through existing Commission procedures. As discussed above in paragraphs 110 and 112, however, a VRS CA service provider is also responsible for ensuring that the neutral video communication service provider has the information it needs to fulfill non-VRS CA service functions.

### F. Implementation of Structural Reforms

#### 1. Neutrality Requirements

116. As with the TRS numbering directory, building, maintaining, and/or operating the TRS-URD, the VRS access technology reference platform, and the neutral video communication service platform will best be done by one or more neutral third parties under contract to the Commission and compensated through the Fund.<sup>255</sup> The record reflects consistent support for this approach with respect to the TRS-URD and the VRS access technology reference platform,<sup>256</sup> and the need for a video

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use of proxies or aliases for telephone numbers), (e) (generally prohibiting the assignment of toll free numbers). See Appendix A, § 64.611(h).

<sup>251</sup> See *infra* section II.E.4.

<sup>252</sup> 47 C.F.R. §§ 64.611(f) (governing routing information maintained in access technology), (g) (requiring providers to provide user advisories regarding registration-related issues).

<sup>253</sup> See Appendix A, § 64.604(b)(4)(iv).

<sup>254</sup> See 47 C.F.R. § 64.606(h).

<sup>255</sup> *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11618-20, ¶¶ 73-78.

<sup>256</sup> See, *e.g.*, Convo PN Comments at 18; Convo PN Reply Comments at 13, n. 44 (Noting “strong record support” for assigning TRS-URD functions to the TRS numbering directory administrator and suggesting that “[i]n the  
(continued...)

communication service provider that is providing service to multiple standalone VRS CA service providers who are competing with other vertically integrated VRS providers to be free of conflicts of interest is readily apparent.<sup>257</sup>

117. Thus, consistent with the TRS numbering directory contract, we believe that the neutral administrator of the TRS-URD, the neutral video communication service provider, and the neutral administrator of the VRS access technology reference platform each should be a non-governmental entity that is not aligned with any particular telecommunications industry segment.<sup>258</sup> The neutral administrator must be fair and impartial. It must also meet neutrality criteria similar to those established for the TRS numbering directory,<sup>259</sup> the North American Numbering Plan Administrator (NANPA),<sup>260</sup> and the Pooling Administrator (PA),<sup>261</sup> but adjusted as appropriate to reflect the purposes described in this *Order*.

118. We therefore conclude that the neutral administrator of the TRS-URD, the neutral video communication service provider, and the neutral administrator of the VRS access technology reference platform each: (1) must be a non-governmental entity that is impartial and is not an affiliate of any Internet-based TRS provider;<sup>262</sup> (2) may not themselves, or any affiliate, issue a majority of its debt to,

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alternative, these tasks also could be assigned by the Commission to some other neutral third party that could operate a user registration and verification database independently of the TRS numbering directory). *See also* Consumer Groups PN Comments at 19 (“Another advantage of a centralized database would be that the database administrator, rather than the VRS provider, can be the entity that maintains the user profile.”); Purple PN Comments at 9-11 (supporting “the use of a third-party vendor, such as Experian, for the express purposes of user identification and verification as part of a third-party managed registration process for VRS”); RERC PN Comments at 9-10.

<sup>257</sup> *See, e.g.*, CSDVRS Mar. 13, 2013 *Ex Parte* (“VRS providers are best situated to provide video communications services or video interpreting, but the Commission should issue an RFP, similar to the RFP for the iTRS database that excluded VRS providers from bidding, for an entity to oversee an interoperable network”).

<sup>258</sup> *See Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, 15 FCC Rcd 7574, 7642, ¶ 153 (2000) (*NRO First Report and Order*); *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11619, ¶ 76.

<sup>259</sup> *See* 47 C.F.R. § 64.613(b)(1).

<sup>260</sup> *See id.* § 52.12(a)(1) (listing neutrality criteria for the NANPA).

<sup>261</sup> *See id.* § 52.20(d)(1) (applying NANPA neutrality criteria to the PA).

<sup>262</sup> We base our definition of “affiliate” on the statutory definition in section 3 of the Act. *See* 47 U.S.C. § 153(1) (defining “affiliate”). We elaborate on that definition as follows: “Affiliate” is a person who controls, is controlled by, or is under the direct or indirect common control of another person. A person shall be deemed to control another if such person possesses, directly or indirectly, (1) an equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten percent (10%) or more of the total outstanding equity interests in the other person; or (2) the power to vote ten percent (10%) or more of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person; or (3) the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other person, by contract (including but not limited to stockholder agreement partnership (general or limited) agreement, joint venture agreement, or operating agreement, or otherwise. *See* 47 C.F.R. § 52.12(a)(1)(i); *see also NRO First Report and Order*, 15 FCC Rcd at 7642, ¶ 154 n. 354 (2000); *Administration of the North American Numbering Plan Toll Free Service Access Codes*, Third Report and Order, CC Docket Nos. 92-237, 95-155, 12 FCC Rcd 23040, 23076, ¶ 69 (1997) (*NANP Administration Third Report and Order*).

nor derive a majority of its revenues from, any Internet-based TRS provider;<sup>263</sup> and (3) notwithstanding the neutrality criteria set forth in (1) and (2) above, may be determined by the Commission to be or not to be subject to undue influence by parties with a vested interest in the outcome of TRS-related activities.<sup>264</sup> Any subcontractor that performs functions of the neutral administrator of the TRS-URD, the neutral video communication service provider, and/or the neutral administrator of the VRS access technology reference platform each must also meet these neutrality criteria.

## 2. Cost Recovery

119. Section 225 creates a cost recovery regime whereby TRS providers are compensated for their reasonable costs of providing service in compliance with the TRS regulations.<sup>265</sup> The Commission has explained that “for purposes of determining the ‘reasonable’ costs that may be recovered . . . , the costs must relate to the provision of service in compliance with the applicable non-waived [TRS] mandatory minimum standards.”<sup>266</sup>

120. Commenters have expressed concerns regarding the cost of implementing the reforms we adopt in this Order.<sup>267</sup> The Commission does not routinely grant extraordinary cost recovery for new regulations. We do not believe that the providers’ additional costs necessary to implement the requirements adopted herein will be substantial, and thus do not find it appropriate to grant additional extraordinary cost recovery in connection with this Order, particularly given that providers currently are compensated well above their actual costs.<sup>268</sup> We recognize, however, that the Commission in the *First Internet-Based TRS Numbering Order* provided a mechanism whereby providers could seek to recover their actual reasonable costs of complying with certain of the new requirements adopted in that *Order*, some of which are comparable to requirements being adopted in this order.<sup>269</sup> We therefore seek comment on whether to adopt such a mechanism in the Further Notice.<sup>270</sup>

## III. ADDITIONAL REFORMS

121. In this section, we adopt targeted, incremental measures to improve the efficiency of the program, help protect against waste, fraud, and abuse, improve our administration of the program, and to generally ensure that VRS users’ experiences reflect the policies and goals of section 225.

<sup>263</sup> “Majority” means greater than 50%, and “debt” means stock, bonds, securities, notes, loans, or any other instrument of indebtedness. See 47 C.F.R. § 52.12(a)(1)(ii); *NRO First Report and Order*, 15 FCC Rcd at 7643, ¶ 154 n. 356; *NANP Administration Third Report and Order*, 12 FCC Rcd at 23076, ¶ 69.

<sup>264</sup> See 47 C.F.R. § 52.12(a)(1)(iii); *NRO First Report and Order*, 15 FCC Rcd at 7643, ¶ 154 & n.357; *NANP Administration Third Report and Order*, 12 FCC Rcd at 23076, ¶ 69. Neither these neutrality criteria nor the neutrality criteria applicable to the TRS numbering directory administrator should be construed to prevent a single entity from providing some or all of the functions which this Order directs be procured by contract.

<sup>265</sup> See 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5). TRS users cannot be required to pay rates “greater than the rates paid for functionally equivalent voice communication services with respect to such factors as duration of the call, the time of day, and the distance from point origination to point of termination.” 47 U.S.C. § 225(d)(1)(D).

<sup>266</sup> *2004 TRS Order*, 19 FCC Rcd at 12551–52, ¶ 199; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order on Reconsideration, 21 FCC Rcd 8050, 8057, ¶¶ 15–16 (2006) (*2006 TRS Reconsideration Order*).

<sup>267</sup> See, e.g., ASL Services Holdings PN Comments at 11-12; Consumer Groups, *Ex Parte* Letter (filed Apr. 8, 2013); Convo, CSDVRS, and CAAG, *Ex Parte* Letter at 5-7 (filed Apr. 19, 2013).

<sup>268</sup> See *infra* section IV.A.

<sup>269</sup> See *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11626-27, ¶¶ 96-101.

<sup>270</sup> See *infra* section V.B.



### A. Improving the Commission's Operations

122. The Commission has delegated authority for disability access policy to CGB, stating that CGB “[a]dvises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to persons with disabilities.”<sup>271</sup>

123. However, in this Order, the Commission delegates financial oversight of the TRS Fund to the Managing Director. These duties reasonably fall within OMD's current delegated authority to “[a]ssist the Chairman in carrying out the administrative and executive responsibilities...”; and “[a]dvice the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest.”<sup>272</sup> In addition, this duty is consistent with OMD's current responsibility to, “[p]lan and manage the administrative affairs of the Commission with respect to the functions of... budget and financial management.”<sup>273</sup> Nonetheless, such financial oversight must be consistent with the TRS Orders, rules, and policies, and OMD should consult with CGB on issues that potentially could impact the availability, provision, and continuity of services to consumers. Enforcement regarding TRS will continue to be carried out under the existing authority delegated to CGB, OMD, and the Enforcement Bureau, as appropriate.

124. CGB will retain authority over TRS policy matters. OMD will be responsible for management of all TRS related contracts and contractors, including the TRS Fund administration contract/TRS Fund administrator, and the TRS-URD contract adopted pursuant to this *Order*. In addition, OMD will be responsible for overseeing TRS Fund audits performed by the TRS Fund administrator, responding (jointly with CGB, if appropriate) to OIG audits of the TRS Fund, advising the TRS Fund administrator on payment withholding and other financial decisions, and reviewing TRS Fund contribution factor calculations.

125. A similar delineation of duties was applied to oversight of the Universal Service Fund (USF) in 2008.<sup>274</sup> This action has led to more effective oversight of USF by the Commission and better coordination within the Commission on USF matters. It has also provided clarity to USF stakeholders on the appropriate points of contact within the Commission on various USF issues. Our intention is to support similar improvements in oversight of the TRS Fund.

126. To meet this clarified responsibility, we note that the Managing Director has recently designated a FCC employee to serve as a TRS Fund Program Coordinator, which we believe will help OMD to carry out its responsibilities with regard to the TRS Fund. We direct that the Contracting Officer's Representatives (CORs) for all TRS related contracts shall provide support to the TRS Fund Program Coordinator. In addition, the TRS Fund Program Coordinator will coordinate with CGB, the Managing Director, and all other relevant Bureaus and Offices as needed to appropriately oversee the TRS Fund, and will establish and oversee appropriate processes for coordination of Commission staff with the CORs who oversee TRS contracted entities in accordance with their prescribed contractual duties. Issues that could expand the scope of the contract work, extend the length of the contract, or raise the price of performance must be coordinated with the Contracting Officer.

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<sup>271</sup> 47 C.F.R. § 0.141(f).

<sup>272</sup> *Id.* § 0.11(a)(3), (4).

<sup>273</sup> *Id.* § 0.11(a)(8).

<sup>274</sup> See FCC, FCC Encyclopedia, available at <http://www.fcc.gov/encyclopedia/universal-service-fund-telecommunications-relay-services-and-numbering-administration-a> (last visited Apr. 10, 2013); Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company, available at <http://www.fcc.gov/omd/usac-mou.pdf>.

**B. General Prohibitions on Practices Causing Unreasonable Discrimination and Waste, Fraud, and Abuse**

127. As the Commission explained in the *2011 Further Notice*, a piecemeal approach to detecting and outlawing discriminatory and fraudulent practices has not always worked.<sup>275</sup> In many cases, for example, “when directed not to engage in certain calling activities, some providers have merely shifted to other arrangements that are not specifically prohibited” or are more difficult to detect.<sup>276</sup> Such practices not only drain the Fund by extracting payments for ineligible calls, but also create inefficiencies in the VRS call processing system. For example, when a VRS provider encourages or causes VRS calls to be made that would not otherwise be made, or enrolls VRS users who would not otherwise be enrolled, such practices artificially tie up CAs and limit the ability of legitimate callers to use VRS, contrary to section 225 of the Act.<sup>277</sup> The Commission therefore proposed to adopt regulations that generally prohibit VRS provider practices that discriminate against particular users or classes of users or that otherwise result in waste, fraud, or abuse of the TRS Fund.<sup>278</sup>

128. Regarding discrimination, we conclude that the most appropriate course is to adopt a regulation that mirrors the prohibitions in Section 202(a) of the Act.<sup>279</sup> Such a requirement that furthers the “functional equivalence” purpose of section 225 by providing safeguards against discrimination in the provision of relay services equivalent to those generally applicable to carriers in their provision of voice communication services.<sup>280</sup> Accordingly, we amend section 64.604 to provide that:

(c)(12) A VRS provider shall not (1) directly or indirectly, by any means or device, engage in any unjust or unreasonable discrimination related to practices, facilities, or services for or in connection with like relay service, (2) engage in or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or (3)

<sup>275</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17408, ¶ 102.

<sup>276</sup> *Id.* at 17384, ¶ 26 n. 88.

<sup>277</sup> *Id.* at 17408, ¶ 102. Further, such practices allow the providers who engage in them to obtain an unwarranted competitive advantage over more scrupulous providers who seek reimbursement only for relay service that falls within the contours of the Act. *Id.*

<sup>278</sup> *Id.* at 17409, ¶ 104.

<sup>279</sup> Section 202(a) generally prohibits common carriers from engaging in unjust or unreasonable discrimination in charges, practices, classifications, etc., or giving undue or unreasonable advantages or disadvantages to any customer or class of customers, in connection with communications service. 42 U.S.C. § 202(a).

<sup>280</sup> See 47 U.S.C. § 225(a)(3). The Commission previously has observed that “[i]n adopting the final version of Section 225(d)(1)(E), the Conference Committee indicated that the provision ‘specifies that a relay operator is subject to the same standards of conduct that operators are subject to under the Communications Act of 1934.’” *TRS I*, 6 FCC Rcd at 4660, ¶ 15 n.15 (quoting H.R. Rep. No. 558, 101st Cong., 2d Sess. at 78 (1990)). The Commission went on to observe that “[a]s indicated in the Conference Report, the Senate acceded to the House amendment,” which “added the words ‘failing to fulfill the obligations of common carriers by’ to the Senate version of Section 225(d)(1)(E).” *TRS I* at 4660, ¶ 15 n.15. See also *TRS II*, 8 FCC Rcd at 1804, ¶ 14 (“Finally, with respect to service and liability issues, we stated [in *TRS I*] that Congress intended relay operators to have the same service obligations as common carriers generally.”). The Commission also has linked the fulfillment of “the obligations of common carriers” in section 225(d)(1)(E) to the “functional equivalency standard mandated by the ADA.” *TRS I* at 4661, ¶ 19 (“In order to maintain the functional equivalency standard mandated by the ADA, we modify the proposed rules to require that CAs are prohibited from failing to fulfill the obligations of common carriers by refusing single or sequential calls or limiting the length of calls utilizing relay services.”).

subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.<sup>281</sup>

129. We intend that this rule be interpreted and applied in the same manner that section 202(a) is applied to common carriers, *i.e.*, that this rule will prohibit VRS providers from discriminating in connection with “like” relay service to the same extent that section 202(a) prohibits common carriers from discriminating in connection with “like” communication service.<sup>282</sup>

130. Regarding waste, fraud, and abuse, recent experience confirms that, in adopting rules aimed at curbing existing abuses, the Commission cannot foresee the specific forms that waste, fraud, or abuse may take in the future.<sup>283</sup> Such practices 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.”<sup>284</sup> Moreover, such practices unlawfully shift improper costs to consumers of other telecommunications services, including local and long distance voice, interconnected VoIP, and other subscribers.<sup>285</sup> If unchecked, waste, fraud, and abuse can drain the TRS Fund and thereby “threaten the availability of . . . relay services that are supported by the Fund for the benefit of legitimate users.”<sup>286</sup>

131. Accordingly, in furtherance of our mandate under section 225(b)(1) to ensure that TRS is available “in the most efficient manner” and the goals underlying the provision and regulation of TRS, we adopt a general prohibition on VRS providers engaging in fraudulent, abusive, and wasteful practices, *i.e.*, practices that threaten to drain the TRS Fund by causing or encouraging (1) false TRS Fund compensation claims, (2) unauthorized use of VRS,<sup>287</sup> (3) the making of VRS calls that would not otherwise be made,<sup>288</sup>

<sup>281</sup> See Appendix A, § 64.604(c)(12).

<sup>282</sup> See, *e.g.*, *Cellular Interconnection*, Declaratory Ruling, 2 FCC Rcd 2910 (1987).

<sup>283</sup> See, *e.g.*, *IP CTS Interim Rules Order* (adopting interim rules to supplement existing TRS rules, in order to address emerging practices likely to cause unnecessary and/or unauthorized use of relay service). See also *Structure and Practices of the Video Relay Service Program; Internet-based TRS Certification Application of Healinc Telecom, LLC*, CG Docket No. 10-51, Order, 28 FCC Rcd 1381, 1384-86, ¶¶ 10-11, 1387, ¶ 14 & n. 37 (CGB 2013) (*Healinc Certification Denial Order*) (VRS provider previously found in violation of a Commission rule prohibiting routing of calls through multiple URLs continued to violate the rule while altering its practices to mask subsequent violations).

<sup>284</sup> *VRS Call Practices R&O*, 26 FCC Rcd at 5551, ¶ 5.

<sup>285</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17408-09, ¶ 103. The Commission noted that VRS users are not charged for use of the service. *Id.* at 17409, ¶ 103 n. 209. Rather, these costs are passed on to all consumers of telecommunications service by intrastate and interstate common carriers, either as a surcharge on their monthly service bills or as part of the rates for the state’s intrastate telephone services. *2005 Financial Incentives Declaratory Ruling*, 20 FCC Rcd at 1468, ¶ 6. When a VRS provider engages in fraudulent practices, the costs are unlawfully passed on to the public. *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17409, ¶ 103 n. 209.

<sup>286</sup> *IP CTS Interim Rules Order*, 28 FCC Rcd at 708, ¶ 8.

<sup>287</sup> See, *e.g.*, *2005 Financial Incentives Declaratory Ruling*, 20 FCC Rcd at 1469-70, ¶ 9.

<sup>288</sup> See, *e.g.*, *id.* at 1469, ¶ 8 (prohibiting a provider’s “Brown Bag” program, which allowed customers to receive five points for every minute of VRS placed through the company, with the customer being able to cash in the points for high speed Internet service); *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, 12505-06, ¶ 6 (2005) (*Long Distance Discounts Declaratory Ruling*) (concluding that offering free or discount long distance service to TRS consumers constitutes an impermissible financial incentive, and that programs “directed at giving the consumer an incentive to make a TRS call in the first place . . . are prohibited”).

or (4) the use of VRS by consumers who do not need the service in order to communicate in a functionally equivalent manner.<sup>289</sup>

132. To prevent practices that cause or encourage unauthorized or unnecessary use of relay services, we amend section 64.604 to provide that:

(c)(13) A VRS provider shall not engage in any practice that causes or encourages, or that the provider knows or has reason to know will cause or encourage (1) false or unverified claims for TRS Fund compensation, (2) unauthorized use of VRS, (3) the making of VRS calls that would not otherwise be made, or (4) the use of VRS by persons who do not need the service in order to communicate in a functionally equivalent manner. A VRS provider shall not seek payment from the TRS Fund for any minutes of service it knows or has reason to know are resulting from such practices. Any VRS provider that becomes aware of such practices being or having been committed by any person shall as soon as practicable report such practices to the Commission or the TRS Fund administrator.<sup>290</sup>

133. We intend that this rule encompass, but not be limited by, the Commission's numerous prior declaratory rulings describing wasteful, fraudulent, and abusive practices that violate section 225.<sup>291</sup> For purposes of the amended rule, a practice is prohibited where, for example, it artificially stimulates TRS usage, enables or encourages participation by unauthorized users, or uses financial incentives to attract new TRS users or to increase usage. This list is provided by way of example only and is not intended to be exhaustive. Providers are in the best position to identify anomalies and trends based on analysis of their call traffic and abuses detected by CAs. The Commission expects each provider to be diligent in ensuring its practices do not result in waste, fraud, or abuse. All monies paid from the Fund to providers who are in violation of this rule shall be recoverable by the TRS Fund administrator.

### C. Provider Compliance Plans

134. In the *2011 Further Notice*, the Commission asked, in general, whether there are any additional safeguards that it should adopt as rules to help ensure that providers comply with the

<sup>289</sup> See, e.g., *IP CTS Interim Rules Order*, 28 FCC Rcd at 711-13, ¶ 14 (adopting interim rules prohibiting financial incentive programs that may result in registration for and usage of relay services by consumers “who do not need these services to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users,” i.e., that “may have the effect of enlisting customers who might not otherwise have a reason to use the service”); *id.* at 714, ¶ 15 (financial rewards that incent hearing professionals “to encourage consumers to order and use IP CTS—whether or not such consumers would actually benefit from IP CTS—. . . may be promoting the use of IP CTS by individuals who do not need this service, or who could benefit more from other assistive devices or hearing technologies”).

<sup>290</sup> See Appendix A, § 64.604(c)(13).

<sup>291</sup> See, e.g., *FCC Clarifies that Certain TRS Marketing and Call Handling Practices are Improper*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 1471, 1473 (2005) (*2005 TRS Marketing Practices PN*) (prohibiting direct and indirect financial or other tangible incentives to make relay calls and prohibiting financial incentives or rewards to register with the provider, and emphasizing that financial incentives are prohibited, even when the benefit goes to a third party rather than the consumer); *2005 Financial Incentives Declaratory Ruling*; *Long Distance Discounts Declaratory Ruling*; *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20173-75, ¶¶ 89-94; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 23 FCC Rcd 8993, 8999, ¶ 13 (*2008 Declaratory Ruling*), *rev'd in part*, *Sorenson Communications, Inc. v. FCC*, 567 F.3d 1215 (10<sup>th</sup> Cir. 2009) (*Sorenson I*).

Commission's TRS rules and policies.<sup>292</sup> Purple proposes that providers be required to adopt regulatory compliance plans designed to prevent waste, fraud, and abuse, and to submit them for Commission review.<sup>293</sup> As Purple points out, carriers participating in the Lifeline program as Lifeline-only eligible telecommunications carriers are required to establish such compliance plans.<sup>294</sup> Although the Commission's rules currently require VRS providers who have received Commission certification to submit annual reports providing evidence of ongoing compliance with our minimum standards, our rules do not specifically require the development of or submission to the Commission of an annual compliance plan addressing waste, fraud, and abuse, comparable to what is required of Lifeline-only carriers.<sup>295</sup> To provide an improved mechanism for ensuring that providers have taken adequate steps and adopted sufficient measures to prevent waste, fraud, and abuse, we amend section 64.606(g) of our rules to add the following requirements:

(g)(3) Each VRS provider shall include within its annual report a compliance plan describing the provider's policies, procedures, and practices for complying with the requirements of section 64.604(c)(13) of this subpart. Such compliance plan shall include, at a minimum: (i) identification of any officer(s) or managerial employee(s) responsible for ensuring compliance with section 64.604(c)(13) of this subpart, (ii) a description of any compliance training provided to the provider's officers, employees, and contractors, (iii) identification of any telephone numbers, website addresses, or other mechanisms available to employees for reporting abuses, (iv) a description of any internal audit processes used to ensure the accuracy and completeness of minutes submitted to the TRS Fund administrator, and (v) a description of all policies and practices that the provider is following to prevent waste, fraud, and abuse of the TRS Fund. A provider that fails to file a compliance plan as directed shall not be entitled to compensation for the provision of VRS during the period of noncompliance.

(4) If, at any time, the Commission determines that a VRS provider's compliance plan currently on file is inadequate to prevent waste, fraud, and abuse of the TRS Fund, the Commission shall so notify the provider, shall explain the reasons the plan is inadequate, and shall direct the provider to correct the identified defects and submit an amended compliance plan reflecting such correction within a specified time period not to exceed 60 days. A provider that fails to comply with such directive shall not be entitled to compensation for the provision of VRS during the period of noncompliance. A submitted compliance plan shall not be *prima facie* evidence of the plan's adequacy; nor shall it be evidence that the provider has fulfilled its obligations under section 64.604(c)(13) of this subpart.<sup>296</sup>

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<sup>292</sup> 2011 VRS Reform FNPRM, 26 FCC Rcd at 17422, ¶ 155.

<sup>293</sup> Purple FNPRM Comments at 21-22.

<sup>294</sup> *Id.* at 22; *Lifeline and Link Up Reform and Modernization Order*, 27 FCC Rcd at 6813-17, ¶¶ 368-381.

<sup>295</sup> 47 C.F.R. § 64.606(g).

<sup>296</sup> See Appendix A, §§ 64.606(g)(3), (4).

#### D. Speed of Answer

135. The Commission sought comment in the *2011 VRS Reform FNPRM* on whether to update its VRS “speed of answer” rules, which require VRS providers to answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis.<sup>297</sup> The record demonstrates that it is appropriate to take steps to more closely align the VRS speed of answer rules with those applicable to other forms of TRS by reducing the permissible wait time for a VRS call to be answered to 30 seconds, 85 percent of the time, and to measure compliance on a daily basis.<sup>298</sup>

136. The Commission previously has found that the “ability of a TRS user to reach a CA prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of ‘functional equivalence.’”<sup>299</sup> Implementing the functional equivalency requirement, the Commission adopted speed of answer rules. The speed of answer requirements for VRS providers differed from those for other forms of TRS, however. We now conclude that it is feasible for VRS providers to meet a speed of answer requirement closer to that of other forms of TRS, and that adopting such a requirement is consistent with the functional equivalency mandate.<sup>300</sup> Although the new 30 second requirement still deviates from the 10 second speed of answer standard required for other forms of TRS, we also find that this new mandate is in keeping with the guiding principle of section 225 of the Act that TRS be made available “in the most efficient manner”<sup>301</sup> because it takes into account the limitations and capabilities of VRS.

137. *Wait time.* The record indicates that VRS providers already achieve a speed of answer of 30 seconds for the majority of VRS calls.<sup>302</sup> We therefore find it reasonable to reduce the permissible wait time for VRS calls to 30 seconds.<sup>303</sup> We note that this 30 second requirement deviates from the 10 second speed of answer standard required for other forms of TRS.<sup>304</sup> Given, however, that the record shows that VRS providers already are largely achieving this standard at current CA staffing levels, this action will set a new standard for VRS provider performance without additional cost to providers or the TRS Fund.<sup>305</sup> In the accompanying FNPRM we seek comment on whether to further reduce the

<sup>297</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17405, ¶ 87. See also *id.* at 17401, ¶ 77, 17403, ¶ 83, 17405, ¶ 86; 47 C.F.R. § 64.604(b)(2)(iii).

<sup>298</sup> Of the few commenters who address this issue, all generally support reducing the speed of answer time limit. See Consumer Groups FNPRM Comments at 11-12; Purple FNPRM Comments at 17-18 (suggesting the Commission make the VRS speed of answer rules “more in alignment with other forms of TRS”); Consumer Groups FNPRM Reply Comments at 3-4; Sorenson FNPRM Reply Comments at 48-49; VRSCA FNPRM Reply Comments at 3.

<sup>299</sup> *2000 TRS Order*, 15 FCC Rcd at 5166, ¶ 60. See also *id.* (“For a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer’s ability to place a call through the relay center clearly compromises the functional equivalence of relay service.”); *id.* at 5167, ¶ 63 (“Just like voice calls, TRS calls should be answered within a reasonable time period, regardless of the traffic load.”).

<sup>300</sup> 47 U.S.C. § 225(a)(3). See Consumer Groups FNPRM Comments at 12 (“Without prompt answer speed, there cannot be functional equivalence”). See also Sorenson FNPRM Reply Comments at 48.

<sup>301</sup> 47 U.S.C. § 225 (b)(1).

<sup>302</sup> See Consumer Groups FNPRM Reply Comments at 4.

<sup>303</sup> See Appendix A, § 64.604(b)(2)(iii)(A).

<sup>304</sup> 47 C.F.R. § 64.604(b)(2)(ii).

<sup>305</sup> See Sorenson FNPRM Reply Comments at 48-49 (noting that “if the Commission adopts a lower speed-of-answer minimum standard, it must maintain a compensation level that enables VRS providers to meet that requirement”).

permissible wait time for VRS calls by requiring calls to be answered 85 percent of the time within 10 seconds so as to fully harmonize the permissible wait time for VRS with the permissible wait time for other forms of TRS.<sup>306</sup>

138. *Compliance threshold.* Consistent with our rules for other forms of TRS, we increase from 80 to 85 percent the number of calls that a provider must answer within the allowable wait time.<sup>307</sup> The Commission previously has found that an 85 percent speed of answer compliance threshold allows providers sufficient leeway to compensate for abandoned calls and fluctuations in call traffic.<sup>308</sup> Further, the Commission's 2005 decision to adopt an 80 percent compliance threshold in 2005 rested primarily on concerns expressed by commenters on the availability of qualified VRS interpreters.<sup>309</sup> No commenter on the *2011 VRS Reform FNPRM*, however, raised the availability of qualified VRS interpreters as an issue with respect to our speed of answer requirements.

139. *Measurement window.* Consistent with our rules for other forms of TRS, we require a daily (rather than monthly) measurement of compliance with our VRS speed of answer standard.<sup>310</sup> The Commission's justification for adopting a larger measurement window for VRS in 2005, when VRS was still a nascent service, was premised on VRS provider's lack of experience determining CA staffing levels necessary to meet call demand.<sup>311</sup> Given that providers now have more than a decade of experience managing CA staffing levels and already are largely meeting the 30 second wait time requirement we adopt today, deviating from the measurement window we apply to other forms of TRS is no longer necessary.<sup>312</sup>

140. *Calculating speed of answer.* In the *2005 VRS Speed of Answer Order*, the Commission concluded that "the speed of answer measurement begins when the VRS provider's equipment accepts the call from the Internet."<sup>313</sup> The Commission added that "the call is 'answered' when either a CA or an automated system responds to the incoming call and begins taking instructions from the calling party

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<sup>306</sup> *Infra* section V.I.

<sup>307</sup> 47 C.F.R. § 64.604(b)(2)(ii).

<sup>308</sup> *See, e.g., 2000 TRS Order*, 15 FCC Rcd at 5167, ¶ 64.

<sup>309</sup> *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Docket Nos. CG 03-123, CC 98-67, 20 FCC Rcd 13165, 13175, ¶ 19 n. 69 (2005) (*2005 VRS Speed of Answer Order*). In 2005, the Commission explained that it would re-examine this VRS rule "to determine if, and when, it might be appropriate to further tighten the speed of answer requirement." *Id.*, ¶ 20.

<sup>310</sup> 47 C.F.R. § 64.604(b)(2)(ii)(C). We note that the Consumer Groups and two providers advocated retaining a monthly measurement window. *See* Consumer Groups FNPRM Comments at 11-12; Purple FNPRM Comments at 18; Sorenson FNPRM Reply Comments at 48.

<sup>311</sup> *See 2005 VRS Speed of Answer Order*, 20 FCC Rcd at 13175-76, ¶ 19; Purple FNPRM Comments at 17-18 ("The current VRS speed of answer standard requiring 80 percent of calls to be answered within 120 seconds was established at a time of rapid growth in the VRS market, and when VRS was in a more experimental phase of development.").

<sup>312</sup> Since VRS speed of answer compliance will be measured on a daily basis, penalties for violating this rule may include full-day reimbursement withholdings on those days when VRS speed of answer requirements are not met. *See* 47 C.F.R. § 64.604(c)(5)(iii)(L).

<sup>313</sup> *2005 VRS Speed of Answer Order*, 20 FCC Rcd at 13176, ¶ 21, *citing Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7788-7789, ¶ 29 (2002) (*IP Relay Declaratory Ruling*). *See also* 47 C.F.R. § 64.604(b)(2)(ii).

about the outbound call the calling party wishes to make.<sup>314</sup> The adoption of the *2005 VRS Speed of Answer Order* preceded the adoption of a uniform ten-digit telephone numbering system linked to the North American Numbering Plan (NANP) for Internet-based TRS.<sup>315</sup> Because VRS users can now dial the number they wish to call, and the connection of the call to the called party no longer requires the VRS provider to obtain telephone numbers and other information from VRS users, we now clarify that the speed of answer will be measured based on the elapsed time between the time at which the call (whether initiated by a hearing or ASL user) is first delivered to the provider's system (handoff time) until the call is either abandoned (call termination time) or answered by any method which results in the caller's call immediately being placed, not put in a queue or on hold (session start time).<sup>316</sup> This clarification mirrors section 64.604(b)(2)(ii) of the rules governing speed of answer for other forms of TRS, which requires that 85 percent of all calls "be answered within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold."<sup>317</sup> Calls that are not completed because the user's eligibility cannot be validated shall not be included in speed of answer calculations.<sup>318</sup>

141. *Phase In.* To allow providers to adjust their operations, as necessary, to meet the new speed of answer requirement, we establish a phase-in period. Specifically, as measured on a daily basis: (1) by January 1, 2014, VRS providers must answer 85 percent of all VRS calls within 60 seconds; and (2) by July 1, 2014, VRS providers must answer 85 percent of all VRS calls within 30 seconds.<sup>319</sup> We will monitor VRS providers' compliance with these new standards, and re-visit this issue in the future if necessary.

#### **E. Preventing Slamming**

142. In the *2011 VRS Reform FNPRM*, the Commission sought comment on the need for rules to protect relay consumers against unauthorized default provider changes,<sup>320</sup> also known as "slamming,"

<sup>314</sup> *2005 VRS Speed of Answer Order*, 20 FCC Rcd at 13176, ¶ 21.

<sup>315</sup> *First Internet-Based TRS Numbering Order*; *Second Internet-Based TRS Numbering Order*.

<sup>316</sup> The handoff time for a standalone VRS CA service provider will be the time the call is delivered to the standalone VRS CA service provider's network by the neutral video communication service provider. See *supra* section II.E.4; Appendix A, § 64.604(b)(2)(iii)(B). The Commission will ensure that the neutral video communication service provider contract contains service quality metrics and incentives sufficient to ensure that the neutral video communication service provider's performance does not result in unacceptable levels of delay. See *supra* ¶ 94.

<sup>317</sup> 47 C.F.R. § 64.604(b)(2)(ii). Because we are not adopting a per-user compensation mechanism at this time, we need not address Sorenson's request for the Commission to adopt rules prohibiting VRS providers from altering speed of answer based on a subscriber's volume. See Sorenson FNPRM Comments at 47, 82-83. Similarly, because we are neither requiring nor allowing skills-based routing, an operation that would allow VRS users to request interpreters based on their particular skills or expertise, we also need not address at this time proposals to exempt from the speed of answer requirements those calls where the consumer proactively requests such skills-based routing. See Consumer Groups FNPRM Comments at 11; Purple FNPRM Comments at 18-19; Sorenson FNPRM Reply Comments at 50.

<sup>318</sup> See *supra* section II.D.1.

<sup>319</sup> The VRS speed of answer rule adopted by the Commission in 2005 embodied a three-step phase-in with more stringent requirements every six months. See 47 C.F.R. § 64.604(b)(2)(iii); *2005 VRS Speed of Answer Order*, 20 FCC Rcd at 13175-76, ¶ 19. Given that VRS providers already achieve a speed of answer of 30 seconds for the majority of VRS calls, a two-step phase-in is sufficient. See *supra* ¶ 137.

<sup>320</sup> A default provider is the Internet-based TRS provider with which an Internet-based TRS user has registered for the purpose of (1) obtaining a telephone number for the routing and completion of calls, (2) facilitating the provision of 911 service, and (3) facilitating the implementation of appropriate network security measures. See *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11609, ¶¶ 42-43.



by VRS providers.<sup>321</sup> In the context of VRS and IP Relay, slamming occurs when a provider changes a user's default provider selection without that user's knowledge or explicit consent.<sup>322</sup> The Commission previously sought comment on the adoption of slamming rules for both VRS and IP Relay in 2008.<sup>323</sup> Commenters responding to both the 2008 and 2011 notices generally urged the Commission to adopt slamming rules,<sup>324</sup> and to model such rules after part 64, subpart K, the telecommunications carrier slamming rules,<sup>325</sup> which require that certain procedures be followed to effect changes in a consumer's preferred telecommunications service provider. In addition to these comments, the Commission has received direct requests from providers to prohibit the unauthorized transfer of a consumer's VRS business,<sup>326</sup> and complaints from consumers about unauthorized changes of their default provider.<sup>327</sup>

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<sup>321</sup> 2011 VRS Reform FNPRM, 26 FCC Rcd at 17410, ¶ 106.

<sup>322</sup> This is essentially the same definition used in the context of telecommunications services, where slamming is said to occur when a carrier changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization. See *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11634, ¶ 120, citing *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1510, ¶ 1 (1998).

<sup>323</sup> See *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11634-39, ¶¶ 119-130; 2011 VRS Reform FNPRM, 26 FCC Rcd at 17410, ¶ 106, n. 216.

<sup>324</sup> Regarding the 2011 notice, see ASL Services Holdings FNPRM Comments at 18, n. 28; Consumer Groups FNPRM Comments at 16 (slamming rules for TRS are needed "to be consistent with the Commission's protections for users of voice services"); CSDVRS FNPRM Comments at 50 (a failure to implement letter of agency (LOA) procedures "could result in providers acquiring LOAs by deceitful measures without full consumer awareness of the porting process"); Sorenson FNPRM Comments at 85 (agreeing with Commission that slamming "nullifies the ability of consumers to select the . . . providers of their choice," quoting *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11633, ¶ 20); VRSCA FNPRM Reply Comments at 3. Regarding the 2008 notice, see Consumer Groups August 8, 2008 Comments at 19-24; Go America August 8, 2008 Comments at 21-25; Sorenson August 8, 2008 Comments at 12-17. But see AT&T August 25, 2008 Reply Comments at 7-8 (denying the existence of a TRS slamming problem, and suggesting that only minimal slamming regulations may be needed).

<sup>325</sup> 47 C.F.R. § 64.1100 *et seq.* See Sorenson, *Ex Parte* Letter, CG Docket No. 03-123, Attachment 1 (filed May 15, 2008) (Sorenson May 15, 2008 *Ex Parte*); Sorenson, *Ex Parte* Letter, CG Docket No. 03-123, Attachment (filed May 19, 2008) (Sorenson May 19, 2008 *Ex Parte*); Consumer Groups FNPRM Comments at 16-17; Sorenson FNPRM Comments at 86; VRSCA FNPRM Reply Comments at 3.

<sup>326</sup> See, e.g., Purple *Ex Parte* Letter (filed Mar. 11, 2013) (Purple March 11, 2013 *Ex Parte*) (urging the FCC to aggressively investigate claims that the dominant provider behaved anticompetitively, e.g., by porting to another provider without permission and reconfiguring routers in customer homes so that they will not connect with a competitor's equipment); CSDVRS, *Ex Parte* Letter, CG Docket No. 10-51 (filed April 24, 2013) (CSDVRS April 24, 2013 *Ex Parte*) (urging the FCC to adopt regulations to prohibit slamming and to prohibit "defeating" of equipment during the number porting process). Other providers have raised concerns about questionable provider behaviors that do not rise to the level of slamming. See, e.g., CSDVRS Petition for Rulemaking on Regulation on Provider Representation, CG Docket No. 03-123 (filed Aug. 21, 2009) (recommending penalties for intentional misrepresentations associated with equipment installation and maintenance committed by a provider's employees); Letter from Charles Breckinridge, Counsel to Sorenson Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Nov. 4, 2011) (urging the Commission to prohibit the practice whereby, following the port of a telephone number to a new provider, the new provider requires customers to relinquish their videophones obtained from their current provider to the new provider).

<sup>327</sup> In the past year, the Commission has received approximately 25-30 such complaints. Given the small size of the VRS subscriber population of approximately 120,000 individuals, we consider this to be a significant level of complaints. Further, we consider it likely that a substantial number of consumers were subjected to unauthorized provider changes but did not file complaints.

These submissions to the Commission indicate that unauthorized transfers are still taking place, and can take multiple forms, including the porting of a VRS user's telephone number from the user's default provider to another provider without the user's consent and the reconfiguring of routers in a user's home so that it no longer connects with a competitor's equipment.<sup>328</sup>

143. In order to protect VRS and IP Relay users from unwanted changes in their default provider, we adopt rules governing how these changes may take place.<sup>329</sup> These rules, which are incorporated into part 64, subpart F of our rules (TRS regulations)<sup>330</sup> and are modeled after part 64, subpart K of our rules,<sup>331</sup> prescribe: the type(s) of user authorization that providers must obtain prior to switching a subscriber's default provider; how verification of any such authorization must be obtained and maintained by the receiving provider; whether and how providers may use information obtained when receiving notification of a user's service change to another provider, whether for marketing, win-back, or other purposes; and complaint procedures and remedies for violation of these rules. The rules we adopt today are not identical to the slamming rules adopted for telecommunications carriers and found in subpart K. Modifications have been made to reflect the differences between iTRS providers and telecommunications carriers, eliminate redundant provisions, and otherwise make the rules more explicit so as to improve enforcement and administration of the requirements that apply to iTRS providers. Although we do not address herein every variance between the subpart K rules that apply to telecommunications carriers and the subpart F rules as they apply to iTRS providers, we describe the main differences below.

144. The rules we adopt today specifically require a provider to obtain individual user consent before a default provider change may occur.<sup>332</sup> Such consent must be obtained in compliance with prescribed verification procedures, which require that a provider, prior to effecting a default provider change, either: (1) obtain the user's written or electronically signed authorization to change his or her default provider; or (2) utilize an independent third party to verify the subscriber's request.<sup>333</sup> Although the Consumer Groups oppose third party verification, because they fear it may cause consumer confusion and create a barrier to effective competition,<sup>334</sup> we believe that when the default provider change is not written or electronically signed, third party verification measures are necessary to ensure that the user has been provided with full information regarding the change order. This will help prevent unauthorized default provider changes, thereby reducing the number of consumer complaints. Moreover, the rules we adopt require that third-party verification be conducted in the same language as the underlying transaction. The third-party verifier must elicit: the date of the verification; identification of the user; confirmation that the person on the call is authorized to make the default provider change; confirmation that the person on the call wants to make the default provider change and understands what the change in

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<sup>328</sup> Purple, *Ex Parte* Letter (filed March 11, 2013).

<sup>329</sup>As discussed above, *see supra* Section I.C., this advances our functional equivalency mandate and carries out the Commission's authority to adopt "functional requirements, guidelines, and operations procedures" and "minimum standards" for TRS. 47 U.S.C. §§ 225(a)(3), (d)(1)(A). We will address in a separate order the applicability of the slamming rules that we adopt today to IP captioned telephone service.

<sup>330</sup> See Appendix A, §§ 64.630-636.

<sup>331</sup> 47 C.F.R. § 64.1100 *et seq.*

<sup>332</sup> As with the slamming rules applicable to telecommunications carriers, this requirement will be interpreted and applied consistently with *AT&T Corp. v. FCC*, 323 F.3d 1081 (D.C. Cir. 2003).

<sup>333</sup> The use of third party verification is supported by a number of commenters. See Sorenson May 19, 2008 *Ex Parte*, Attachment at 2-3; GoAmerica August 8, 2008 Comments at 22-23.

<sup>334</sup> See Consumer Groups FNPRM Comments at 17. See also AT&T August 25, 2008 Reply Comments at 8.

default provider means, including that the customer may need to return any leased video equipment belonging to the default provider; confirmation that the person on the call understands that a default provider change, not an upgrade to existing service, or any other misleading description of the transaction is being authorized; the name of the new default provider; the telephone number of record to be transferred to the new default provider; and the type of relay service used with the telephone number being transferred.<sup>335</sup> The rules also require that the third-party verification process be recorded, which in the case of a third-party verification conducted in ASL, means video-recorded.<sup>336</sup>

145. In the *First Internet-Based TRS Numbering Order*, the Commission found that iTRS providers and their numbering partners are subject to the same porting obligations as interconnected VoIP providers, with the sole exception of contributing to meet shared numbering administration costs and local number portability (LNP) costs.<sup>337</sup> The Commission added:

This means the Internet-based TRS provider has an affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the Internet-based TRS user, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number. Moreover Internet-based TRS providers and their numbering partners may not enter into agreements that would prohibit or unreasonably delay an Internet-based TRS user from porting between Internet-based TRS providers and will be subject to Commission enforcement action for any such violation of the Act and the Commission's LNP rules.<sup>338</sup>

146. Because the Commission addressed the number portability obligations of iTRS providers in the *First Internet-Based TRS Numbering Order*, except as discussed herein, we will not revisit the number portability obligations of iTRS providers at this time, and we do not include in the iTRS slamming rules the provisions found in subpart K of part 64 that already apply to the numbering partners of the iTRS providers.<sup>339</sup> However, in response to reports alleging that there have been instances where VRS providers have, upon receiving a number porting request for one of their registered users, failed to process that user's calls pending completion of the port or have disabled or reduced the functionality of that user's VRS access technology during the pendency of the porting process,<sup>340</sup> we remind iTRS providers and their numbering partners on both ends of the number porting process that they are responsible for coordinating the timing of the number porting to ensure that there is no interruption of service to the user. To prevent improper degradation or interruption of service, we adopt a rule

<sup>335</sup> See Appendix A, § 64.631(c)(2)(iii). See also 47 C.F.R. § 64.1120, after which these requirements are patterned.

<sup>336</sup> See Appendix A, § 64.631(c)(2)(iv). To prevent porting without informed consumer consent, CSDVRS requests that we require "clear documentation of consumer consent to effectuate a port of an iTRS number." See CSDVRS April 24, 2013 *Ex Parte* at 1-2. We believe that when consent is expressed in ASL, a video-recording of the third party consent process, which serves the same function as a written authorization, will address the concerns expressed by CSDVRS.

<sup>337</sup> *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11606-07, ¶ 34.

<sup>338</sup> *Id.* at 11607, ¶ 35.

<sup>339</sup> See, e.g., 47 C.F.R. § 64.1100(a) (defining "submitting carrier"); *id.* § 64.1100(b) (defining "executing carrier"); *id.* § 64.1120(a)(2) (requiring the executing (or original) carrier to promptly execute carrier changes that have been verified by the submitting (or new) carrier).

<sup>340</sup> See, e.g., CSDVRS, *Ex Parte* Letter (filed April 24, 2013).

prohibiting default providers from reducing the level or quality of service provided to their users, or the functionality of their users' iTRS access technology, during the porting process.<sup>341</sup>

147. We adopt recordkeeping requirements applicable to iTRS providers that are five years in duration,<sup>342</sup> as opposed to two years in the case of telecommunications carriers.<sup>343</sup> This is consistent with other recordkeeping requirements applicable to iTRS providers<sup>344</sup> and will ensure that the underlying records supporting verification of a default provider change are maintained and are available to the Commission for review. For example, in the event that a claim is made that an iTRS user never authorized a default provider change, and the iTRS user, in fact, had authorized the change several years earlier, the five-year record retention requirement will assist the Commission in any investigation it may undertake by ensuring that relevant verification documents are not destroyed in the ordinary course before the Commission has had an opportunity to fully investigate.

148. In the telecommunications carrier context, subpart K of part 64 of our rules requires that preferred carrier change orders be submitted within 60 days of obtaining a letter of agency.<sup>345</sup> In the iTRS provider slamming rules adopted today, we likewise require that all default provider change orders be implemented within 60 days, whether verified by a letter of authorization or by a third party verification.<sup>346</sup> The Commission finds that placing a limit on the amount of time between when the default provider change order is received and verified and when the change is implemented avoids situations where, for example, an iTRS provider may implement a stale default provider change order that the iTRS user may no longer desire.

149. Consistent with the comments received,<sup>347</sup> we permit a provider to acquire by sale or transfer either part or all of another provider's user base, provided that the acquiring provider complies with the user notification procedures set forth in the new rule. Any such sale or transfer must be to a provider that is certified by the Commission pursuant to section 64.606(a)(2) of the rules<sup>348</sup> to receive compensation from the Fund to provide the specific relay service for which the sale or transfer is occurring.<sup>349</sup> We believe that this approach will permit legitimate transactions, and at the same time, by requiring user notification, permit users to change default providers if they are dissatisfied with the default provider to whom they have been transferred.

150. Under the telecommunications slamming rules, a "preferred carrier freeze" prevents a change in a subscriber's preferred carrier selection by placing a "freeze" on that subscriber's selection, unless the subscriber gives the carrier from whom the freeze was requested his or her express consent to change carriers.<sup>350</sup> Sorenson proposes that the Commission adopt rules permitting similar freezes for

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<sup>341</sup> See Appendix A, § 64.631(e).

<sup>342</sup> *Id.*, § 64.631(a)(2).

<sup>343</sup> See 47 C.F.R. §§ 64.1120(a)(1)(ii), (c)(3)(iv).

<sup>344</sup> See, e.g., *id.* § 64.604(c)(5)(D)(7) (requiring that call data supporting claims for payment from the TRS Fund be maintained for five years).

<sup>345</sup> *Id.* § 64.1130(j).

<sup>346</sup> See Appendix A, § 64.631(d).

<sup>347</sup> See, e.g., Sorenson May 19, 2008 *Ex Parte*, Attachment at 4-5; GoAmerica August 8, 2008 Comments at 25; Consumer Groups FNPRM Comments at 18.

<sup>348</sup> 47 C.F.R. § 64.606(a)(2).

<sup>349</sup> See Appendix A, § 64.631(f).

<sup>350</sup> 47 C.F.R. § 64.1190(a).

VRS.<sup>351</sup> Consumer Groups oppose this, however, claiming that such freezes in the relay context could present an additional barrier to legitimate provider change requests, thereby hindering competition in the market.<sup>352</sup> We agree with the Consumer Groups and will prohibit default provider freezes. Although the record in this proceeding provides evidence of the existence of slamming in support of some Commission action, we are hopeful that the smaller size of the iTRS market, compared to the telecommunications services market, will make it relatively easier to enforce the other provisions of the slamming rules,<sup>353</sup> and we are concerned that allowing such freezes, especially in a market where anti-slamming procedures have not previously applied, would be detrimental for an industry where competition continues to evolve, and where consumers should be able to change their default providers with ease.<sup>354</sup> We expect that in the case of VRS and IP Relay, the user authorization and third-party verification procedures adopted today will be sufficient to protect consumers from unauthorized changes of default providers,<sup>355</sup> and find that the need to foster competition by prohibiting default provider freezes outweighs the incremental benefit that might be achieved by the imposition of such freezes.

151. We extend to VRS and IP Relay the common carrier prohibition against using carrier proprietary information gained from a number porting request to initiate retention marketing while a number port is in progress.<sup>356</sup> Just as a carrier providing telecommunications services subject to Title II of the Act cannot market based on porting information without violating Section 222(b) of the Act (which prohibits the use of carrier proprietary information obtained from another carrier for marketing purposes),<sup>357</sup> we find that a VRS or IP Relay provider may not use the proprietary information obtained from a provider submitting a number porting request to try to retain its customer during the porting process. Once the port is complete, the carrier change information is no longer proprietary information protected from use by the former default provider, and therefore the former default provider may use such information to market to its former customer, consistent with TRS requirements.<sup>358</sup> We do not accept CSDVRS's proposal to prohibit a provider from marketing to its former customer for a period of 45 days<sup>359</sup> because we believe that such action could impede legitimate competition.

152. *Enforcement.* The telecommunications carrier slamming rules provide that any submitting provider that fails to comply with the slamming rules for a particular subscriber shall pay 150% of the payments from that subscriber to the authorized carrier, who in turn pays a refund to the

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<sup>351</sup> Sorenson May 19, 2008 *Ex Parte*, Attachment at 8-10. *See also* GoAmerica August 25, 2008 Reply Comments at 10-11 (arguing that optional preferred carrier freezes would be functionally equivalent to telecommunications preferred carrier freezes).

<sup>352</sup> Consumer Groups FNPRM Comments at 17.

<sup>353</sup> *See id.*

<sup>354</sup> *See id.*

<sup>355</sup> Some of the questionable practices that have been associated with carrier changes in the telecommunications service market, such as the mailing of checks and other financial rewards to prospective customers, are less likely to occur in the VRS market due to the strict limits placed on offering or providing financial incentives. *See infra* ¶ 167.

<sup>356</sup> *See Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 10704 (2008) (*Bright House*), *pet. for rev. denied sub nom. Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009). *See also* Sorenson FNPRM Comments at 87; GoAmerica August 25, 2008 Reply Comments at 10.

<sup>357</sup> 47 U.S.C. § 222(b). *See Bright House*, 23 FCC Rcd at 10721.

<sup>358</sup> *Id.* at 10713 (“The existing carrier must remain ‘neutral,’ and not act as a competitor, until the carrier change is completed and the new carrier has begun providing telecommunications service.”).

<sup>359</sup> *See* CSDVRS FNPRM Comments at 50.

subscriber of 50% of all such payments.<sup>360</sup> Sorenson proposes a similar approach, *i.e.*, that the submitting provider pay 100% of the revenues to the authorized VRS or IP Relay provider and a refund to the Fund of 50% of all such payments.<sup>361</sup> However, since the authorized VRS or IP Relay provider is not providing any CA services associated with the minutes paid to the submitting provider, any payment to the authorized provider would be a windfall at the expense of the contributors to the Fund.<sup>362</sup> Therefore, we believe that the appropriate remedy is for the submitting provider to pay to the Fund 100% of the amount that was paid by the Fund to the submitting provider. In other words, since the minutes submitted to the Fund for reimbursement by the submitting provider were not authorized, the provider will have to return its compensation for such minutes to the Fund. We will not require the submitting provider to pay to the Fund an additional 50% as proposed by the Consumer Groups,<sup>363</sup> because such additional payment would amount to a collection of funds in excess of the costs caused by TRS. However, we remind VRS and IP Relay providers that, in addition to the repayment remedy discussed herein, violations could result in enforcement or other remedies available by law to address noncompliance, including but not limited to the Commission's forfeiture procedures.<sup>364</sup>

153. We adopt complaint procedures for unauthorized changes of a default provider that are similar to the complaint procedures used for unauthorized changes of telecommunications carriers.<sup>365</sup> In response to the request of the Consumer Groups that the Commission implement a convenient process for users to file a complaint regarding slamming practices or actions,<sup>366</sup> the rules we adopt today provide for consumers to file informal complaints with the Commission in writing, including via the Commission's web-based complaint filing system via the option "Disability Access to Communications Services and Equipment."<sup>367</sup>

154. *Legal Authority.* The Commission's statutory authority to apply anti-slamming safeguards to VRS and IP Relay derives from section 225 of the Act, which directs the Commission to prescribe regulations to ensure that telecommunications relay services are available in the most efficient manner to enable communication in a manner functionally equivalent to voice telephone services.<sup>368</sup> Because voice telephone users enjoy the protections of the Commission's anti-slamming regulations, we find that applying these same protections to VRS and IP Relay users advances the Act's mandate of functional equivalency. We also find that applying such protections will improve the efficiency of VRS and IP Relay by reducing wasteful "churning" of the customer base for those services. We establish slamming prohibitions for VRS and IP Relay pursuant to the specific mandate of section 225(d)(1)(A) to establish "functional requirements, guidelines, and operations procedures" for TRS.<sup>369</sup>

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<sup>360</sup> 47 C.F.R. §§ 64.1140, 1170.

<sup>361</sup> See Sorenson May 19, 2008 *Ex Parte*, Attachment at 8.

<sup>362</sup> See GoAmerica August 8, 2008 Comments at 25.

<sup>363</sup> See Consumer Groups FNPRM Comments at 19.

<sup>364</sup> See 47 C.F.R. § 1.80.

<sup>365</sup> See *id.* § 64.1150; Appendix A, § 64.633.

<sup>366</sup> See Consumer Groups FNPRM Comments at 17. See also Sorenson May 19, 2008 *Ex Parte*, Attachment at 6-7.

<sup>367</sup> See <http://www.fcc.gov/complaints>. See also 47 C.F.R. § 1.716. A consumer having difficulty filing an informal complaint may call the Commission's toll free number, 1-888-CALL-FCC (1-888-225-5322) voice or 1-888-TELL-FCC (1-888-835-5322) TTY, for assistance. Upon request, call-takers will reduce the complaint to writing for the consumer.

<sup>368</sup> See *id.* § 225(a)(3), (b)(1).

<sup>369</sup> *Id.* § 225(d)(1)(A).

## F. Consumer Privacy

155. In this section, we adopt rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers. The Commission sought comment on the adoption of such privacy rules for TRS in general in 2008 in the *TRS Numbering FNPRM*,<sup>370</sup> and more recently for VRS with respect to certain issues in the *2011 VRS Reform FNPRM*.<sup>371</sup>

156. *Background.* Section 222(h)(1) of the Act defines Customer Proprietary Network Information (CPNI) as “information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service” that is available to a carrier “solely by virtue of the carrier-customer relationship.”<sup>372</sup> As a practical matter, CPNI may include information such as: the phone numbers called by a consumer; the frequency, duration, and timing of such calls; and any services obtained by the consumer. Section 222(c)(1) provides that a carrier may only use, disclose, or permit access to customers’ CPNI in limited circumstances: (1) as required by law; (2) with the customer’s approval; (3) in its provision of the “telecommunications service from which such information is derived,” or (4) in its provision of “services necessary to, or used in, the provision of such telecommunications service.”<sup>373</sup>

157. In 1998, the Commission adopted rules to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of CPNI.<sup>374</sup> Among other things, the rules require carriers to: (1) implement a system for establishing the status of customer approval prior to the use of CPNI;<sup>375</sup> (2) train their personnel in authorized use of CPNI;<sup>376</sup> (3) maintain a record of instances where CPNI has been disclosed or provided to third parties, or where third parties have been allowed access to CPNI;<sup>377</sup> (4) establish a supervisory review process for “outbound” marketing campaigns;<sup>378</sup> and (5) annually certify their compliance with the Commission’s CPNI requirements.<sup>379</sup>

158. In 2007, the Commission adopted additional safeguards to protect customers’ CPNI from unauthorized disclosure resulting from the practice of “pretexting,” defined as “the practice of pretending to be a particular customer or other authorized person in order to obtain access to that customer’s call

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<sup>370</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11639-46, ¶¶ 131-146 (2008) (*TRS Numbering FNPRM*).

<sup>371</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17422, ¶ 152.

<sup>372</sup> 47 U.S.C. § 222(h)(1).

<sup>373</sup> *Id.* § 222(c)(1).

<sup>374</sup> *See Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115, 96-149, 13 FCC Rcd 8061, 8195-8200, ¶¶ 193-202 (1998) (*1998 CPNI Order*).

<sup>375</sup> 47 C.F.R. § 64.2009(a); *1998 CPNI Order*, 13 FCC Rcd at 8198, ¶ 198.

<sup>376</sup> 47 C.F.R. § 64.2009(b); *1998 CPNI Order*, 13 FCC Rcd at 8198, ¶ 198.

<sup>377</sup> 47 C.F.R. § 64.2009(c); *1998 CPNI Order*, 13 FCC Rcd at 8198-99, ¶ 199.

<sup>378</sup> 47 C.F.R. § 64.2009(d); *1998 CPNI Order*, 13 FCC Rcd at 8199, ¶ 200.

<sup>379</sup> 47 C.F.R. § 64.2009(e); *1998 CPNI Order*, 13 FCC Rcd at 8199, ¶ 201.

detail or other private communications records.”<sup>380</sup> In particular, the *2007 CPNI Order*: (1) restricted disclosure of CPNI over the telephone and required passwords to be used in customer-initiated calls seeking CPNI;<sup>381</sup> (2) required passwords for on-line access to customer account information;<sup>382</sup> and (3) adopted a number of notification requirements for changes in account status and unauthorized disclosures of CPNI.<sup>383</sup> The Commission also changed its rules to require an opt-in approach for carrier disclosure to any third party other than “agents” and “affiliates that provide communications-related services.”<sup>384</sup>

159. In the context of privacy for TRS users, the Commission has long held that certain kinds of customer information, known as customer profile information,<sup>385</sup> “may not be used for any purpose other than the provision of TRS.”<sup>386</sup> The privacy status of other kinds of customer information initially was not as explicitly addressed in the Commission’s orders. In 2007, however, the Commission interpreted its TRS privacy rule<sup>387</sup> as prohibiting TRS providers from using any “consumer or call data to contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service.”<sup>388</sup>

160. In the *TRS Numbering FNPRM*, the Commission sought comment on what, if any, specific actions the Commission should take to ensure the privacy and security of TRS consumers’ call records or other personally identifiable account or usage information.<sup>389</sup> The Commission asked whether any new rules should apply to all TRS providers, including traditional TTY-based providers, or only to VRS and IP Relay providers or some other subset of TRS providers.<sup>390</sup> The Commission also sought comment on whether to modify the present CPNI rules in the TRS context and, if so, how. The Commission specifically sought comment on proposed revisions to the CPNI rules submitted by

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<sup>380</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115, 22 FCC Rcd 6927, 6928, ¶ 1, n. 1 (2007) (*2007 CPNI Order*), *pet. for rev. denied sub nom., National Cable & Telecommunications Association v. FCC*, 555 F.3d 996 (D.C. Cir. 2009) (*NCTA*). “Call detail” includes “any information that pertains to the transmission of specific telephone calls including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call.” *Id.* at 6936, ¶ 13 n. 45.

<sup>381</sup> *2007 CPNI Order*, 22 FCC Rcd at 6937–39, ¶¶ 15–17.

<sup>382</sup> *Id.* at 6940–41, ¶¶ 20–22.

<sup>383</sup> *Id.* at 6942, ¶ 24, 6943–45, ¶¶ 26–32.

<sup>384</sup> 47 C.F.R. § 64.2007(b); *2007 CPNI Order*, 22 FCC Rcd at 6947–53, ¶¶ 37–49.

<sup>385</sup> Customer profile information is information maintained by TRS providers on relay customers’ preferences, such as the customer’s interexchange carrier of choice, use of voice or hearing carry-over features, blocking preferences, speed dial numbers, and specific instructions for the handling of relay calls, *2000 TRS Order*, 15 FCC Rcd at 5173, ¶ 77 & n. 157.

<sup>386</sup> *Id.* at 5175, ¶ 83.

<sup>387</sup> Currently codified at 47 C.F.R. § 64.604(c)(7).

<sup>388</sup> *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20176, ¶ 96; *See also 2008 Declaratory Ruling*, 23 FCC Rcd at 8999, ¶ 13 (clarifying that providers may use consumer or call data to contact consumers for purposes related to the handling of relay calls).

<sup>389</sup> *TRS Numbering FNPRM*, 23 FCC Rcd at 11639, ¶ 131, 11644, ¶ 141.

<sup>390</sup> *Id.* at 11644-45, ¶ 142.



Sorenson,<sup>391</sup> and in particular, on the authority of the Commission under section 225 of the Act<sup>392</sup> to extend the CPNI protections to customers receiving point-to-point services from VRS providers.<sup>393</sup>

161. In the *TRS Numbering FNPRM*, the Commission also asked whether it may rely on the Commission's ancillary authority under Title I as the jurisdictional basis for extending the CPNI protections to TRS.<sup>394</sup> Previously, in the *2007 CPNI Order*, the Commission had exercised ancillary jurisdiction to extend the CPNI requirements of Title II to interconnected VoIP providers, notwithstanding that the Commission had not formally classified interconnected VoIP as a Title I "information service" or as a Title II "telecommunications service" within the meaning of the Act.<sup>395</sup>

162. The *TRS Numbering FNPRM* also sought comment on how best to reconcile the CPNI rules with the existing TRS restrictions on TRS providers' use of consumer database information.<sup>396</sup> The Commission has been consistent in its determination that TRS user data may not be used for any purpose other than the provision of TRS.<sup>397</sup> In contrast, section 64.2005(a) of the Commission's CPNI rules permits a carrier to "use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings" among the categories of service to which the customer already subscribes from the carrier,<sup>398</sup> and section 64.2005(c)(3) permits the use or disclosure of CPNI "to market services formerly known as adjunct-to-basic services."<sup>399</sup> In light of these and other differences between TRS (where there traditionally has been no subscription agreement and consumers do not pay for the service) and market-based communications services (for which consumers do pay), the Commission sought comment on whether, in the TRS context, the Commission should apply CPNI requirements that permit the use or disclosure of personally identifiable consumer information for marketing purposes and, if so, whether this action is consistent with the Commission's existing TRS requirements.<sup>400</sup> The Commission also sought comment on the comparative advantages and disadvantages of applying the CPNI rules to TRS providers,

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<sup>391</sup> Sorenson May 15, 2008 *Ex Parte*, Attachment 1.

<sup>392</sup> 47 U.S.C. § 225.

<sup>393</sup> *TRS Numbering FNPRM*, 23 FCC Rcd at 11645, ¶ 143.

<sup>394</sup> *Id.*, ¶ 144.

<sup>395</sup> *2007 CPNI Order*, 22 FCC Rcd at 6954–57, ¶¶ 54–59. In using ancillary jurisdiction to extend the Commission's CPNI rules to interconnected VoIP providers, the Commission found that: (1) interconnected VoIP service "is increasingly used to replace analog voice service," and that it is therefore reasonable for American consumers to expect that their calls will be private irrespective of whether they are using traditional telephone services or interconnected VoIP services; (2) because the CPNI of interconnected VoIP customers includes call histories to or from traditional phone service users, extending section 222's protection to interconnected VoIP service customers is necessary to protect the privacy of those traditional phone service users; and (3) applying the CPNI protections to interconnected VoIP providers may encourage customer migration to VoIP services and therefore spur technological development in the digital telephone realm. *Id.* at 6956–57, ¶¶ 55–59.

<sup>396</sup> *TRS Numbering FNPRM*, 23 FCC Rcd at 11645-46, ¶ 145.

<sup>397</sup> See, e.g., *2000 TRS Order*, 15 FCC Rcd at 5175, ¶ 83 (stating that customer profile information "shall not be used for any purpose other than to connect the TRS user, for whom the profile exists, with the called parties [identified] by that TRS user").

<sup>398</sup> 47 C.F.R. § 64.2005(a).

<sup>399</sup> *Id.* § 64.2005(c)(3). Such "adjunct-to-basic services" may include, among others, "speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features." *Id.*

<sup>400</sup> *TRS Numbering FNPRM*, 23 FCC Rcd at 11646, ¶ 145.

as opposed to expanding the existing TRS requirements governing permissible uses of database information.<sup>401</sup>

163. After the issuance of the *TRS Numbering FNPRM*, the U.S. Court of Appeals for the Tenth Circuit decided *Sorenson I*. In that 2009 decision, the court addressed challenges to the Commission's rulings, in the *2007 Rate Methodology Order* and the *2008 Declaratory Ruling*, that TRS providers are prohibited from using customer information to contact TRS users "for lobbying or any other purpose except the handling of TRS calls."<sup>402</sup> The court ruled that the Commission's rulings were, at least in part, restricting commercial speech, and the Commission had failed to pass First Amendment scrutiny under the *Central Hudson* test,<sup>403</sup> namely the Commission had failed to articulate a substantial governmental interest to be served by the restriction on the use of TRS customer data to contact customers "for lobbying or any other purpose" primarily because it did not attempt to defend the decision under a *Central Hudson* analysis.<sup>404</sup> The court therefore ruled that, upon remand, the Commission must vacate the restriction on the use of TRS customer data to contact customers "for lobbying or any other purpose."<sup>405</sup> As a result of this ruling, the status of privacy protection accorded to data about TRS customers must be addressed in order to ensure that TRS consumers' privacy is protected.

164. *Discussion.* Commenters generally agree that the Commission should apply CPNI protections to all forms of TRS, as well as to point-to-point video services provided over the VRS network, with minor modifications to account for the unique nature of TRS.<sup>406</sup> We now adopt rules that are modeled after part 64, subpart U of our rules<sup>407</sup> for the purpose of applying the protections of the CPNI rules to TRS and point-to-point video calls handled over the VRS network.<sup>408</sup> We agree with the Consumer Groups that for TRS to be functionally equivalent to voice telephone services, consumers with disabilities who use TRS are entitled to have the same assurances of privacy as do consumers without disabilities for voice telephone services.<sup>409</sup> Further, because upwards of 80-90 percent of all calls made by ASL users on the VRS network are point-to-point, we also find that it is just as important, if not more

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<sup>401</sup> *Id.*, ¶ 146.

<sup>402</sup> *Sorenson I*, 567 F.3d at 1218; *2007 Rate Methodology Order*, 22 FCC Rcd at 20176; *2008 Declaratory Ruling*, 23 FCC Rcd at 8996-97.

<sup>403</sup> *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 566 (1980).

<sup>404</sup> *Sorenson I*, 567 F.3d at 1226-27. In *Sorenson I*, the Commission attempted to defend the adoption of customer privacy requirements as a permissible condition placed on a government subsidy under *Rust v. Sullivan*, 500 U.S. 173, 193-94 (1991), rather than under a *Central Hudson* analysis that required a substantial government interest. *Sorenson I*, 567 F.3d at 1225-26.

<sup>405</sup> *Id.* at 1227.

<sup>406</sup> Consumer Groups August 8, 2008 Comments at 25-29; GoAmerica August 8, 2008 Comments, at 38-39; Sorenson August 8, 2008 Comments, at 15-16. See also Consumer Groups FNPRM Comments at 22-27 (expressing support for applying the CPNI rules to TRS and point-to-point video calls); Sorenson FNPRM Comments at 86 (referring to proposal in Sorenson May 15, 2008 *Ex Parte*); VRSCA PN Reply Comments at 4.

<sup>407</sup> 47 C.F.R. §§ 64.2001 *et seq.*

<sup>408</sup> See Sorenson May 15, 2008 *Ex Parte*. See also Consumer Groups August 8, 2008 Comments at 25; GoAmerica August 8, 2008 Comments at 38. Both parties generally support the proposal in the Sorenson May 15, 2008 *Ex Parte*.

<sup>409</sup> See Consumer Groups FNPRM Comments at 22-24. See also 47 U.S.C. § 225(a)(3) (including the functional equivalency requirement within the statutory definition of TRS).

important, to apply the CPNI protections to point-to-point video calls handled over the VRS network as it is to apply these safeguards to calls that are relayed.<sup>410</sup>

165. The rules we adopt today are not identical to the CPNI rules adopted for telecommunications carriers and found in subpart U of part 64 of the Commission's rules.<sup>411</sup> Modifications have been made to reflect the differences between TRS providers and telecommunications carriers. For example, the use of sign language is contemplated by the rules.<sup>412</sup> Other modifications have been made to make the rules more explicit so as to improve enforcement and administration of the rules. Although we do not address herein every variance between the subpart U rules that apply to telecommunications carriers and the subpart EE rules that apply to TRS, we describe the main differences below.

166. As with telecommunications services, a TRS provider may access CPNI for the purpose of marketing services to its registered users within the same category of service (meaning same type of TRS) that its registered users already receive from that provider.<sup>413</sup> However, just as a wireless carrier may not access CPNI for the purpose of marketing to a roaming service user (because the roaming service user is not a subscriber of the serving carrier), a TRS provider may not use CPNI for the purpose of marketing to a dial-around user.<sup>414</sup> Similarly, just as a telecommunications carrier may not use CPNI to market services to a party on the other end of its subscriber's voice call because such party may not be a subscriber of that carrier, we do not permit a TRS provider to use CPNI for the purpose of marketing services to a party on the other end of its registered user's point-to-point call.<sup>415</sup>

167. We agree with the Consumer Groups that due to certain inherent differences between voice telephone services and TRS, certain additional protections should apply to TRS.<sup>416</sup> As the Commission has repeatedly emphasized, because the TRS Fund, and not the consumers, pay for TRS calls, TRS providers may not, with or without using CPNI, engage in marketing communications that offer improper financial incentives to existing or potential customers or that suggest, urge, or tell a TRS user to make more or longer TRS calls.<sup>417</sup> To make clear that, in adopting CPNI rules to cover TRS providers, we are not relieving TRS providers of their obligations under our prior rulings regarding prohibited marketing communications, the rules adopted today explicitly provide that when CPNI is used for marketing purposes, it may only be used for lawful marketing activities.<sup>418</sup> To the extent that the Consumer Groups advocate restrictions on political speech by TRS providers,<sup>419</sup> we believe that a more

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<sup>410</sup> See Consumer Groups FNPRM Comments at 26; Sorenson May 15, 2008 *Ex Parte*, Attachment at 2.

<sup>411</sup> See 47 C.F.R. §§ 64.2001 *et seq.*

<sup>412</sup> See, e.g., Appendix A, §§ 64.5103(o), 64.5107.

<sup>413</sup> See 47 C.F.R. § 64.2005(a).

<sup>414</sup> See Consumer Groups FNPRM Comments at 23.

<sup>415</sup> See Consumer Groups August 8, 2008 Comments at 30-31.

<sup>416</sup> See Consumer Groups FNPRM Comments at 23.

<sup>417</sup> See 2005 TRS Marketing Practices PN, 20 FCC Rcd at 1473 ; 2007 TRS Rate Methodology Order, 22 FCC Rcd at 20173-75, ¶¶ 89-94; 2008 Declaratory Ruling, 23 FCC Rcd at 8999, ¶ 13.

<sup>418</sup> See Appendix A, § 64.5105(a). See also 2005 TRS Marketing Practices PN, 20 FCC Rcd at 1473 ; 2007 TRS Rate Methodology Order, 22 FCC Rcd at 20173-75, ¶¶ 89-94; 2008 Declaratory Ruling, 23 FCC Rcd at 8999, ¶ 13.

<sup>419</sup> See, e.g., Consumer Groups FNPRM Comments at 23-24.

developed record is necessary to evaluate the potential merits of adopting new requirements in that regard, and consequently we seek comment on those issues in the Further Notice.<sup>420</sup>

168. Because the administrator of the TRS Fund requires call data information and other CPNI to administer the Fund and to investigate and prevent waste, fraud, and abuse of TRS, we are adding provisions to the rules requiring TRS providers to use, disclose, or permit access to CPNI upon request by the administrator of the Fund.<sup>421</sup> We further note that, because consumers generally are not billed for TRS, the concerns about access to customer financial information that underlie the subpart U provisions requiring password protection of CPNI to obtain access to call data information over the telephone are less applicable here,<sup>422</sup> and this provision has been replaced with a simpler customer authentication provision in subpart EE.<sup>423</sup>

169. The rules adopted today for TRS CPNI require records to be maintained for three years, compared with one year in subpart U,<sup>424</sup> to ensure that the underlying records supporting a TRS provider's annual compliance certification are maintained and available to the Commission for review.<sup>425</sup> For example, paragraph (e) of this section requires an officer of a TRS provider to file with the Commission an annual CPNI compliance certification.<sup>426</sup> A TRS provider must provide a statement explaining, among other things, how its operating procedures ensure compliance with the CPNI rules and include an explanation of any actions taken against data brokers, a summary of all consumer complaints over the reporting period that assert a breach of the consumer's CPNI rights, and report all instances of non-compliance.<sup>427</sup> The three-year record retention will assist the Commission in any investigation it may undertake based on the annual compliance filing or in response to consumer complaints by ensuring that relevant documents are not destroyed in the ordinary course before the Commission has an opportunity to secure their retention through issuance of a letter of inquiry or subpoena.

170. *Legal Authority.* The Commission's statutory authority to apply customer privacy requirements to TRS derives from section 225 of the Act, which directs the Commission to prescribe regulations to ensure that telecommunications relay services are available to enable communication in a manner that is functionally equivalent to voice telephone services.<sup>428</sup> Because voice telephone users enjoy the privacy protections of the Commission's CPNI regulations, we find that applying these same protections to TRS users advances the Act's mandate of functional equivalency.<sup>429</sup> We establish customer privacy requirements for TRS pursuant to the specific mandate of section 225(d)(1)(A) to establish

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<sup>420</sup> See *infra* section V.L.

<sup>421</sup> See Appendix A, § 64.5105(c)(5).

<sup>422</sup> See 47 C.F.R. § 64.2010(b).

<sup>423</sup> See Appendix A, § 64.5110(b).

<sup>424</sup> 47 C.F.R. § 64.2009

<sup>425</sup> See Appendix A, § 64.5109.

<sup>426</sup> *Id.*, § 64.5109(e).

<sup>427</sup> *Id.*

<sup>428</sup> See 47 U.S.C. §§ 225(a)(3), 225(b)(1). In the *2000 TRS Order*, the Commission concluded that the CPNI requirements of section 222 of the Act do not directly apply to TRS. *2000 TRS Order*, 15 FCC Rcd at 5175, ¶ 81. As discussed herein, based on the record in this proceeding, we conclude that, even if section 222, by its own terms, may not directly cover TRS, we can and should apply the protections of our CPNI rules to TRS as part of our implementation of section 225.

<sup>429</sup> See Consumer Groups FNPRM Comments at 25.

“functional requirements, guidelines, and operations procedures” for TRS.<sup>430</sup> In addition, extending our CPNI regulations to TRS users also is ancillary to our responsibilities under section 222 of the Act to telecommunications service subscribers that place calls to or receive calls from TRS users,<sup>431</sup> because TRS call records include call detail information concerning all calling and called parties.<sup>432</sup>

171. The Commission also has ancillary authority to apply the CPNI requirements to point-to-point video services provided by VRS providers over the VRS network. With respect to the first prong of the *ALA* ancillary jurisdiction test, the provision of point-to-point video services is “communication by wire or radio” within the general jurisdictional grant of section 2 of the Act.<sup>433</sup> As for the second prong, the application of CPNI protection to point-to-point video services is ancillary to our responsibilities under sections 222 and 225. As discussed above, we have direct authority under section 225 to adopt privacy requirements for VRS service. Point-to-point services are provided by VRS providers to their VRS customers by virtue of the Commission’s requirement that VRS providers facilitate such functionality. Consequently, VRS providers have access to CPNI regarding point-to-point services by virtue of their section 225-regulated role as the VRS provider for the caller and/or recipient of a point-to-point call. In addition, we conclude that there is a risk that consumers will not readily recognize or anticipate regulatory distinctions between VRS services and the point-to-point services at issue here, which rely on the same access technology and are routed and transmitted over the same network as the VRS services provided by that same provider. Consequently, to the extent that users’ privacy is not adequately protected with respect to point-to-point calls, this risks undermining their expectation of privacy as to VRS services, as well. Such an outcome would be at odds with our intent that VRS users should be entitled to have, with respect to their VRS service, the same expectations of privacy as traditional voice service customers, reflected in the TRS privacy rules adopted pursuant to our direct authority under section 225 as discussed above. Thus, we find that adopting privacy protections for point-to-point services is reasonably ancillary to our oversight of the VRS provider-user relationship in general, and the privacy protections adopted in that context in particular, regulated under our section 225 authority. Further, for a VRS user whose primary means of communication is ASL, a point-to-point video call is akin to a telephone call. Specifically, for such an individual, a point-to-point video call transmitted over the Internet is the primary means by which that person can communicate with another person whose primary means of communication is also ASL. In essence, then, from a privacy perspective, point-to-point video calls between ASL users are “virtually indistinguishable” from VoIP calls between hearing persons, and thus users must have the same expectation of privacy.<sup>434</sup> Thus, analogous to the Commission’s exercise of ancillary authority to extend CPNI requirements to

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<sup>430</sup> 47 U.S.C. § 225(d)(1)(A).

<sup>431</sup> Ancillary authority may be employed when “(1) the Commission’s general jurisdictional grant under Title 1 covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.” *American Library Ass’n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005) (*ALA*). See also, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (upholding certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium). As noted *infra* ¶ 171, the first prong of this test is satisfied because the provision of TRS clearly is “communication by wire or radio” within the general jurisdictional grant of section 2 of the Act. 47 U.S.C. § 152.

<sup>432</sup> Cf. *2007 CPNI Order*, 22 FCC Rcd at 6956, ¶ 57 (finding that extending section’s 222’s protections to interconnected VoIP service customers is necessary to protect the privacy of telecommunications service subscribers that place calls to or receive calls from interconnected VoIP service customers, because TRS call records include call detail information concerning all calling and called parties).

<sup>433</sup> 47 U.S.C. § 152.

<sup>434</sup> See Consumer Groups August 8, 2008 Comments at 27.

interconnected VoIP, we conclude it is reasonably ancillary to our section 222 authority to extend privacy requirements to point-to-point services.<sup>435</sup>

172. Extending CPNI requirements to VRS providers does not violate the First Amendment. Undoubtedly, as the Tenth Circuit in *Sorenson I* noted, such requirements restrict commercial speech.<sup>436</sup> Here, however, the Commission is merely extending to VRS providers requirements that previously have passed constitutional muster for telecommunications carriers and interconnected VoIP providers.<sup>437</sup> Congress has clearly stated that the privacy of customer communications is an important governmental interest,<sup>438</sup> and as discussed above, the governmental interest in protecting the privacy of its citizens in the VRS context is at least equal to that of protecting the interest of customers served by telecommunications carriers or interconnected VoIP providers.<sup>439</sup> The Commission has compiled a record indicating that this privacy interest will be directly advanced by the regulations adopted in this Order,<sup>440</sup> and has determined that the extension of these CPNI requirements is proportionate to the privacy interests it seeks to protect by adopting the CPNI rules.<sup>441</sup>

### **G. Certification Under Penalty of Perjury for Certification Application and Annual Reports**

173. In the *2011 VRS Reform FNPRM*, the Commission proposed to adopt permanently the interim rules adopted in the *2011 iTRS Certification Order*,<sup>442</sup> requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under section 64.606(g) of the Commission's rules<sup>443</sup> are truthful, accurate, and complete.<sup>444</sup> The Commission

<sup>435</sup> See *2007 CPNI Order*, 22 FCC Rcd at 6956, ¶ 56.

<sup>436</sup> *Sorenson I*, 567 F.3d at 1225-26.

<sup>437</sup> See *2007 CPNI Order* (adopting more stringent CPNI requirements and extending CPNI requirements to interconnected VoIP providers); *NCTA*, 555 F.3d at 1001 (finding that the *2007 CPNI Order* met the *Central Hudson* test by articulating a substantial government interest that was directly advanced by the CPNI rules in a manner not more extensive than necessary to serve that interest).

<sup>438</sup> See Telephone Records and Privacy Protection Act of 2006, Pub. L. No. 109-476, 120 Stat. 3568 (codified at 18 U.S.C. § 1039) (stating that that unauthorized disclosure of customer information “not only assaults individual privacy but, in some instances, may further acts of domestic violence or stalking, compromise the personal safety of law enforcement officers, their families, victims of crime, witnesses, or confidential informants, and undermine the integrity of law enforcement investigations”). *Sorenson I* is distinguishable here because, in defending the TRS privacy rules at issue there, the Commission did not attempt to defend the rules under a *Central Hudson* analysis, but instead relied on its funding authority to enable it to impose conditions on *Sorenson* and other TRS providers. *Sorenson I*, 567 F.3d at 1225-27.

<sup>439</sup> The application of *US West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir.1999) is inapposite here, since the decision was related to an earlier CPNI Order. The subsequent *2007 CPNI Order*, which is the basis of the rules adopted today, was affirmed by the D.C. Circuit in *NCTA*.

<sup>440</sup> See *supra* ¶¶ 164-169.

<sup>441</sup> See *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989). We find that, like telecommunications carriers and interconnected VoIP providers, VRS providers have similar incentives to monetize customer information or otherwise use customer information for their own gain and that extending CPNI protections to VRS customers is an appropriate response to counteract these incentives.

<sup>442</sup> *2011 iTRS Certification Order*, 26 FCC Rcd at 10923-25, ¶¶ 62-67.

<sup>443</sup> 47 C.F.R. § 64.606(g).

<sup>444</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17422, ¶ 152.

also sought comment on whether there are any additional elements that should be covered by these proposed certifications, and, in general, whether there are any additional safeguards that we should adopt as rules to ensure the veracity and completeness of provider submissions, and to help ensure that providers comply with the Commission's TRS rules and policies.<sup>445</sup>

174. In the *2011 iTRS Certification Order*, the Commission found the interim certification to be “a necessary and critical component of our efforts to curtail fraud and abuse.”<sup>446</sup> We affirm this finding and conclude that this attestation is essential to our efforts to ensure that only qualified providers become and remain eligible for compensation from the Fund. We find our actions today to be consistent with Commission rules, already in place, mandating similar attestations as to the accuracy and truthfulness of requests for compensation from the Fund and data submissions to the TRS Fund administrator. Having received no comment opposing the interim certification, and because of its continued necessity, the Commission therefore permanently adopts the following requirements:

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification under this section<sup>447</sup> with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification under paragraph (a)(2) of this section,<sup>448</sup> must certify as follows: I swear under penalty of perjury that I am \_\_\_ (name and title), \_\_\_ an officer of the above-named applicant, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.<sup>449</sup>

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an Internet-based TRS provider under this section<sup>450</sup> with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual report under paragraph (g) of this section,<sup>451</sup> must, with each such submission, certify as follows: I swear under penalty of perjury that I am \_\_\_ (name and title), \_\_\_ an officer of the above-named reporting entity, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.<sup>452</sup>

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<sup>445</sup> *Id.*

<sup>446</sup> *Id.*

<sup>447</sup> 47 C.F.R. § 64.606.

<sup>448</sup> *Id.*

<sup>449</sup> *Id.* § 64.606(a)(2)(v).

<sup>450</sup> *Id.* § 64.606.

<sup>451</sup> *Id.*

<sup>452</sup> *Id.* § 64.606(g)(2).

175. The Commission believes that this attestation requirement will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the information provided. Although we do not adopt any additional rule changes to ensure the veracity and completeness of provider submissions at this time, we note that additional safeguards may be necessary at a later time.

## H. Other Issues

### 1. CA Qualifications

176. The Commission's rules direct that VRS CAs must be qualified interpreters, *i.e.*, capable of interpreting "effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary."<sup>453</sup> The Commission sought comment in the *2011 VRS Reform FNPRM* on whether specific training requirements or qualifications for VRS CAs were needed beyond the general requirements set forth in section 64.604(a)(1) of our rules, as well as the effect that imposing such requirements would have on the current pool of CAs and on the ability of VRS providers to comply with the speed of answer requirement.<sup>454</sup>

177. Two commenters call for a national VRS CA certification standard, specifically recommending the RID-NAD National Interpreter Certification.<sup>455</sup> The record does not, however, support the imposition of additional or modified VRS CA qualification rules. First, there is no record in this proceeding to indicate a lack of high VRS CA quality, and Commission records indicate that few consumers have complaints regarding VRS CA quality in the last 12 months. Further, VRS providers compete for users primarily on the basis of quality of service, including the quality of their VRS CAs; a user dissatisfied with the quality of a given provider's VRS CAs can switch to another provider on a per call or permanent basis.<sup>456</sup> VRS providers thus have developed their own internal methods designed to ensure compliance with our "qualified interpreter" requirement.<sup>457</sup> For these reasons, we see no need to modify that requirement at this time.

178. We note that commenters expressed a number of other concerns with a national VRS CA certification requirement, including arguments that: (a) certification alone does not guarantee that a VRS

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<sup>453</sup> The Commission adopted this requirement when it first recognized VRS as a form of TRS compensable from the Fund. *2000 TRS Order*, 15 FCC Rcd at 5161-62, ¶ 48. See also 47 C.F.R. § 64.601(a)(17) (2012). This standard is patterned after the definition of "qualified interpreter" that the U.S. Department of Justice utilizes in its regulations implementing Titles II and III of the ADA. See 28 C.F.R. §§ 35.104, 36.104.

<sup>454</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17404-05, ¶ 86.

<sup>455</sup> Consumer Groups FNPRM Comments at 11; RID FNPRM Comments at 3; Consumer Groups FNPRM Reply Comments at 2. These commenters claim that requiring national certification will establish a minimum standard not unlike certifications required to practice in other professions.

<sup>456</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17378, ¶ 14.

<sup>457</sup> For example, CSDVRS reports that it has a training and recruitment program, as well as ongoing monitoring and feedback systems for its VRS CAs, many of whom have some level of state or national certification. CSDVRS FNPRM Comments at 35-37. Similarly, Sorenson reports that its own in-house training program provides in-depth instruction to its VRS CAs on meeting the needs of deaf, hard-of-hearing and speech-disabled consumers and complying with the regulatory standards applicable to CAs. Sorenson FNPRM Reply Comments at 80-81. Likewise, Convo states that it evaluates all of its CA applicants using a process that addresses its customers' needs and preferences, and provides CAs with significant training before the CAs take their first VRS call. Convo adds that some applicants holding RID certification have not passed its in-house evaluation. Convo FNPRM Reply Comments at 15-16.



CA will be a “qualified interpreter;”<sup>458</sup> (b) national certification does not exist for Spanish-ASL interpreters and English-ASL national certification exams cannot effectively assess the VRS skills of Spanish-ASL VRS CAs;<sup>459</sup> and (c) the Commission should be cautious about reliance on a single national certifying body given that interpreters may be qualified under various state quality assurance programs.<sup>460</sup> Further, we note that, in 2010, the U.S. Department of Justice considered, and rejected, a similar proposal to add a certification requirement to its definition of “qualified interpreter.”<sup>461</sup> In rejecting this proposal, DOJ found its existing definition to be sufficient to ensure effective communication without the need for certification.<sup>462</sup>

179. There is no doubt that high quality VRS CAs are critical to the provision of effective VRS, and we will revisit this issue if it becomes apparent that our current rules are insufficient to ensure the availability of qualified VRS CAs. We will continue to carefully monitor consumer complaints related to the quality of VRS CAs and will look for patterns of complaints regarding individual CAs or providers. We encourage callers who encounter a VRS CA that they believe is unable to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, to make note of the CA’s identification number, notify the VRS provider handling the call, and file a complaint with the Commission.<sup>463</sup> Finally, we remind VRS providers that their annual complaint log summaries (submitted to the Commission) must include, among other things, a listing of complaints alleging a violation of any of the TRS mandatory minimum standards, including violations of the requirement for CAs to be qualified, as well as the manner in which such complaints were resolved.

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<sup>458</sup> A majority of more than 250 individual sign language interpreters—many of whom are certified—maintain that holding certification alone does not necessarily reflect their skills as effective VRS CAs. *See, e.g.*, J. Day (late-filed comment filed May 15, 2012); C. Errigo (late-filed comment filed May 18, 2012) (“I know some highly qualified interpreters who are stellar VIs who have not passed the NIC exam and conversely those of questionable ability who have passed. Getting NIC certification is by no means the only valid read of an interpreter’s ability to provide skilled VRS interpreting services.”); P. Meyer (late-filed comment filed June 4, 2012). *See also* Convo FNPRM Reply Comments at 15; Sorenson FNPRM Comments at 80-81; Sorenson FNPRM Reply Comments at 63 (“While NAD-RID certification (or other specific certifications) can often help in identifying qualified interpreters, it is not a foolproof shortcut for ensuring that providers employ only high quality VRS interpreters.”).

<sup>459</sup> *See* ASL Services Holdings FNPRM Comments at 27 (although non-certified Spanish-speaking CAs often find passing English-ASL certification to be challenging, “these individuals provide perhaps the best possible ASL-Spanish interpretation possible,” and should not be deemed incapable of serving the lack of a certification process); L. Fragoso (late-filed comment filed May 18, 2012); A. Lozada (late-filed comment filed May 21, 2012). Non-shared language Spanish translation VRS is a non-mandated, but compensable form of VRS in which the CA translates what is signed in ASL into spoken Spanish, and *vice versa*. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67 & CG Docket No. 03-123, Order on Reconsideration, 20 FCC Rcd. 13140 (2005) (*Non-Shared ASL-Spanish Reconsideration Order*).

<sup>460</sup> *See, e.g.*, S. Moore (late-filed comment filed May 25, 2012); *see also, e.g.*, L. Barrett (late-filed comment filed May 30, 2012) (“Several states and other organizations offer certification that is arguably better than RID’s.”); E. Sewell (late-filed comment filed May 9, 2012); L.K. Doyle (late-filed comment filed May 9, 2012); A. Jeralds (late-filed comment filed May 10, 2012).

<sup>461</sup> *See* 28 C.F.R. Part 36, Appendix A – Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities (2010).

<sup>462</sup> *Id.* *See also id.* Part 35, Appendix A – Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (2010).

<sup>463</sup> Information on how to file a TRS-related complaint electronically (Form 2000C), over the phone, or via postal mail, e-mail, or fax can be found at <http://www.fcc.gov/complaints>.

## 2. Skill-Based Routing

180. Commenters have asked that VRS providers be allowed, or required, to offer “skill-based routing,” which would allow a VRS caller to select preferred VRS CAs according to the CAs’ skill sets—in particular their interpreting, transliteration, and signing styles, and/or areas of knowledge (e.g., medicine, law, or technology).<sup>464</sup> We are concerned that allowing skill-based routing would increase the incentive of VRS users to substitute VRS for in-person sign language interpreting services, including video remote interpreting (VRI)—a practice that is not permitted.<sup>465</sup> Even if that critical issue were resolvable, skill-based routing poses a number of implementation issues, including (a) how to reconcile a skill-based routing function with our requirement that VRS calls be answered in the order received,<sup>466</sup> (b) our availability and speed of answer requirements,<sup>467</sup> (c) determining what types of skills are appropriate for specialized routing,<sup>468</sup> and (d) whether skill-based routing should be a mandatory or a voluntary feature of VRS.<sup>469</sup> We therefore decline to require or allow skill-based CA routing – or any type of routing to a particular interpreter or interpreter pool – at this time.<sup>470</sup>

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<sup>464</sup> Consumer Groups PN Comments at 9-11; *see also* ASL Services Holdings PN Comments at 18 (“A CA should have the professional latitude, based on their knowledge and expertise, to immediately route the caller to the most qualified CA to meet the caller’s needs.”); Sorenson PN Reply Comments at 75-77 (supporting rules that would allow skill based routing subject to a number of conditions, including that it be provided as a “voluntary adjunct” to VRS available less than 24 hours a day).

<sup>465</sup> VRI is used when an interpreter cannot be physically present to interpret for two or more persons who are in the same location, and it may also be used when persons are in different locations. 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, e.g., 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 2005 TRS Marketing Practices PN*, 20 FCC Rcd 1471; *Non-Shared ASL-Spanish Reconsideration Order*, 20 FCC Rcd at 13154, n.109; *2006 IP Relay Misuse FNPRM*, 21 FCC Rcd at 5482-83, ¶10.

<sup>466</sup> ASL Services Holdings PN Comments at 18.

<sup>467</sup> Purple FNPRM Comments at 18-19 (requesting that the speed of answer requirement be lifted for calls sent to specific interpreters pursuant to skill-based routing); Sorenson FNPRM Reply Comments at 49-54 (supporting permissive, not required, skill-based call routing, if certain measures are taken, including waiving the speed of answer requirement for such calls); Sorenson PN Reply Comments at 76-77.

<sup>468</sup> *Id.* at 77.

<sup>469</sup> *See id.* at 75.

<sup>470</sup> We remind providers that they must handle incoming calls in the order that they are received, with the exception of 911 calls. *2005 TRS Marketing Practices PN*, 20 FCC Rcd at 1472, 1474 (2005); 47 CFR § 64.605(a)(2)(ii). These rules are intended to ensure that VRS providers do not discriminate against, or in favor of, particular VRS users. The practice of granting a caller’s request for a CA of specific gender or skilled in handling ASL-Spanish calls remains permissible. *See id.* § 64.604(a)(1)(vi) (TRS providers must make best efforts to accommodate a TRS user’s requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA); *Non-Shared ASL-Spanish Reconsideration Order*.

#### IV. VRS COMPENSATION RATE STRUCTURE AND RATES

##### A. Background

181. In order to implement the statutory requirement that TRS users “pay rates no greater than the rates paid for functionally equivalent voice communication services,”<sup>471</sup> the Commission established the TRS Fund, which is intended to allow TRS providers, including VRS providers, to recover the reasonable costs of providing TRS.<sup>472</sup> As a result, the costs associated with providing TRS are not charged to the consumers using these services; rather, interstate TRS and iTRS, including VRS, are funded through mandatory contributions made to the TRS Fund.<sup>473</sup> Under the current rules, providers submit to the TRS Fund administrator on a monthly basis the number of minutes of service provided, and the TRS Fund administrator compensates them based on per-minute compensation rates, which are set annually by the Commission.<sup>474</sup>

182. The current compensation methodology for VRS was adopted in 2007<sup>475</sup> and modified in 2010.<sup>476</sup> Under the current approach, the Fund compensates VRS providers on a per-minute basis, employing a three-tier rate structure that allows smaller providers to receive a higher average per-minute rate than larger providers.<sup>477</sup>

183. Prior to June 2010, VRS compensation rates were calculated based on projections of cost and demand submitted by providers.<sup>478</sup> In setting TRS Fund compensation rates for the 2010-11 Fund year, the Commission found that for the prior four years, for which rates had been set based on providers’ projected costs, providers had been overcompensated by more than \$2.00 per minute, due to reliance on projected costs and inaccurate demand forecasts submitted by providers.<sup>479</sup>

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<sup>471</sup> 47 U.S.C. § 225(d)(1)(D).

<sup>472</sup> *TRS II*, 8 FCC Rcd at 1806, ¶ 24.

<sup>473</sup> See 47 C.F.R. § 64.604(c)(5). The TRS Fund is supported by contributions collected from common carriers providing interstate telecommunications services and from voice over Internet Protocol providers. See *id.* § 64.604(c)(5)(iii)(A). The costs of PSTN-based intrastate TRS are the responsibility of the states, and they may select their funding mechanisms, so long as their programs are in compliance with the Commission’s mandatory minimum TRS standards. See 47 U.S.C. §§ 225(d)(3), (f).

<sup>474</sup> 47 C.F.R. § 64.604(c)(5); see also, e.g., *2012 TRS Rate Order*.

<sup>475</sup> See *2007 TRS Rate Methodology Order*.

<sup>476</sup> See *2010 TRS Rate Order*, 25 FCC Rcd at 8692, ¶ 6, 8694, ¶9.

<sup>477</sup> See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20164-70, ¶¶ 47-56, 20173-75, ¶¶ 67-72; *2010 TRS Rate Order*, 25 FCC Rcd at 8697-98, ¶¶ 16-17. Tier I rates apply to a provider’s first 50,000 monthly VRS minutes; Tier II rates apply to volumes between 50,001 and 500,000 minutes per month; and Tier III rates apply to volumes above 500,000 minutes per month. *Id.* at 8697, ¶ 16.

<sup>478</sup> In the *2007 TRS Rate Methodology Order*, the Commission introduced price cap-style regulation, permitting VRS compensation rates to remain in effect subject to adjustment for a three-year period. *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20169-70, ¶ 56. The initial rates set in that order to kick off the price cap regime were based on providers’ projected costs. *Id.* at 20167, ¶ 52.

<sup>479</sup> *2010 TRS Rate Order*, 25 FCC Rcd at 8694, ¶ 9. Based on the data received from providers, the administrator found that VRS providers’ weighted average actual per-minute costs were \$4.4603 in 2006, \$3.9604 in 2007, \$4.1180 in 2008, and \$4.1596 in 2009. By contrast, the VRS compensation rates (which were split into rate tiers beginning in 2007) were in the following ranges for each of those years: \$6.644 in 2006, \$6.444 to \$6.77 in 2007, \$6.30 to \$6.7632 in 2008, and \$6.2373 to \$6.7362 in 2009.

184. To bring the rates closer to actual costs, the Commission in June 2010 cut the compensation rate for the bulk of VRS traffic by more than \$1.00 per minute, the first substantial VRS rate reduction in six years.<sup>480</sup> The TRS Fund administrator had proposed a sharper reduction based on its analysis of actual, historical costs.<sup>481</sup> The Commission found that while the TRS Fund administrator's proposed rates were "reasonable and supported by record evidence,"<sup>482</sup> a less severe rate reduction was appropriate to avoid "a significant and sudden cut to providers' compensation"<sup>483</sup> and to ensure that VRS providers were able to continue providing quality service while the Commission considered reform of the practices and structure of VRS.<sup>484</sup> The Commission therefore adopted interim rates calculated for each rate tier as the mid-point between the TRS Fund administrator's proposed rate and the existing rate.<sup>485</sup> The Commission's adoption of those rates was upheld by the U.S. Court of Appeals for the 10<sup>th</sup> Circuit in *Sorenson II*.<sup>486</sup>

185. The Commission allowed the interim VRS compensation rates, which were set significantly higher than actual VRS costs, to continue in effect for the 2011-12 and 2012-13 Fund years while continuing its consideration of structural reforms.<sup>487</sup> Nevertheless, the Commission remained committed to bringing VRS compensation rates in line with costs. Along these lines, in the *2011 VRS Reform FNPRM*, the Commission proposed to develop a cost-based initial per-user rate,<sup>488</sup> and alternatively, if a per-minute rate methodology was retained, "to move to a [per-minute] rate based entirely on providers' actual costs."<sup>489</sup>

### B. Per-User Compensation Mechanism

186. The *2011 VRS Reform FNPRM* sought comment on a proposal to transition VRS from the existing per-minute compensation mechanism to a per-user compensation mechanism in order to better align the compensation methodology with the providers' cost structure, increase efficiency and transparency in the rate setting process, and reduce incentives to conduct common and difficult-to-detect forms of fraud.<sup>490</sup> The record reflects broad opposition to a per-user compensation mechanism.<sup>491</sup> Even those that offer qualified support for a per-user mechanism note that transition would require a "carefully

<sup>480</sup> *Id.*, ¶ 8, Table 1 (reducing the Tier III rate from \$6.24 per minute to \$5.07 per minute).

<sup>481</sup> The Tier III rate for the 2009-10 Fund year was \$6.24 per minute. The administrator's proposed Tier III rate, based on actual, historical costs for the 2010-2011 Fund year, was \$3.8963. *Id.*

<sup>482</sup> *Id.* at 8696, ¶ 13.

<sup>483</sup> *Id.*

<sup>484</sup> *Id.* at 8690, ¶ 2.

<sup>485</sup> *Id.* at 8692, ¶ 6.

<sup>486</sup> 659 F.3d 1035.

<sup>487</sup> See *2011 TRS Rate Order*; *2012 TRS Rate Order*.

<sup>488</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17458-60, Appendix C ¶¶ 13-18.

<sup>489</sup> *Id.* at 17418, ¶ 140.

<sup>490</sup> *Id.* at 17396, ¶ 59.

<sup>491</sup> See, e.g., ASL Services Holdings FNPRM Comments at 5-13, 29; CAAG FNPRM Comments at 1-3; Consumer Groups FNPRM Comments at 38 (expressing a "strong preference that the Commission not change the reimbursement methodology" absent additional outreach and education, and an evaluation of the impact of prior actions (and the potential for future actions) to limit waste, fraud, and abuse under the current mechanism); CSDVRS FNPRM Comments at 5 (per-user rate proposal "suffers from a variety of infirmities"); Purple FNPRM Comments at 27 ("a modified per minute model is the optimal solution").

calibrated phase-in process” and is subject to “complexities and challenges,” particularly during the initial implementation phases.<sup>492</sup>

187. The Commission itself noted that the per-user mechanism, if adopted, “would need to be phased in according to a well-developed and transparent plan”<sup>493</sup> and would require that a number of other significant reforms be completed prior to transition, including that a database of VRS users be established and operational and that iTRS access technology standards be adopted and implemented.<sup>494</sup> It is difficult to assess, on the basis of the record before us, the validity of commenters’ objections to a per-user compensation mechanism or the ultimate impact a per-user mechanism would have on VRS providers and consumers; the reforms that are a predicate to implementation of a per-user mechanism would both alter the nature of the VRS program and provide data that will help determine the need for additional reforms. We therefore decline to adopt a per-user compensation mechanism at this time.<sup>495</sup>

### C. Short-term Rate Methodology Pending Implementation of Structural Reforms

188. As discussed in the accompanying FNPRM, we are proposing that once structural reforms are implemented, the Commission will set VRS compensation rates based largely if not entirely on competitively established pricing, *i.e.*, prices set through a competitive bidding process. During the transition to structural reforms, however, in order to satisfy our “obligation to protect the integrity of the Fund and to deter and detect waste,”<sup>496</sup> we conclude that we should continue to move rates closer to actual cost using currently available ratemaking tools. While the interim rates set in 2010 began to close the gap between rates and costs, those rates have remained in effect for almost three years, during which average provider costs have declined significantly.<sup>497</sup> Therefore, we will reduce rates further to bring them closer to average provider costs, as calculated by the Fund administrator, beginning with the 2013-14 Fund year.

189. As in the *2010 TRS Rate Order*, we find that the use of providers’ actual, historical costs continues to provide a valuable point of reference for setting VRS compensation rates, pending implementation of our structural reforms. Historical costs are an especially useful reference point where,

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<sup>492</sup> See Sorenson FNPRM Comments at 28; *see also* Purple FNPRM Comments at 27-28 (noting a per user model could be implemented, but is “complex and will require significant interaction with all stakeholders and additional time to fully develop”).

<sup>493</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17410, ¶ 108.

<sup>494</sup> *Id.* at 17411-12, ¶ 112.

<sup>495</sup> We likewise decline to adopt proposals that were predicated, in whole or in part, on the adoption of a per-user compensation mechanism, including the elimination of “dial around” service (*id.* at 17400-01, ¶¶ 74-78), one free provider per VRS user (*id.* at 17401-03, ¶¶ 79-82), providing compensation for “enterprise users” (*id.* at 17400, ¶¶ 71-73), and service contracts (*id.* at 17403, ¶¶ 83-84).

<sup>496</sup> *See 2010 TRS Rate Order*, 25 FCC Rcd at 8695, ¶ 12 (footnote omitted).

<sup>497</sup> In 2010, the Fund administrator calculated that weighted average actual costs for prior years were \$4.4603 in 2006, \$3.9604 in 2007, \$4.1180 in 2008, and \$4.1596 in 2009, *Id.* at 8694, ¶ 9. In the *2012 VRS Rate Filing*, the administrator found that weighted average actual costs were \$3.5740 in 2010 and \$3.1900 in 2011. *2012 VRS Rate Filing* at 4. The Fund administrator’s 2013 filing indicates a further continuation of this trend, with weighted average historical costs for 2011 recalculated as \$3.2477 and weighted average historical costs for 2012 calculated as \$3.0929. RLSA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51, at 19-20 (filed May 1, 2013) (*2013 TRS Rate Filing*). The administrator explains that the recalculated average historical cost for 2011 shown in the *2013 TRS Rate Filing* differs from that submitted in the *2012 VRS Rate Filing* due to the changed composition of the providers filing cost data. *Id.* at 19 n. 35.

as here, prior submissions of projected costs have proven to be higher than actual costs subsequently determined for the Fund year.<sup>498</sup>

190. Sorenson, however, urges the Commission to abandon any further effort to bring rates closer to costs, whether actual or projected, and instead to accept the current interim rates as the starting point for a new multi-year rate plan.<sup>499</sup> As discussed further below, we agree that a multi-year plan, with built-in rate level adjustments, is an appropriate means to provide stability and predictability for the transition period pending implementation of structural reforms.<sup>500</sup> However, we decline to use the interim rates currently in effect as the starting point for a new multi-year rate plan. When the current interim rates were adopted, the Commission specifically determined that those rates were substantially in excess of actual costs. Balancing the need for cost-based rates with concerns about carrier stability in the short term, the Commission decided to allow providers to continue to collect VRS compensation from the TRS Fund at above-cost rates for a limited period, in order to spare providers from a precipitous rate drop and to allow them to continue providing high quality service pending the Commission's consideration of an appropriate rate methodology and other reforms.<sup>501</sup> As a consequence, providers have benefitted for several additional years, at the expense of the TRS Fund and the general body of ratepayers who contribute to the Fund, from VRS compensation rates substantially in excess of costs. Moreover, given that, as noted above, provider costs are declining, the disparity between the existing interim rates and actual provider costs is even greater today than it was when the rates were initially set. In effect, in the interests of preserving industry stability pending the adoption of structural reforms, VRS providers have already had the opportunity to provide VRS under a multi-year rate plan, lasting from July 2010 to the present, with above-cost interim rates as *both* the starting point *and* the end point. We can no longer justify maintaining VRS rates at these interim levels.<sup>502</sup>

191. Sorenson also argues that a historical cost methodology is inappropriate because it does not incorporate economic incentives promoting efficiencies.<sup>503</sup> While we recognize that efficiency disincentives can be generated when rates are annually recalculated based on historical costs, in this instance we utilize RLSA's historical cost analysis for a different purpose, namely, as the reference point for establishing a multi-year rate plan. We agree with those commenters who urge that multi-year rate plans can offer salutary, efficiency-promoting and rate-predictability benefits, and we adopt such a plan below. Multi-year rate plans, however, must have a defensible cost-based reference point from which to proceed.<sup>504</sup> We find that RLSA's cost analysis, which actually uses a combination of providers' projected

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<sup>498</sup> See *supra* section IV.A. There is currently no “true-up” mechanism for reconciling, after the Fund year, the rates at which providers are reimbursed from the Fund and their actual costs for the Fund year.

<sup>499</sup> See Sorenson PN Comments at 32, 37-45, Katz Dec. ¶¶ 2, 56-82; Sorenson PN Reply Comments at 40.

<sup>500</sup> Cf. *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17416-17, ¶¶ 132-136.

<sup>501</sup> *2010 TRS Rate Order*, 25 FCC Rcd at 8695, ¶ 12.

<sup>502</sup> Further, as *2010 TRS Rate Order* explains, the history of fraud associated with the provision of VRS makes it imperative that the Commission consider the impact of inflated reimbursement rates for the service on the incentive to commit fraud. *Id.* at 8693, ¶ 10 n. 32.

<sup>503</sup> Sorenson PN Comments, Katz Dec. ¶¶ 68-70.

<sup>504</sup> When permitting local exchange carriers to transition from rate-of-return to price-cap regulation, for example, the Commission generally requires the use of rate-of-return regulated rates or historical cost data as a reference point for initializing price-cap rates. See, e.g., *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 12-63, Order, 27 FCC Rcd 15753 (2012) (finding that “using historical cost and demand data is the best way to prevent carriers from gaming the transition process by skewing cost and demand projections in their favor, and provides a more accurate (continued...)”).

costs and actual historical costs,<sup>505</sup> provides an appropriate reference point in this instance for establishing a multi-year rate plan that enables the VRS industry to transition towards cost-based rates, which we propose to determine in the future using competitively established pricing. Thus, we find that the cost basis calculated by RLSA, based on a combination of historical and projected costs, is an appropriate reference point for the rates we adopt today, which are described in section IV.D below. In the remainder of this section, we address several questions raised in the *2011 VRS Reform FNPRM* regarding allowable categories of costs and the handling of rate tiers both during and after the transition to structural reforms.

### 1. Outreach

192. As explained in section II.B above, the Commission has decided to establish a coordinated nationwide outreach program for VRS and IP Relay, handled by an independent entity. This change removes the need for VRS and IP Relay providers to incur expenses to conduct their own outreach activities. Therefore, in the future we will preclude such providers from including outreach expenses in their annual cost submissions to the TRS Fund administrator.<sup>506</sup> The elimination of this obligation for IP Relay providers will be taken into account in determining future IP Relay per minute rates. We therefore direct the Fund Administrator to submit a revised rate recommendation that treats outreach as a non-compensable cost for IP Relay providers and direct the Chief, Consumer and Governmental Affairs Bureau, to adopt or revise IP Relay rates for Fund year 2013-2014 as appropriate after consideration of that recommendation.<sup>507</sup> To be clear, however, providers remain free to conduct outreach; we decide here only that we will not consider the expense of such activities in setting rates for these services.

### 2. User Equipment

193. As we explained in the *2011 VRS Reform FNPRM*, the Commission has consistently held that costs attributable to the user's relay hardware and software, including installation, maintenance, and testing, are not compensable from the Fund.<sup>508</sup> The Commission has explained that expenses for which providers are compensated "must be *the providers'* expenses in making the service available and not the customer's costs of receiving the equipment. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software."<sup>509</sup>

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estimate of a converting average schedule carrier's costs and demand for purposes of establishing price cap indexes").

<sup>505</sup> *2012 VRS Rate Filing* at 4. Reliance on projected costs in this instance, however, does not reflect a global finding that provider projections should invariably be used in setting TRS compensation rates. In the *2013 TRS Rate Filing*, the administrator notes that the cost projections for 2013 and 2014 "should be scrutinized closely for reasonableness, particularly in light of the low correlation between projected CA related increases and subsequent historical performance." *2013 TRS Rate Filing* at 20.

<sup>506</sup> 47 C.F.R. § 64.604(c)(5)(D)(I). See *Sorenson II*, 659 F.3d at 1044 (rejecting argument that rate order is infirm because it would allegedly compel providers to sacrifice "outreach and training").

<sup>507</sup> We believe the revised VRS rates adopted herein, which are formulated to approach actual costs, adequately take into account the elimination of VRS providers' outreach costs.

<sup>508</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17393, ¶ 49. See *2006 MO&O*, 21 FCC Rcd at 8071, ¶ 17; *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20170-71, ¶ 82.

<sup>509</sup> *2006 MO&O*, 21 FCC Rcd at 8071, ¶ 17.

194. Notwithstanding some providers' continued urging that we should include user equipment as allowable costs,<sup>510</sup> we decline to alter our policy against the use of monies from the TRS Fund to support VRS providers' distribution of user equipment or access technology, whether as part of generally applicable rates or through direct payments to VRS providers. In seeking comment on whether to provide explicit compensation to support iTRS access technology, the Commission made clear that it did not seek to "alter our prior decision that equipment costs are not 'costs caused by interstate telecommunications relay service.'"<sup>511</sup> Rather, it sought comment on whether providing explicit compensation for the provision of iTRS access technology to some or all users, subject to conditions to reduce "user lock in" and to address other issues, would help further the goal of ensuring that TRS is "available, to the extent possible and in the most efficient manner."<sup>512</sup> In this Order, we conclude that a better approach to furthering that goal at this time is to fund the development of open source VRS access technology, as discussed in section II.A above, and to contract for the development and deployment of a VRS access technology reference platform, as discussed in section II.C above. After implementation of a VRS access technology reference platform and the other reforms adopted herein, there will be another opportunity to assess the extent to which additional measures are necessary and appropriate to promote the availability of iTRS access technology.<sup>513</sup>

### 3. Capital Costs and Income Taxes

195. In the *2010 VRS NOI* and the *VRS Structure and Rates PN*, the Commission sought comment on the current process for allowing providers a rate-of-return on capital investment. Some parties have argued that, owing to differences between the types of investment undertaken by telecommunications carriers and VRS providers, the 11.25% rate of return prescribed for carriers on the value of assets defined as investment under our rules does not adequately compensate VRS providers for their capital costs.<sup>514</sup> No party, however, suggests a quantified, concrete alternative to the current approach used for calculating an allowable rate of return, other than to simply reimburse providers for their actual expenditures on interest and other capital costs. With respect to the types of capital costs that are recoverable, we find it would be irresponsible and contrary to our mandate to ensure the efficient provision of TRS and to preserve the integrity of the TRS Fund, to simply reimburse VRS providers for all capital costs they have chosen to incur—such as high levels of debt—where there is no reason to believe that those costs are necessary to the provision of reimbursable services.<sup>515</sup>

<sup>510</sup> Sorenson FNPRM Comments at 34, 73, n. 155 (arguing for compensation for imputed technology licensing fees); Sorenson FNPRM Reply Comments at 40.

<sup>511</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17393, ¶ 51. See also *Sorenson II*, 659 F.3d at 1044 ("The statute only requires that VRS be made 'available' and that users pay no higher rates for calls than others pay for traditional phone services. It does not also require that VRS users receive free equipment and training.") (citation omitted). See also *id.* at 1044-45 (exclusion of equipment costs does not undermine section 225 goal of not discouraging or impairing development of improved technology).

<sup>512</sup> See 47 U.S.C. § 225(b)(1).

<sup>513</sup> Most VRS software currently available is proprietary. As explained *supra* section II.A, the Commission is committing funds to develop a generally available, non-proprietary VRS access technology reference platform. Based on our experience with that program, we may reevaluate at a later time, if necessary, the need for and propriety of Fund support for the distribution and maintenance of non-proprietary VRS access technology.

<sup>514</sup> See, e.g., Sorenson FNPRM Comments at 35-45, Katz Dec. ¶¶ 2, 56-63, 72, 78; Purple PN Comments, Turner Dec. ¶¶ 55-58.

<sup>515</sup> 47 U.S.C. § 225(b)(1).



196. Our application of the 11.25% rate of return to TRS compensation rates is a longstanding practice that was affirmed by a federal court of appeals.<sup>516</sup> In the absence of immediately implementable alternative proposals, and because we expect that a capital cost methodology will become unnecessary as we transition away from using a cost-calculation methodology to set VRS rates,<sup>517</sup> we decline to alter our current approach to Fund support for VRS providers' recovery of capital costs, except that we accept RLSA's recommended adjustment to account for corporate income taxes.<sup>518</sup>

#### 4. Rate Tiers

197. The Commission noted in the *2011 VRS Reform FNPRM* that the existing structure of the VRS industry contained numerous small providers, who incurred higher per-minute costs than larger providers and thus required higher "tiered" compensation rates in order to recover such higher costs.<sup>519</sup> Pointing out that inefficient VRS operations requiring higher compensation rates are inconsistent with the sound management of the TRS Fund, the Commission suggested that such small-provider inefficiencies may not be due to a "learning curve" but rather may reflect inherent economies of scale that prevent smaller providers from ever operating efficiently. Noting that the current scheme provides no limit on the duration of support for subscale providers, the Commission sought comment on whether to transition from the current tiered per-minute rates to a single at-scale per-user rate. Alternatively, if a per-minute rate methodology is retained, the Commission proposed to eliminate the current tier structure and utilize a single rate based on the weighted average of providers' actual costs.<sup>520</sup>

198. We note that some commenters oppose the elimination of tiers.<sup>521</sup> These commenters generally argue that tiers are necessary to maintain a sufficient number of providers so that consumers can choose from a reasonable range of service offerings.<sup>522</sup> No party, however, has presented a valid reason why the TRS Fund should support indefinitely VRS operations that are substantially less efficient.<sup>523</sup> Therefore, to encourage the provision of VRS in the most efficient manner,<sup>524</sup> the gap between the highest and lowest tiered rates will be reduced over time, in accordance with the schedule set forth in Table 2 below.

199. We also believe that our structural reforms, once implemented, will eliminate any residual need for tiered rates. The initiatives we adopt in this order will address many of the issues that have made it difficult for small providers to operate efficiently. By ensuring the interoperability of access technologies, for example, we anticipate a substantial alleviation of the "lock-in" problem that has limited

<sup>516</sup> *Sorenson II*, 659 F.3d at 1045, 1046-48.

<sup>517</sup> See FNPRM, *infra* section V.A.

<sup>518</sup> That factor was calculated using the following equation:  $15.21 = 11.25 * (1 + (EP * Tax / (1 - Tax)))$ , where the EP, equity percentage, 63.8, is based on the factors used to determine the 11.25% return, and a 35% tax rate. See *2012 VRS Rate Filing* at 4, citing *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No.89-624, Order, 5 FCC Rcd 7507 (1990).

<sup>519</sup> See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20162-63, ¶¶ 52-53.

<sup>520</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17418, ¶ 141.

<sup>521</sup> See Convo FNPRM Comments at 29-31; CSDVRS FNPRM Comments at 23-27.

<sup>522</sup> See Convo FNPRM Comments at 29-31; CSDVRS FNPRM Comments at 23-27; Purple April 19, 2012 *Ex Parte*.

<sup>523</sup> See Sorenson FNPRM Comments at 25-26, Katz Dec. ¶¶ 14-18 (tiered rate structure rewards inefficient VRS operations).

<sup>524</sup> See 47 U.S.C. § 225(b)(1).

the ability of smaller rivals to compete effectively with the largest provider. Further, by transferring to a neutral entity many of the fixed cost components of VRS, we anticipate that restructuring will make it more feasible for smaller entities to compete efficiently in the provision of CA service without artificial supports such as rate tiers. Therefore, we anticipate that the complete elimination of rate tiers for CA service will be able to coincide with the implementation of VRS structural reforms.

200. Prior to implementation of restructuring, however, there are good reasons to retain rate tiers and no compelling reasons to eliminate them. With only six providers currently providing VRS, eliminating the rate tiers immediately could force out some of the smallest remaining providers, unnecessarily constricting the service choices available to VRS consumers during the period prior to implementation of structural reforms. Some of these small providers may be able to operate more efficiently and compete more effectively under the structural reform conditions than under current conditions, in which technical barriers to interoperability and portability, as well as other limitations, continue to inhibit the full development of competition. Experienced providers, and the consumers who prefer to use their services, should have an opportunity to find out whether such providers are able to grow sufficiently to reach a more efficient scale under more hospitable conditions. We conclude that it is worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient providers in the future, in the more competition-friendly environment that we expect to result from our structural reforms. Therefore, we will allow tiered rates to remain in effect during the transition to structural reforms, but with a gradually reduced gap between highest and lowest tiers, in order to allow smaller providers an opportunity to increase the efficiency of their operations so as to maximize their chances of success after structural reforms are implemented.<sup>525</sup>

201. We also conclude that the tier boundaries should be adjusted during the transition, so as to ensure that smaller providers have a full opportunity to achieve efficient operations.<sup>526</sup> As noted above, VRS rates are currently structured in three tiers: Tier I rates apply to a provider's first 50,000 VRS minutes each month; Tier II rates apply to a provider's monthly minutes between 50,001 and 500,000; and Tier III rates apply to a provider's monthly minutes in excess of 500,000. As adjusted in this order, Tier I rates will apply to a provider's first 500,000 monthly VRS minutes; Tier II rates will apply to a provider's monthly minutes between 500,001 and 1 million; and Tier III rates will apply to a provider's monthly minutes in excess of 1 million.

202. Regarding the configuration of tiers, the critical question concerns whether and how to adjust the boundary between Tier II, for which the rate is currently \$6.23 per minute, and Tier III, for which the rate is currently \$5.07 per minute.<sup>527</sup> Parties have offered divergent theories as to the traffic levels necessary to achieve minimum efficient scale and the tier configurations that should be adopted to reflect such economies of scale. For example, Sorenson, which favors resetting the Tier II/III boundary at 250,000 monthly minutes,<sup>528</sup> argues that all significant scale efficiencies are already achieved at this level,

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<sup>525</sup> In theory, if smaller VRS providers were driven out of the market by the immediate elimination of tiers, those providers could return, or be replaced by new entrants, after the existing barriers to full competition are fully eliminated. But that could leave a gap in the availability of service choices to VRS consumers, which we seek to avoid. Preventing "market disruption pending broader reforms is, of course, a standard and accepted justification for a temporary rule." *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1106 (D.C. Cir. 2009) (quoting *Competitive Telecomm's Ass'n v. FCC*, 309 F.3d 8, 14 (D.C. Cir. 2002)).

<sup>526</sup> See, e.g., Purple April 19, 2012 *Ex Parte*; Purple PN Comments at 14-16; CSDVRS PN Comments at 16-18.

<sup>527</sup> By contrast, the Tier I rate is currently \$6.24 per minute, only one cent higher than the Tier II rate.

<sup>528</sup> Sorenson Comments at 27 (proposing that boundary be set at 250,000 minutes per month).

while Purple, which supports resetting the Tier II/Tier III boundary at 2 million monthly minutes,<sup>529</sup> argues that economies of scale are substantial even at the 2 million minute level. Among other differences, Sorenson argues that there are only limited economies of scale involved in general and administrative costs,<sup>530</sup> while Purple contends that such economies of scale are substantial.<sup>531</sup> Similarly, while Sorenson contends that there are no significant economies of scale involved in call center facilities and CA staffing,<sup>532</sup> Purple argues that there are important economies of scale involved in those cost categories.<sup>533</sup>

203. We find that, regardless of whether the existing cost differences between the largest provider and its smaller competitors—including providers currently handling call volume levels greater than 500,000 minutes per month<sup>534</sup>—are due to economies of scale or to other efficiency differences among the existing providers, their actual existence is undisputed<sup>535</sup> and is supported by historical data.<sup>536</sup>

204. Further, given our decision to reduce the gap between the highest and lowest tiered rates and our expectation that tier classifications ultimately will be eliminated upon the implementation of structural reforms, the main question before us is not whether we can pinpoint the exact level where the greatest economies of scale are achieved, but rather how we can best balance, during the transition to structural reforms, the competing concerns of (1) maintaining sufficient incentives for smaller providers to improve the efficiency of their operations, and (2) ensuring that smaller providers have a reasonable opportunity to compete effectively during the transition and to achieve or maintain the necessary scale to compete effectively after structural reforms are implemented. In other words, there is no single “right answer” to the question; rather, the matter is inherently a question of administrative line-drawing.<sup>537</sup> In

<sup>529</sup> Purple PN Comments at 14-16 (proposing that Tier II/Tier III boundary be set at 2,000,000 minutes per month).

<sup>530</sup> Sorenson Comments, Katz Dec. ¶¶ 41-44. *But see id.* ¶ 35 (theorizing that a provider operating at 250,000 minutes per month achieves 95.4 percent of “maximal feasible efficiency”). *See also 2010 TRS Rate Order*, 25 FCC Rcd at 8694, Table 1 (showing proposed rates reflecting the Fund administrator’s determination that costs incurred by providers operating in the 50,000 to 500,000 minute range are not lower (and in fact, are somewhat higher) than those incurred by providers operating in the under 50,000 minute range).

<sup>531</sup> Purple PN Comments, Turner Dec. ¶¶ 22-24.

<sup>532</sup> Sorenson Comments, Katz Dec. ¶¶ 27-38.

<sup>533</sup> Purple PN Comments, Turner Dec. ¶¶ 25-41.

<sup>534</sup> *See id.* ¶ 17 (Purple and CSDVRS, as well as Sorenson, each have minute volume exceeding 500,000 minutes per month).

<sup>535</sup> *See, e.g.*, Sorenson PN Reply Comments at 36 (“Sorenson is unquestionably the most efficient provider”); Purple PN Comments at 12 (“VRS costs are volume-sensitive and . . . the VRS industry is characterized by significant economies of scale”).

<sup>536</sup> In 2010, for example, the Fund administrator calculated that the average cost per minute for Tier III providers (more than 500,000 monthly minutes) was substantially lower than the average cost per minute for either of the lower tiers, resulting in a proposed rate for Tier III that was roughly two dollars lower than the proposed Tier I and II rates. *See 2010 TRS Rate Order*, 25 FCC Rcd at 8694, Table 1. In the *2012 VRS Rate Filing*, the administrator did not present cost calculations for each tier; however, it did propose setting the rates for the two lower tiers to be equal to each other, a proposal that is consistent with there continuing to be no significant cost differences between the two lower tiers. *2012 VRS Rate Filing* at 6.

<sup>537</sup> *See, e.g., AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) (the Commission “has wide discretion to determine where to draw administrative lines,” and can be reversed only for abuse of discretion); *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998) (to demonstrate abuse of discretion, a petitioner must show that “lines drawn . . . are patently unreasonable, having no relationship to the underlying regulatory problem.”) (internal quotations omitted); *Hercules Inc. v. EPA*, 598 F.2d 91, 107-108 (D.C. Cir. 1978) (in evaluating agency line drawing, the court  
(continued...))

this regard, we find that significant potential harm to competition could result if we set rate tier boundaries at levels that are too low to allow smaller competitors to remain in the market pending implementation of structural reforms. If, for example, we maintain or reduce the level of the Tier II/III boundary, currently set at 500,000 monthly minutes, and there are in fact significant economies of scale that can be achieved by providers whose call volumes substantially exceed 1 million minutes per month, but not by providers whose call volumes fall between 500,000 and 1 million minutes per month, the rate reductions we mandate today could lead to a one-firm industry prior to the implementation of structural reforms, frustrating our policy objective of maintaining effective competition in the provision of VRS.<sup>538</sup> On the other hand, if we reset the Tier II/III boundary at a level higher than the current level of 500,000 monthly minutes, and there are in fact no economies of scale to be achieved by increasing call volumes to higher levels, the only consequence will be that smaller, less efficient competitors will remain in the VRS market longer than would otherwise be the case, resulting in somewhat higher expenditures from the Fund.

205. Moreover, as explained above, it is the Commission's present intent to eliminate tiers after the transition to structural reforms is completed; therefore, smaller providers will have a strong incentive to improve the efficiency of their operations, regardless of the tier configuration that is in place for the short term. We conclude that the harm to the public interest will be greater if we set the rate tier boundary for the transition period lower than the optimum level, than if we set it higher than the optimum level. Therefore, in setting the boundary between the highest and next-highest tiers, we conclude that we should err on the side of setting the boundary too high.

206. As noted above, the current Tier II/III boundary is at 500,000 monthly minutes. Sorenson has proposed adjusting the boundary downward, to 250,000 monthly minutes, while Purple has proposed adjusting the boundary upward, to 2 million monthly minutes. Adjusting the Tier II/III boundary downward appears to be a risky course for the reasons stated above, particularly in light of the fact that in 2010, the Fund administrator found no significant cost differences between providers operating in the 50,000-500,000 minutes range and those operating in the below 50,000 range.<sup>539</sup> Further, maintaining the existing Tier II/III boundary while progressively lowering the rates for all tiers, raises concerns that those providers who are arguably best positioned to offer effective competition to the largest provider may be prevented from continuing to grow, and thus to achieve efficient scale, prior to the implementation of structural reforms. CSDVRS, a relatively small provider, has proposed that the Tier II/III boundary be set at 1 million monthly minutes, presumably reflecting its view that providers the size of CSDVRS (and Purple, which has a comparable market share) can effectively compete if the rate tier boundary is adjusted to 1 million monthly minutes.<sup>540</sup> In order to ensure that VRS competition is preserved pending the implementation of structural reforms, therefore, we will redraw the Tier II/III

(Continued from previous page) \_\_\_\_\_ asks "whether the agency's numbers are within a 'zone of reasonableness,' not whether its numbers are precisely right"). See also Sorenson II, 659 F.3d at 1046 (court is "particularly deferential when reviewing ratemaking orders because 'agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise'" (quoting *Qwest Corp. v. FCC*, 258 F.3d 1191, 1206 (10<sup>th</sup> Cir. 2001) and *Sw. Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999)) and "the FCC is entitled to substantial deference when adopting interim rates").

<sup>538</sup> See *supra* section II.E.

<sup>539</sup> In fact, the Fund administrator calculated that providers' average cost per minute for minutes in Tier I (up to 50,000 monthly minutes) was actually somewhat *lower* than the average cost per minute for minutes in Tier II (between 50,001 and 500,000 monthly minutes), leading the administrator to propose that the Tier I rate be set 25 cents lower than the Tier II rate. See *2010 TRS Rate Order*, 25 FCC Rcd at 8694, Table 1.

<sup>540</sup> CSDVRS PN Comments at 16-18.

boundary at 1 million monthly minutes. We believe that setting the Tier II/III boundary at the 1 million minute level will serve to offset the potential competitive impact of lowering per minute reimbursement rates and thus will allow relatively well established but currently less efficient providers to operate within compensation rate categories that reflect their currently higher costs.<sup>541</sup>

207. In addition, we adjust the boundary between Tiers I and II, currently at 50,000 monthly minutes, up to 500,000 monthly minutes. We agree with the Fund administrator that the rates for all monthly minutes up to 500,000 should be merged, inasmuch as the rates applicable to these minutes are already virtually equal and the historical record does not reflect significant cost differences between smaller and larger companies operating within these ranges.<sup>542</sup>

208. In summary, for purposes of setting rates applicable to the transition period prior to implementation of structural reforms, we will merge existing Tiers I and II into a new Tier I, and carve out a new Tier II, applicable to the range of 500,001 – 1 million monthly minutes, from the lower portion of existing Tier III. The existing and new tiers are shown in Table 1 below.

**Table 1: Reconfigured Rate Tiers for VRS Compensation**

Tier Numbers	Existing Tier Definition (The range of a provider's monthly VRS minutes to which the Tier is applicable)	New Tier Definition (The range of a provider's a monthly VRS minutes to which the Tier is applicable)
I	0-50,000	0-500,000
II	50,001-500,000	500,001-1 million
III	Over 500,000	Over 1 million

To minimize any unintended consequences from the adjustment of the Tier II/III boundary, we will phase in the divergence of the rates applicable to Tier II and Tier III over time, as VRS compensation rates in general are being moved closer to actual costs. This is shown below in Table 2.

#### **D. Determination of a Cost-Based Rate and a Transitional Rate Plan**

209. In the *2012 VRS Rate Filing*, RLSA stated that VRS providers' weighted average actual per-minute costs were \$3.5740 for 2010 and \$3.1900 for 2011, and that VRS providers' weighted average projected per-minute costs were \$3.4313 for 2012.<sup>543</sup> RLSA proposed that rates be based on the average of these three numbers, or \$3.396 per minute, with appropriate adjustments to reflect rate tiers.<sup>544</sup> Implementing the proposed cost-based rate, however, would require per minute rate reductions of \$2.844 (\$6.24 - \$3.396) in the Tier I rate, \$2.834 (\$6.23 - \$3.396) in the Tier II rate, and \$1.674 (\$5.07 - \$3.396) in the Tier III rate. To avoid such dramatic immediate reductions, RLSA proposed that the \$3.396 cost based rate be phased in over a multi-year time period,<sup>545</sup> with the rates restructured in two tiers instead of

<sup>541</sup> See Purple PN Comments, Turner Dec. ¶ 17 (Purple and CSDVRS, as well as Sorenson, each have call volumes exceeding 500,000 minutes per month).

<sup>542</sup> See *2010 TRS Rate Order*, 25 FCC Rcd at 8694, Table 1.

<sup>543</sup> *2012 VRS Rate Filing* at 4, Table 4.

<sup>544</sup> *Id.* at 5.

<sup>545</sup> *Id.*

the current three tiers.<sup>546</sup> Based on equal yearly rate reductions over a three-year phase-in period, RLSA proposed that rates be set initially by reducing each tier by about one-third of the foregoing amounts, resulting in initial rates of \$5.2877 per minute for Tiers I and II (applicable to a provider's first 500,000 minutes each month) and \$4.5099 per minute for Tier III (applicable to a provider's monthly minutes in excess of 500,000).<sup>547</sup>

210. In its May 1, 2013 TRS compensation rate filing, RLSA updated the VRS cost information presented in the *2012 VRS Rate Filing*.<sup>548</sup> The administrator reported that the weighted averages of the actual per-minute costs reported by providers are \$3.2477 for 2011 and \$3.0929 for 2012, and that weighted averages of providers' per-minute projected costs are \$3.3894 for 2013 and \$3.7102 for 2014.<sup>549</sup>

211. As noted above, we find that RLSA's use, in this instance, of a combination of provider's projected costs and actual, historical costs is appropriate for the purpose of setting rates for the transition period.<sup>550</sup> Although we remain concerned about the accuracy of provider projections in general,<sup>551</sup> in this instance the inclusion of projected costs does not appear to inject a significant bias. Indeed, had the Fund administrator excluded 2012 projected costs from the calculation, and simply taken an average of the two historical cost figures (from 2010 and 2011), the result would have been virtually the same.<sup>552</sup> We also approve RLSA's use of weighted averages in calculating actual and projected costs.<sup>553</sup> To the extent that one provider commands a substantial share of the VRS market, we find that RLSA's use of weighted averages is appropriate, and properly balances, on one side, the greater relative costs incurred by smaller providers with, on the other, not penalizing providers operating at lower costs for their greater efficiency. We conclude that RLSA's methodology and its use of projected and actual cost information submitted by the providers (certified under penalty of perjury to be true and correct) were reasonable. Based on the foregoing, we find reasonable RLSA's determination that a rate based on providers' reasonable costs, if adopted today, would be \$3.396 per minute, the average of three figures representing providers' historical costs for 2010, historical costs for 2011, and projected costs for 2012. RLSA's estimate is also within the range of provider cost figures presented in RLSA's most recent TRS rate filing.<sup>554</sup>

212. Although the cost data would justify immediate adoption of RLSA's proposed cost-based rate of \$3.396 per minute, we concur with RLSA that taking a step-by-step transition from existing, tiered rates toward a unitary cost-based rate is appropriate. Immediate imposition of a unitary cost-based rate

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<sup>546</sup> *Id.* at 5-6.

<sup>547</sup> *Id.* at 5.

<sup>548</sup> *2013 TRS Rate Filing* at 19-20.

<sup>549</sup> *Id.* The *2013 TRS Rate Filing* notes that, while the cost projections for 2013 and 2014 suggest an upward trend in VRS costs, "the leading factor affecting the 2013 and beyond increase is the substantial projected increase in communications assistants' cost. . . . These increases appear to be on the very high end of labor compensation increases and should be scrutinized closely for reasonableness, particularly in light of the low correlation between projected CA related increases and subsequent historical performance." *Id.* at 20.

<sup>550</sup> See *supra* section IV.C.

<sup>551</sup> See *supra* section IV.A.

<sup>552</sup> Whereas the average of the three figures utilized by RLSA, including 2012 projected costs, is \$3.396, the average of 2010 and 2011 historical costs, excluding 2012 projected costs, is \$3.382. See *2012 VRS Rate Filing* at 4, Table 4.

<sup>553</sup> See *id.* at 5-7.

<sup>554</sup> *2013 TRS Rate Filing* at 19-20.

would represent a significant and sudden cut to providers' compensation with potentially negative consequences for consumers. Rather than RLSA's proposed three-year transition, however, we conclude that a somewhat longer "glide path" towards a unitary cost-based rate strikes the correct balance. As discussed in the accompanying FNPRM, as we implement structural reforms, we propose to transition to a new ratemaking approach that uses competitive bidding to establish market-based rates. Our structural reform plan will take a period of years to implement fully. Accordingly, until then, we adopt a multi-year "glide path" towards cost-based rates. In addition, rather than RLSA's proposed yearly rate adjustments, we find that smaller six-month rate adjustments will provide a less disruptive "glide path" for providers. To improve the predictability of reimbursements and assist providers in planning efficiently for this transition, we now determine the rates that will be in effect for the next four years, subject to exogenous cost adjustments, unless implementation of structural reforms and/or related changes in methodology support revision of the rates prior to that time.<sup>555</sup>

213. In designing a "glide path" toward cost-based rates, there is, as with the design of rate tiers,<sup>556</sup> no single "right answer" to the question; rather, the matter is inherently a question of administrative judgment.<sup>557</sup> However, given the widening gap between existing rates and actual costs,<sup>558</sup> and given that providers have operated under the current interim rates for three years, we find it appropriate to "jump-start" the transition to cost-based rates by setting a uniform \$0.25 rate reduction for the initial rate period. The effective date of the initial rates set herein will be the later of July 1, 2013, or 30 days after publication of this Order in the Federal Register. Those initial rates, which will remain in effect through December 31, 2013, will be \$5.98 per minute for new Tier I (applicable to a provider's first 500,000 minutes each month), and \$4.82 per minute for new Tier II (applicable to a provider's minutes between 500,001 and 1 million each month) and new Tier III (applicable to a provider's monthly minutes in excess of 1 million). These rates are each about \$0.25 lower than the existing rates applicable to the corresponding ranges of minutes.

214. Subsequently, the Tier III rate will be reduced in \$0.19 increments every six months, so that at the end of four years (unless the rate has been adjusted by then to take account of implementation of structural reforms) it will reach \$3.49, a level approaching RLSA's estimate of the weighted average of actual per-minute VRS costs. The rates for the other tiers will be reduced at a slower pace relative to current levels, in order to ensure that smaller VRS providers have a reasonable opportunity to improve the efficiency of their operations and to reach the optimum scale to compete effectively after the implementation of structural reforms. Thus, after the initial \$0.25 drop, the Tier I rate will be reduced by \$0.23 (a larger absolute reduction, but a smaller percentage reduction than for Tier III) every six months until January 1, 2016, when (unless the rate has been adjusted by then to take account of implementation of structural reforms) the reductions will begin to accelerate. As to Tier II, while we have determined in section IV.C above that it is appropriate to carve out a new Tier II in order to allow smaller competitors a full opportunity to improve efficiencies and achieve scale, we will not initially differentiate the rates for

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<sup>555</sup> We set the rates for a period of four years based on the assumption that implementation of the structural reforms will not take longer than four years. In the event that it takes a shorter or longer period, we will reassess the rates at the appropriate time.

<sup>556</sup> See *supra* section IV.C.4.

<sup>557</sup> See *Sorenson II*, 659 F.3d at 1046 (court is "particularly deferential when reviewing ratemaking orders because 'agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise'" (*quoting Qwest Corp. v. FCC*, 258 F.3d 1191, 1206 (10<sup>th</sup> Cir. 2001) and *Sw. Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999)) and "the FCC is entitled to substantial deference when adopting interim rates").

<sup>558</sup> See *supra* section IV.C.

new Tiers II and III. Rather, the rates for new Tiers II and III are initially set equal to each other, at \$4.82 per minute, to avoid any sudden, unintended consequences from the reconfiguration of tiers. In subsequent periods, as the rates for Tiers I and III are reduced further, the Tier II rate will remain stable for several periods at \$4.82, so that it becomes differentiated from the Tier III rate and so that the gap between the rates for Tiers I and II will progressively diminish until the rates for those two tiers are equal. The Tier I and Tier II rates will then remain equal to each other while incrementally declining until the end of the transition. Despite these individual variations in the rate of change for the rates in each tier, all rates are progressively reduced over the four-year plan, and all rates reach levels approaching, but higher than, actual costs at the end of the four-year period.

215. The progressive adjustment of rates for each tier is illustrated in Table 2 below, which shows: (1) the current interim compensation rates, (2) average provider costs as calculated by RLSA, (3) RLSA’s proposed first-year rates, and (4) the rates we adopt today for Fund years 2013-14, 2014-15, 2015-16, and 2016-17.

**Table 2: Average VRS Provider Costs, Current VRS Compensation Rates, RLSA’s Proposed Rates, and the Rates Adopted for Fund Years 2013-14 through 2016-17**

Tiers (as reconfigured by this order)	Weighted Average Provider Costs <sup>559</sup>	FY 2012-13 Rates	RLSA’s Proposed First-Year Rates	FY 2013-14 Rates	FY 2014-15 Rates <sup>560</sup>	FY 2015-16 Rates <sup>561</sup>	FY 2016-17 Rates <sup>562</sup>
Tier I (0-500,000 minutes/month)	\$3.396	\$6.24 / \$6.23	\$5.2877	\$5.98 (Jul.–Dec. 2013)	\$5.52 (Jul.–Dec. 2014)	\$5.06 (Jul.–Dec. 2015)	\$4.44 (Jul.–Dec. 2016)
				\$5.75 (Jan.-June 2014)	\$5.29 (Jan.-June 2015)	\$4.82 (Jan.-June 2016)	\$4.06 (Jan.-June 2017)
Tier II (500,001 – 1 million minutes/month)	\$3.396	\$5.07	\$4.5099	\$4.82 (Jul.–Dec. 2013)	\$4.82 (Jul. – Dec. 2014)	\$4.82 (Jul.– Dec. 2015)	\$4.44 (Jul.– Dec. 2016)
				\$4.82 (Jan.-June 2014)	\$4.82 (Jan.-June 2015)	\$4.82 (Jan.- June 2016)	\$4.06 (Jan.- June 2017)

<sup>559</sup> 2012 VRS Rate Filing at 5. Weighted average provider costs are shown for the VRS industry as a whole; they were not computed separately for each rate tier.

<sup>560</sup> Pending implementation of market-based rates.

<sup>561</sup> Pending implementation of market-based rates.

<sup>562</sup> Pending implementation of market-based rates.



Tier III (over 1 million minutes/ month)	\$3.396	\$5.07	\$4.5099	\$4.82 (Jul.– Dec. 2013)	\$4.44 (Jul.–Dec. 2014)	\$4.06 (Jul.– Dec. 2015)	\$3.68 (Jul.– Dec. 2016)
				\$4.63 (Jan.- June 2014)	\$4.25 (Jan.-June 2015)	\$3.87 (Jan.- June 2016)	\$3.49 (Jan.- June 2017)

216. The rates established in this Report and Order will apply as scheduled to all VRS providers absent further action by the Commission. During the “glide path” period, however, the Commission may adjust the compensation rate to reflect exogenous cost changes, including the shedding of service responsibilities by VRS providers as VRS components begin to be provided by neutral entities. Pending the implementation of structural reforms, we expect that the rate reduction plan adopted in this order will permit service providers to continue offering VRS in accordance with our mandatory minimum standards for high quality services, as we transition to structural reforms and a disaggregated, market-based compensation methodology. We reserve the right to revisit the rates adopted in this Order if provider data shows that, notwithstanding our actions today, the rates remain substantially in excess of actual provider costs.

## V. FURTHER NOTICE OF PROPOSED RULEMAKING

### A. Transition to a Market-Based Compensation Methodology

217. In today’s Order, we take further action to achieve VRS compensation rates that “better approximate the actual cost of providing VRS while ensuring that VRS is provided in accordance with the [Act].”<sup>563</sup> Ratemaking based on calculations of allowable costs is inherently a contentious, complicated, and imprecise process. This is particularly true in the VRS context.<sup>564</sup> First, unlike most regulated telecommunications services, VRS is generally provided at no charge to users.<sup>565</sup> There is no pressure from users on VRS suppliers to restrain the amount they charge because the users share none of the costs.<sup>566</sup> Second, a number of questions have arisen over the past several years concerning the methodology used for determining VRS costs as well as the appropriateness of certain costs.<sup>567</sup> Third, the

<sup>563</sup> 2010 TRS Rate Order, 25 FCC Rcd at 8692, ¶ 6.

<sup>564</sup> 2011 VRS Reform FNPRM, 26 FCC Rcd at 17382, ¶ 23.

<sup>565</sup> *Id.*

<sup>566</sup> *Id.* Moreover, the TRS Fund, which provides the payment for relay service, cannot “choose” how much service to purchase, and so has no control over total expenditures once rates are set. *Id.*

<sup>567</sup> See *id.* at 17382, ¶ 23, 17394, ¶ 53 & n. 144; see generally 2000 TRS Order, 15 FCC Rcd at 5152-56, ¶¶ 22, 26-27, 32-33 (directing the TRS Advisory Council to develop cost recovery guidelines for VRS; the Council recommended using the same methodology for VRS as used for traditional TRS); 2001 TRS Cost Recovery MO&O, 16 FCC Rcd at 22958-60, ¶¶ 30-36 (declining to adopt a permanent cost recovery methodology for VRS and seeking additional comment on this issue); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 18 FCC Rcd 12823 (CGB 2003); 2004 TRS Report & Order, 19 FCC Rcd at 12487-90, ¶¶ 17-24 (declining to adopt a permanent cost recovery methodology for VRS), 12565-67, ¶¶ 234-40 (seeking additional comments and noting that although the Commission had previously sought comment on this issue, the relative infancy and unique characteristics of VRS made it difficult to determine what the appropriate cost recovery methodology should be); 2006 TRS Cost Recovery FNPRM, 21 FCC Rcd at 8389-90, ¶ 24.

VRS compensation rate has fluctuated significantly over time, with frequent recalculation of rates as cost or demand levels change or as new evidence about cost and demand levels come to light.<sup>568</sup> Finally, the absence of retail prices has encouraged perverse provider behavior and contributed to fraud and abuse—*e.g.*, by resulting in providers artificially generating minutes of use in order to collect more TRS Fund revenues.<sup>569</sup> Although the Commission has been able to take significant steps to address these issues, we believe that these reasons also support the need to replace cost-of-service ratemaking with more market-based approaches, to the extent that this can be accomplished without adversely affecting the public interest and the goals of Section 225. Therefore, as we implement structural reforms, we propose to transition to a new ratemaking approach that makes use of competitively established pricing, *i.e.*, contract prices set through a competitive bidding process, where feasible.

218. There are several elements in this new approach. First, as explained in sections II.AII.B and II.D above, the outreach and registration verification components of VRS will not be handled by VRS providers. Rather, they will be handled by neutral entities pursuant to contracts. Therefore, as these transfers to neutral entities are implemented, the costs associated with these components of VRS will be removed from compensation rates for all VRS providers.

219. Second, as explained in section II.E above, the Commission will also contract with a neutral entity to offer the video communication service components of VRS, disaggregated from VRS CA service, without charge, to those VRS providers that choose to make use of such a common video communication service platform. For such providers, the costs associated with the disaggregated components of VRS will also be removed from the cost basis for the compensation rates applicable to such standalone VRS CA service providers.

220. Third, we propose in this FNPRM that the contract price that the Commission pays to the neutral video communication service provider for the disaggregated video communication service component of VRS will serve as a benchmark for setting appropriate compensation applicable to any VRS provider that chooses to continue offering a fully integrated service.

221. Fourth, we propose in this FNPRM to establish a compensation rate for the provision of VRS CA service by auctioning a portion of VRS traffic.

#### **1. Using the Cost of the Neutral Video Communication Service Provider Contract as a Benchmark**

222. We tentatively conclude that the contract price that the Commission pays to the neutral video communication service provider for the disaggregated video communication service component of VRS will serve as a benchmark for setting appropriate compensation applicable to any VRS provider that chooses to continue offering a fully integrated service. Such result is appropriate, given that the neutral video communication service provider will be serving many of the same functions as an integrated provider—*i.e.*, user registration and validation, authentication, authorization, ACD platform functions, routing (including emergency call routing), call setup, mapping, call features (such as call forwarding and video mail), and such other features and functions not directly related to the provision of VRS CA services. This would also be consistent with our rules requiring providers only to be compensated for the reasonable costs of providing service.<sup>570</sup> We seek comment on this proposal. Would such an approach ensure an appropriate level of compensation for integrated providers? Specifically, how should the contract price be used to determine the appropriate additional compensation for fully integrated service? Are there overhead or other costs that an integrated VRS provider might incur that a neutral video

<sup>568</sup> 2011 VRS Reform FNPRM, 26 FCC Rcd at 17381, ¶ 22.

<sup>569</sup> *Id.* at 17384, ¶ 26.

<sup>570</sup> See 47 CFR § 64.604(c)(5)(iii)(E).

communication service provider would not, or vice versa? Are there other factors the Commission should consider when setting compensation for the video communication service component of an integrated VRS provider's service offering? The winning neutral video communication service provider may be compensated on a usage insensitive basis (e.g., \$x per year regardless of the number of users or minutes of use serviced) or a usage sensitive basis (e.g., \$x per user per month). Does the compensation structure for the neutral video communication service provider affect this analysis?

## 2. Using Auctions to Establish a Per Minute Rate for CA Service

223. Data from the TRS numbering directory indicates that a sizeable percentage of compensable VRS calls are placed to a relatively small number of telephone numbers that terminate to an even smaller number of companies and government agencies. For example, the top 100 telephone numbers called by VRS users for the period from July 1, 2011 to June 30, 2012 accounted for a total of 13.1 million minutes—over 12% of the total compensable VRS minutes of use for that year. Of these top 100 numbers, 48 numbers, representing approximately 7.4 million minutes of use, terminated to entities subject to the Commission's jurisdiction, including AT&T, Verizon, Qwest, T-Mobile, Comcast, Time Warner Cable, and Dish Network. Another 3 million minutes terminated to government agencies, including the Social Security Administration (responsible for more than 1.5 million minutes alone), Medicare, the Internal Revenue Service (IRS), and state agencies such as the Florida Department of Children and Families. The remaining minutes terminate primarily to large banks (e.g., Bank of America, Wells Fargo), technology companies (e.g., Apple, Dell) and service providers (e.g., eBay, GEICO, UPS, SouthWest Airlines).

224. Given this pattern of calling, we propose that an auction of the right to provide VRS CA service for all calls terminated to an appropriately selected set of telephone numbers representing a sufficient number of minutes of use could be used to establish a market rate for all minutes of use of VRS CA service—including VRS CA service delivered by integrated VRS providers. We seek comment on this proposal. Is it appropriate to use an auction determined price as a benchmark for regulating other prices?

225. *What Is to Be Auctioned?* If the Commission were to auction the right to provide VRS CA service to a set of telephone numbers, how should those telephone numbers be selected? The top 100 numbers called? All calls to government agencies, entities regulated by the Commission, and/or general business call centers? Some other selection criteria? How can the Commission ensure that the telephone numbers selected account for sufficient minutes of use to ensure that the winning bid represents a market rate for VRS CA service?

226. VRS minutes of use arguably could be categorized, by, for example, time of day or the nature of the called party (e.g., a government agency as opposed to a corporate technical support line). For the purposes of an auction, should the Commission establish and auction more than one category of minutes, where minutes within each category can be considered homogenous and minutes across categories are sufficiently different? If so, what would be appropriate categories? If more than one category is established should the different categories be auctioned simultaneously, as in spectrum auctions with different categories of interrelated licenses, or auctioned sequentially? A simultaneous dynamic (e.g., descending clock) auction has the advantage that it allows bidders to easily switch bids among categories of licenses as relative prices change. For example, suppose the categories were minutes between 9:00 a.m. and 5:00 p.m. and minutes at all other times. If during the auction the price of minutes between 9:00 a.m. and 5:00 p.m. fell relative to other minutes, some bidders might wish to supply fewer minutes to that category and more to other times.

227. *Number of Winners.* Should there be one or multiple auction winners? One approach for a single winner auction would be to select the bidder with the lowest price per minute willing to serve all demand for VRS CA service to the specified telephone numbers. One option is a single-round sealed bid auction in which bidders submit their price offer. Alternatively, we could use a descending clock auction

in which bid prices are reduced until only a single bidder remains.<sup>571</sup> A descending clock auction may be simpler for bidders because optimal bidding does not require strategic calculations about what others may bid as in a single-round auction and bidders need not determine an exact bid at the beginning of the auction. How can we ensure before the auction that there are multiple qualified bidders capable of providing quality VRS CA service for all auctioned minutes of use? Are there other ways a single winner auction could be structured to accomplish the Commission's goals?

228. Another option would be to design an auction that allows for multiple winners. One possibility is a descending clock auction, in which the auctioneer calls out a price and winners indicate the percentage of total demand to the eligible numbers they are willing to serve at that price. The auctioneer would continue to reduce the price until the sum of provider bids equals 100%.<sup>572</sup> Given that we have historical data on calling patterns, would such a structure provide flexibility to accommodate the actual number of minutes without creating a high degree of uncertainty as to the number of minutes each auction winner would be expected to service? Are there other ways a multiple winner auction could be structured to accomplish the Commission's goals?

229. In the case of a multiple winner auction, how should specific minutes be assigned to winners? If minutes are truly homogenous, should they be randomly assigned? If minutes, while sufficiently alike to be classified in a single category, are nonetheless somewhat differentiated should the Commission use another procedure? For example, bidders could be randomly assigned priorities and then pick preferences for types of minutes within a given category (*e.g.*, minutes to be terminated to a particular entity). An alternative approach would allow winners of minutes within a given category to bid for the order in which they pick preferences.

230. *Form of Bids.* What form should bids take? We contemplate that bids would take the form of an offer to provide VRS CA service at a price per minute for all demand or a percentage of the demand to certain telephone numbers. Is that the appropriate bid structure? Should bidders be required to specify a fixed quantity of minutes of use they are willing to provide? If bids are for a fixed number of minutes, what should the Commission do if the total minutes of use for which bids are received are insufficient to cover demand? Would additional demand be routed through a user's default provider?

231. *Bidder Qualifications.* What qualifications should the Commission set for bidders? Should we allow entities to bid only after they have been certified by the Commission, or would it be sufficient to condition final auction reward on a bidder's ability to achieve certification?<sup>573</sup> Are there additional criteria that should be established for entities that wish to bid in an auction?

232. *Frequency of Auctions.* How often should auctions be conducted (*i.e.*, for what period of time would bidders win the right to provide exclusive VRS CA service)?

233. *Reserve Price.* Should the Commission set a reserve price and, if so, how? Is the cost data submitted by providers sufficient to allow the Commission to set a reserve price based on historical provider costs? What other mechanism might be used to establish a reserve price?

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<sup>571</sup> "Intra-round" bidding can be used to mitigate the problem of going from multiple bidders at one price to no bidders at the next price reduction. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12576-77, Appendix C at 15-16 (2012).

<sup>572</sup> "Intra-round" bidding could be used in this auction design as well to mitigate the problem of "overshooting"—total supply going from more than 100% to less than 100% when the price increments down. If there is no price at which bidders are willing to supply exactly 100% of demand the auction could select a price at which supply is less than 100% but as close as possible.

<sup>573</sup> *See* 47 C.F.R. § 64.606.

234. *Ensuring Quality of Service.* How can the Commission ensure that auction winners provide an appropriate level of quality of service? Should we require that auction winners be bonded (*i.e.*, obtain a financial guarantee of performance)? Are the Commission's existing rules on quality of service sufficient to guarantee an appropriate level of performance? Should additional performance metrics with penalties for failure to achieve those metrics be implemented by contract? In the event of a failure to perform, should the party lose all the rights it won in the auction, or should it lose a portion of its rights commensurate with its degree of performance failure until performance improves? For example, if the winner fails to meet its obligations, should the Commission reduce the minutes of use it is entitled to terminate by some percentage? If all rights are terminated should it be immediate or phased out over a period of time and, if so, over what period?

235. *Other Issues.* How can the Commission ensure that there are sufficient bidders for a competitive auction? If we are willing to select only one winner, are any of the suppliers other than the largest incumbent able to serve all the demand? How is competitive behavior affected by the fact that the winning bids will be used as a benchmark for setting prices for non-participants? Would any large incumbent be willing to participate since driving down the price in the auction would reduce its prices on the rest of its business? Would any such disincentive for large incumbents to participate tend to encourage participation by small incumbents and new entrants?

### 3. Other Issues

236. *Compensation for Integrated Providers.* The neutral video communication service provider and any winners of an auction of VRS CA service minutes will account for overhead and other costs they incur in setting their bid prices. Is it therefore reasonable to assume that the sum of a benchmark rate for video communication service and a market rate for VRS CA service established by auction would be sufficient to compensate integrated VRS providers for the services they deliver? If not, what other factors should be considered when setting market based compensation rates?

237. *Providers of Multiple Forms of iTRS.* A number of VRS providers also provide other forms of iTRS and VRI.<sup>574</sup> How do such providers allocate costs that may be shared across services? For example, how are costs for facilities and indirect costs such as financial/accounting, legal/regulatory, and human resources allocated between services when submitting cost data for multiple services? How can the Commission and the TRS Fund administrator ensure that entities that provide more than one iTRS service and/or VRI are not being overcompensated for shared resources?

238. *Using Auctions for Other Forms of iTRS.* Would it be appropriate to establish the compensation rate for other forms of iTRS by conducting similar types of auctions? What changes, if any, would the Commission need to consider if setting rates by auction for IP Relay and/or IP CTS?

#### B. Cost Recovery

239. Section 225 creates a cost recovery regime whereby TRS providers are compensated for their reasonable costs of providing service in compliance with the TRS regulations.<sup>575</sup> The Commission has explained that "for purposes of determining the 'reasonable' costs that may be recovered . . . , the

<sup>574</sup> VRI allows a provider to pre-schedule, for a fee, remote interpreting sessions between ASL users and other individuals who are located in the same room, and may also be used when persons are in different locations. Several VRS providers also provide VRI.

<sup>575</sup> See 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5). TRS users cannot be required to pay rates "greater than the rates paid for functionally equivalent voice communication services with respect to such factors as duration of the call, the time of day, and the distance from point origination to point of termination." 47 U.S.C. § 225(d)(1)(D).

costs must relate to the provision of service in compliance with the applicable non-waived [TRS] mandatory minimum standards.”<sup>576</sup>

240. As noted in the Order, we do not believe that the providers’ additional costs necessary to implement the requirements adopted today will be substantial, but we recognize that the Commission in the *First Internet-Based TRS Numbering Order* provided a mechanism whereby providers could seek to recover their actual reasonable costs of complying with certain of the new requirements adopted in that Order.<sup>577</sup> We seek comment on whether the Commission should adopt such a mechanism in connection with any comparable requirements adopted today. What costs, if any, would it be appropriate to consider for additional recovery? How long would providers be entitled to seek recovery of such costs? By what standard should the Commission and the Fund administrator review any submitted costs to ensure that the costs are both allowable and reasonable?

### C. Research and Development

241. We seek comment on the appropriate budget and funding mechanism for research conducted pursuant to the arrangement with the NSF we direct be entered into in today’s Report and Order.<sup>578</sup> We propose to set the initial budget for research under this arrangement at \$3 million dollars, which is approximately 40 percent of the expenditures reported by VRS providers for Fund year 2012 on compensable R&D.<sup>579</sup> We seek comment on this proposal. We further seek comment on the mechanism by which research and development should be funded under this arrangement. For example, what review criteria should be applied to identify appropriate research? What types of awards would be appropriate?<sup>580</sup>

### D. TRS Fund Contribution Calculations and Reporting

242. We propose to amend sections 64.604(c)(iii)(B) and (H) to match the periodicity of filing requirements from the TRS Fund administrator proposing contribution factors to the Commission for the TRS Fund to those of the Universal Service Fund (currently quarterly). Under this revision and the clarification above of OMD’s duties in relation to the TRS Fund, the Fund administrator would request TRS providers to revise their projected minutes of use, and OMD would put the contribution factor proposals on public notice, and adopt a new contribution factor each quarter based on the TRS Fund administrator’s proposal under OMD’s delegated authority. This would allow for greater flexibility in addressing increases or decreases in requests for reimbursement and projections of service requirements from TRS providers. We seek comment on this proposal and ask commenters to address the costs and benefits of the proposal.

<sup>576</sup> 2004 TRS Order, 19 FCC Rcd at 12551–52, ¶ 199; 2006 TRS Reconsideration Order, 21 FCC Rcd at 8057, ¶¶ 15–16.

<sup>577</sup> See *supra* section II.F.2; *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11626-27, ¶¶ 96-101. In particular, the Commission allowed providers to seek recovery for costs that directly related to implementation of the numbering database, including: “(1) ensuring that database information is properly and timely updated and maintained; (2) processing and transmitting calls made to ten-digit numbers assigned pursuant to this Order; (3) routing emergency calls to an appropriate PSAP; (4) other implementation related tasks directly related to facilitating ten-digit numbering and emergency call handling; and (5) consumer outreach and education related to the requirements and services adopted in this Order.” *Id.*, ¶ 100.

<sup>578</sup> See *supra* section II.A.

<sup>579</sup> See Letter from David Rolka, President, RLSA, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123, at 3 (filed Apr. 23, 2013).

<sup>580</sup> See NSF Grant Policy Manual, NSF 05-131 at II-1-II-3 (July 2005) available at [http://www.nsf.gov/pubs/manuals/gpm05\\_131/gpm2.jsp](http://www.nsf.gov/pubs/manuals/gpm05_131/gpm2.jsp).

**E. Allowing Hearing Individuals to Purchase Access to the Neutral Video Communication Service Provider for Point-to-Point Calls**

243. The Consumer Groups have urged the Commission to adopt “rules that would permit hearing individuals to obtain ten-digit numbers that would allow them to make point-to-point calls with VRS users,” and note that “[i]f all registration is done through a central database, it presumably would be easier to flag a hearing person’s ten-digit number in the system so that it is not eligible for VRS reimbursement while still allowing them to use the system to make direct calls to their deaf or hard of hearing contacts.”<sup>581</sup> We seek comment on this proposal. Should the neutral video communication service provider and/or integrated VRS providers be permitted to sell point-to-point service to hearing individuals? Should hearing individuals that purchase such service be registered in the TRS-URD but flagged as “hearing” or “non-compensable?” How can the Commission ensure that TRS Funds are not used to subsidize such a service? Is it sufficient to require that the charge for such a service be sufficient to cover the costs of providing that service? What other factors must be considered if such a service is implemented?

**F. TRS Fund Advisory Council**

244. As part of the transition to a disaggregation of certain VRS functions, we propose to revise the nature, composition, and functions of the advisory body that focuses on TRS issues. We propose to replace the existing Interstate TRS Fund Advisory Council (TRS Fund Council), which advises the TRS Fund administrator on TRS cost recovery matters, with a new advisory council that will provide advice and recommendations in four areas: (1) technology; (2) efficiency; (3) outreach; and (4) user experience. Stakeholders and experts on the new Council will provide advice on ways that iTRS can adapt to the evolving and advancing nature of technology in communication technologies that affect the iTRS service, and ensure that iTRS users obtain a functionally equivalent service. The unique insight, institutional knowledge, and expertise that consumer and industry representatives can offer would help ensure that iTRS technologies and services are developed and deployed in a timely manner in response to the evolving needs of iTRS users.

**1. Background**

245. The Commission directed the TRS Fund administrator to establish the TRS Fund Council to monitor TRS cost recovery issues and provide advice to the administrator, which was then the National Exchange Carrier Association (NECA).<sup>582</sup> During its early years, the TRS Fund Council assisted the TRS Fund administrator in the development of cost recovery guidelines for various forms of TRS and in reviewing and approving proposed compensation rates before submission to the Commission on May 1st of each year.<sup>583</sup> Subsequently, however, with the growth of Internet-based TRS services for which rates are set exclusively at the federal level, the Commission itself began to focus more intensively on developing an appropriate ratemaking methodology. In 2004, expressing concern about rising iTRS

<sup>581</sup> Consumer Groups PN Reply Comments at 17.

<sup>582</sup> *TRS III*, 8 FCC Rcd at 5301, ¶8; 47 C.F.R. § 64.604(c)(5)(iii)(H). The Commission directed the Fund administrator to “establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers.” *Id.* The Commission further directed that each of the foregoing groups select its own representative to the committee, and that the committee “meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters.” *Id.*

<sup>583</sup> *See, e.g., 2000 TRS Order*, 15 FCC Rcd at 5155-5156, ¶¶ 32-33; *TRS Cost Recovery Recommendations* (filed November 9, 2000); *IP Relay Cost Recovery Recommendations* (filed October 9, 2002). *See generally* 47 C.F.R. § 64.604(c)(5)(iii)(H).

compensation rates and emphasizing the Commission's own fiduciary responsibility to ensure the integrity of the TRS Fund, the Commission began an examination into whether a TRS Fund Council was still necessary, and if so, whether the Council's composition and role should change.<sup>584</sup> For example, the Commission sought comment on whether the Council's composition should be expanded to include representatives of the consumers of interstate telecommunications services from whom the costs of interstate TRS and iTRS are recovered.<sup>585</sup> Further, noting that its rules do not elaborate the role of the Council other than to "monitor TRS cost recovery matters,"<sup>586</sup> the Commission asked whether the Council's role should be expanded to include advising the TRS Fund administrator and the Commission on other TRS issues.<sup>587</sup> Although the Commission renewed its focus on the Council's role in the *2007 TRS Rate Methodology Order*, the questions raised in the *2004 TRS Report and Order* remained unresolved.

## 2. Discussion

246. We believe that the role and structure of the TRS Fund Council should be redefined to reflect the changing needs of the TRS program.<sup>588</sup> We note that at various times, the existing TRS Fund Council itself has asked for additional responsibilities, including matters concerning TRS quality.<sup>589</sup> We propose to dissolve the existing TRS Fund Council. Given that rate methodology decisions currently are made by the Commission, not the TRS Fund administrator, and that we are moving to a regime in which compensation rates for most VRS functions will be set by a contractual competitive bidding process, there will be less need for the Council under its current mission.

247. In place of the existing TRS Fund Council, we propose to direct the TRS Fund administrator to establish a new advisory committee to provide advice on specified matters related to the TRS program. With respect to VRS, we intend that the advisory committee provide input to TRS program administrators, including the TRS Fund administrator, the iTRS Outreach Coordinator(s), the VRS access technology reference platform administrator, the TRS-URD administrator, and/or the neutral video communication service provider in the implementation of their responsibilities under this restructuring. We seek comment on which of the following areas should be included within the new advisory committee's focus: (1) technology;<sup>590</sup> (2) efficiency;<sup>591</sup> (3) outreach;<sup>592</sup> (4) user experience (reference functional equivalency requirement);<sup>593</sup> (5) eligibility, registration, and verification;<sup>594</sup> and (6)

<sup>584</sup> *2004 TRS Report and Order*, 19 FCC Rcd at 12570-71, ¶¶ 251-54.

<sup>585</sup> *Id.* at 12571, ¶ 253; 47 U.S.C. § 225(d)(3)(B)).

<sup>586</sup> *2004 TRS Report and Order*, 19 FCC Rcd at 12571, ¶ 254; 47 C.F.R. § 64.604(c)(5)(iii)(H).

<sup>587</sup> *2004 TRS Report and Order*, 19 FCC Rcd at 12571, ¶ 254; *see generally 2000 TRS Order*, 15 FCC Rcd at 5192, ¶¶ 123-124 (noting discussion of quality issues).

<sup>588</sup> A number of commenting parties generally support changing the Council's role. *See* Consumers FNPRM Comments at 48; Convo FNPRM Comments at 4, 17-18; CSDVRS FNPRM Comments at 30-31; Consumers FNPRM Reply Comments at 7; Sorenson FNPRM Reply Comments at 64-65; Joint Providers *Ex Parte* at 2.

<sup>589</sup> *See, e.g.*, Interstate Telecommunications Relay Services Advisory Council Comments, CG Docket No. 03-123 (filed Sep. 6, 2007).

<sup>590</sup> *See, e.g., supra* sections II.A, II.C; *see also* Convo FNPRM Comments at 19; CSDVRS FNPRM Comments at 30-31, 34-35; Consumer Groups PN Comments at 11-12, 14; CSDVRS PN Comments at 28 (supporting advisory committee role in designing and implementing access standards); Consumer Groups PN Reply Comments at 4.

<sup>591</sup> *See* 47 U.S.C. § 225(b)(1); *see also* Consumer Groups, *Ex Parte* Letter at 1 (October 17, 2012); Consumer Groups PN Reply Comments at 4 (supporting advisory committee role in addressing service quality).

<sup>592</sup> *See, e.g., supra* section II.B.



porting and slamming.<sup>595</sup> In addition, we seek comment on which specific matters within these general areas require input from an advisory committee.

248. *Composition of Proposed Committee's Membership.* We invite input on the appropriate composition of the new advisory committee to ensure that all interested parties are fairly represented. We believe the committee should be comprised of consumers who stand to benefit from VRS, researchers, and entities paying into the fund—rather than providers that receive compensation for services. State administrators should also be included if this includes PSTN-based TRS. While we expect that providers will have an opportunity to make their views known to the committee through open sessions held by the advisory committee, we are concerned that with the change in the council's focus, provider membership in the committee would create a potential conflict of interest when the committee is making decisions regarding recommended technologies, outreach initiatives, quality of service improvements and the like.<sup>596</sup> In addition, provider membership may lead to distracting discussions regarding the relative merits of competing provider services and technologies.

249. We propose that CGB release a PN seeking nominations for the new committee. We seek comment on ways in which the proposed advisory committee may play a productive role in connection with the four proposed areas.

### **G. Consistent Regulation of All Forms of iTRS**

250. With certain exceptions such as our treatment of iTRS access technology, this proceeding has focused on the structure and practices of the VRS program. We note, however, that there are significant commonalities among VRS, IP Relay, and other forms of iTRS. Indeed, VRS and IP Relay already are subject to the same user registration requirements, both utilize the TRS numbering directory,<sup>597</sup> and VRS and IP CTS now have comparable requirements for certification of eligibility.<sup>598</sup> Indeed, many of the actions we take in today's Order to improve the efficiency and availability of the VRS program could be equally beneficial if applied to other forms of iTRS, and such application would further simplify the administration of the TRS program. We therefore seek comment on extending the structural reforms adopted in today's Order to all forms of Internet-based TRS.

251. *Registration and the TRS-URD.* The Commission has taken significant steps to reduce waste, fraud, and abuse in the IP Relay and IP CTS programs in the last year.<sup>599</sup> As is the case with VRS, however, the Commission lacks a definitive count of the number of unique, active users of each service, hindering the ability of the Commission and the TRS Fund administrator to conduct audits and determine compliance with the Commission's rules. We therefore propose to require each iTRS provider to provide users with the capability to register with that iTRS provider as a "default provider,"<sup>600</sup> to populate the TRS-URD with the necessary information for each registered user, and to query the database to ensure

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<sup>593</sup> See 47 U.S.C. § 225(a)(3).

<sup>594</sup> See, e.g., *supra* section II.D; see also Convo FNPRM Comments at 19; CSDVRS FNPRM Comments at 30-32 (supporting advisory committee role in designing and implementing the TRS-URD).

<sup>595</sup> See, e.g., *supra* section III.E.

<sup>596</sup> See, e.g., Sorenson FNPRM Reply Comments at 65 (contending that Sorenson has been blocked by other providers from having a representative on the existing Interstate TRS Fund Advisory Council).

<sup>597</sup> See 47 C.F.R. §§ 64.611, 64.613.

<sup>598</sup> See *supra* section II.D.2.

<sup>599</sup> See 2012 *IP Relay Misuse Order*; *IP CTS Interim Rules Order*.

<sup>600</sup> See 47 C.F.R. § 64.611(a).

each user's eligibility for each call. Given that deaf and hard of hearing Americans may use multiple forms of iTRS, what modifications to the TRS-URD, if any, are necessary to accommodate IP Relay and IP CTS data in the TRS-URD? Should the Commission modify or waive its registration requirements as they pertain to NANP numbers in light of the distinct technical and regulatory issues posed by IP CTS?<sup>601</sup>

252. *Certification and Verification Requirements.* The Commission has adopted detailed eligibility certification and verification requirements for IP CTS and VRS to ensure that the use of those services is limited to those who have a hearing or speech disability.<sup>602</sup> We seek comment on extending these certification and verification requirements to IP Relay. What criteria should be established when determining a user's eligibility for IP Relay? We note that the Commission previously has required IP Relay providers to take reasonable measures to verify the registration information of new IP Relay registrants.<sup>603</sup> Is the information we currently require for IP CTS or VRS eligibility certification sufficient for IP Relay, given the history of fraud in this program, or should additional information be required?

253. *Neutral Platform.* We seek comment on extending the capabilities of the neutral video communication service provider to other forms of iTRS. Would IP Relay and IP CTS benefit from the introduction of "standalone" providers of the CA service components of those services? To what extent might new providers of those services be induced to enter the market given the potential reduction of barriers to entry? Would it be appropriate to require provider certification consistent with our VRS rules? Would the availability of single communication service provider allow for or encourage the development of iTRS access technologies capable of delivering multiple forms of iTRS?<sup>604</sup>

254. *Outreach.* Today's Order initiates a national pilot program to conduct TRS outreach, and no longer allows IP Relay and VRS providers to include the cost of outreach in their yearly cost submissions. We seek comment on whether similar action is appropriate with regard to IP CTS. To what extent do IP CTS providers currently engage in outreach? Would it be more effective, as is the case with IP Relay and VRS, to conduct IP CTS outreach through a national outreach coordinator?

255. *Other Rules and Obligations.* To what extent should the Commission make applicable to all iTRS providers other VRS-specific rules and obligations adopted herein? Specifically, the general prohibitions on VRS provider practices causing discrimination, waste, fraud, and abuse, discussed in section III.B above, would appear to be appropriate for application to IP Relay and IP CTS providers. Similarly, the rule on VRS provider compliance plans (section III.C) appears to be appropriate for application to IP Relay and IP CTS providers, and the rules on prevention of slamming (section III.E) appear to be appropriate for application to IP CTS providers. We seek comment on whether to make these provisions of our rules applicable to all iTRS providers.

## H. Disaggregation of Emergency Calls to 911

256. In the *2011 VRS Reform Further Notice*, the Commission sought comment on whether the proposed changes to a per-user rate methodology and the elimination of the dial-around feature necessitate modifications to VRS emergency calling requirements.<sup>605</sup> These requirements direct VRS

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<sup>601</sup> *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11631-32, ¶ 116.

<sup>602</sup> *See supra* section II.D.2; *IP CTS Interim Rules Order*.

<sup>603</sup> *2012 IP Relay Misuse Order*, 27 FCC Rcd at 7866, ¶ 1.

<sup>604</sup> *See, e.g.*, Letter from Peter Hayes, CEO, Spranto, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 10-51 (filed Mar. 4, 2013) (noting that Spranto's software client is capable of providing both VRS and real-time text utilizing the T.140 protocol).

<sup>605</sup> *See 2011 VRS Reform FNPRM*, 26 FCC Rcd at 17407, ¶ 99.

providers to transmit all calls to 911, along with the automatic number identification, the caller's registered location, the VRS provider's name, and the CA identification number for each call, to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority serving the caller's registered location.<sup>606</sup> Because the accompanying Order does not adopt the proposed per-user compensation model, the Commission no longer needs to consider the impact that a change in rate methodology would have on our mandates for emergency calling. Nevertheless, in an effort to improve the efficiency and effectiveness of emergency call handling for VRS users, in this FNPRM we invite comment on other ways to ensure that VRS users have access to 911 services that is functionally equivalent to 911 access available to the general population.<sup>607</sup>

257. In particular, in line with our decision to disaggregate and contract for the provision of the video communication service components of VRS,<sup>608</sup> as well as our proposal to partially include certain CA service components in a competitive bidding process, we seek feedback on whether we should similarly transfer the VRS emergency call handling obligation to a single VRS contractor through a competitive bidding process. Given the urgent and specialized nature of such calls, we ask for feedback on the benefits to be gained by routing VRS 911 calls to pre-identified CAs who, under contract, would be specially trained to handle the safety and medical issues that typically characterize emergency calls. For example, could support services, such as for managing stress, be provided more efficiently and effectively to a limited pool of CAs than to all VRS CAs? To what extent should CAs who handle emergency calls be integrated into general purpose VRS centers or separated out into centralized or regional call centers? In the event of a widespread emergency, should the Commission prescribe a means for addressing call handling if these specialized centers reach capacity—for example, should overflow calls be routed to all certified providers on a rotating basis?

258. In deciding these issues, it would also help the Commission to receive public comment on the average number of 911 calls that are made through VRS each month. Similarly, we ask commenters—both providers and consumers—to indicate the average length of time that it takes to connect a 911 call made through VRS to the appropriate PSAP or emergency authority, as well as how this compares with making calls directly via voice or TTY. Should the Commission require that VRS calls to 911 be connected within a certain time frame, and, if so, what should that time frame be?

259. Under the Commission's rules, all CAs must be qualified interpreters, *i.e.*, capable of interpreting "effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary."<sup>609</sup> Should CAs who handle emergency calls be required to take additional training to better equip them to address the specialized needs of consumers who make these calls? If so, what should the nature of this training be? We ask commenters to describe the extent to which such training already is provided for the purpose of handling emergency VRS calls.

260. Finally, we note that in March 2013, the Commission's Emergency Access Advisory Committee (EAAC), established under the CVAA, released a report containing recommendations to facilitate effective communication for relay users who need to access 911.<sup>610</sup> According to the EAAC,

<sup>606</sup> 47 C.F.R. § 64.605(b)(2)(ii).

<sup>607</sup> *See generally* 47 U.S.C. § 225(a)(3).

<sup>608</sup> *See supra* section II.E.

<sup>609</sup> 47 C.F.R. § 604(a)(1)(iv).

<sup>610</sup> *See Emergency Access Advisory Committee Working Group 3 Recommendations on Current 9-1-1 and Next Generation 9-1-1: Media Communication Line Services Used to Ensure Effective Communication with Callers with Disabilities* (March 1, 2013) (EAAC 911 Recommendations), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-319394A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-319394A1.pdf) (EAAC 911 Report). This report, originally prepared by the EAAC's Media Communication Line Services Subcommittee, follows earlier reports by the EAAC

(continued...)

because current VRS providers “have frequently improperly delivered or handled emergency calls to Public Safety Answering Points via the existing 9-1-1 networks,”<sup>611</sup> it would be best to create nationally certified “Media Communications Line Service,” (MCLS) centers, defined as centers that would provide “translation service for people with disabilities and telecommunicators using video, voice, text and data during NG [next generation] 911 calls.”<sup>612</sup> We seek further information about the nature of these proposed centers and in particular, how their services would interface with VRS and other forms of TRS, whether their services should be provided by a single national entity or through regional centers, and whether funding for such centers would be expected to come from the Fund or another source, such as local and state governmental programs supporting emergency 911 services. The EAAC Report also proposed regulatory changes for national and uniform standards for relay service providers in processing 911 calls,<sup>613</sup> training protocols and performance criteria to achieve and maintain highly skilled CAs capable of handling crisis calls,<sup>614</sup> the provision of stress management services for CAs,<sup>615</sup> the availability of caller profiles,<sup>616</sup> and compatibility between emergency call handling procedures by VRS providers and specifications established by the National Emergency Number Association (NENA).<sup>617</sup> We invite

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that describe common problems that relay users confront when trying to access 911, “such as waiting in line for an available communications assistant, delays in getting connected to the appropriate PSAP, and communications assistants not trained for emergency situations.” *See Emergency Access Advisory Committee Report and Recommendations* at 25 (December 6, 2011) (*EAAC Report and Recommendations*), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-312161A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312161A1.pdf); *EAAC Report on Emergency Calling for Persons with Disabilities Survey Review and Analysis 2011* (July 21, 2011) (*EAAC Survey Report*), available at <http://transition.fcc.gov/cgb/dro/EAAC/EAAC-REPORT.pdf> (providing the results of the EAAC’s national survey to determine the most effective and efficient technologies and methods by which to enable access to emergency services by individuals with disabilities). Under the CVAA, the Commission may promulgate regulations to implement the recommendations proposed by the EAAC, as well as any other regulations, technical standards, protocols, and procedures as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible. CVAA, § 106(g).

<sup>611</sup> *EAAC 911 Report* at 14. The report leaves open whether such centers should be provided by a national entity or regional centers.

<sup>612</sup> *Id.* at 4. The EAAC recommends that certification requirements for the MCLS centers be developed by the Commission, the U.S. Department of Justice, and the U.S. Department of Transportation.

<sup>613</sup> *Id.* at 9. Specifically, the report calls for all centers to have “established credentials and certifications for . . . CAs to adequately meet the needs of emergency callers using varying communication methods.” *Id.* at 12.

<sup>614</sup> *Id.* at 11, noting the absence of VRS CA training standards for this purpose, which, in turn, has resulted in a lack of consistency in the content, depth and length of training from one VRS provider to another; and recommending specialized training for VRS CAs to handle emergency-related calls, “for effective communications to occur between the caller and 9-1-1.” *Id.* at 9. *See also id.* at 14-20 (setting out areas in which CAs should demonstrate levels of competency, recommending that certifications be developed for CAs handling 911 calls, and defining necessary training and evaluation criteria for CAs to achieve effective emergency response and communication with emergency responder personnel).

<sup>615</sup> *Id.* at 22.

<sup>616</sup> *Id.* at 23. The report proposes that such profiles be used to allow persons with disabilities to store information about their type of disability, preferred language, medical conditions and communication modes.

<sup>617</sup> *Id.* at 14. Specifically, the report recommends that VRS and IP Relay providers make their services compatible with recommended guidelines as set forth in NENA, “Specification for i3 Solution,” available at [http://c.ymcdn.com/sites/www.nena.org/resource/collection/2851C951-69FF-40F0-A6B8-36A714CB085D/NENA\\_08-751-v1\\_i3\\_Requirements\\_LTD.pdf](http://c.ymcdn.com/sites/www.nena.org/resource/collection/2851C951-69FF-40F0-A6B8-36A714CB085D/NENA_08-751-v1_i3_Requirements_LTD.pdf).

comment on each of these recommendations and in particular seek input the appropriateness of integrating any or all of the EAAC's proposals into the Commission's VRS program. In addition, we seek information on the costs and benefits of adopting each of the EAAC's proposals.

### I. Speed of Answer

261. In the accompanying Order, we establish new benchmarks for the VRS speed of answer requirements. Specifically, as measured on a daily basis: (1) by January 1, 2014, VRS providers must answer 85 percent of all VRS calls within 60 seconds; and (2) by July 1, 2014, VRS providers must answer 85 percent of all VRS calls within 30 seconds.<sup>618</sup> In this FNPRM, we seek comment on how we should measure compliance with the new threshold. Specifically, we propose and seek comment on the following formula to measure VRS speed-of-answer compliance:

$$\text{(Calls unanswered in 30 seconds or less + calls answered in 30 seconds or less)} / \text{(all calls (unanswered and answered))}$$

262. Alternatively we propose and seek comment on the following formula, which removes unanswered calls for which the caller ended the call prior to the threshold time. Under this formula, the provider's measured speed-of-answer performance would be unaffected by callers that do not give the CA enough time to answer the call within the threshold time period:

$$\text{(Calls answered in 30 seconds or less)} / \text{(All calls answered by a CA + Calls abandoned after more than 30 seconds)}$$

263. As noted in the Order, compliance will be determined on a daily basis. Calls will be considered as part of the measurement for the date when the call was handed off to the provider's system for purposes of establishing compliance with the VRS speed-of-answer requirements.

264. To enable the TRS Fund administrator to confirm the correct calculation of speed-of-answer performance, we propose that providers be required to submit to the TRS Fund administrator certain call detail record information. First, providers would submit an identifier for each inbound call that is unique and used only once and not reused in subsequent periods. Second, submissions would include, for each call, the date and time that each call arrives at the provider's network. Third, for each answered call, the submission would include the time when the first assigned CA answered the incoming call, to the nearest second. Fourth, for each call (including abandoned calls), the provider would submit the time, to the nearest second, that the incoming call ends. We seek comment on this proposed methodology for calculating and verifying speed-of-answer compliance for video relay service.

265. We also seek comment on whether to further reduce the permissible wait time for VRS calls by requiring calls to be answered 85 percent of the time within 10 seconds. Making this change would fully harmonize the permissible wait time for VRS with the permissible wait time for other forms of TRS.<sup>619</sup> We further propose that, if adopted, compliance with this measurement continue to be determined on a daily basis. We request feedback on the benefits and the costs of adopting these proposals. Specifically, we ask commenters to address whether the proposed further reduction in the speed of answer would require VRS providers to hire additional CAs, and if so, what effect, if any, there would be on the per minute costs incurred by providers. Finally, we ask commenters to address whether adopting a phase-in period to implement this further reduction would facilitate any necessary hiring of

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<sup>618</sup> *Supra* section III.D.

<sup>619</sup> See 47 C.F.R. § 64.604(b)(2)(ii) (requiring 85 percent of all other forms of TRS calls to be answered within 10 seconds).

additional interpreters and whether such a phase-in would help mitigate the effects of any additional costs that may be incurred to implement the change.

## J. Administrative, Oversight, and Certification Rules

266. In the *2011 Further Notice*, the Commission sought comment on whether, if it should choose to adopt any of the options set forth therein, there should be changes in its rules relating to the TRS Fund, including (1) modifying the rules on data that must be submitted to or that may be collected by the TRS Fund administrator,<sup>620</sup> (2) modifying the rules governing payments to TRS providers, eligibility for payments from the TRS Fund, and notice of participation in the TRS Fund,<sup>621</sup> (3) modifying the rules governing the obligations of the TRS Fund administrator, Commission review of the TRS Fund administrator's performance, and treatment of TRS customer information,<sup>622</sup> (4) modifications to TRS rules to ensure that they are enforceable,<sup>623</sup> and (5) modifying or enhancing the TRS Fund administrator's authority to conduct audits.<sup>624</sup> We have adopted some changes to these rules, as described above. We seek additional comment on whether further changes to these rules are necessary and appropriate to effectively implement those reforms.

267. In addition to seeking comments generally on changes to these rules, we invite comment on the following specific issues. Is the existing general grant of authority to the TRS Fund administrator to request information reasonably "necessary to determine TRS Fund revenue requirements and payments" sufficient?<sup>625</sup> Should we explicitly require providers to submit additional detailed information, such as information regarding their financial status (e.g., a cash flow to debt ratio)?<sup>626</sup>

268. We also seek comment on whether there should be changes in our rules relating to the certification of VRS providers and/or other iTRS providers, in order to effectively implement the reforms adopted in today's order. For example, Section V.E of the order creates a new category of VRS providers—standalone VRS CA service providers, which will not be required to own their own platforms for automatic call distribution and routing. Because the Commission's existing VRS rules do require the ownership or lease of such technology, they consequently require applicants for certification to provide both a description of the equipment used for this purpose, as well as the proofs of purchase, leases or license agreements of technology and equipment used to support their 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.<sup>627</sup> We propose to modify our VRS certification rules to eliminate such requirements and seek comment on this proposal. In addition, we seek comment on whether and how to modify our VRS certification rules to ensure that standalone VRS CA service providers meet high standards of service and to eliminate incentives and opportunities for waste, fraud,

<sup>620</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17406, ¶ 93. See 47 C.F.R. §§ 64.604(c)(5)(iii)(D), (I).

<sup>621</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17406, ¶ 94. See 47 C.F.R. §§ 64.604(c)(5)(iii)(E)-(G).

<sup>622</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17406-07, ¶ 95. See 47 C.F.R. §§ 64.604(c)(5)(iii)(H), (J), (7).

<sup>623</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17407, ¶ 96. See 47 C.F.R. § 64.604(c)(5)(iii)(K).

<sup>624</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17410, ¶ 107. See 47 C.F.R. § 64.604(c)(5)(iii)(C). The Commission did not propose to modify the rules that govern jurisdictional separation of costs or cost recovery (see *id.* §§ 64.604(c)(5)(i), (ii)) but nonetheless sought comment on whether modifications to such rules are necessary. *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17406, ¶ 91. No commenting party has requested such modifications.

<sup>625</sup> See 47 U.S.C. § 64.604(c)(5)(iii)(D).

<sup>626</sup> Such information might, for example, inform the Commission's understanding of a VRS provider's ability to comply with the obligation to provide VRS every day, 24 hours a day. See *id.* § 64.604(b)(4).

<sup>627</sup> 64 C.F.R. § 64.606(a)(2)(ii)(A)(4).

and abuse by such providers. For example, should such providers be required to have certain levels of expertise or experience in the provision of interpreting services, and if so what should these levels be—for example, should such applicants be required to have provided interpreter services for a certain number of years, and if so, for how long? Should such providers be required to have prior experience in the provision of TRS or VRS? Should the Commission adopt specific requirements to ensure the financial stability of such applicants? To what extent should the Commission consider the impact that certifying a standalone provider may have on the availability of community interpreting services in the areas served by that provider? To what extent should the Commission consider the existence of non-competitive measures, such as non-compete contractual clauses for CAs who provide sign language functions, in determining certification for either standalone VRS CA service providers or integrated VRS providers? We welcome other comments on considerations that the Commission should take into consideration when certifying such standalone entities or integrated providers.

#### **K. Restructuring Section 64.604**

269. In the *2011 VRS Reform FNPRM*, observing that section 64.604 of the Commission's rules has become somewhat unwieldy since it was adopted in 2000, the Commission sought comment on whether, the provisions in that section should be reorganized.<sup>628</sup> The Commission also sought comment on whether it should separate section 64.604 into service-specific rules (*e.g.*, VRS, speech-to-speech, captioned telephone relay service), transmission-specific rules (*i.e.*, PSTN-based TRS vs. iTRS), or adopt some other structure.<sup>629</sup> We now propose to revise the structure of our rules so that they are service-specific and transmission-specific, where appropriate, and seek additional comment on this proposed structural approach and related issues. For example, would it be preferable, from the perspective of clarity and convenience of access, for all rules applicable to each service to be placed in a single section dedicated to that service? Alternatively, would it be more desirable for the rules to be segregated by category – *e.g.*, operational standards, emergency calling, registration, etc. – with each service addressed in a subsection of the rule for a particular category?

#### **L. Use of Customer Information**

270. As discussed above, the Commission is adopting a number of privacy protections for users of TRS services. In addition to those adopted above, we note that the Consumer Groups proposed that Commission “rules should prohibit a relay provider from using CPNI for the purpose of contacting a relay user for political and regulatory advocacy purposes, unless the user affirmatively agrees to such contacts” through a proposed opt-in procedure.<sup>630</sup> In this regard, the Consumer Groups argue that “just as voice telephone users do not receive political and regulatory advocacy messages when picking up a telephone to make a call, the Commission should emphasize that although TRS providers are permitted to advocate political and regulatory issues on their websites, they may not advocate such issues (or for that matter promote or advertise anything) on those web pages that must be navigated to make a relay call.”<sup>631</sup> We seek comment on the Consumer Groups' proposal in this regard. Would the proposed restrictions advance section 225's functional equivalency mandate as the Consumer Groups appear to suggest? Would they otherwise be consistent with the Act and with the First Amendment? What are the relative costs and benefits of such requirements? Are there other rules governing TRS providers' use of customer information that the Commission should consider?

<sup>628</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17399-400, ¶ 70.

<sup>629</sup> *Id.*

<sup>630</sup> Consumer Groups FNPRM Comments at 23-24.

<sup>631</sup> *Id.* at 24.

### M. Unjust and Unreasonable Practices

271. In the accompanying Order, the Commission adopts a rule modeled on section 202(a) designed to address impermissible discrimination by VRS providers, as well as a rule intended to prevent practices that cause or encourage unauthorized or unnecessary use of relay services. Building on those steps, we seek comment on whether to adopt a rule implementing section 225 of the Act that would prohibit unjust and unreasonable practices for or in connection with TRS services. Like the rule modeled on section 202(a) of the Act, this rule would be modeled on section 201(b) of the Act, and the interpretation of that rule could be informed by the Commission's common carrier precedent under section 201(b). We seek comment on the need for such a rule, as well as the Commission's authority to adopt such a requirement. Would such a requirement advance the statutory mandate for functional equivalency, consistent with the Commission's section 225(d)(1)(A) authority to "prescribe regulations to implement this section, including regulations that—(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services..."<sup>632</sup> Would such a rule be consistent with prior Commission decisions interpreting section 225(d)(1)(E) and its legislative history?<sup>633</sup> Is there other authority that would provide a basis for the Commission to adopt such a rule? Are there alternative rules that the Commission should consider in this regard, and if so, how should they operate?

### N. Temporary Registration

272. When the Commission directed VRS and IP Relay providers in the *Second Internet-Based TRS Numbering Order* to implement a reasonable means of verifying registration and eligibility information, the Commission added that, "to the extent technically feasible, Internet-based TRS providers must allow newly registered users to place calls immediately," even before completing the verification of such individuals.<sup>634</sup> In permitting such temporary use of VRS and IP Relay by new registrants, the Commission responded to comments by a coalition of consumer groups, who were concerned that legitimate VRS and IP Relay users would be cut off from service during the transition to the new ten-digit numbering and registration system.<sup>635</sup> In order to enable users to make calls under this "guest user" procedure, some providers have been giving users temporary ten-digit numbers and provisioning these numbers to the iTRS Directory. These numbers were allowed to remain valid for the purpose of making VRS and IP Relay calls until such time that the users' identifying information was authenticated or rejected.

273. In 2012, in an effort to address concerns of rampant use of IP Relay by people who did not have hearing or speech disabilities, the Commission prohibited IP Relay providers from handling non-emergency calls made by new IP Relay registrants prior to taking reasonable measures to verify their registration information.<sup>636</sup> The Commission found that although there may have been some value in allowing unverified users to make calls for a short period of time during the Commission's transition to the IP Relay registration system, the Commission was concerned that reliance on the guest user procedure had resulted in abuse of the IP Relay program by unauthorized IP Relay users. In addition, the Commission was concerned that unverified users had remained in the iTRS numbering directory—and made repeated IP Relay calls—for extended periods of time, despite the obligation of IP Relay providers to institute procedures to verify the accuracy of registration information.<sup>637</sup> The Commission added:

<sup>632</sup> 47 U.S.C. § 225(d)(1)(A).

<sup>633</sup> See *supra* n. 282.

<sup>634</sup> *Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 803, ¶ 25.

<sup>635</sup> *Id.*

<sup>636</sup> *2012 IP Relay Misuse Order*, 27 FCC Rcd 7866.

<sup>637</sup> *Id.* at 7871, ¶ 11.



“any rationale for initially permitting temporary user authorization—*i.e.*, to prevent the exclusion of users who were already using IP Relay service and were either unfamiliar with the Commission’s new registration process or had not yet registered—is greatly diminished because considerable time has passed since the transition period for registering ended on November 12, 2009.”<sup>638</sup>

274. In view of the fact that it is now approximately three and a half years since the transition period to ten-digit numbering has ended, we question whether there is still any reason to continue the guest user procedure for VRS. We therefore propose to prohibit VRS providers from handling non-emergency calls made by new VRS registrants prior to verification of their registration information and seek comment on our proposal. We ask commenters to weigh the costs and benefits of continuing the guest user procedure for VRS against the costs and benefits of eliminating the procedure.

#### **O. Access to Video Mail**

275. We propose to amend our rules to explicitly require that, if a VRS provider offers a video mail feature to its customers, the provider must ensure that video mail messages can be left by point-to-point callers who are customers of other VRS providers and are using access technology provided by such other providers.<sup>639</sup> As the Commission has previously stated, “[w]hile point-to-point calls between VRS users are not relay calls, and thus are not compensable from the Fund, they do constitute an important form of communication for many VRS users, and any loss of such basic functionality is simply not acceptable.”<sup>640</sup> Therefore, the Commission has ruled that all default providers must support the ability of VRS users to make point-to-point calls without the intervention of an interpreter.<sup>641</sup> Such interoperability is intended to “ensure that VRS users can make point-to-point calls to all other VRS users, irrespective of the default provider of the calling and called party.”<sup>642</sup>

276. We believe that a VRS provider’s failure to allow other providers’ customers to leave video mail messages causes significant degradation in the value of point-to-point video communication capabilities for all VRS users. We seek comment on this point, on the percentage of VRS customers who currently have video mail boxes, and on the extent to which customers currently encounter difficulties in attempting to leave messages in video mail boxes of customers registered with other providers.<sup>643</sup> In addition, we seek comment on the extent to which the failure of a provider to allow such messages to be left could endanger a consumer’s safety or health.<sup>644</sup> Further, we seek comment on whether such failure may unfairly discourage a consumer from switching from one default VRS provider to another.

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<sup>638</sup> *Id.*, ¶ 12 (footnotes omitted).

<sup>639</sup> As noted in the accompanying order, the Commission has authority to make rules regarding point-to-point calls, *e.g.*, to protect the privacy of information about a consumer’s point-to-point calling. *See supra* ¶ 171. We seek comment on whether such authority extends to the type of rule proposed here.

<sup>640</sup> *Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 820, ¶ 65.

<sup>641</sup> *Id.*

<sup>642</sup> *2011 VRS Reform FNPRM*, 26 FCC Rcd at 17378, ¶ 16 (*citing* 47 C.F.R. § 64.611(e)).

<sup>643</sup> *See generally* Purple Communications, Inc., Request for Immediate Public Notice: VRS Providers May Not Discriminate Against Consumers Using Competing Service Providers In Their Ability to Leave a Video Mail Message, CG Docket No. 03-123 (filed April 11, 2013). Purple seeks a ruling that a VRS provider’s blocking of video mail messages by customers of other providers violates Section 225 and the Commission’s existing VRS rules and orders. That question will be addressed separately from the question raised in this FNPRM as to whether the Commission should adopt a new rule explicitly prohibiting such practices.

<sup>644</sup> *See id.* (full interoperability, including the ability to make point to point calls, “ensures greater protection for TRS users’ safety, life, health, and property”).

277. Finally, we seek comment on the extent to which any new or changed technical standards are necessary to ensure that video mail messages can be left in another provider's mail box, beyond the standards necessary to ensure interoperability of point-to-point calling generally. To the extent that any new or changed standards are needed, we seek comment on the appropriate forum for developing such standards and on the content of such standards.

**P. Non-Competition Agreements in VRS CA Employment Contracts**

278. In 2007, a coalition of five VRS providers petitioned the Commission for a declaratory ruling to prohibit VRS providers from using non-competition agreements in VRS CA employment contracts that limit the ability of VRS CAs to work for competing VRS providers after the VRS CAs terminate their employment with their current employer.<sup>645</sup> Petitioners argued that non-competition agreements are overly broad, harm the VRS market, and are contrary to the public interest.<sup>646</sup> The Commission placed the petition on public notice,<sup>647</sup> and received five comments<sup>648</sup> and two reply comments from organizations and providers.<sup>649</sup> In addition, 109 individual consumers and interpreters submitted comments. Since then, several additional *ex parte* communications on this issue have been filed with the Commission.<sup>650</sup> All commenters except Sorenson and one individual have supported the Coalition Petition. In a recent *ex parte* communication, Purple maintains that such non-competition agreements are contrary to the public interest because they artificially remove VRS CAs from the labor pool, resulting in higher interpreter costs and limiting the ability of VRS companies to compete in the market place, thereby depriving consumers of the full benefits of competition.<sup>651</sup> However, Sorenson, which makes use of such agreements, maintains that they increase the pool of available VRS CAs because they encourage Sorenson to invest in training new VRS CAs, knowing that competitors will not hire away Sorenson's newly-trained CAs.<sup>652</sup>

279. We seek comment on the extent to which these non-competition agreements have an adverse effect on the provision of VRS, and to the extent that they do, whether we should prohibit these

<sup>645</sup> See Hands On VRS (HOVRS), CSDVRS, Snap, GoAmerica and CAC, Petition for Declaratory Ruling and Complaint Concerning the Provision of Video Relay Services by Sorenson Communications, Inc., CG Docket No. 03-123, May 18, 2007 (Coalition Petition).

<sup>646</sup> *Id.*

<sup>647</sup> *Consumer & Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Video Relay Service (VRS) Provider Employment Contracts with VRS Communications Assistants (CAs)*, Public Notice, CG Docket 03-12, 22 FCC Rcd 14048 (CGB 2007).

<sup>648</sup> AT&T Comments (Sept. 4, 2007); NAD Comments (Sept. 4, 2007); Sign Language Associates Comments (Sept. 4, 2007); Sorenson Comments (Sept. 4, 2007); Telecommunications for the Deaf and Hard of Hearing, Inc., Association of Late-Deafened Adults, National Association of the Deaf (NAD), Deaf and Hard of Hearing Consumer Advocacy Network, and California Coalition of Agencies Serving the Deaf and Hard of Hearing Comments (Sept. 4, 2007).

<sup>649</sup> HOVRS Reply Comments (Sept. 19, 2007); Sorenson Reply Comments (Sept. 19, 2007).

<sup>650</sup> *Ex parte* communications were filed by HOVRS (June 5, 2007; Sept. 24, 2007; Jan. 22, 2008; May 23, 2008); American Association of People with Disabilities (late-filed comments) (Sept. 21, 2007); CSDVRS and HOVRS (Mar. 17, 2008); GoAmerica (merged with HOVRS) (Mar. 26, 2008); Sorenson (Apr. 25, 2008; May 2, 2008; May 14, 2008; June 26, 2008; July 10, 2008).

<sup>651</sup> See Purple, *Ex Parte* Letter (March 1, 2013) (Purple March 1, 2013 *Ex Parte*).

<sup>652</sup> See Sorenson, *Ex Parte* Letter (April 17, 2013) (maintaining that its employment contracts are limited in duration to six months following the employee's termination of employment with Sorenson, limited to the state where the employee works for Sorenson, and are limited to employment with a competing VRS provider).

agreements in VRS CA employment contracts. What are the benefits or disadvantages of allowing or prohibiting these agreements? We are especially interested in understanding any harm that these agreements may cause for VRS providers or consumers. Do non-competition agreements limit the pool of VRS CAs that are available to VRS providers? If so, does any such limitation affect the ability of VRS providers to effectively compete in the marketplace? To what extent do these agreements have an impact on the level of compensation paid to VRS CAs, and consequently, the cost of providing VRS? Do the agreements affect speed of answer, accuracy or other quality of service metrics for VRS users? As an alternative to an outright prohibition on non-competition agreements, should the Commission limit the scope of such agreements? If so, how? We ask commenters to address the costs and benefits of prohibiting or limiting such agreements and how such costs and benefits would affect the TRS Fund. Commenters should support their positions with data to the extent possible. We also ask commenters to address possible sources of authority for the Commission to regulate or prohibit VRS Relay CA non-competition agreements. For example, does section 225(d)(1)(A) of the Act, which directs the Commission to “establish functional requirements, guidelines, and operations procedures for telecommunications relay services”<sup>653</sup> afford the Commission sufficient authority to address these agreements? Are there other provisions of section 225 that provide the Commission with such authority? If the Commission were to prohibit non-competition agreements, could the Commission abrogate such provisions in existing agreements, and if so, would it be appropriate to do so as a policy matter? We seek feedback on any other matter that might assist the Commission in determining whether and how to regulate these agreements.

**Q. CAs Working from Home Environments During Overnight Hours**

280. In the *VRS Call Practices R&O* the Commission found that allowing VRS CAs to work from home poses more risks than benefits,<sup>654</sup> and consequently adopted a rule prohibiting VRS CAs from handling relay calls from a location used primarily as their home.<sup>655</sup> The Commission was particularly concerned that the unsupervised home environment is more conducive to fraud than a supervised call center with on-site management.<sup>656</sup> The Commission also concluded that compliance with its mandatory minimum requirements, including the expectation of user privacy,<sup>657</sup> and its technical standards, including requirements for redundancy features, uninterruptible power for emergency use, and the ability to handle 9-1-1 calls, might be compromised in the home environment.<sup>658</sup> Lastly, the Commission was concerned that CAs working in the home environment might not be able to meet service quality standards.<sup>659</sup> Notwithstanding these concerns, the Commission explained that it remained open to revisiting the issue of at-home VRS call handling if, in the future, the Commission determines 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.”<sup>660</sup>

<sup>653</sup> 47 U.S.C. § 225(d)(1)(A).

<sup>654</sup> *VRS Call Practices R&O*, 26 FCC Rcd at 5556, ¶ 16.

<sup>655</sup> *Id.* at 5559, ¶ 20.

<sup>656</sup> *Id.*

<sup>657</sup> *Id.* at 5556-57, ¶ 17. *See also* 47 C.F.R. § 64.604(a)(2) (setting forth CA confidentiality requirements).

<sup>658</sup> *VRS Call Practices R&O*, 26 FCC Rcd at 5557, ¶ 18. *See also* 47 C.F.R. §§ 64.604(b)(4)(ii) (setting forth redundancy requirements), 64.605 (setting forth emergency calling requirements).

<sup>659</sup> *VRS Call Practices R&O*, 26 FCC Rcd at 5557-58, ¶ 19.

<sup>660</sup> *Id.* at 5559, ¶ 20.

281. In August 2011, CSDVRS filed a petition for partial waiver of the above prohibition for a maximum of 10 percent of its active VRS CAs on duty and a maximum of 10 percent of CSDVRS's VRS call volume to address its concern for the safety of CAs who work during overnight hours.<sup>661</sup> According to CSDVRS, its "remote interpreting program ensures the safety of VRS interpreters, strictly adheres to mandatory minimum TRS standards, utilizes failsafe monitoring to prevent fraud, and ensures that CSDVRS' service to consumers is not interrupted or otherwise degraded by an inability to provide adequate support."<sup>662</sup> CSDVRS further alleges that its at-home interpreting service provides sufficient safeguards against fraud,<sup>663</sup> security for CAs working at home during off-hours because the CAs do not need to report to an office building;<sup>664</sup> and more opportunities to recruit CAs.<sup>665</sup> Finally, CSDVRS argues that it has taken steps to ensure confidentiality,<sup>666</sup> redundancy,<sup>667</sup> the handling of emergency calls,<sup>668</sup> and service quality.<sup>669</sup>

282. We seek comment on whether we should permit VRS CAs to work from home during the overnight hours when the safety and security of CAs may be endangered from travelling to or from VRS call centers. We ask commenters to address these safety concerns and to propose specific hours when CAs may be permitted to work from home. We also ask commenters to identify rules needed to ensure appropriate safeguards against fraud and to ensure that all of the Commission's mandatory minimum standards and technical standards are met. In particular, we ask commenters to address the concerns expressed by the Commission in the *VRS Call Practices R&O* with regard to privacy, redundancy, uninterruptable power, emergency calling, and service quality, and what measures need to be taken to ensure that functional equivalency is achieved if CAs were to be permitted to work from home during overnight hours. We also ask commenters to address the costs and benefits of permitting CAs to work from home on this limited basis.

## VI. PROCEDURAL MATTERS

### A. Paperwork Reduction Act Analysis

283. This document contains a new information collection requirement 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 of the PRA, 44 U.S.C. § 3507. Prior to submission to OMB, the Commission will publish a notice in the Federal Register seeking public comment on the information collection requirement. In addition, that notice will also seek comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4). The information collection contained in this Report and Order will

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<sup>661</sup> CSDVRS, LLC Petition for Temporary Waiver at 1 (filed August 12, 2011) (CSDVRS At-Home Interpreting Petition).

<sup>662</sup> *Id.*

<sup>663</sup> *Id.* at 2, 4, 6-7.

<sup>664</sup> *Id.* at 2-4.

<sup>665</sup> *Id.* at 5-6.

<sup>666</sup> *Id.* at 4.

<sup>667</sup> *Id.* at 5-6.

<sup>668</sup> *Id.* at 4.

<sup>669</sup> *Id.* at 2.

not go into effect until OMB approves the collection and the Commission has published a notice in the Federal Register announcing the effective date of the information collection.

**B. Congressional Review Act**

284. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>670</sup>

**C. Final Regulatory Flexibility Analysis**

285. The Regulatory Flexibility Act (RFA)<sup>671</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>672</sup> Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the *Report and Order* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix C.

**D. Initial Regulatory Flexibility Analysis**

286. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document.<sup>673</sup> The IRFA is set forth in Appendix D. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided on or before the dates indicated on the first page of this Report and Order and FNPRM. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>674</sup> In addition, the Report and Order and FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>675</sup>

**E. Further Notice of Proposed Rulemaking**

287. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-

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<sup>670</sup> See 5 U.S.C. 801(a)(1)(A).

<sup>671</sup> See *id.* § 601–12. The RFA 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>672</sup> 5 U.S.C. § 605(b).

<sup>673</sup> See *id.* § 603.

<sup>674</sup> See *id.* § 603(a).

<sup>675</sup> *Id.*

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. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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.

288. 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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

289. *Ex Parte Rules.* The proceeding this Further Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>676</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

## VII. ORDERING CLAUSES

290. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 225, 251, 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, 251, 254, 303(r), this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective upon announcement in the Federal Register of OMB approval and an effective date of the rules.

291. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 225, 251, 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, 251, 254, 303(r), Part 64 of the Commission's rules, 47 C.F.R. Part 64, IS AMENDED, as set forth in Appendix A, and such rule amendments shall be effective 30 days after the date of publication of the rule

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<sup>676</sup> 47 C.F.R. §§ 1.1200 *et seq.*

amendments in the Federal Register, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review WILL BECOME EFFECTIVE upon announcement in the Federal Register of OMB approval and an effective date of the rules.

292. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

293. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Initial Regulatory Flexibility Analysis, and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rules

The Commission amends 47 C.F.R. part 64 as follows:

## PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Amend section 64.601 by revising paragraph (a) to read as follows:

**§ 64.601 Definitions and provisions of general applicability.**

(a) \* \* \*

(1) 711. The abbreviated dialing code for accessing relay services anywhere in the United States.

(2) ACD platform. The hardware and/or software that comprise the essential call center function of call distribution, and that are a necessary core component of Internet-based TRS.

(3) American Sign Language (ASL). A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(4) ANI. For 911 systems, the Automatic Number Identification (ANI) identifies the calling party and may be used as the callback number.

(5) ASCII. An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(6) Authorized provider. An iTRS provider that becomes the iTRS user's new default provider, having obtained the user's authorization verified in accordance with the procedures specified in this part.

(7) Baudot. A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(8) Call release. A TRS feature that allows the CA to sign-off or be "released" from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.

(9) Common carrier or carrier. Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(10) Communications assistant (CA). A person who transliterates or interprets conversation between two or more end users of TRS. CA supersedes the term "TDD operator."

(11) Default provider. The iTRS provider that registers and assigns a ten-digit telephone number to an iTRS user pursuant to section 64.611 of this part.

(12) Default provider change order. A request by an iTRS user to an iTRS provider to change the user's default provider.



(13) Hearing carry over (HCO). A form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. Two-line HCO is an HCO service that allows TRS users to use one telephone line for hearing and the other for sending TTY messages. HCO-to-TTY allows a relay conversation to take place between an HCO user and a TTY user. HCO-to-HCO allows a relay conversation to take place between two HCO users.

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

(15) Internet-based TRS (iTRS). A telecommunications relay service (TRS) in which an individual with a hearing or a speech disability connects to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network. Internet-based TRS does not include the use of a text telephone (TTY) over an interconnected voice over Internet Protocol service.

(16) Internet Protocol Captioned Telephone Service (IP CTS). A telecommunications relay service that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the Internet, rather than the public switched telephone network.

(17) Internet Protocol Relay Service (IP Relay). A telecommunications relay service that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet, rather than using a text telephone (TTY) and the public switched telephone network.

(18) IP Relay access technology. Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive an IP Relay call.

(19) iTRS access technology. Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive an Internet-based TRS call.

(20) Neutral Video Communication Service Platform. The service platform that allows a registered Internet-based VRS user to use VRS access technology to make and receive VRS and point-to-point calls through a VRS CA service provider. The functions provided by the Neutral Video Communication Service Platform include the provision of a video link, user registration and validation, authentication, authorization, ACD platform functions, routing (including emergency call routing), call setup, mapping, call features (such as call forwarding and video mail), and such other features and functions not provided by the VRS CA service provider.

(21) New default provider. An iTRS provider that, either directly or through its numbering partner, initiates or implements the process to become the iTRS user’s default provider by replacing the iTRS user’s original default provider.

(22) Non-English language relay service. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

(23) Non-interconnected VoIP service. The term “non-interconnected VoIP service”—

(i) Means a service that—

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

- (B) Requires Internet protocol compatible customer premises equipment; and
- (ii) Does not include any service that is an interconnected VoIP service.
- (24) Numbering partner. Any entity with which an Internet-based TRS provider has entered into a commercial arrangement to obtain North American Numbering Plan telephone numbers.
- (25) Original default provider. An iTRS provider that is the iTRS user's default provider immediately before that iTRS user's default provider is changed.
- (26) Qualified interpreter. An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (27) Registered Internet-based TRS user. An individual that has registered with a VRS or IP Relay provider as described in § 64.611 of this chapter.
- (28) Registered Location. The most recent information obtained by a VRS or IP Relay provider that identifies the physical location of an end user.
- (29) Sign language. A language which uses manual communication and body language to convey meaning, including but not limited to American Sign Language.
- (30) Speech-to-speech relay service (STS). A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.
- (31) Speed dialing. A TRS feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a short-hand" name or number for the user's most frequently called telephone numbers.
- (32) Telecommunications relay services (TRS). Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."
- (33) Text telephone (TTY). A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term "TDD" or "telecommunications device for the deaf," and TT.
- (34) Three-way calling feature. A TRS feature that allows more than two parties to be on the telephone line at the same time with the CA.
- (35) TRS Numbering Administrator. The neutral administrator of the TRS Numbering Directory selected based on a competitive bidding process.
- (36) TRS Numbering Directory. The database administered by the TRS Numbering Administrator, the purpose of which is to map each registered Internet-based TRS user's NANP telephone number to his or her end device.
- (37) TRS User Registration Database. A system of records containing TRS user identification data capable of (a) receiving and processing subscriber information sufficient to identify unique TRS users and to ensure that each has a single default provider; (b) assigning each VRS user a unique identifier; (c) allowing VRS providers and other authorized entities to query the TRS User Registration Database to determine if a prospective user already has a default provider; (d) allowing VRS providers to indicate that

a VRS user has used the service; and (e) maintaining the confidentiality of proprietary data housed in the database by protecting it from theft, loss or disclosure to unauthorized persons. The purpose of this database is to ensure accurate registration and verification of VRS users and improve the efficiency of the TRS program.

(38) Unauthorized provider. An iTRS provider that becomes the iTRS user’s new default provider without having obtained the user’s authorization verified in accordance with the procedures specified in this part.

(39) Unauthorized change. A change in an iTRS user’s selection of a default provider that was made without authorization verified in accordance with the verification procedures specified in this part.

(40) Video relay service (VRS). A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller.

(41) 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.

(42) Voice carry over (VCO). A form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation. Two-line VCO is a VCO service that allows TRS users to use one telephone line for voicing and the other for receiving TTY messages. A VCO-to-TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user. VCO-to-VCO allows a relay conversation to take place between two VCO users.

(43) VRS access technology. Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive a VRS call.

(44) VRS Access Technology Reference Platform. A software product procured by or on behalf of the Commission that provides VRS functionality, including the ability to make and receive VRS and point-to-point calls, dial-around functionality, and the ability to update user registration location, and against which providers may test their own VRS access technology and platforms for compliance with the Commission’s interoperability and portability rules.

(45) VRS CA service provider. A VRS provider that uses the Neutral Video Communication Service Platform for the video communication service components of VRS.

\* \* \* \* \*

3. Amend section 64.604 by revising paragraphs (b)(2)(iii), (b)(4)(iv) and (c)(5)(iii)(N)(1)(iii), reserving paragraphs (c)(10) and (c)(11), and adding paragraphs (c)(12), (c)(13), and (d) to read as follows:

**§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(2) \* \* \*

\* \* \* \* \*

(iii) Speed of answer requirements for VRS providers. (A) Speed of answer requirements for VRS providers are phased-in as follows: by January 1, 2007, VRS providers must answer 80% of all VRS calls within 120 seconds, measured on a monthly basis; by January 1, 2014, VRS providers must answer 85% of all VRS calls within 60 seconds, measured on a daily basis; and by July 1, 2014, VRS providers

must answer 85% of all VRS calls within 30 seconds, measured on a daily basis. Abandoned calls shall be included in the VRS speed of answer calculation.

(B) VRS CA service providers must meet the speed of answer requirements for VRS providers as measured from the time a VRS call reaches facilities operated by the VRS CA service provider.

\* \* \* \* \*

(4) \* \* \*

\* \* \* \* \*

(iv) A VRS provider leasing or licensing an automatic call distribution (ACD) platform must have a written lease or license agreement. Such lease or license agreement may not include any revenue sharing agreement or compensation based upon minutes of use. In addition, if any such lease is between two eligible VRS providers, the lessee or licensee must locate the ACD platform on its own premises and must utilize its own employees to manage the ACD platform. VRS CA service providers are not required to have a written lease or licensing agreement for an ACD if they obtain that function from the Neutral Video Communication Service Platform.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(5) \* \* \*

\* \* \* \* \*

(iii) \* \* \*

\* \* \* \* \*

(N) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(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:

(a) That authorized third party also is an eligible provider; or

(b) The eligible VRS provider is a VRS CA service provider and the authorized third party is the provider of the Neutral Video Communication Service Platform, except that a VRS CA service provider may not contract with or otherwise authorize the provider of the Neutral Video Communication Service Platform to perform billing on its behalf.

\* \* \* \* \*

(10) [Reserved]

(11) [Reserved]

(12) Discrimination and preferences. A VRS provider shall not (1) directly or indirectly, by any means or device, engage in any unjust or unreasonable discrimination related to practices, facilities, or services for or in connection with like relay service, (2) engage in or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or (3) subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(13) Unauthorized and unnecessary use of VRS. A VRS provider shall not engage in any practice that causes or encourages, or that the provider knows or has reason to know will cause or encourage (1) false or unverified claims for TRS Fund compensation, (2) unauthorized use of VRS, (3) the making of VRS calls that would not otherwise be made, or (4) the use of VRS by persons who do not need the service in order to communicate in a functionally equivalent manner. A VRS provider shall not seek payment from the TRS Fund for any minutes of service it knows or has reason to know are resulting from such practices. Any VRS provider that becomes aware of such practices being or having been committed by any person shall as soon as practicable report such practices to the Commission or the TRS Fund administrator.

(d) Other standards—The applicable requirements of sections 64.605, 64.611, 64.615, 64.617, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109 and 64.5110 of this part are to be considered mandatory minimum standards.

4. Amend section 64.605 by revising paragraph (b)(4)(ii) to read as follows:

**§ 64.605 Emergency calling requirements.**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(4) \* \* \*

\* \* \* \* \*

(ii) If the VRS or IP Relay is capable of being used from more than one location, provide their registered Internet-based TRS users one or more methods of updating their Registered Location, including at least one option that requires use only of the iTRS access technology necessary to access the VRS or IP Relay. Any method utilized must allow a registered Internet-based TRS user to update the Registered Location at will and in a timely manner.

5. Amend section 64.606 by adding paragraphs (a)(4), (g)(3) and (g)(4) to read as follows:

**§ 64.606 Internet-based TRS provider and TRS program certification.**

(a) \* \* \*

\* \* \* \* \*

(4) For the purposes of paragraphs (a)(2)(ii)(A)(4) and (a)(2)(ii)(A)(6) of this section, VRS CA Service Providers shall, in their description of the technology and equipment used to support their call center functions, describe:

(i) How they provide connectivity to the Neutral Video Communication Service Platform; and

(ii) How they internally route calls to CAs and then back to the Neutral Video Communication Service Platform. VRS CA service providers need not describe ACD platform functionality if it is not used for these purposes.

\* \* \* \* \*

(g) \* \* \*

\* \* \* \* \*

(3) Each VRS provider shall include within its annual report a compliance plan describing the provider’s policies, procedures, and practices for complying with the requirements of section 64.604(c)(13) of this subpart. Such compliance plan shall include, at a minimum: (i) identification of any officer(s) or

managerial employee(s) responsible for ensuring compliance with section 64.604(c)(13) of this subpart; (ii) a description of any compliance training provided to the provider's officers, employees, and contractors; (iii) identification of any telephone numbers, website addresses, or other mechanisms available to employees for reporting abuses; (iv) a description of any internal audit processes used to ensure the accuracy and completeness of minutes submitted to the TRS Fund administrator; and (v) a description of all policies and practices that the provider is following to prevent waste, fraud, and abuse of the TRS Fund. A provider that fails to file a compliance plan shall not be entitled to compensation for the provision of VRS during the period of noncompliance.

(4) If, at any time, the Commission determines that a VRS provider's compliance plan currently on file is inadequate to prevent waste, fraud, and abuse of the TRS Fund, the Commission shall so notify the provider, shall explain the reasons the plan is inadequate, and shall direct the provider to correct the identified defects and submit an amended compliance plan reflecting such correction within a specified time period not to exceed 60 days. A provider that fails to comply with such directive shall not be entitled to compensation for the provision of VRS during the period of noncompliance. A submitted compliance plan shall not be *prima facie* evidence of the plan's adequacy; nor shall it be evidence that the provider has fulfilled its obligations under section 64.604(c)(13) of this subpart.

\* \* \* \* \*

6. Amend section 64.611 by adding paragraphs (a)(3) and (a)(4), revising paragraph (f), and adding paragraph (h) to read as follows:

**§ 64.611 Internet-based TRS registration.**

(a) \* \* \*

\* \* \* \* \*

(3) Certification of eligibility of VRS users. (i) A VRS provider seeking compensation from the TRS Fund for providing VRS to a particular user registered with that provider must first obtain a written certification from the user, attesting that the user is eligible to use VRS.

(ii) The certification required by paragraph (a)(3)(i) of this section must include the user's attestation that:

(A) The user has a hearing or speech disability; and

(B) The user understands that the cost of VRS calls is paid for by contributions from other telecommunications users to the TRS Fund.

(iii) The certification required by paragraph (a)(3)(i) of this section must be made on a form separate from any other agreement or form, and must include a separate user signature specific to the certification. For the purposes of this rule, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature. For the purposes of this rule, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

(iv) Each VRS provider shall maintain the confidentiality of any registration and certification information obtained by the provider, and may not disclose such registration and certification information or the content of such registration and certification information except as required by law or regulation.

(v) VRS providers must, for existing registered Internet-based TRS users, submit the certification required by paragraph (a)(3)(i) of this section to the TRS User Registration Database within 60 days of notice from the Managing Director that the TRS User Registration Database is ready to accept such information.

(vi) When registering a user that is transferring service from another VRS provider, VRS providers shall obtain and submit a properly executed certification if a query of the TRS User Registration Database shows a properly executed certification has not been filed.

(vii) VRS providers shall require their CAs to terminate any call which does not involve an individual eligible to use VRS due to a hearing or speech disability or, pursuant to the provider's policies, the call does not appear to be a legitimate VRS call, and VRS providers may not seek compensation for such calls from the TRS Fund.

(4) TRS User Registration Database information. Each VRS provider shall collect and transmit to the TRS User Registration Database, in a format prescribed by the administrator of the TRS User Registration Database, the following information for each of its new and existing registered Internet-based TRS users: full name; full residential address; ten-digit telephone number assigned in the TRS numbering directory; last four digits of the social security number or Tribal Identification number, if the registered Internet-based TRS user is a member of a Tribal nation and does not have a social security number; date of birth; Registered Location; VRS provider name and dates of service initiation and termination; a digital copy of the user's self-certification of eligibility for VRS and the date obtained by the provider; the date on which the user's identification was verified; and (for existing users only) the date on which the registered Internet-based TRS user last placed a point-to-point or relay call.

(i) Each VRS provider must obtain, from each new and existing registered Internet-based TRS user, consent to transmit the registered Internet-based TRS user's information to the TRS User Registration Database. Prior to obtaining consent, the VRS provider must describe to the registered Internet-based TRS user, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the TRS User Registration Database to ensure proper administration of the TRS program, and that failure to provide consent will result in the registered Internet-based TRS user being denied service. VRS providers must obtain and keep a record of affirmative acknowledgment by every registered Internet-based TRS user of such consent.

(ii) VRS providers must, for existing registered Internet-based TRS users, submit the information in paragraph (a)(3) of this section to the TRS User Registration Database within 60 days of notice from the Commission that the TRS User Registration Database is ready to accept such information. Calls from or to existing registered Internet-based TRS users that have not had their information populated in the TRS User Registration Database within 60 days of notice from the Commission that the TRS User Registration Database is ready to accept such information shall not be compensable.

(iii) VRS providers must submit the information in paragraph (a)(4) of this section upon initiation of service for users registered after 60 days of notice from the Commission that the TRS User Registration Database is ready to accept such information.

\* \* \* \* \*

(f) iTRS access technology. (1) Every VRS or IP Relay provider must ensure that all iTRS access technology they have issued, leased, or otherwise provided to VRS or IP Relay users delivers routing information or other information only to the user's default provider, except as is necessary to complete or receive "dial around" calls on a case-by-case basis.

(2) All iTRS access technology issued, leased, or otherwise provided to VRS or IP Relay users by Internet-based TRS providers must be capable of facilitating the requirements of this section.

\* \* \* \* \*

(h) A VRS CA service provider shall fulfill its obligations under paragraphs (a), (c), (d), and (e) of this section using the Neutral Video Communication Service Platform.

7. Add sections 64.615, 64.617, 64.619, 64.621, 64.623, 64.630, 64.631, 64.632, 64.633, 64.634, 64.635, and 64.636 to subpart F to read as follows:

**§ 64.615 TRS User Registration Database and administrator.**

(a) TRS User Registration Database. (1) VRS providers shall validate the eligibility of the party on the video side of each call by querying the TRS User Registration Database on a per-call basis. Emergency 911 calls are excepted from this requirement.

(i) Validation shall occur during the call setup process, prior to the placement of the call.

(ii) If the eligibility of at least one party to the call is not validated using the TRS User Registration Database, the call shall not be completed, and the VRS provider shall either terminate the call or, if appropriate, offer to register the user if they are able to demonstrate eligibility.

(iii) Calls that VRS providers are prohibited from completing because the user's eligibility cannot be validated shall not be included in speed of answer calculations and shall not be eligible for compensation from the TRS Fund.

(2) The administrator of the TRS User Registration Database shall assign a unique identifier to each user in the TRS User Registration Database.

(3) Data integrity. (i) Each VRS provider shall request that the administrator of the TRS User Registration Database remove from the TRS User Registration Database user information for any registered user:

(A) Who informs its default provider that it no longer wants use of a ten-digit number for TRS services; or

(B) For whom the provider obtains information that the user is not eligible to use the service.

(ii) The administrator of the TRS User Registration Database shall remove the data of:

(A) Any user that has neither placed nor received a VRS or point to point call in a one year period; and

(B) Any user for which a VRS provider makes a request under paragraph (a)(3)(i) of this section.

(4) VRS providers may query the TRS User Registration Database only for the purposes provided in this subpart, and to determine whether information with respect to its registered users already in the database is correct and complete.

(5) User verification. (i) The TRS User Registration Database shall have the capability of performing an identification verification check when a VRS provider or other party submits a query to the database about an existing or potential user.

(ii) VRS providers shall not register individuals that do not pass the identification verification check conducted through the TRS User Registration Database.

(iii) VRS providers shall not seek compensation for calls placed by individuals that do not pass the identification verification check conducted through the TRS User Registration Database.

(b) Administration. (1) Terms of administration. The administrator of the TRS User Registration Database shall administer the TRS User Registration Database pursuant to the terms of its contract.

(2) Compensation. The TRS Fund, as defined by section 64.604(a)(5)(iii) of this subpart, may be used to compensate the administrator of the TRS User Registration Database for the reasonable costs of administration pursuant to the terms of its contract.



**§ 64.617 Neutral Video Communication Service Platform.**

(a) VRS CA service providers certified by the Commission are required to utilize the Neutral Video Communication Service Platform to process VRS calls. Each VRS CA service provider shall be responsible for providing sign language interpretation services and for ensuring that the Neutral Video Communication Service Platform has the information it needs to provide video communication service on the VRS CA service provider's behalf.

(b) Administration. (1) Terms of administration. The provider of the Neutral Video Communication Service Platform shall administer the Neutral Video Communication Service Platform pursuant to the terms of its contract.

(2) Compensation. The TRS Fund, as defined by section CFR 64.604(a)(5)(iii) of this subpart, may be used to compensate the provider of the Neutral Video Communication Service Platform for the reasonable costs of administration pursuant to the terms of its contract.

**§ 64.619 VRS Access Technology Reference Platform and administrator.**

(a) VRS Access Technology Reference Platform. (1) The VRS Access Technology Reference Platform shall be a software product that performs consistently with the rules in this subpart, including any standards adopted in section 64.621 of this subpart.

(2) The VRS Access Technology Reference Platform shall be available for use by the public and by developers.

(b) Administration. (1) Terms of administration. The administrator of the VRS Access Technology Reference Platform shall administer the VRS Access Technology Reference Platform pursuant to the terms of its contract.

(2) Compensation. The TRS Fund, as defined by section 64.604(a)(5)(iii) of this subpart, may be used to compensate the administrator of the VRS Access Technology Reference Platform for the reasonable costs of administration pursuant to the terms of its contract.

**§ 64.621 Interoperability and portability.**

(a) General obligations of VRS providers. (1) All VRS users must be able to place a VRS call through any of the VRS providers' services, and all VRS providers must be able to receive calls from, and make calls to, any VRS user.

(2) A VRS provider may not take steps that restrict a user's unfettered access to another provider's service, such as providing degraded service quality to VRS users using VRS equipment or service with another provider's service.

(3) All VRS providers must ensure that their VRS access technologies and their video communication service platforms are interoperable with the VRS Access Technology Reference Platform, including for point-to-point calls. No VRS provider shall be compensated for minutes of use involving their VRS access technologies or video communication service platforms that are not interoperable with the VRS Access Technology Reference Platform.

(4) All VRS providers must ensure that their VRS access technologies and their video communication service platforms are interoperable with the Neutral Video Communication Service Platform, including for point-to-point calls. No VRS provider shall be compensated for minutes of use involving their VRS access technologies or video communication service platforms that are not interoperable with the Neutral Video Communication Service Platform.

(b) Standards. [Reserved]

**§ 64.623 Administrator requirements.**

(a) For the purposes of this section, the term “Administrator” shall refer to each of the TRS Numbering administrator, the administrator of the TRS User Registration Database, the administrator of the VRS Access Technology Reference Platform, and the provider of the Neutral Video Communication Service Platform. A single entity may serve in one or more of these capacities.

(b) Neutrality. (1) The Administrator shall be a non-governmental entity that is impartial and not an affiliate of any Internet-based TRS provider.

(2) Neither the Administrator nor any affiliate thereof shall issue a majority of its debt to, nor derive a majority of its revenues from, any Internet-based TRS provider.

(3) Neither the TRS Numbering administrator nor any affiliate thereof shall be unduly influenced, as determined by the North American Numbering Council, by parties with a vested interest in the outcome of TRS-related numbering administration and activities.

(4) None of the administrator of the TRS User Registration Database, the administrator of the VRS Access Technology Reference Platform, or the provider of the Neutral Video Communication Service Platform, nor any affiliates thereof, shall be unduly influenced, as determined by the Commission, by parties with a vested interest in the outcome of TRS-related activities.

(5) Any subcontractor that performs any function of any Administrator shall also meet the neutrality criteria applicable to such Administrator.

(c) Terms of administration. The Administrator shall administer pursuant to the terms of its contract.

(d) Compensation. The TRS Fund, as defined by section 64.604(a)(5)(iii) of this subpart, may be used to compensate the Administrator for the reasonable costs of administration pursuant to the terms of its contract.

**§ 64.630 Applicability of change of default TRS provider rules.**

Sections 64.630 through 64.636 of this part governing changes in default TRS providers shall apply to any provider of IP Relay or VRS eligible to receive payments from the TRS Fund.

**§ 64.631 Verification of orders for change of default TRS providers.**

(a) No iTRS provider, either directly or through its numbering partner, shall initiate or implement the process to change an iTRS user’s selection of a default provider prior to obtaining:

(1) Authorization from the iTRS user, and

(2) Verification of that authorization in accordance with the procedures prescribed in this section. The new default provider shall maintain and preserve without alteration or modification all records of verification of the iTRS user’s authorization for a minimum period of five years after obtaining such verification and shall make such records available to the Commission upon request. In any case where the iTRS provider is unable, unwilling or otherwise fails to make such records available to the Commission upon request, it shall be presumed that the iTRS provider has failed to comply with its verification obligations under the rules.

(b) Where an iTRS provider is offering more than one type of TRS, that provider must obtain separate authorization from the iTRS user for each service, although the authorizations may be obtained within the same transaction. Each authorization must be verified separately from any other authorizations obtained in the same transaction. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) A new iTRS provider shall not, either directly or through its numbering partner, initiate or implement the process to change a default provider unless and until the order has been verified in accordance with one of the following procedures:

(1) The iTRS provider has obtained the iTRS user's written or electronically signed authorization in a form that meets the requirements of section 64.632 of this part; or

(2) An independent third party meeting the qualifications in this subsection has obtained, in accordance with the procedures set forth in paragraphs (c)(2)(i) through (c)(2)(iv) of this section, the iTRS user's authorization to implement the default provider change order that confirms and includes appropriate verification of registration data with the TRS User Registration Database as defined in section 64.601(a) of this part. The independent third party must not be owned, managed, controlled, or directed by the iTRS provider or the iTRS provider's marketing agent; must not have any financial incentive to confirm default provider change orders for the iTRS provider or the iTRS provider's marketing agent; and must operate in a location physically separate from the iTRS provider or the iTRS provider's marketing agent.

(i) Methods of third party verification. Third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied. It shall be a per se violation of these rules if at any time the iTRS provider, an iTRS provider's marketing representative, or any other person misleads the iTRS user with respect to the authorization that the iTRS user is giving, the purpose of that authorization, the purpose of the verification, the verification process, or the identity of the person who is placing the call as well as on whose behalf the call is being placed, if applicable.

(ii) Provider initiation of third party verification. An iTRS provider or an iTRS provider's marketing representative initiating a three-way conference call must drop off the call once the three-way connection has been established.

(iii) Requirements for content and format of third party verification. Any description of the default provider change transaction by a third party verifier must not be misleading. At the start of the third party verification process, the third party verifier shall identify the new default provider to the iTRS user and shall confirm that the iTRS user understands that the iTRS user is changing default providers and will no longer receive service from the iTRS user's current iTRS provider. In addition, all third party verification methods shall elicit, at a minimum: The date of the verification; the identity of the iTRS user; confirmation that the person on the call is the iTRS user; confirmation that the iTRS user wants to make the default provider change; confirmation that the iTRS user understands that a default provider change, not an upgrade to existing service, or any other misleading description of the transaction, is being authorized; confirmation that the iTRS user understands what the change in default provider means, including that the iTRS user may need to return any video equipment belonging to the original default provider; the name of the new default provider affected by the change; the telephone number of record to be transferred to the new default provider; and the type of TRS used with the telephone number being transferred. If the iTRS user has additional questions for the iTRS provider's marketing representative during the verification process, the verifier shall instruct the iTRS user that they are terminating the verification process, that the iTRS user may contact the marketing representative with additional questions, and that the iTRS user's default provider will not be changed. The marketing representative may again initiate the verification process following the procedures set out in this section after the iTRS user contacts the marketing representative with any additional questions. Third party verifiers may not market the iTRS provider's services by providing additional information.

(iv) Other requirements for third party verification. All third party verifications shall be conducted in the same language and format that were used in the underlying marketing transaction and shall be recorded in their entirety. In the case of VRS, this means that if the marketing process was conducted in American Sign Language (ASL), then the third party verification shall be conducted in ASL. In the event that the underlying marketing transaction was conducted via text over IP Relay, such text format shall be used for

the third party verification. The third party verifier shall inform both the iTRS user and, where applicable, the communications assistant relaying the call, that the call is being recorded. The third party verifier shall provide the new default provider an audio, video, or IP Relay transcript of the verification of the iTRS user authorization. New default providers shall maintain and preserve audio and video records of verification of iTRS user authorization in accordance with the procedures set forth in paragraph (a)(2) of this section.

(d) A new default provider shall implement an iTRS user's default provider change order within 60 days of obtaining either (i) a written or electronically signed letter of agency in accordance with section 64.632 of this part or (ii) third party verification of the iTRS user's default provider change order in accordance with paragraph (c)(2) of this section. If not implemented within 60 days as required herein, such default provider change order shall be deemed void.

(e) At any time during the process of changing an iTRS user's default provider, and until such process is completed, which is when the new default provider assumes the role of default provider, the original default provider shall not (i) reduce the level or quality of iTRS service provided to such iTRS user, or (ii) reduce the functionality of any VRS access technology provided by the iTRS provider to such iTRS user.

(f) An iTRS provider that is certified pursuant to section 64.606(a)(2) of this part may acquire, through a sale or transfer, either part or all of another iTRS provider's iTRS user base without obtaining each iTRS user's authorization and verification in accordance with paragraph (c) of this section, provided that the acquiring iTRS provider complies with the following streamlined procedures. An iTRS provider shall not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64 of the Commission rules.

(1) Not later than 30 days before the transfer of the affected iTRS users from the selling or transferring iTRS provider to the acquiring iTRS provider, the acquiring iTRS provider shall provide notice to each affected iTRS user of the information specified herein. The acquiring iTRS provider is required to fulfill the obligations set forth in the advance iTRS user notice. In the case of VRS, the notice shall be provided as a pre-recorded video message in American Sign Language sent to all affected iTRS users. In the case of IP Relay, the notice shall be provided as a pre-recorded text message sent to all affected iTRS users. The advance iTRS user notice shall be provided in a manner consistent with 47 U.S.C. §§ 255, 617, 619 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, sections 6.3, 6.5, 14.20, 14.21 of this chapter. The following information must be included in the advance iTRS user notice:

- (i) The date on which the acquiring iTRS provider will become the iTRS user's new default provider;
- (ii) The iTRS user's right to select a different default provider for the iTRS at issue, if an alternative iTRS provider is available;
- (iii) Whether the acquiring iTRS provider will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring iTRS provider, and
- (iv) The toll-free customer service telephone number of the acquiring iTRS provider.

(2) All iTRS users receiving the notice will be transferred to the acquiring iTRS provider, unless they have selected a different default provider before the transfer date.

**§ 64.632 Letter of authorization form and content.**

(a) An iTRS provider may use a written or electronically signed letter of authorization to obtain authorization of an iTRS user's request to change his or her default provider. A letter of authorization that does not conform with this section is invalid for purposes of this subpart.

- (b) The letter of authorization shall be a separate document or located on a separate screen or webpage. The letter of authorization shall contain the following title “**Letter of Authorization to Change my Default Provider**” at the top of the page, screen, or webpage, as applicable, in clear and legible type.
- (c) The letter of authorization shall contain only the authorizing language described in paragraph (d) of this section and be strictly limited to authorizing the new default provider to implement a default provider change order. The letter of authorization shall be signed and dated by the iTRS user requesting the default provider change.
- (d) At a minimum, the letter of authorization must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:
- (1) The iTRS user’s registered name and address and each telephone number to be covered by the default provider change order;
  - (2) The decision to change the default provider from the original default provider to the new default provider;
  - (3) That the iTRS user designates [insert the name of the new default provider] to act as the iTRS user’s agent and authorizing the new default provider to implement the default provider change; and
  - (4) That the iTRS user understands that only one iTRS provider may be designated as the TRS user’s default provider for any one telephone number.
- (e) If any portion of a letter of authorization is translated into another language then all portions of the letter of authorization must be translated into that language. Every letter of authorization must be translated into the same language as any promotional materials, descriptions or instructions provided with the letter of authorization.
- (f) Letters of authorization submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

**§ 64.633 Procedures for resolution of unauthorized changes in default provider.**

- (a) Notification of alleged unauthorized provider change. Original default providers who are informed of an unauthorized default provider change by an iTRS user shall immediately notify the allegedly unauthorized provider and the Commission’s Consumer and Governmental Affairs Bureau of the incident.
- (b) Referral of complaint. Any iTRS provider that is informed by an iTRS user or original default provider of an unauthorized default provider change shall (i) notify the Commission’s Consumer and Governmental Affairs Bureau and (ii) shall inform that iTRS user of the iTRS user’s right to file a complaint with the Commission’s Consumer and Governmental Affairs Bureau. iTRS providers shall also inform the iTRS user that the iTRS user may contact and file a complaint with the alleged unauthorized default provider. An original default provider shall have the right to file a complaint with the Commission in the event that one of its respective iTRS users is the subject of an alleged unauthorized default provider change.
- (c) Notification of receipt of complaint. Upon receipt of an unauthorized default provider change complaint or notification filed pursuant to this section, the Commission will notify the allegedly unauthorized provider and the Fund administrator of the complaint or notification and order that the unauthorized provider identify to the Fund administrator all minutes attributable to the iTRS user after the alleged unauthorized change of default provider is alleged to have occurred. The Fund administrator shall withhold reimbursement for such minutes pending Commission determination of whether an unauthorized change, as defined by section 64.601(a) of this part, has occurred, if it has not already done so.

(d) Proof of verification. Not more than 30 days after notification of the complaint or other notification, the alleged unauthorized default provider shall provide to the Commission's Consumer and Governmental Affairs Bureau a copy of any valid proof of verification of the default provider change. This proof of verification must clearly demonstrate a valid authorized default provider change, as that term is defined in sections 64.631 through 64.632 of this part. The Commission will determine whether an unauthorized change, as defined by section 64.601(a) of this part, has occurred using such proof and any evidence supplied by the iTRS user or other iTRS providers. Failure by the allegedly unauthorized provider to respond or provide proof of verification will be presumed to be sufficient evidence of a violation.

**§ 64.634 Procedures where the Fund has not yet reimbursed the provider.**

(a) This section shall only apply after an iTRS user or iTRS provider has complained to or notified the Commission that an allegedly unauthorized change, as defined by section 64.601(a) of this part, has occurred, and the TRS Fund (Fund), as defined in section 64.604(c)(5)(iii) of this part, has not reimbursed the allegedly unauthorized default provider for service attributable to the iTRS user after the allegedly unauthorized change occurred.

(b) An allegedly unauthorized provider shall identify to the Fund administrator all minutes submitted by the allegedly unauthorized provider to the Fund for reimbursement that are attributable to the iTRS user after the allegedly unauthorized change of default provider, as defined by section 64.601(a) of this part, is alleged to have occurred.

(c) If the Commission determines that an unauthorized change, as defined by section 64.601(a) of this part, has occurred, the Commission shall direct the Fund administrator to not reimburse for any minutes attributable to the iTRS user after the unauthorized change occurred, and neither the authorized nor the unauthorized default provider may seek reimbursement from the fund for those charges. The remedies provided in this section are in addition to any other remedies available by law.

(d) If the Commission determines that the default provider change was authorized, the default provider may seek reimbursement from the Fund for minutes of service provided to the iTRS user.

**§ 64.635 Procedures where the Fund has already reimbursed the provider.**

(a) The procedures in this section shall only apply after an iTRS user or iTRS provider has complained to or notified the Commission that an unauthorized change, as defined by section 64.601(a) of this part, has occurred, and the Fund has reimbursed the allegedly unauthorized default provider for minutes of service provided to the iTRS user.

(b) If the Commission determines that an unauthorized change, as defined by section 64.601(a) of this part, has occurred, it shall direct the unauthorized default provider to remit to the Fund an amount equal to 100% of all payments the unauthorized default provider received from the Fund for minutes attributable to the iTRS user after the unauthorized change occurred. The remedies provided in this section are in addition to any other remedies available by law.

**§ 64.636 Prohibition of default provider freezes.**

(a) A default provider freeze prevents a change in an iTRS user's default provider selection unless the iTRS user gives the provider from whom the freeze was requested his or her express consent.

(b) Default provider freezes shall be prohibited.

8. Add subpart EE, sections 64.5100 through 64.5111, to read as follows:

Part 64, Subpart EE – TRS Customer Proprietary Network Information

**§ 64.5101 Basis and purpose.**

- (a) Basis. The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.
- (b) Purpose. The purpose of the rules in this subpart is to implement customer proprietary network information protections for users of telecommunications relay services pursuant to sections 4, 222, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 4, 222, and 225.

**§ 64.5103 Definitions.**

- (a) Address of record. An “address of record,” whether postal or electronic, is an address that the TRS provider has associated with the customer for at least 30 days.
- (b) Affiliate. The term “affiliate” shall have the same meaning given such term in section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.
- (c) Call data information. The term “call data information” means any information that pertains to the handling of specific TRS calls, including the call record identification sequence, the communications assistant identification number, the session start and end times, the conversation start and end times, incoming and outbound telephone numbers, incoming and outbound internet protocol (IP) addresses, total conversation minutes, total session minutes, and the electronic serial number of the consumer device.
- (d) Communications assistant (CA). The term “communications assistant” or “CA” shall have the same meaning given to the term in section 64.601(a) of this part.
- (e) Customer. The term “customer” means a person (i) to whom the TRS provider provides TRS or point-to-point service, or (ii) who is registered with the TRS provider as a default provider.
- (f) Customer proprietary network information (CPNI). The term “customer proprietary network information” or “CPNI” means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service used by any customer of a TRS provider; and information regarding a customer’s use of TRS contained in the documentation submitted by a TRS provider to the TRS Fund administrator in connection with a request for compensation for the provision of TRS.
- (g) Customer premises equipment (CPE). The term “customer premises equipment” or “CPE” shall have the same meaning given to such term in section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.
- (h) Default provider. The term “default provider” shall have the same meaning given such term in section 64.601(a) of this part.
- (i) Internet-based TRS (iTRS). The term “Internet-based TRS” or “iTRS” shall have the same meaning given to the term in section 64.601(a) of this part.
- (j) iTRS access technology. The term “iTRS access technology” shall have the same meaning given to the term in section 64.601(a) of this part.
- (k) Opt-in approval. The term “opt-in approval” shall have the same meaning given such term in section 64.5107(b)(1) of this subpart.
- (l) Opt-out approval. The term “opt-out approval” shall have the same meaning given such term in section 64.5107(b)(2) of this subpart.
- (m) Point-to-point service. The term “point-to-point service” means a service that enables a VRS customer to place and receive non-relay calls without the assistance of a CA over the VRS provider facilities using VRS access technology. Such calls are made by means of ten-digit NANP numbers assigned to customers by VRS providers. The term “point-to-point call” shall refer to a call placed via a point-to-point service.

(n) Readily available biographical information. The term “readily available biographical information” means information drawn from the customer’s life history and includes such things as the customer’s social security number, or the last four digits of that number; mother’s maiden name; home address; or date of birth.

(o) Sign language. The term “sign language” shall have the same meaning given to the term in section 64.601(a) of this part.

(p) Telecommunications relay services (TRS). The term “telecommunications relay services” or “TRS” shall have the same meaning given to such term in section 64.601(a) of this part.

(q) Telephone number of record. The term “telephone number of record” means the telephone number associated with the provision of TRS, which may or may not be the telephone number supplied as part of a customer’s “contact information.”

(r) TRS Fund. The term “TRS Fund” shall have the same meaning given to the term in section 64.604(c)(5)(iii) of this part.

(s) TRS provider. The term “TRS provider” means an entity that provides TRS and shall include an entity that provides point-to-point service.

(t) TRS-related services. The term “TRS-related services” means, in the case of traditional TRS, services related to the provision or maintenance of customer premises equipment, and in the case of iTRS, services related to the provision or maintenance of iTRS access technology, including features and functions typically provided by TRS providers in association with iTRS access technology.

(u) Valid photo ID. The term “valid photo ID” means a government-issued means of personal identification with a photograph such as a driver’s license, passport, or comparable ID that has not expired.

(v) Video relay service. The term “video relay service” or VRS shall have the same meaning given to the term in section 64.601(a) of this part.

(w) VRS access technology. The term “VRS access technology” shall have the same meaning given to the term in section 64.601(a) of this part.

**§ 64.5105 Use of customer proprietary network information without customer approval.**

(a) A TRS provider may use, disclose, or permit access to CPNI for the purpose of providing or lawfully marketing service offerings among the categories of service (*i.e.*, type of TRS) for which the TRS provider is currently the default provider for that customer, without customer approval.

(1) If a TRS provider provides different categories of TRS, and the TRS provider is currently the default provider for that customer for more than one category of TRS offered by the TRS provider, the TRS provider may share CPNI among the TRS provider’s affiliated entities that provide a TRS offering to the customer.

(2) If a TRS provider provides different categories of TRS, but the TRS provider is currently not the default provider for that customer for more than one offering by the TRS provider, the TRS provider shall not share CPNI with its affiliates, except as provided in section 64.5107(b) of this subpart.

(b) A TRS provider shall not use, disclose, or permit access to CPNI as described in this paragraph (b).

(1) A TRS provider shall not use, disclose, or permit access to CPNI to market to a customer TRS offerings that are within a category of TRS for which the TRS provider is not currently the default provider for that customer, unless that TRS provider has customer approval to do so.



(2) A TRS provider shall not identify or track CPNI of customers that call competing TRS providers and, notwithstanding any other provision of this subpart, a TRS provider shall not use, disclose or permit access to CPNI related to a customer call to a competing TRS provider.

(c) A TRS provider may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A TRS provider may use, disclose or permit access to CPNI derived from its provision of TRS without customer approval, for the provision of CPE or iTRS access technology, and call answering, voice or video mail or messaging, voice or video storage and retrieval services.

(2) A TRS provider may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(3) A TRS provider may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, call waiting, caller I.D., and call forwarding, only to those customers that are currently registered with that TRS provider as their default provider.

(4) A TRS provider shall use, disclose, or permit access to CPNI to the extent necessary to (i) accept and handle 911/E911 calls; (ii) access, either directly or via a third party, a commercially available database that will allow the TRS provider to determine an appropriate Public Safety Answering Point, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location; (iii) relay the 911/E911 call to that entity; and (iv) facilitate the dispatch and response of emergency service or law enforcement personnel to the caller's location, in the event that the 911/E911 call is disconnected or the caller becomes incapacitated.

(5) A TRS provider shall use, disclose, or permit access to CPNI upon request by the administrator of the TRS Fund, as that term is defined in section 64.604(c)(5)(iii) of this part, or by the Commission for the purpose of administration and oversight of the TRS Fund, including the investigation and prevention of fraud, abuse, and misuse of TRS and seeking repayment to the TRS Fund for non-compensable minutes.

(6) A TRS provider may use, disclose, or permit access to CPNI to protect the rights or property of the TRS provider, or to protect users of those services, other TRS providers, and the TRS Fund from fraudulent, abusive, or unlawful use of such services.

**§ 64.5107 Approval required for use of customer proprietary network information.**

(a) A TRS provider may obtain approval through written, oral, electronic, or sign language methods.

(1) A TRS provider relying on oral or sign language approval shall bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a TRS provider must remain in effect until the customer revokes or limits such approval or disapproval. A TRS provider shall accept any such customer revocation, whether in written, oral, electronic, or sign language methods.

(3) A TRS provider must maintain records of approval, whether oral, written, electronic, or sign language, during the time period that the approval or disapproval is in effect and for at least one year thereafter.

(b) Use of opt-in and opt-out approval processes. (1) Opt-in approval requires that the TRS provider obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the TRS provider's request consistent with the requirements set forth in this subpart.

(2) With opt-out approval, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in section 64.5108(d)(1) of this subpart after the TRS provider has provided to the customer appropriate notification of the TRS provider's request for consent consistent with the rules in this subpart.

(3) A TRS provider may only use, disclose, or permit access to the customer's individually identifiable CPNI with the customer's opt-in approval, except as follows:

(i) Where a TRS provider is permitted to use, disclose, or permit access to CPNI without customer approval under section 64.5105 of this subpart.

(ii) Where a TRS provider is permitted to use, disclose, or permit access to CPNI by making use of customer opt-in or opt-out approval under paragraph (4) of this section.

(4) A TRS provider may make use of customer opt-in or opt-out approval to take the following actions with respect to CPNI:

(i) Use its customer's individually identifiable CPNI for the purpose of lawfully marketing TRS-related services to that customer.

(ii) Disclose its customer's individually identifiable CPNI to its agents and its affiliates that provide TRS-related services for the purpose of lawfully marketing TRS-related services to that customer. A TRS provider may also permit such persons or entities to obtain access to such CPNI for such purposes.

**§ 64.5108 Notice required for use of customer proprietary network information.**

(a) Notification, generally. (1) Prior to any solicitation for customer approval to use, disclose, or permit access to CPNI, a TRS provider shall provide notification to the customer of the customer's right to deny or restrict use of, disclosure of, and access to that customer's CPNI.

(2) A TRS provider shall maintain records of notification, whether oral, written, electronic, or sign language, during the time period that the approval is in effect and for at least one year thereafter.

(b) A TRS provider shall provide individual notice to customers when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) Content of notice. Customer notification shall provide sufficient information in clear and unambiguous language to enable the customer to make an informed decision as to whether to permit a TRS provider to use, disclose, or permit access to, the customer's CPNI.

(1) The notification shall state that the customer has a right to deny any TRS provider the right to use, disclose or permit access to the customer's CPNI, and the TRS provider has a duty, under federal law, to honor the customer's right and to protect the confidentiality of CPNI.

(2) The notification shall specify the types of information that constitute CPNI and the specific entities that will use, receive or have access to the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw the customer's consent to use, disclose, or permit access to access to CPNI at any time.

(3) The notification shall advise the customer of the precise steps the customer must take in order to grant or deny use, disclosure, or access to CPNI, and must clearly state that customer denial of approval will not affect the TRS provider's provision of any services to the customer. However, TRS providers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) TRS providers shall provide the notification in a manner that is accessible to the customer, comprehensible, and not misleading.

- (5) If the TRS provider provides written notification to the customer, the notice shall be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.
- (6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.
- (7) A TRS provider may state in the notification that the customer's approval to use CPNI may enhance the TRS provider's ability to offer products and services tailored to the customer's needs. A TRS provider also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.
- (8) The notification shall state that any approval or denial of approval for the use of CPNI outside of the service for which the TRS provider is the default provider for the customer is valid until the customer affirmatively revokes or limits such approval or denial.
- (9) A TRS provider's solicitation for approval to use, disclose, or have access to the customer's CPNI must be proximate to the notification of a customer's CPNI rights to non-disclosure.
- (d) Notice requirements specific to opt-out. A TRS provider shall provide notification to obtain opt-out approval through electronic or written methods, but not by oral or sign language communication (except as provided in paragraph (f) of this section). The contents of any such notification shall comply with the requirements of paragraph (c) of this section.
- (1) TRS providers shall wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A TRS provider may, in its discretion, provide for a longer period. TRS providers shall notify customers as to the applicable waiting period for a response before approval is assumed.
- (i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and
- (ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.
- (2) TRS providers using the opt-out mechanism shall provide notices to their customers every two years.
- (3) TRS providers that use e-mail to provide opt-out notices shall comply with the following requirements in addition to the requirements generally applicable to notification:
- (i) TRS providers shall obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;
- (ii) TRS providers shall either (a) allow customers to reply directly to the e-mail containing the CPNI notice in order to opt-out; or (b) include within the e-mail containing the CPNI notice a conspicuous link to a web page that provides to the customer a readily usable opt-out mechanism;
- (iii) Opt-out e-mail notices that are returned to the TRS provider as undeliverable shall be sent to the customer in another form before the TRS provider may consider the customer to have received notice;
- (iv) TRS providers that use e-mail to send CPNI notices shall ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and
- (v) TRS providers shall make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. TRS providers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) Notice requirements specific to opt-in. A TRS provider may provide notification to obtain opt-in approval through oral, sign language, written, or electronic methods. The contents of any such notification shall comply with the requirements of paragraph (c) of this section.

(f) Notice requirements specific to one-time use of CPNI. (1) TRS providers may use oral, text, or sign language notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone, TRS, or point-to-point contacts for the duration of the call, regardless of whether TRS providers use opt-out or opt-in approval based on the nature of the contact.

(2) The contents of any such notification shall comply with the requirements of paragraph (c) of this section, except that TRS providers may omit any of the following notice provisions if not relevant to the limited use for which the TRS provider seeks CPNI:

(i) TRS providers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) TRS providers need not advise customers that the TRS provider may share CPNI with the TRS provider's affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) TRS providers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as the TRS provider explains to customers that the scope of the approval the TRS provider seeks is limited to one-time use; and

(iv) TRS providers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the TRS provider clearly communicates that the customer can deny access to his or her CPNI for the call.

**§ 64.5109 Safeguards required for use of customer proprietary network information.**

(a) TRS providers shall implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI. Except as provided for in sections 64.5105 and 64.5108(f) of this subpart, TRS providers shall provide access to and shall require all personnel, including any agents, contractors, and subcontractors, who have contact with customers to verify the status of a customer's CPNI approval before using, disclosing, or permitting access to the customer's CPNI .

(b) TRS providers shall train their personnel, including any agents, contractors, and subcontractors, as to when they are and are not authorized to use CPNI, including procedures for verification of the status of a customer's CPNI approval. TRS providers shall have an express disciplinary process in place, including in the case of agents, contractors, and subcontractors, a right to cancel the applicable contract(s) or otherwise take disciplinary action.

(c) TRS providers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All TRS providers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record shall include a description of each campaign, the specific CPNI that was used in the campaign, including the customer's name, and what products and services were offered as a part of the campaign. TRS providers shall retain the record for a minimum of three years.

(d) TRS providers shall establish a supervisory review process regarding TRS provider compliance with the rules in this subpart for outbound marketing situations and maintain records of TRS provider compliance for a minimum period of three years. Sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(e) A TRS provider shall have an officer, as an agent of the TRS provider, sign and file with the Commission a compliance certification on an annual basis. The officer shall state in the certification that

he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The TRS provider must provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the TRS provider must include an explanation of any actions taken against data brokers, a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI, and a report detailing all instances where the TRS provider, or its agents, contractors, or subcontractors, used, disclosed, or permitted access to CPNI without complying with the procedures specified in this subpart. In the case of iTRS providers, this filing shall be included in the annual report filed with the Commission pursuant to section 64.606(g) of this part for data pertaining to the previous year. In the case of all other TRS providers, this filing shall be made annually with the Disability Rights Office of the Consumer and Governmental Affairs Bureau on or before March 1 in CG Docket No. 03-123 for data pertaining to the previous calendar year.

(f) TRS providers shall provide written notice within five business days to the Disability Rights Office of the Consumer and Governmental Affairs Bureau of the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the TRS provider's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified, if applicable, and whether the state commission(s) has taken any action, a copy of the notice provided to customers, and contact information.

(2) Such notice shall be submitted even if the TRS provider offers other methods by which consumers may opt-out.

**§ 64.5110 Safeguards on the disclosure of customer proprietary network information.**

(a) Safeguarding CPNI. TRS providers shall take all reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI. TRS providers shall authenticate a customer prior to disclosing CPNI based on a customer-initiated telephone contact, TRS call, point-to-point call, online account access, or an in-store visit.

(b) Telephone, TRS, and point-to-point access to CPNI. A TRS provider shall authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer telephonic, TRS, or point-to-point access to CPNI related to his or her TRS account. Alternatively, the customer may obtain telephonic, TRS, or point-to-point access to CPNI related to his or her TRS account through a password, as described in paragraph (e) of this section.

(c) Online access to CPNI. A TRS provider shall authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to his or her TRS account. Once authenticated, the customer may only obtain online access to CPNI related to his or her TRS account through a password, as described in paragraph (e) of this section.

(d) In-store access to CPNI. A TRS provider may disclose CPNI to a customer who, at a TRS provider's retail location, first presents to the TRS provider or its agent a valid photo ID matching the customer's account information.

(e) Establishment of a password and back-up authentication methods for lost or forgotten passwords. To establish a password, a TRS provider shall authenticate the customer without the use of readily available biographical information, or account information. TRS providers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or

account information. If a customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer shall establish a new password as described in this paragraph.

(f) Notification of account changes. TRS providers shall notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed. This notification is not required when the customer initiates service, including the selection of a password at service initiation. This notification may be through a TRS provider-originated voicemail, text message, or video mail to the telephone number of record, by mail to the physical address of record, or by e-mail to the e-mail address of record, and shall not reveal the changed information or be sent to the new account information.

**§ 64.5111 Notification of customer proprietary network information security breaches.**

(a) A TRS provider shall notify law enforcement of a breach of its customers' CPNI as provided in this section. The TRS provider shall not notify its customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules, until it has completed the process of notifying law enforcement pursuant to paragraph (b) of this section. The TRS provider shall file a copy of the notification with the Disability Rights Office of the Consumer and Governmental Affairs Bureau at the same time as when the TRS provider notifies the customers.

(b) As soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach, the TRS provider shall electronically notify the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility at <http://www.fcc.gov/eb/cpni>.

(1) Notwithstanding any state law to the contrary, the TRS provider shall not notify customers or disclose the breach to the public until 7 full business days have passed after notification to the USSS and the FBI except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) If the TRS provider believes that there is an extraordinarily urgent need to notify any class of affected customers sooner than otherwise allowed under paragraph (b)(1) of this section, in order to avoid immediate and irreparable harm, it shall so indicate in its notification and may proceed to immediately notify its affected customers only after consultation with the relevant investigating agency. The TRS provider shall cooperate with the relevant investigating agency's request to minimize any adverse effects of such customer notification.

(3) If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the TRS provider not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the TRS provider when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the TRS provider, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by TRS providers.

(c) Customer notification. After a TRS provider has completed the process of notifying law enforcement pursuant to paragraph (b) of this section, and consistent with the waiting requirements specified in paragraph (b) of this section, the TRS provider shall notify its customers of a breach of those customers' CPNI.

(d) Recordkeeping. All TRS providers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the USSS and the FBI pursuant to paragraph (b) of this

section, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. TRS providers shall retain the record for a minimum of 2 years.

(e) Definition. As used in this section, a “breach” has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.

(f) This section does not supersede any statute, regulation, order, or interpretation in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

## APPENDIX B

## Final Regulatory Flexibility Analysis

## CG Docket No. 03-123

## CG Docket No. 10-51

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 2011 Further Notice of Proposed Rulemaking in this proceeding.<sup>2</sup> The Commission sought comment on the possible significant economic impact on small entities by the policies and rules proposed in the *2011 VRS Reform FNPRM*, including comment on the IRFA. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup> The Report and Order (or summaries thereof) will be published in the Federal Register.<sup>4</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Under Title IV of the Americans with Disabilities Act (ADA), the Commission must ensure that telecommunications relay services (TRS) “are available, to the extent possible and in the most efficient manner” to persons in the United States with hearing or speech disabilities.<sup>5</sup> Section 225 of the Communications Act of 1934, as amended (Act) defines TRS as a service provided in a manner that is “functionally equivalent” to voice telephone services<sup>6</sup> and directs the Commission to establish functional requirements, minimum standards, and other regulations to carry out the statutory mandate.<sup>7</sup> In addition, the Commission’s regulations must encourage the use of existing technology and must not discourage the

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<sup>1</sup> See 5 U.S.C. § 603. 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>2</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (2011) (*2011 VRS Reform FNPRM*).

<sup>3</sup> See 5 U.S.C. § 604. Some of the issues addressed in the Report and Order and addressed in this FRFA included issues that were also raised in earlier requests for comment in CG Docket No. 03-123. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11634-46, ¶¶ 119-146 (2008) (*First Internet-Based TRS Numbering Order*). In the *First Internet-Based TRS Numbering Order*, the Commission certified in the Initial Regulatory Flexibility Certification that because only four of the 14 providers that would be affected at that time by the Further Notice of Proposed Rulemaking contained therein were deemed to be small entities under the Small Business Administration’s small business size standard, that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. *First Internet-Based TRS Numbering Order*, 23 FCC Rcd at 11664-65, Appendix D.

<sup>4</sup> See 5 U.S.C. § 604.

<sup>5</sup> 47 U.S.C. § 225(b)(1).

<sup>6</sup> 47 U.S.C. § 225(a)(3) (defining TRS 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”).

<sup>7</sup> 47 U.S.C. § 225(d)(1).



development of new technology.<sup>8</sup> Finally, the Commission must ensure that TRS users “pay rates no greater than the rates paid for functionally equivalent voice communication services.”<sup>9</sup> To this end, the costs of providing TRS on a call are supported by shared funding mechanisms at the state and federal levels. The federal fund supporting TRS is the Telecommunications Relay Services Fund (TRS Fund or Fund),<sup>10</sup> which is managed by the TRS Fund administrator, subject to the oversight of the Commission. Video relay service (VRS) is a form of TRS that allows persons with hearing or speech disabilities to use sign language to communicate in near real time through a communications assistant (CA), via video over a broadband Internet connection.<sup>11</sup>

3. In the *2011 VRS Reform FNPRM* and subsequent *VRS Structure and Rates PN*,<sup>12</sup> the Commission sought comment on a series of proposals to improve the structure and efficiency of the VRS program, to ensure that it is available to all eligible users and offers functional equivalence—particularly given advances in commercially-available technology—and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates.

4. In the Report and Order, as an important first step in its reforms, the Commission has identified certain discrete areas in which it can explore a new approach of relying on the efforts of one or more non-VRS provider third parties, either in whole or in part, to carry out the Commission’s VRS policies. Specifically, the Commission:

- Directs the Commission’s Managing Director, in consultation with the Chief of the Office of Engineering and Technology (OET) and the Chief of the Consumer and Governmental Affairs Bureau (CGB), to determine how best to structure, fund, and enter into an arrangement with the National Science Foundation (NSF) (or cause the TRS Fund administrator to enter into such an arrangement) to enable research designed to further the Commission’s multiple goals of ensuring that TRS is functionally equivalent to voice telephone services and improving the efficiency and availability of TRS;
- Directs the Managing Director in consultation with the Chief of CGB to establish a two-to three year pilot Internet-based TRS (iTRS) National Outreach Program (iTRS-NOP) to select one or more independent iTRS Outreach Coordinators to conduct and coordinate IP Relay and VRS outreach nationwide under the Commission’s (or the TRS Fund administrator’s) supervision;
- Promotes the development and adoption of voluntary, consensus interoperability and portability standards, and facilitate compliance with those standards by directing the Managing Director to contract for the development and deployment of a VRS access technology reference platform;
- Directs the Managing Director to contract for a central TRS User Registration Database (TRS-URD) which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, to achieve more effective fraud and abuse prevention, and

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<sup>8</sup> 47 U.S.C. § 225(d)(2).

<sup>9</sup> 47 U.S.C. § 225(d)(1)(D).

<sup>10</sup> See 47 C.F.R. § 64.604(c)(5)(iii).

<sup>11</sup> See 47 C.F.R. § 64.601(a)(27) (2012).

<sup>12</sup> *Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, CG Docket Nos. 03-123, 10-51, 27 FCC Rcd 12959 (2012) (*VRS Structure and Rates PN*).

to allow the Commission to know, for the first time, the number of individuals that actually use VRS; and

- Directs the Managing Director to contract for a neutral party to build, operate, and maintain a neutral video communication service platform, which will allow eligible relay interpretation service providers to compete as VRS providers using the neutral video communication service platform without having to build their own video communication service platform.

5. Because the Commission is not fully departing from its historical regulatory approach for VRS, in the Report and Order, the Commission accompanies the actions describe above with targeted, incremental measures to improve the efficiency of the program, help protect against waste, fraud, and abuse, improve its administration of the program, and to generally ensure that VRS users' experiences reflect the policies and goals of section 225 of the Act. Specifically, the Commission:

- Adopts a general prohibition on practices resulting in waste, fraud, and abuse;
- Requires providers to adopt regulatory compliance plans subject to Commission review;
- More closely harmonizes the VRS speed of answer rules with those applicable to other forms of TRS by reducing the permissible wait time for all VRS calls to be answered within 30 seconds, 85 percent of the time, to be measured on a daily basis;
- Adopts rules to protect relay consumers against unauthorized default provider changes, also known as "slamming," by VRS and Internet Protocol (IP) Relay providers;<sup>13</sup>
- Adopts rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers; and
- Adopts permanently the interim rules adopted in the *2011 iTRS Certification Order*,<sup>14</sup> requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under section 64.606(g) of the Commission's rules<sup>15</sup> are truthful, accurate, and complete.

6. Consistent with the Commission's incremental approach to reform of the structure of this program, the Commission initiates in the Report and Order a step-by-step transition from the existing tiered TRS Fund compensation rates for VRS providers toward a unitary, market-based compensation rate. Specifically, the Report and Order (1) adjusts a volume-based three-tier rate structure by modifying the tier boundaries and (2) calls for a series of incremental rate reductions, every six months, over a four-year period.

#### **B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

7. No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities. The Commission

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<sup>13</sup> IP Relay is a form of TRS that permits an individual with a hearing or speech disability to communicate in text using an IP-enabled device via the Internet, rather than a text telephone (TTY) and the public switched telephone network. 47 C.F.R. § 64.601(a)(13) (2012).

<sup>14</sup> *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10923-10925, ¶¶ 62-67 (2011) (*2011 iTRS Certification Order*).

<sup>15</sup> 47 C.F.R. § 64.606(g).

has, nonetheless, considered any potential significant economic impact that the rule changes may have on the small entities which are impacted. On balance, the Commission believes that the economic impact on small entities will be positive rather than negative, and that the rule changes are needed to combat waste, fraud, and abuse in the TRS program.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply**

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules.<sup>16</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>17</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>18</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 SBA.<sup>19</sup>

9. We believe that the entities that may be affected by the proposed rules are VRS providers and other TRS providers that are eligible to receive compensation from the TRS Fund. Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees.<sup>20</sup> Currently, there are ten TRS providers that are authorized by the Commission to receive compensation from the Fund. Six of these entities may be small businesses under the SBA size standard.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

10. Certain rule changes adopted in the Report and Order modify rules or add requirements governing reporting, recordkeeping and other compliance obligations.

11. The development and deployment of a VRS access technology reference platform will require providers to offer access technology that is compatible with the reference platform. By ensuring interoperability of VRS and point-to-point video calling, these additional requirements will actually benefit small entities by facilitating their ability to compete with the larger providers.

12. Although the development of a central TRS-URD will include the requirement for VRS providers to collect certain information from consumers and enter that information in the TRS-URD, the TRS-URD will actually reduce the regulatory burden on VRS providers because (1) the providers will no longer be required to verify user information, which will be accomplished centrally by a single entity contracted by the Commission, and (2) the providers will have reduced burdens when collecting information from users who switch providers, because the user information of those consumers is already in the database.

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<sup>16</sup> 5 U.S.C. § 604(a)(3).

<sup>17</sup> 5 U.S.C. § 601(6).

<sup>18</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>19</sup> 15 U.S.C. § 632.

<sup>20</sup> 13 C.F.R. § 121.201, NAICS Code 517110 (2007).

13. The Commission has decided to establish a neutral video communication service provider to reduce barriers to entry, to promote efficient and effective VRS CA service competition, and to ensure interoperability between VRS providers. VRS providers, including small entities, who elect to use the platform of the neutral video communication service provider for network operations will be able to operate more efficiently because they will be relieved of the obligation to provide their own video communication service platform. Although providers, including small entities, who elect to continue to operate their own video communication service platform will be required to ensure that such platform is interoperable with the platform of the neutral video communication service provider, the interoperability requirement will benefit small entities because the interoperability requirement will facilitate their ability to compete with larger providers.

14. The general prohibition on practices resulting in waste, fraud, and abuse adopted in the Report and Order codifies and clarifies the already existing prohibition on such practices. However, VRS providers will also be required to adopt regulatory compliance plans, submit such plans to the Commission and certify that they are in compliance. Although these additional requirements will result in new reporting, recordkeeping, and compliance requirements for VRS providers, including small entities, given the history of waste, fraud, and abuse in the VRS industry, these requirements are therefore necessary to ensure that the providers are not engaging in practices resulting in waste, fraud, and abuse. The Commission finds it essential to enact such measures to ensure the efficiency of the TRS program as required by Section 225(b)(1) of the Act<sup>21</sup> and to control the expenditure of public funds. The costs incurred by providers associated with regulatory compliance, which in the Report and Order the Commission believes will not be substantial, will be far outweighed by the substantial savings to the Fund that result from curbing waste, fraud, and abuse.

15. The adoption of more stringent VRS speed of answer requirements—calls answered within 30 seconds, 85 percent of the time, measured daily—will not cause an undue regulatory burden on VRS providers, including small entities, because record evidence demonstrates that the actual speed of answer currently practiced by providers would satisfy the new requirements, and all parties commenting on the issue supported a reduced speed of answer time.<sup>22</sup> The more stringent speed of answer requirements are closer to the speed of answer requirements for other forms of TRS and are closer to achieving functionally equivalent service for VRS users. In addition, the new requirements are being phased in to help ease any regulatory burden that may exist.

16. Although the adoption of rules to protect consumers against unauthorized default provider changes, also known as “slamming,” will result in additional regulatory compliance requirements for VRS and IP Relay providers, including small entities, in addition to protecting consumers, such requirements will also protect providers, including small entities, from unauthorized provider changes, thereby enhancing the ability of such entities to compete.

17. Although the adoption of rules to protect consumer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers will impose additional regulatory compliance requirements on all TRS providers, including small entities, such requirements are essential to ensure that users of TRS services enjoy the same privacy protections as users of telecommunications services.

18. Under interim rules established by the Commission, TRS providers, including small entities, are already certifying under penalty of perjury that their certification applications and annual

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<sup>21</sup> 47 U.S.C. § 225(b)(1).

<sup>22</sup> See Consumer Groups FNPRM Comments at 11-12; Purple FNPRM Comments at 17-18; Consumer Groups FNPRM Reply Comments at 3-4; Sorenson FNPRM Reply Comments at 48-49; VRSCA FNPRM Reply Comments at 3.

compliance filings are truthful, accurate and complete. Making the interim certification requirements permanent is necessary to curb waste, fraud, and abuse in the TRS program and does not increase the regulatory compliance obligations.

19. The rate changes enacted in the Report and Order do not impose any new reporting or recordkeeping requirements.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

20. The RFA requires an agency to describe any significant alternatives, specific to small entities, that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>23</sup>

21. In general, alternatives to proposed rules are discussed only when those rules pose a significant adverse economic impact on small entities. In this context, however, the proposed rules generally confer benefits as explained below. Therefore, we limit our discussion of an alternative to paragraphs 26-28 below.

22. By ensuring interoperability of VRS and point-to-point video calling, the development and deployment of a VRS access technology reference platform will benefit small entities by facilitating their ability to compete with the larger providers.

23. The development of a central TRS-URD will reduce the regulatory burden on small entities because (1) VRS providers will no longer be required to verify user information, which will be accomplished centrally by a single entity contracted by the Commission, and (2) the providers will have reduced burdens when collecting information from users who switch providers, because the user information of those consumers is already in the database.

24. Small entities that elect to use the platform of the neutral video communication service provider for network operations will be able to operate more efficiently because they will be relieved of the obligation to provide their own video communication service platform. Although small entities that elect to continue to operate their own video communication service platform will be required to ensure that such platform is interoperable with the platform of the neutral video communication service provider, the interoperability requirement will benefit these small entities because the interoperability requirement will facilitate their ability to compete with larger providers.

25. The adoption of rules to protect consumers against unauthorized default provider changes, also known as “slamming,” will benefit small entities by protecting them from unauthorized provider changes, thereby enhancing their ability to compete.

26. The general prohibition on practices resulting in waste, fraud, and abuse, the requirement for providers to adopt regulatory compliance plans, submit such plans to the Commission and certify that they are in compliance, and the requirement for providers to certify under penalty of perjury that their certification applications and annual compliance filings are truthful, accurate and complete are all necessary to combat waste, fraud, and abuse in the VRS industry. The Commission therefore finds it essential to enact such measures to ensure the efficiency of the TRS program as required by Section

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<sup>23</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

225(b)(1) of the Act<sup>24</sup> and to control the expenditure of public funds. Because large and small providers alike have engaged in practices resulting in waste, fraud, and abuse in the VRS industry, exempting small providers from these requirements was considered and rejected. Therefore, it would be contrary to the public interest to in any way limit or exempt small entities from these requirements.

27. The adoption of more stringent VRS speed of answer requirements is necessary to bring the VRS speed of answer requirements closer to the speed of answer requirements for other forms of TRS and to help achieve functionally equivalent service for TRS users as required by Section 225(a)(3) of the Act.<sup>25</sup> Slower speed of answer requirements for small providers were considered and rejected, because they would not provide consumers with functionally equivalent service. The Commission finds that these new requirements will not cause an undue regulatory burden on small providers, because record evidence demonstrates that the actual speed of answer currently practiced by providers would satisfy the new requirements, and all parties commenting on the issue supported a reduced speed of answer time.<sup>26</sup> In addition, the new requirements are being phased in to help ease any regulatory burden that may exist.

28. The adoption of rules to protect consumer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers is essential to ensure that users of TRS services enjoy the same privacy protections as users of telecommunications services. Adopting regulations for small TRS providers that would not be as comprehensive as the regulations already in place for wireline, wireless and Voice over Internet Protocol (VoIP) providers to protect consumer information was considered and rejected because such lesser regulations would not provide TRS users with full protection of their privacy rights and such users would be denied functionally equivalent service as required by Section 225(a)(3) of the Act.<sup>27</sup> It would therefore be contrary to the public interest to enact any special exemptions for small providers.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with Proposed Rules**

29. None.

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<sup>24</sup> 47 U.S.C. § 225(b)(1).

<sup>25</sup> 47 U.S.C. § 225(a)(3).

<sup>26</sup> See Consumer Groups FNPRM Comments at 11-12; Purple FNPRM Comments at 17-18; Consumer Groups FNPRM Reply Comments at 3-4; Sorenson FNPRM Reply Comments at 48-49; VRSCA FNPRM Reply Comments at 3. Purple is a small entity.

<sup>27</sup> 47 U.S.C. § 225(a)(3).

## APPENDIX C

## Initial Regulatory Flexibility Analysis

## CG Docket No. 03-123

## CG Docket No. 10-51

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the Further Notice. The Commission will send a copy of this Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Under Title IV of the Americans with Disabilities Act (ADA), the Commission must ensure that relay services “are available, to the extent possible and in the most efficient manner” to persons in the United States with hearing or speech disabilities.<sup>4</sup> Section 225 of the Communications Act of 1934, as amended (Act) defines TRS as a service provided in a manner that is “functionally equivalent” to voice telephone services<sup>5</sup> and directs the Commission to establish functional requirements, minimum standards, and other regulations to carry out the statutory mandate.<sup>6</sup> In addition, the Commission’s regulations must encourage the use of existing technology and must not discourage the development of new technology.<sup>7</sup> Finally, the Commission must ensure that TRS users “pay rates no greater than the rates paid for functionally equivalent voice communication services.”<sup>8</sup> To this end, the costs of providing TRS on a call are supported by shared funding mechanisms at the state and federal levels. The federal fund supporting TRS is the interstate Telecommunications Relay Services Fund (TRS Fund or Fund),<sup>9</sup> which is managed by the TRS Fund administrator, subject to the oversight of the Commission. Video relay service (VRS) is a form of TRS that allows persons with hearing or speech disabilities to use sign

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<sup>1</sup> See 5 U.S.C. § 603. 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>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See 5 U.S.C. § 603(a).

<sup>4</sup> 47 U.S.C. § 225(b)(1).

<sup>5</sup> 47 U.S.C. § 225(a)(3) (defining TRS 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”).

<sup>6</sup> 47 U.S.C. § 225(d)(1).

<sup>7</sup> 47 U.S.C. § 225(d)(2).

<sup>8</sup> 47 U.S.C. § 225(d)(1)(D).

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

language to communicate in near real time through a communications assistant (CA), via video over a broadband Internet connection.<sup>10</sup>

3. In the Report and Order, as an important first step in its reforms, the Commission has identified certain discrete areas in which it can explore a new approach of relying on the efforts of one or more non-VRS provider third parties, either in whole or in part, to carry out the Commission's VRS policies. Specifically, the Commission establishes mechanisms:

- To enable research designed to further the Commission's multiple goals of ensuring that TRS is functionally equivalent to voice telephone services and improving the efficiency and availability of TRS;
- For a two-to three year pilot Internet-based TRS (iTRS) National Outreach Program (iTRS-NOP) and to select one or more independent iTRS Outreach Coordinators;
- For the development and deployment of a VRS access technology reference platform;
- To contract for a central TRS User Registration Database (TRS-URD) which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, to achieve more effective fraud and abuse prevention, and to allow the Commission to know, for the first time, the number of individuals that actually use VRS; and
- To contract for a neutral party to build, operate, and maintain a neutral video communication service platform, which will allow eligible relay interpretation service providers to compete as VRS providers.

4. The Commission also includes in the Report and Order incremental measures to improve the efficiency of the program, help protect against waste, fraud, and abuse, improve its administration of the program, and to generally ensure that VRS users' experiences reflect the policies and goals of section 225 of the Act. Specifically, the Commission:

- Adopts a general prohibition on practices resulting in waste, fraud, and abuse;
- Requires providers to adopt regulatory compliance plans subject to Commission review;
- Amends the VRS speed of answer rules by reducing the permissible wait time for a VRS call to be answered within 30 seconds, 85 percent of the time, to be measured on a daily basis;
- Adopts rules to protect relay consumers against unauthorized default provider changes, also known as "slamming," by VRS and Internet Protocol (IP) Relay providers;<sup>11</sup>
- Adopts rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers;
- Adopts permanent rules requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under section 64.606(g) of the Commission's rules<sup>12</sup> are truthful, accurate, and complete; and

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<sup>10</sup> See 47 C.F.R. § 64.601(a)(27) (2012).

<sup>11</sup> IP Relay is a form of TRS that permits an individual with a hearing or speech disability to communicate in text using an IP-enabled device via the Internet, rather than a text telephone (TTY) and the public switched telephone network. 47 C.F.R. § 64.601(a)(13) (2012).

<sup>12</sup> 47 C.F.R. § 64.606(g).



- Adjusts a volume-based three-tier rate structure by modifying the tier boundaries and calling for a series of incremental rate reductions, every six months, over a four-year period.

5. In this Further Notice, the Commission seeks comment on a series of proposals to further improve the structure and efficiency of the VRS program, to ensure that it is available to all eligible users and offers functional equivalence—particularly given advances in commercially-available technology—and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates.

6. In the Further Notice, the Commission proposes to replace cost-of-service ratemaking with a more market-based approach by establishing a compensation rate for the provision of VRS communications assistant (CA) service through an auction process. Specifically, the Commission proposes to auction contracts to VRS providers to provide service to those governmental agencies and businesses that receive a substantial volume of VRS calls. The proposal, if adopted would provide for the winners of these auctions to receive the contracts to provide VRS to those agencies and businesses, and the rates for all other VRS traffic would be based on the rates of these competitively bid contracts.

7. In the Further Notice, the Commission also seeks comment on whether there should be changes to the Commission's rules relating to certification of VRS providers and/or other iTRS providers, including whether to modify the rules to ensure that standalone VRS CA service providers meet high standards of service and to eliminate incentives and opportunities for waste, fraud, and abuse. To this end the Commission asks whether there should be requirements for certain levels of expertise or experience in the provision of interpreting services; requirements of prior experience in the provision of TRS or VRS; and requirements to ensure financial stability. The Further Notice asks whether the Commission should consider the impact of certifying the standalone provider on the availability of community interpreting services. In addition, the Further Notice asks whether the certification application should ask for information regarding whether interpreter employment contracts for both standalone CA service providers and integrated VRS providers include non-compete clauses.

8. The Commission also seeks comment in the Further Notice on whether to extend the structural reforms and other rules adopted in the Report and Order with regard to VRS to other forms of Internet-based TRS (iTRS). These would include:

- Extending use of the TRS-URD to IP Relay and Internet Protocol captioned telephone service (IP CTS);<sup>13</sup>
- Extending user certification and verification requirements to IP Relay;
- Extending the capabilities of the neutral video communication service provider to IP Relay and IP CTS;
- Conducting IP CTS outreach through a national outreach coordinator;
- Extending the general prohibitions on discrimination, waste, fraud, and abuse to IP Relay and IP CTS;

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<sup>13</sup> IP CTS is a form of TRS that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the Internet, rather than the public switched telephone network. 47 C.F.R. § 64.601(a)(12) (2012).

- Extending the rules on compliance plans to IP Relay and IP CTS;
- Extending the prohibitions on slamming to IP CTS; and
- The extent to which other VRS-specific rules should be extended to other forms of iTRS.

9. In the Further Notice, the Commission also seeks comment on a number of other issues as follows:

- Whether to adopt a mechanism whereby providers could seek to recover the actual reasonable costs of complying with certain of the new requirements adopted in the Report and Order;
- The appropriate budget and funding mechanism for research contracting to improve the efficiency and availability of TRS;
- Whether to match the periodicity of filing requirements from the TRS Fund administrator proposing contribution factors to the Commission for the TRS Fund to those of the Universal Service Fund (currently quarterly) rather than annually;
- Whether to permit hearing individuals to obtain ten-digit phone numbers that would allow them to make point-to-point video calls to VRS users, so long as TRS Funds are not used to subsidize such service;
- Whether to replace the current TRS Fund Advisory Council, which advises the TRS Fund administrator on TRS cost recovery matters, with a new advisory council that would provide advice and recommendations to the iTRS database administrator on technology, efficiency, outreach, and user experience;
- Whether to transfer the VRS emergency call handling obligation to a single VRS contractor through a competitive bidding process;
- The methodology for measuring compliance with the new VRS speed of answer requirements and whether to further reduce the permitted speed of answer time for VRS to 10 seconds for 85 percent of the calls;
- Whether the existing grant of authority to the TRS Fund administrator to request information reasonably “necessary to determine TRS Fund revenue requirements and payments”<sup>14</sup> is sufficient, or whether the Commission should explicitly require TRS providers to submit additional detailed information, such as information regarding their financial status (*e.g.*, cash flow to debt ratio);
- Whether to separate section 64.604 of the Commission’s rules<sup>15</sup> into service-specific rules or transmission-specific rules or to adopt some other structure;

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<sup>14</sup> 47 C.F.R. § 64.604(c)(5)(iii)(D).

<sup>15</sup> 47 C.F.R. § 64.604.

- Whether to prohibit TRS providers from using Customer Proprietary Network Information (CPNI) for the purpose of contacting TRS users for political and advocacy purposes, unless the user affirmatively agrees to such contacts through an opt-in procedure;
- Whether to adopt a rule implementing section 225 of the Act<sup>16</sup> that would prohibit unjust and unreasonable practices on the part of TRS providers and would be modeled after section 201(b) of the Act,<sup>17</sup> which prohibits unjust and unreasonable practices on the part of common carriers;
- Whether to terminate the “guest user” procedure for VRS, which requires VRS providers to provide temporary service to users while verification of the user’s eligibility is pending;
- Whether to explicitly require that, if a VRS provider offers a video mail feature to its customers, the provider must ensure that video mail messages can be left by point-to-point video callers who are customers of other VRS providers and are using access technology provided by such other providers;
- Whether to prohibit non-competition agreements in VRS CA employment contracts;
- Whether to permit VRS CAs to work from home during the overnight hours.

#### **B. Legal Basis**

10. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1, 2, 4(i), 4(j), 225, 251, 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, 251, 254, 303(r).

#### **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply**

11. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules.<sup>18</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>19</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>20</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 SBA.<sup>21</sup>

12. We believe that the entities that may be affected by the proposed rules are VRS providers

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<sup>16</sup> See 47 U.S.C. § 225(d)(1)(A) authorizing the Commission to prescribe regulations that establish functional requirements, guidelines, and operations procedures for TRS.

<sup>17</sup> 47 U.S.C. § 201(b).

<sup>18</sup> 5 U.S.C. § 604(a)(3).

<sup>19</sup> 5 U.S.C. § 601(6).

<sup>20</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>21</sup> 15 U.S.C. § 632.

and other TRS providers that are eligible to receive compensation from the TRS Fund. Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees.<sup>22</sup> Currently, there are ten TRS providers that are authorized by the Commission to receive compensation from the Fund. Six of these entities may be small businesses under the SBA size standard.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

13. Certain rule changes, if adopted by the Commission, would modify rules or add requirements governing reporting, recordkeeping and other compliance obligations.

14. If the Commission were to adopt a mechanism whereby providers could seek to recover the actual reasonable costs of complying with certain of the new requirements adopted in the Report and Order, providers, including small entities, would be subject to the recordkeeping and reporting requirements associated with such cost recovery.

15. If the Commission were to adopt an auction process to award contracts to provide service to part of the VRS market, VRS providers, including small entities, may wish to participate. Such participation would entail compliance with the various filing, reporting, recordkeeping and bidding requirements associated with the action process.

16. If the Commission were to adopt additional certification requirements for VRS providers and/or other iTRS providers, small entities would be subject to the qualification, reporting, recordkeeping and other compliance obligations. Additional qualification and/or reporting requirements might include certain levels of expertise or experience in the provision of interpreting services, prior experience in the provision of TRS or VRS, assurances of financial stability, including the provision of financial information, the anticipated impact on the availability of community interpreting services, and whether interpreter employment contracts include non-compete clauses.

17. If the Commission were to extend the use of the TRS-URD to IP Relay and IP CTS, providers of those services, including small entities would be required to collect certain information from consumers and enter that information in the TRS-URD. However, the TRS-URD would actually reduce the regulatory burden on IP Relay and IP CTS providers, including small entities, because (1) the providers would no longer be required to verify user information, which would be accomplished centrally by a single entity contracted by the Commission, and (2) the providers would have reduced burdens when collecting information from users who switch providers, because the user information of those consumers would already be in the database.

18. If the Commission were to extend user certification and verification requirements to IP Relay, there would be no additional compliance obligations imposed on IP Relay providers, including small businesses, because the user certification and verification would be managed centrally by a Commission-contracted entity.

19. If the Commission were to extend to IP Relay and IP CTS providers, including small entities, the option to use the platform of the neutral video communication service provider for network operations, such providers would be able to operate more efficiently because they would be relieved of the obligation to provide their own communication service platform. Although providers, including small entities, who elect to continue to operate their own communication service platform, would be required to ensure that such platform is interoperable with the platform of the neutral communication service

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<sup>22</sup> 13 C.F.R. § 121.201, NAICS Code 517110 (2007).

provider, the interoperability requirement would benefit small entities because the interoperability requirement would facilitate their ability to compete with larger providers.

20. If the Commission were to extend to IP Relay and IP CTS providers, including small entities, the general prohibition on practices resulting in waste, fraud, and abuse, this would in effect be a codification and clarification of the already existing prohibition on such practices. Therefore, no new regulatory compliance obligations would be imposed.

21. If the Commission were to extend to IP Relay and IP CTS providers, including small entities, the requirement to adopt regulatory compliance plans, submit such plans to the Commission and certify that they are in compliance, these additional requirements would result in new reporting, recordkeeping, and compliance requirements for such providers.

22. If the Commission were to extend to IP CTS providers, including small entities, the rules to protect consumers against unauthorized default provider changes, also known as “slamming,” such requirements would result in additional regulatory compliance requirements for such providers.

23. If the Commission were to require the TRS Fund administrator to propose changes to the Fund contribution factor with the same periodicity as is done with the Universal Service Fund (currently quarterly) rather than annually, such requirement may impose on TRS providers receiving compensation from the Fund, including small entities, a requirement to submit to the Commission their usage projections quarterly rather than annually.

24. If the Commission were to permit hearing individuals to obtain ten-digit phone numbers that would allow them to make point-to-point video calls to VRS users, VRS providers, including small entities, would be obligated to register and provide service to hearing users. Since it would be prohibited to use TRS Funds to subsidize such service, VRS providers, including small entities, either would absorb the cost of providing such service or would collect payments for service from the hearing users. Thus, such change in regulations would impose additional compliance obligations on VRS providers, including small entities.

25. If the Commission were to transfer the VRS emergency call handling obligation to a single VRS contractor through a competitive bidding process, VRS providers, including small entities, that desire to provide emergency call handling would have the additional regulatory obligation of participating in a competitive bidding process. However, those VRS providers, including small entities, that do not desire to provide emergency call handling, would be relieved of such obligations.

26. If the Commission were to adopt new regulations regarding the methodology for measuring compliance with the new VRS speed of answer requirements or if the Commission were to further reduce the permitted speed of answer time for VRS to 10 seconds for 85 percent of the calls, VRS providers, including small entities, would be obligated to comply with such regulations.

27. If the Commission were to explicitly require TRS providers, including small entities, to submit additional detailed information to the Commission, such as information regarding their financial status (*e.g.*, cash flow to debt ratio), the Commission would be imposing additional reporting requirements on such providers.

28. If the Commission were to restructure section 64.604 of its rules,<sup>23</sup> such restructuring would not impose additional regulatory obligations on TRS providers, including small entities.

29. If the Commission were to prohibit TRS providers, including small entities, from using CPNI for the purpose of contacting TRS users for political and advocacy purposes, unless the user

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<sup>23</sup> 47 C.F.R. § 64.604.

affirmatively agrees to such contacts through an opt-in procedure, this would impose additional regulatory compliance obligations on TRS providers, including small entities.

30. If the Commission were to adopt a rule that would prohibit unjust and unreasonable practices on the part of TRS providers, it would impose additional regulatory compliance obligations on TRS providers, including small entities.

31. If the Commission were to terminate the “guest user” procedure for VRS, which requires VRS providers to provide temporary service to users while verification of the user’s eligibility is pending, the change in rules would not impose new compliance requirements on VRS providers, including small entities, because VRS providers are already required to refuse service to unqualified individuals. The new requirements would simply expand the circumstances under which individuals would be denied service.

32. If the Commission were to explicitly require that, if a VRS provider offers a video mail feature to its customers, the provider must ensure that video mail messages can be left by point-to-point video callers who are customers of other VRS providers and are using access technology provided by such other providers, VRS providers, including small entities, would be obligated to comply with such regulations.

33. If the Commission were to prohibit non-competition agreements in VRS CA employment contracts, VRS providers, including small entities, would be obligated to comply with such regulations and would be subject to additional recordkeeping and reporting requirements if the Commission were to require that such information be included with certification applications and/or annual reports.

34. If the Commission were to permit VRS CAs to work from home during the overnight hours, it would reduce the regulatory burdens on VRS providers, including small entities, because VRS providers, including small entities, would be afforded more flexibility with VRS CA staffing.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

35. The RFA requires an agency to describe any significant alternatives, specific to small entities, that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>24</sup>

36. In general, alternatives to proposed rules are discussed only when those rules pose a significant adverse economic impact on small entities. In this context, however, the proposed rules generally confer benefits as explained below.

37. If the Commission were to adopt a mechanism whereby providers could seek to recover the actual reasonable costs of complying with certain of the new requirements adopted in the Report and Order, providers, including small entities, would be subject to the recordkeeping and reporting requirements associated with such cost recovery. However, because compliance with such requirements would result in cost recovery by providers, including small entities, small entities would benefit from such recordkeeping and reporting requirements.

38. If the Commission were to adopt an auction process to award contracts to provide service to part of the VRS market, VRS providers, including small entities, may wish to participate. Such

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<sup>24</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

participation would entail compliance with the various filing, reporting, recordkeeping and bidding requirements associated with the action process. However, those providers, including small entities, who were not interested in serving the market segments subject to the auction process would not be participating in the auction.

39. If the Commission were to adopt additional certification requirements for VRS providers and/or other iTRS providers, small entities would be subject to the qualification, reporting, recordkeeping and other compliance obligations. Additional qualification and/or reporting requirements might include certain levels of expertise or experience in the provision of interpreting services, prior experience in the provision of TRS or VRS, assurances of financial stability, including the provision of financial information, the anticipated impact on the availability of community interpreting services, and whether interpreter employment contracts include non-compete clauses. If the Commission were to adopt any such certification requirements, it would weigh the public interest benefits of the new requirements against the impact on VRS and other iTRS providers, including small entities, and would consider how to minimize the impact on small entities. For example, since the neutral video communication service provider would relieve small providers who elect to utilize the common platform of the qualification, reporting, recordkeeping and other compliance obligations associated with providing video communication service, those small entities could potentially have fewer regulatory burdens than larger entities utilizing their own video communication service platforms.

40. If the Commission were to extend the use of the TRS-URD to IP Relay and IP CTS, providers of those services, including small entities would be required to collect certain information from consumers and enter that information in the TRS-URD. However, the TRS-URD would actually reduce the regulatory burden on IP Relay and IP CTS providers, including small entities, because (1) the providers would no longer be required to verify user information, which would be accomplished centrally by a single entity contracted by the Commission, and (2) the providers would have reduced burdens when collecting information from users who switch providers, because the user information of those consumers would already be in the database.

41. If the Commission were to extend user certification and verification requirements to IP Relay, there would be no additional compliance obligations imposed on IP Relay providers, including small businesses, because the user certification and verification would be managed centrally by a Commission-contracted entity.

42. If the Commission were to extend to IP Relay and IP CTS providers, including small entities, the option to use the platform of the neutral video communication service provider for network operations, such providers would be able to operate more efficiently because they would be relieved of the obligation to provide their own communication service platform. Although providers, including small entities, who elect to continue to operate their own communication service platform, would be required to ensure that such platform is interoperable with the platform of the neutral communication service provider, the interoperability requirement would benefit small entities because the interoperability requirement would facilitate their ability to compete with larger providers.

43. If the Commission were to extend to IP Relay and IP CTS providers, including small entities, the general prohibition on practices resulting in waste, fraud, and abuse, this would in effect be a codification and clarification of the already existing prohibition on such practices. Therefore, no new regulatory compliance obligations would be imposed.

44. If the Commission were to extend to IP Relay and IP CTS providers, including small entities, the requirement to adopt regulatory compliance plans, submit such plans to the Commission and certify that they are in compliance, these additional requirements would result in new reporting, recordkeeping, and compliance requirements for such providers. In determining whether to enact any such requirements, the Commission would weigh the public interest benefits of the new requirements in curbing waste, fraud, and abuse and the need to control the expenditure of public funds against the impact

on VRS and other iTRS providers, including small entities, and would consider how to minimize the impact on small entities. For example, since the neutral video communication service provider would relieve small providers who elect to utilize the common platform of the compliance plan obligations associated with providing video communication service, those small entities could potentially have fewer regulatory burdens than larger entities utilizing their own video communication service platforms.

45. If the Commission were to extend to IP CTS providers, including small entities, the rules to protect consumers against unauthorized default provider changes, also known as “slamming,” such requirements would result in additional regulatory compliance requirements for such providers. However, in addition to protecting consumers, these requirements would also protect IP CTS providers, including small entities, from unauthorized provider changes, thereby enhancing the ability of such entities to compete.

46. If the Commission were to require the TRS Fund administrator to propose changes to the Fund contribution factor with the same periodicity as is done with the Universal Service Fund (currently quarterly) rather than annually, such requirement may impose on TRS providers receiving compensation from the Fund, including small entities, a requirement to revise their usage projections more often than the current annual requirement. Although this change would impose an additional obligation on TRS providers, including small entities, the change would also benefit such providers due to the fact that more frequent revisions to the Fund contribution factor will help ensure that there are sufficient monies in the Fund to compensate providers. In determining whether to require TRS providers to revise their usage projections more often, the Commission will consider how to minimize the impact on small entities, such as considering whether to exempt small providers from providing quarterly more often and requiring only annual estimates from such small providers.

47. If the Commission were to permit hearing individuals to obtain ten-digit phone numbers that would allow them to make point-to-point video calls to VRS users, VRS providers, including small entities, would be obligated to register and provide service to hearing users. Since it would be prohibited to use TRS Funds to subsidize such service, VRS providers, including small entities, either would absorb the cost of providing such service or would collect payments for service from the hearing users. In determining whether to adopt these proposed regulatory changes, the Commission would weigh the benefits of facilitating communication between individuals with hearing and speech disabilities and individuals without such disabilities against the additional compliance obligations on VRS providers, including small entities.

48. If the Commission were to transfer the VRS emergency call handling obligation to a single VRS contractor through a competitive bidding process, VRS providers, including small entities, that desire to provide emergency call handling would have the additional regulatory obligation of participating in a competitive bidding process. However, those VRS providers, including small entities, that do not desire to provide emergency call handling, would be relieved of such obligations.

49. If the Commission were to adopt new regulations regarding the methodology for measuring compliance with the new VRS speed of answer requirements, VRS providers, including small entities, would be obligated to comply with such regulations. Such regulations would be in the public interest and would benefit VRS providers, including small entities, because they would provide additional certainty to VRS providers, including small entities, on how to comply with and report compliance with the VRS speed of answer requirements. If the Commission were to further reduce the permitted speed of answer time to 10 seconds for 85 percent of the calls, VRS providers, including small entities, would be required to comply with such regulations. Adopting such a requirement would be in the public interest because it would result in service to VRS consumers that would be comparable to the permitted speed of



answer wait time for other forms of TRS<sup>25</sup> and would be more functionally equivalent than a permitted wait time of 30 seconds for 85 percent of the calls.<sup>26</sup> Nevertheless, in determining whether to further reduce the permitted speed of answer time, the Commission will consider how to minimize the impact on small entities, such as considering whether to phase-in a further reduction in permitted speed of answer time.

50. If the Commission were to explicitly require TRS providers, including small entities, to submit additional detailed information to the Commission, such as information regarding their financial status (*e.g.*, cash flow to debt ratio), the Commission would be imposing additional reporting requirements on such providers. In determining whether to enact such requirements, the Commission would weigh the public interest benefits of how these requirements would help combat waste, fraud, and abuse and help preserve the integrity of the TRS Fund against the impact of imposing such requirements on TRS providers, including small entities. In determining whether to require TRS providers to provide such information, the Commission will consider how to minimize the impact on small entities, such as considering the level of detail that would be required of small providers.

51. If the Commission were to restructure section 64.604 of its rules,<sup>27</sup> such restructuring would not impose additional regulatory obligations on TRS providers, including small entities.

52. If the Commission were to prohibit TRS providers, including small entities, from using CPNI for the purpose of contacting TRS users for political and advocacy purposes, unless the user affirmatively agrees to such contacts through an opt-in procedure, this would impose additional regulatory compliance obligations on TRS providers, including small entities. In deciding whether to enact such requirements, the Commission would weigh the public interest benefits in protecting consumers from misuse of CPNI against the impact on TRS providers, including small entities, and would examine whether any such requirements would infringe on the First Amendment rights of TRS providers. For example, the Commission would consider whether there would be a difference in terms of the First Amendment between utilizing CPNI to help develop a contact list for political and advocacy purposes as compared to developing a contact list for political and advocacy purposes without the use of CPNI.

53. If the Commission were to adopt an explicit rule that would prohibit unjust and unreasonable practices on the part of TRS providers, it would not likely impose additional regulatory compliance obligations on TRS providers, including small entities, because a prohibition on unjust and unreasonable practices is implicit in the current TRS requirements.

54. If the Commission were to terminate the “guest user” procedure for VRS, which requires VRS providers to provide temporary service to users while verification of the user’s eligibility is pending, the change in rules would not impose new compliance requirements on VRS providers, including small entities, because VRS providers are already required to refuse service to unqualified individuals. The new requirements would simply expand the circumstances under which individuals would be denied service.

55. If the Commission were to explicitly require that, if a VRS provider offers a video mail feature to its customers, the provider must ensure that video mail messages can be left by video point-to-point callers who are customers of other VRS providers and are using access technology provided by such other providers, VRS providers, including small entities, would be obligated to comply with such regulations. However, such regulations would benefit small entities because the regulations would enhance the ability of small entities to compete by ensuring that point-to-point callers using the services

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<sup>25</sup> See 47 C.F.R. § 64.604(b)(2)(ii) (permitted speed of answer is 10 seconds for other forms of TRS).

<sup>26</sup> See Report and Order, section III.D.

<sup>27</sup> 47 C.F.R. § 64.604.

of all VRS providers, including small entities, would be able to leave video mail messages with consumers using any VRS provider.

56. If the Commission were to prohibit non-competition agreements in VRS CA employment contracts, VRS providers, including small entities, would be obligated to comply with such regulations and would be subject to additional recordkeeping and reporting requirements if the Commission were to require that such information be included with certification applications and/or annual reports. However, such regulations would benefit small entities because the regulations would enhance the ability of small entities to compete by ensuring that all VRS providers, including small entities, would be able to hire VRS CAs without the pool of available VRS CAs being limited by non-competition agreements.

57. If the Commission were to permit VRS CAs to work from home during the overnight hours, it would reduce the regulatory burdens on VRS providers, including small entities, because VRS providers, including small entities, would be afforded more flexibility with VRS CA staffing.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with Proposed Rules**

58. None.

## APPENDIX D

## List of Commenters

## Further Notice of Proposed Rulemaking (December 15, 2011)

Commenter/Date FiledAbbreviation

ASL Services Holdings, LLC (Mar. 9, 2012)	ASL Services Holdings
Cerebral Palsy and Deaf Organization (Mar. 8, 2012)	CPADO
Communication Access Ability Group (Mar. 9, 2012)	CAAG
Convo Communications, LLC (Mar. 9, 2012)	Convo
CSDVRS, LLC, d/b/a ZVRS (Mar. 9, 2012)	CSDVRS
Experian Government Services (Mar. 30, 2012)	Experian
Healine Telecom, LLC (Mar. 9, 2012)	Healine
myVRS Relay Central LLC (Jan. 4, 2012)	myVRS
Neustar, Inc. (Mar. 9, 2012)	Neustar
Over 200 VRS Employees and Users (Jan. 19, 2012)	VRS Employees
Purple Communications, Inc. (Mar. 8, 2012)	Purple
Rehabilitation Engineering Research Center on Telecommunications Access (Mar. 9, 2012)	RERC-TA
Registry of Interpreters for the Deaf (Mar. 9, 2012)	RID
Sorenson Communications, Inc. (Mar. 9, 2012)	Sorenson
Telecommunications for the Deaf and Hard of Hearing, et al.: Deaf and Hard of Hearing Consumer Advocacy Network; Telecommunications for the Deaf and Hard of Hearing; National Association of the Deaf; Association of Late-Deafened Adults, Inc.; California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc.; American Speech-Language Hearing Association; Registry of Interpreters for the Deaf; Deaf Seniors of America; National Black Deaf Advocates, Inc.; Alexander Graham Bell Association for the Deaf and Hard of Hearing (Mar. 9, 2012)	Consumer Groups/Consumers
Video Relay Services Consumer Association (Mar. 9, 2012)	VRSCA

Short-form comments were also filed by a number of individual commenters

**Reply Commenter/Date Filed****Abbreviation**

Convo Communications, LLC (Mar. 30, 2012)	Convo
Communication Service for the Deaf, Inc. (Mar. 30, 2012)	CSD
CSDVRS, LLC (Mar. 30, 2012)	CSDVRS
Healinc Telecom, LLC (Mar. 19, 2012)	Healinc
Purple Communications (Apr. 2, 2012)	Purple
Rehabilitation Engineering Research Center on Telecommunications Access (Mar. 30, 2012)	RERC-TA
Snap Telecommunications, Inc. (Mar. 30, 2012)	Snap
Sorenson Communications, Inc. (Mar. 30, 2012)	Sorenson
Telecommunications for the Deaf and Hard of Hearing, et al.: Deaf and Hard of Hearing Consumer Advocacy Network; Telecommunications for the Deaf and Hard of Hearing; National Association of the Deaf; Association of Late-Deafened Adults, Inc.; California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc.; American Speech-Language Hearing Association; Registry of Interpreters for the Deaf; Deaf Seniors of America; National Black Deaf Advocates, Inc.; Alexander Graham Bell Association for the Deaf and Hard of Hearing (Mar. 30, 2012)	Consumer Groups/Consumers
Video Relay Services Consumer Association (Mar. 30, 2012)	VRSCA

**Public Notice (October 29, 2012)****Commenter/Date Filed****Abbreviation**

ASL Services Holdings, LLC (Nov. 14, 2012)	ASL Services Holdings
Communication Access Ability Group (Nov. 14, 2012)	CAAG
Communication Workers of America (Nov. 14, 2012)	CWA
Convo Communications, LLC (Nov. 14, 2012)	Convo
CSDVRS, LLC (Nov. 14, 2012)	CSDVRS
National Alliance of Black Interpreters (Nov. 14, 2012)	NAOBI
Purple Communications (Nov. 14, 2012)	Purple
Registry of Interpreters for the Deaf (Nov. 14, 2012)	RID
Rehabilitation Engineering Research Center on Telecommunications Access (Nov. 14, 2012)	RERC-TA/Telecom RERC
Sorenson Communications, Inc. (Nov. 14, 2012)	Sorenson
Telecommunications for the Deaf and Hard of Hearing, et al.: Deaf and Hard of Hearing Consumer Advocacy Network; Telecommunications for the Deaf and Hard of Hearing; National Association of the Deaf; Association of Late-Deafened Adults, Inc.; California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc.; American Speech-Language Hearing Association; Registry of Interpreters for the Deaf; Deaf Seniors of America; National Black Deaf Advocates, Inc.; Alexander Graham Bell Association for the Deaf and Hard of Hearing (Nov. 14, 2012)	Consumer Groups/Consumers

Short-form comments were also filed by a number of individual commenters

**Reply Commenter/Date Filed****Abbreviation**

ASL Services Holdings, LLC (Nov. 29, 2012)	ASL Services Holdings
Communication Axxess Ability Group (Nov. 29, 2012)	CAAG
Convo Communications, LLC (Nov. 29, 2012)	Convo
CSDVRS, LLC (Nov. 29, 2012)	CSDVRS
Dean DeRusso (Nov. 27, 2012)	Dean DeRusso
Mano a Mano, Inc. (Nov. 29, 2012)	Mano a Mano
Purple Communications (Nov. 29, 2012)	Purple
Rehabilitation Engineering Research Center on Telecommunications Access (Nov. 29, 2012)	RERC-TA/Telecom RERC
Sorenson Communications, Inc. (Nov. 29, 2012)	Sorenson
Telecommunications for the Deaf and Hard of Hearing, et al.: Deaf and Hard of Hearing Consumer Advocacy Network; Telecommunications for the Deaf and Hard of Hearing; National Association of the Deaf; Association of Late-Deafened Adults, Inc.; California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc.; American Speech-Language Hearing Association; Registry of Interpreters for the Deaf; Deaf Seniors of America; National Black Deaf Advocates, Inc.; Alexander Graham Bell Association for the Deaf and Hard of Hearing (Nov. 29, 2012)	Consumer Groups/Consumers
Video Relay Services Consumer Association (Nov.29, 2012)	VRSCA

**Notice of Inquiry (June 28, 2010)****Commenter/Date Filed****Abbreviation**

Ad Hoc Group of Sorenson Communications Bondholders (Aug. 18, 2010)	Sorenson Bondholders
AT&T, Inc. (Aug. 18, 2010)	AT&T
Convo Communications, LLC (Aug. 16, 2010)	Convo
CSDVRS, LLC (Aug. 18, 2010)	CSDVRS
Florida Coordinating Council for the Deaf and Hard of Hearing (Aug. 16, 2010)	FCCDHH
Florida Public Service Commission (Aug. 18, 2010)	Florida PSC/FPSC
Government of Canada (Sept. 7, 2010) (Sept. 8, 2010)	Canada
Maryland Public Service Commission (Aug. 11, 2010)	Maryland
Pah! VRS and Interpretel LLC (Aug. 18, 2010)	Pah! VRS <i>et al.</i>
Purple Communications (Aug. 18, 2010)	Purple
Registry of Interpreters for the Deaf (Aug. 18, 2010)	RID
Sky VRS (Aug. 24, 2010)	Sky VRS
Sorenson Communications, Inc. (Aug. 18, 2010)	Sorenson
Sprint Nextel Corporation (Aug. 18, 2010)	Sprint
Telecommunications for the Deaf and Hard of Hearing, Inc., et al.:	Consumer Groups
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	
American Association of the Deaf-Blind (Aug. 18, 2010)	

Short-form comments were also filed by a number of individual commenters

**Reply Commenter/Date Filed****Abbreviation**

Convo Communications, LLC (Sept. 2, 2010)	Convo
CSDVRS, LLC (Sept. 3, 2010)	CSDVRS
Pah! VRS and Interpretel LLC (Sept. 16, 2010)	Pah! VRS <i>et al.</i>
Purple Communications (Sept. 2, 2010)	Purple
Say-Hey, Inc. (Sept. 2, 2010)	Say-Hey
Snap Telecommunications, Inc. (Sept. 1, 2010)	Snap
Sorenson Communications, Inc. (Sept. 2, 2010)	Sorenson
Sorenson Communications, Inc. (Sept. 16, 2010)	Sorenson
Sprint Nextel Corporation (Aug. 18, 2010)	Sprint
Verizon and Verizon Wireless (Sept. 2, 2010)	Verizon

**STATEMENT OF  
ACTING CHAIRWOMAN MIGNON L. CLYBURN**

Today's action will enable millions of Americans with disabilities to access telephone service in ways that are more simple, robust, and affordable. Americans who are deaf, hard of hearing, deaf-blind, or have a speech disability rely on this critical service to communicate with family, friends, and emergency personnel. This program is a necessity in their daily lives.

That's why the Commission has taken several actions in this Order to preserve the program's integrity and long-term viability. For instance, by encouraging the development of interoperability and portability standards for VRS devices and establishing a neutral video communication service provider, the Commission is promoting competition in ways that will benefit consumers. The Commission is also acting vigorously to eliminate waste, fraud, and abuse while also initiating a transition from the existing, inefficient rate structure to rates that will ensure that the program's fiscal house is in order. We also set a goal of moving to a market-based approach for setting rates in the near future. I want to thank my colleagues for joining me in this unanimous decision to better serve millions of Americans with disabilities.