

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
Misuse of Internet Protocol Relay Service	)	CG Docket No. 12-38

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: November 18, 2020**

**Released: November 20, 2020**

Comment Date: (30 Days after Publication in the Federal Register)  
Reply Comment Date: (45 Days after Publication in the Federal Register)

By the Commission: Chairman Pai and Commissioner O’Rielly issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking, we propose to complete the process of updating the mechanism for the funding of Internet-based telecommunications relay services (TRS). When the Commission first authorized use of the Internet to provide TRS, it decided as an interim measure that all of the costs of providing Internet-based TRS should be paid by contributors to the TRS Fund, based only on their interstate telecommunications revenue.<sup>1</sup> In 2019, the Commission recognized that this “interim” funding mechanism, which disproportionately burdens providers and users of interstate services, was no longer justifiable as a means of supporting one Internet-based form of TRS—Internet Protocol Captioned Telephone Service (IP CTS).<sup>2</sup> Therefore, the Commission modified the cost recovery rules for IP CTS to expand the TRS Fund contribution base for that service to include intrastate as well as interstate end-user revenues.<sup>3</sup> Today, we propose to expand the TRS Fund contribution base for the other two forms of Internet-based TRS—video relay service (VRS) and Internet Protocol Relay Service (IP Relay)—so that

<sup>1</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, 5154-56, paras. 22-27 (2000) (*2000 TRS Order*); *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, 7784-87, paras. 15-26 (2002) (*2002 IP Relay Declaratory Ruling*).

<sup>2</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.” 47 CFR § 64.601(a)(22).

<sup>3</sup> *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, 34 FCC Rcd 11265 (2019) (*IP CTS Contributions Order*).

providers of intrastate voice communications must contribute to the TRS Fund for the support of these services as well.<sup>4</sup> We believe this rule change would ensure fair treatment of intrastate and interstate service providers and users in TRS funding and the long-term sustainability of the TRS Fund.

## II. BACKGROUND

2. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that both “interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner.”<sup>5</sup> The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS,<sup>6</sup> including rules on cost separation, which “shall generally provide” that interstate TRS costs are recovered from interstate services and intrastate TRS costs are recovered from the intrastate jurisdiction.<sup>7</sup> Section 225 also authorizes, but does not require, the establishment of state-administered TRS programs and funding mechanisms, subject to approval by the Commission.<sup>8</sup>

3. To provide for the recovery of interstate TRS costs, the Commission established the interstate TRS Fund in 1993.<sup>9</sup> Interstate telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service, are required to contribute to the TRS Fund a specified percentage of their interstate end-user revenues for the prior year.<sup>10</sup>

4. Although initially limited to supporting interstate TRS, the scope of the TRS Fund changed beginning in 2000, as the Commission authorized Internet-based forms of TRS—VRS, IP Relay, and IP CTS. To encourage the development of these nascent forms of TRS through nationwide competition among providers, the Commission (1) did not mandate that any of these services be included

---

<sup>4</sup> VRS is a form of TRS that enables people with hearing or speech disabilities who use sign language to make telephone calls over broadband with a videophone. 47 CFR § 64.601(a)(50). IP Relay is a form of TRS that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet. 47 CFR § 64.601(a)(23).

<sup>5</sup> 47 U.S.C. § 225(b)(1).

<sup>6</sup> *Id.* § 225(d); *see also id.* § 225(b)(2) (providing that, for the purposes of administering and enforcing TRS rules, “the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has . . . with respect to any common carrier engaged in interstate communication”).

<sup>7</sup> *Id.* § 225(d)(3)(B). Providers of international as well as interstate services are currently required to contribute to the TRS Fund. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 21 FCC Rcd 5247, 5250, para. 8, *recon.*, 21 FCC Rcd 5962, 5963, para. 2 (CGB 2006). For ease of reference, we use the term “interstate” to mean “interstate and international.”

<sup>8</sup> 47 U.S.C. § 225(f). Currently, all 50 states, the District of Columbia, and several United States territories have TRS programs approved by the Commission. *See Notice of Certification of State Telecommunications Relay Services (TRS) Programs*, CG Docket No. 03-123, Public Notice, 33 FCC Rcd 6741 (CGB 2018). For ease of reference, we refer to all state and territory TRS programs as state TRS programs. The Commission requires that state TRS programs include text-based TRS and speech-to-speech relay (STS). *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, 5149, para. 15 (2000) (*2000 TRS Order*) (determining that STS should be a mandatory form of TRS); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 98-67 and 03-123, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 12379, 12396, para. 26 (2003) (noting that the Commission’s TRS regulations require text-based TRS and STS).

<sup>9</sup> *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993) (*1993 TRS Order*); *see also* 47 CFR § 64.604(c)(5)(iii).

<sup>10</sup> 47 CFR § 64.604(c)(5)(iii)(A), (B).

in state-funded TRS programs and (2) as an interim measure, authorized use of the TRS Fund to compensate TRS providers for all compensable costs of Internet-based TRS calls, whether interstate or intrastate.<sup>11</sup> The Commission took these steps to speed the development of Internet-based TRS and encourage further experimentation and development of the platforms and networks to provide such services.<sup>12</sup> The Commission stated an intention to revisit these interim funding arrangements in the future.<sup>13</sup>

5. Two decades later, the interim funding measures for VRS and IP Relay remain in place. Although the Commission did not preclude states from applying for certification to add these services to state TRS programs,<sup>14</sup> no state has done so. As a result, the TRS Fund contributions supporting VRS and IP Relay are collected solely from providers of interstate telecommunications and VoIP services, based on a percentage of their interstate end-user revenues. This revenue base has been steadily decreasing over time.<sup>15</sup>

6. In 2015, IDT Telecom, Inc. (IDT), filed a petition for rulemaking requesting that the Commission expand the TRS Fund contribution base, for purposes of supporting Internet-based forms of TRS, to include intrastate revenues.<sup>16</sup> IDT argues that the inclusion of intrastate revenues is required by section 225 and that to recover the costs of Internet-based TRS solely from interstate revenues imposes an unfair burden on those TRS Fund contributors that offer primarily interstate services.<sup>17</sup> Most commenting

---

<sup>11</sup> *2000 TRS Order*, 15 FCC Rcd at 5154-56, paras. 22-27; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7784-87, paras. 15-26; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, 22 FCC Rcd 379, 390, para. 25 (2007) (*2007 IP CTS Declaratory Ruling*).

<sup>12</sup> *2000 TRS Order*, 15 FCC Rcd at 5152, para. 22; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786, para. 20. In support of the interim approach to VRS, the Commission also cited concerns that the cost of the service and the limited supply of qualified interpreters could burden state relay programs. *2000 TRS Order*, 15 FCC Rcd at 5153, paras. 24-25. For IP Relay, the Commission also sought to allow time for consideration of whether and how to identify or allocate calls as interstate and intrastate. *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786, para. 20.

<sup>13</sup> *2000 TRS Order*, 15 FCC Rcd at 5156, para. 27; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786-87, paras. 20-22; *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 390, para. 25.

<sup>14</sup> *See, e.g., 2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7787, para. 25 (making clear states are not precluded from including IP Relay in their program or from providing cost recovery from state funds).

<sup>15</sup> *See* Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 9 & Exh. 3 (filed May 1, 2020), <https://ecfsapi.fcc.gov/file/105013048227177/2020%20Annual%20TRS%20Fund%20Report.pdf> (2020 TRS Rate Report); Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate Supplemental Comment, CG Docket Nos. 03-123 and 10-51, Supp. Exh. 3 (filed June 5, 2020), <https://ecfsapi.fcc.gov/file/10605033505315/Updated%202020%20Exhibits%202%20and%20%203.pdf> (2020 TRS Rate Report Supplement) (detailing the continued annual decline of interstate TRS contributions).

<sup>16</sup> Petition of IDT for Rulemaking, CG Docket No. 03-123, at 1, 14 (filed Nov. 25, 2015), <https://ecfsapi.fcc.gov/file/60001345008.pdf> (IDT Petition).

<sup>17</sup> *Id.* at 6-7, 9.

parties supported IDT's petition, while a coalition of VoIP service providers opposed it.<sup>18</sup>

7. In partial response to IDT's petition, the Commission in 2018 proposed, and in 2019 adopted, a rule providing that TRS Fund contributions for the support of IP CTS shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and VoIP service provider.<sup>19</sup>

### III. DISCUSSION

8. To conform the funding of VRS and IP Relay to the requirements of section 225 and to harmonize cost recovery for these services with the cost recovery plan adopted one year ago for IP CTS, we propose to expand the TRS Fund contribution base for VRS and IP Relay to include intrastate revenues of telecommunications carriers and VoIP service providers. We propose this change for several reasons.

9. *First*, the current funding arrangements were authorized as interim measures to speed the development of these services and were not intended to be permanent.<sup>20</sup> Twenty years later, the primary purpose of these interim arrangements has been achieved. VRS has grown to be the second largest TRS program, and even IP Relay, with much lower demand than VRS, now accounts for more annual minutes than all state TRS programs combined.<sup>21</sup>

10. *Second*, the inherent inequities and limitations of the interim contribution arrangement for these services loom much larger today, given the current size of the TRS funding requirement—more than \$1.6 billion for TRS Fund Year 2020-21.<sup>22</sup> Nearly all of this amount is attributable to support for the three Internet-based relay services—IP CTS, VRS, and IP Relay.<sup>23</sup> IP CTS is projected to cost the TRS Fund approximately \$1 billion and is supported by all end-user telecommunications and VoIP revenues,

---

<sup>18</sup> See Hancock, Jahn, Lee & Puckett, LLC Comments, CG Docket No. 03-123 (filed Feb. 3, 2016); Sprint Corporation Comments, CG Docket No. 03-123 (filed Feb. 4, 2016); Sorenson Communications, Inc. and CaptionCall, LLC Comments, CG Docket No. 03-123 (filed Feb. 4, 2016); Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., Cerebral Palsy and Deaf Organization, Deaf Seniors of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing Comments, CG Docket No. 03-123 (filed Feb. 4, 2016) (all supporting IDT Petition). The Voice on the Net Coalition (VON Coalition) opposed the petition, arguing that the current funding scheme is within the Commission's statutory authority and that the Commission lacks authority to require TRS Fund contributions from intrastate revenue. VON Coalition Comments, CG Docket No. 03-123 (filed Feb. 4, 2016) (VON Coalition 2015 IDT Petition Comments). The United States Telecom Association (USTelecom) took no formal position on the petition. USTelecom Comments, CG Docket No. 03-123, at 2 (filed Feb. 4, 2016). Three parties filed reply comments supporting the petition: Ad Hoc Coalition of International Telecommunications Companies (filed Feb. 11, 2016); Convo Communications, Inc. (filed Feb. 16, 2016); and IDT Telecom (filed Feb. 16, 2016).

<sup>19</sup> *IP CTS Contributions Order*, 34 FCC Rcd 11265.

<sup>20</sup> *2000 TRS Order*, 15 FCC Rcd at 5152, 5156, paras. 22, 27; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786-87, paras. 20-22.

<sup>21</sup> See 2020 TRS Rate Report Supplement, Exh. 2.

<sup>22</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, 35 FCC Rcd 6649, 6657-58, para. 22 (CGB 2020) (*2020 TRS Rate Order*); CaptionCall Comments at 16, n.45; ClearCaptions Comments at 23; Consumer Groups and Academics Comments at 23-24; IDT Comments at 2-4; see also ITTA-The Voice of America's Broadband Providers Comments (ITTA) at 5-6 (discussing the burden of the continued growth of IP CTS usage for TRS Fund contributors).

<sup>23</sup> *2020 TRS Rate Order*, 35 FCC Rcd at 6657-58, para. 22.

with a contribution factor of less than 1%.<sup>24</sup> VRS and IP Relay, with projected expenditures of \$575 million in Fund Year 2020-21,<sup>25</sup> are supported by a 1.33% contribution only from interstate end-user telecommunications and VoIP revenues, with no contribution from intrastate revenues.<sup>26</sup> By contrast, approximately 58% of IP CTS costs are funded from intrastate end-user revenues,<sup>27</sup> and 75% of the costs of relay services provided through state TRS programs are funded from intrastate sources.<sup>28</sup>

11. The burden of supporting the \$575 million annual cost of VRS and IP Relay has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. In TRS Fund Year 2020-21, for example, providers of interstate-only services must contribute approximately 1.33% of their annual end-user revenues to support VRS and IP Relay.<sup>29</sup> By contrast, service providers for which only 42% of end-user revenues are interstate (the industry average) contribute only 0.56% of annual end-user revenues to support these services.<sup>30</sup> And providers of intrastate-only services, of which there are at least 200, contribute nothing to support VRS and IP Relay, despite consumers' use of VRS and IP Relay to make intrastate calls.

12. *Third*, the recovery of VRS and IP Relay costs based on interstate revenues alone appears likely to cause distortions in the pricing of interstate and intrastate voice services due to inaccurate market signals regarding their relative costs. As the Commission has recognized in various contexts, applying artificial regulatory distinctions or other disparate treatment to providers of similar services may create unintended market distortions, which can reduce the effectiveness of competition in ensuring efficient

---

<sup>24</sup> *Id.* at 6657-58, 6659, paras. 22, 26. The services provided through state TRS programs—traditional TRS, Speech-to-Speech Relay Service (STS), and non-IP Captioned Telephone Service (CTS)—for which the total costs are much smaller, are similarly supported from both interstate sources (through the TRS Fund) and intrastate sources (through state program funding mechanisms).

<sup>25</sup> *Id.* at 6657-58, para. 22.

<sup>26</sup> The current contribution factor for TRS Fund contributions derived solely from interstate end-user revenue is .01360, or 1.36%, *id.* at 6657-58, para. 22, and 97.7% of the TRS Fund payments funded from interstate-only revenue are for the provision of VRS and IP Relay. *See* 2020 TRS Rate Report Supplement, Exh. 2. 97.7% of 1.36% is 1.33%.

<sup>27</sup> Contributions to support IP CTS are divided between interstate and intrastate sources in the same percentages as the reported end-user revenue. According to the 2019 USF Monitoring Report, approximately 58% of total end-user telecommunications and interconnected VoIP revenues are intrastate, and 42% are interstate. Federal-State Joint Board on Universal Service, Universal Service Monitoring Report – 2019, CC Docket No. 96-45 et al., at 11, Table 1.2, <https://docs.fcc.gov/public/attachments/DOC-362272A1.pdf> (2019 USF Monitoring Report). Although the contribution base for TRS includes *non-interconnected* VoIP end-user revenues, while the USF contribution base does not, the inclusion of this relatively small category is unlikely to have a major impact on our estimate of the relative percentages of intrastate and interstate end-user revenues in the TRS contribution base. *Compare, e.g.*, 2019 USF Monitoring Report, Table 1.2 (showing total interstate end-user revenues of \$53,098,000,000 for 2018, *with* 2020 TRS Rate Report, Exh. 3 (showing a total interstate TRS contribution base of \$53,380,042,779 for 2018).

<sup>28</sup> Communication from Rolka Loube, October 20, 2020.

<sup>29</sup> *See supra* note 27.

<sup>30</sup> 2019 USF Monitoring Report at 11, Table 1.2 (showing that the average percentage of end-user revenue that is interstate is 42%). 42% of 1.33% is 0.56%.

pricing of telecommunications services.<sup>31</sup>

13. *Fourth*, the total amount of end-user revenues from which TRS Fund contributions can be drawn has been steadily decreasing over time, worsening the impact of the current funding arrangement on interstate service providers and users and increasing any existing distortion between intrastate and interstate service prices.<sup>32</sup> Expanding contributions to support VRS and IP Relay to encompass intrastate as well as interstate revenues would strengthen the sustainability of these services.

14. We seek comment on this proposal and its costs and benefits. Are there additional aspects of the current state of the VRS and IP Relay programs that support either altering or maintaining the current interstate-only funding mechanism? Are there differences between those programs and IP CTS, such that the interim funding arrangement for VRS and IP Relay should be retained, notwithstanding the facts stated above and the Commission's 2019 determination that the interim plan was no longer suitable for IP CTS?

15. *Legal Authority.* We believe the Commission has statutory authority to include the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support VRS and IP Relay, to the extent that these services continue to be funded solely through the TRS Fund. As explained in the *IP CTS Contributions Order*, section 225 expressly directs the Commission to ensure that both interstate and intrastate TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including TRS cost recovery.<sup>33</sup> Further, Congress expressly carved section 225 out from the Act's general reservation of state authority over intrastate communications,<sup>34</sup> and responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such authority.<sup>35</sup> We believe this analysis equally supports the Commission's authority to adopt the same approach to funding an appropriate share of the costs of VRS and IP Relay from intrastate revenues. We seek comment on the above analysis and assumptions. Are there differences between the provision of IP CTS and the provision of VRS and IP Relay that could affect our statutory analysis?

16. *Implementation.* In the *IP CTS Contributions Order*, the Commission adopted a separate contribution factor for IP CTS, which is applied to all (interstate and intrastate) end-user revenues of each

---

<sup>31</sup> See, e.g., *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5359, para. 4 (2012) (explaining that some aspects of universal service contributions may cause competitive distortions by imposing different contribution obligations on similar services); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5920, para. 53 (2007) (stating that disparate regulatory treatment of two classes of carriers offering the same information service would introduce competitive distortions into the marketplace); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5317-21, paras. 174-81 (2011) (recognizing competitive disparities that arise from telecommunications carriers paying higher pole attachment rates than their cable operator competitors); *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767, 5788-89, para. 46 (2019) (“[D]isparate forbearance treatment of carriers providing the same or similar services is not in the public interest, as it creates distortions in the marketplace that may harm consumers.”).

<sup>32</sup> See 2020 TRS Rate Report at 9, Exh. 3; 2020 TRS Rate Report Supplement, Supp. Exh. 3.

<sup>33</sup> 47 U.S.C. § 225(b)(1), (2), (d)(3)(B); *IP CTS Contributions Order*, 34 FCC Rcd at 11270, para. 13.

<sup>34</sup> 47 U.S.C. § 152(b); *IP CTS Contributions Order*, 34 FCC Rcd at 11270, para. 13.

<sup>35</sup> See 47 U.S.C. § 225(c), (f), (g); see also *IP CTS Contributions Order*, 34 FCC Rcd at 11270-71, paras. 14-16 (concluding that a state's undertaking to make some relay services available in a Commission-certified TRS program does not deprive the Commission of authority to ensure that other forms of TRS are available and adequately funded).

TRS Fund contributor.<sup>36</sup> We propose to apply this approach to VRS and IP Relay as well, using a single contribution factor to determine the total level of support required for all three services from a contributor's total intrastate and interstate end-user revenues.<sup>37</sup> To implement this approach, the TRS Fund administrator would determine a revenue requirement for all three services, based on the applicable compensation rates and projected demand. Next, based on the total intrastate and interstate end-user revenue data reported by TRS Fund contributors on Forms 499-A, the TRS Fund administrator would compute a separate TRS Fund contribution factor for the three services, by dividing the revenue requirement by contributors' total intrastate and interstate end-user revenues.

17. We tentatively conclude, for the reasons stated in the *IP CTS Contributions Order*, that implementation of this approach does not require separation of VRS and IP Relay costs, because a single contribution factor would apply to contributors' total interstate and intrastate end-user revenues, regardless of the proportion of VRS and IP Relay minutes and costs that might be deemed interstate or intrastate.<sup>38</sup> Accordingly, it would not be necessary to refer this matter to a Federal-State Joint Board, absent a state request to include VRS or IP Relay in state program offerings.<sup>39</sup> We seek comment on this implementation proposal and tentative conclusion. Is the above approach reasonable, equitable to all providers, and consistent with the requirements of section 225? What are the costs and benefits of this approach? How should a state opting to include VRS or IP Relay in its state TRS program affect our analysis?

18. Are there alternative implementation approaches we should consider? For example, in the *IP CTS Contributions Order*, the Commission determined not to adopt an alternative approach, whereby the budget for support of IP CTS would be divided into "interstate" and "intrastate" portions, based on an estimate of the proportions of IP CTS costs and minutes that are interstate and intrastate, respectively, and separate contribution factors then would be calculated for the interstate and intrastate portions of the IP CTS budget.<sup>40</sup> The Commission rejected this approach for IP CTS because: (1) it was not then feasible to consistently identify the geographic location of both end-points of telephone calls for which captioning is provided, and thus not practicable to determine with precision the percentage of IP CTS minutes that are attributable to interstate and intrastate calling; and (2) "given that IP CTS is available nationwide for both intrastate and interstate calling, it is not obvious that the use of separate factors for interstate and intrastate contributions is required to ensure fairness to TRS Fund contributors."<sup>41</sup> Are there differences between IP CTS and the current circumstances of VRS and IP Relay, such that this alternative method should be considered for those services, notwithstanding the

---

<sup>36</sup> *IP CTS Contributions Order*, 34 FCC Rcd at 11273-74, paras. 23-24.

<sup>37</sup> The interstate-only contribution factor would continue to be used, but only to support the interstate costs of services provided in state TRS programs (currently TTY-based TRS, STS, and non-Internet-based CTS).

<sup>38</sup> See *IP CTS Contributions Order*, 34 FCC Rcd at 11273, para. 19.

<sup>39</sup> See 47 U.S.C. § 410(c). In the *IP CTS Contributions Order*, the Commission concluded that this approach could be implemented without first referring the implementation issues to a Federal-State Joint Board. *IP CTS Contributions Order*, 34 FCC Rcd at 11273, para. 19. The Commission explained that, although section 225 requires that the Commission's rules governing *separation* of TRS costs must be consistent with section 410 of the Act, implementation of the above approach did not involve any modification of how TRS cost separation is determined. *Id.* The rule change adopted in the *IP CTS Contributions Order* only affected how contributor revenues are treated for purposes of calculating TRS Fund contributions.

<sup>40</sup> See *IP CTS Contributions Order*, 34 FCC Rcd at 11274, para. 23; see also *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5849-51, paras. 107-108 (2018) (*2018 IP CTS Modernization FNPRM*) (seeking comment on the alternative contribution-factor proposal).

<sup>41</sup> *IP CTS Contributions Order*, 34 FCC Rcd at 11274, para. 23.

Commission's determination that it was unsuitable for IP CTS? Is there any other approach that would be more appropriate here? Commenters proposing an alternative approach should discuss the costs and benefits of their preferred approach.

19. *Inclusion of VRS and IP Relay in State Programs.* To date, no state TRS program provides VRS or IP Relay, and we believe that some of the same impediments to states administering and funding intrastate IP CTS may exist for intrastate VRS and IP Relay.<sup>42</sup> For example, concerns raised in that rulemaking regarding states' legislative authority to incorporate an Internet-based form of TRS into state TRS programs would appear equally applicable to VRS and IP Relay as to IP CTS.<sup>43</sup> In addition, the issues of program cost and the potential impact of state involvement on competition, also cited in the *IP CTS Contributions Order*, would also raise complications regarding state funding and administration of VRS (and IP Relay, though to a lesser extent given its much lower cost and the current lack of competitive providers for this service).<sup>44</sup>

20. We nonetheless seek comment on how the Commission should proceed in the event that a state requests certification to include VRS or IP Relay in a state TRS program.<sup>45</sup> What modifications to the cost recovery method described above would be necessary to ensure that cost recovery is fairly apportioned and that TRS Fund contributors providing service within the affected state are not subjected to double payment of their share of intrastate VRS or IP Relay costs?<sup>46</sup> Should we refer such state requests to a Federal-State Joint Board, in order to make an appropriate determination regarding separation of intrastate and interstate TRS costs?<sup>47</sup>

21. *Economic Impact.* Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate revenues would likely reduce the TRS funding contributions that are passed on by contributing providers to users of interstate telecommunications and VoIP services, and concomitantly increase the contributions that are passed on to users of intrastate services.<sup>48</sup> This broadening of the base on which TRS Fund contributions are made would tend to reduce any current distortions in the relative prices of intrastate and interstate services, increasing economic efficiency by more accurately signaling relative costs to purchasers, which in turn will generate more efficient provider investment signals. The change we propose would cause some one-off implementation costs, but with the exception of any

---

<sup>42</sup> See *id.* at 11276-77, para. 31.

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.* at 11278, para. 32 (“If, at some future point, a state seeks authority to fund and administer IP CTS, we will address at that time the related issues of competition policy and program efficiency.”).

<sup>46</sup> In the *IP CTS Contributions Order*, the Commission stated that “[i]n the event that a state’s request to fund and administer intrastate IP CTS is approved, appropriate steps will be taken at that time to identify or estimate intrastate IP CTS minutes and costs and determine by how much to reduce the TRS Fund contributions from telecommunications and VoIP service providers operating within the state.” *Id.*

<sup>47</sup> See 47 U.S.C. § 225(d)(3)(A) (directing the Commission to “prescribe regulations governing the jurisdictional separation of costs” for TRS “[c]onsistent with the provisions of section 410 of this title”). Section 410, in turn, permits the Commission to refer to a Joint Board any matter “arising in the administration of this chapter,” including any matter “relating to common carrier communications of joint Federal-State concern,” but only requires such referral in the case of a rulemaking proceeding “regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations.” *Id.* § 410(a), (c). We note that in the initial 1993 decision establishing the TRS Fund, the Commission determined that its existing separations rules for common carrier investment and expenses were adequate for TRS purposes and that, accordingly, it would not be necessary to convene such a board. *1993 TRS Order*, 8 FCC Rcd at 5305, para. 30 & n.30.

<sup>48</sup> To the extent this would occur, it is not a cost of our proposed rule change, but a transfer of the contribution burden from some providers and their customers to other providers and their customers. Our proposal would not change total required contributions.



repricing, most of these would be *de minimis*, since current TRS Fund administrative processes would be left intact. Moreover, any repricing costs, being one-off, are likely to be small relative to the ongoing benefits such repricing would bring. Thus, we tentatively conclude the benefits of more efficient production and consumption would exceed any implementation costs of the proposed rule change. We seek comment on this. Broadening the base on which TRS Fund contributions are based also would ensure fair treatment of intrastate and interstate service providers and users in TRS funding and the long-term sustainability of the TRS Fund. This justifies the redistribution our action would impose on interstate and intrastate service providers and their customers. We seek comment on this analysis.

22. *Compliance date.* In the *IP CTS Contributions Order*, the Commission required intrastate carriers and VoIP service providers to contribute revenue to fund IP CTS starting with TRS Fund year 2020-21, to allow reasonable time for the Commission to amend relevant forms, for any carriers and VoIP service providers that have only intrastate revenue to register and prepare for submission of IP CTS contributions to the TRS Fund administrator, and for the TRS Fund administrator and Universal Service Administrative Company (USAC) to process such registrations.<sup>49</sup> In setting that timeline, the Commission afforded seven months for these steps to be taken. If we move forward with implementing our proposed rule change, carriers and VoIP service providers that have only intrastate revenue will already be registered to submit contributions to the TRS Fund given our earlier change to the IP CTS cost recovery rules. Nevertheless, the Commission will still need to amend the instructions for the relevant forms, and it would be administratively efficient to tie the compliance date to the start of new TRS Fund year. We seek comment on whether a similar timeline should apply to affected providers if the proposed rule change is adopted, or whether some other timeline would be more appropriate.

#### IV. PROCEDURAL MATTERS

23. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), 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>50</sup> The IRFA is set forth in Appendix B. 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 Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>51</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>52</sup>

24. *Paperwork Reduction Act Analysis.* The Notice seeks comment on proposed rule amendments that may result in new or modified information collection requirements. If the Commission adopts any new or modified information collection requirements, the Commission will publish another notice in the *Federal Register* inviting the public to comment on the requirements, as required by the PRA.<sup>53</sup> In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.<sup>54</sup>

25. *Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before the dates indicated on the first page of this document.<sup>55</sup>

---

<sup>49</sup> *IP CTS Contributions Order*, 34 FCC Rcd at 11275, para. 27.

<sup>50</sup> Pub. L. No. 96-354, 94 Stat 1164 (1980) (codified at 5 U.S.C. §§601-612).

<sup>51</sup> See 5 U.S.C. § 603(a).

<sup>52</sup> *Id.*

<sup>53</sup> 44 U.S.C. §§ 3501-3520.

<sup>54</sup> *Id.* § 3506(c)(4).

<sup>55</sup> 47 CFR §§ 1.415, 1.419

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>56</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- 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-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 Secretary's Office at 9050 Junction Drive, Annapolis Junction, MD 20701. The filing hours are 8:00 a.m. to 4:00 p.m., Monday through Friday. 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 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail may be addressed to Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

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

27. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>57</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 section 1.1206(b). In proceedings governed by section 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.

---

<sup>56</sup> See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

<sup>57</sup> 47 CFR § 1.1200 *et seq.*

**V. ORDERING CLAUSES**

28. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, the foregoing Notice of Proposed Rulemaking IS ADOPTED.

29. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the 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**  
**Proposed Rules**

The Federal Communications Commission proposes to amend Title 47 of the Code of Federal Regulations as follows:

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

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

Authority: [INSERT CURRENT AUTHORITY CITATION]

2. Amend section 64.604 by revising paragraphs (c)(5)(ii) and (c)(5)(iii)(A) to read as follows:

**§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate IP CTS, VRS, and IP Relay, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) \* \* \*

(A) *Contributions.* Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund, as described herein, (1) for the support of TRS other than IP CTS, VRS, and IP Relay, on the basis of interstate end-user revenues, and (2) for the support of IP CTS, VRS, and IP Relay on the basis of interstate and intrastate revenues. Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

\* \* \* \* \*

**APPENDIX B****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided in the item. The Commission will send a copy of the entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need For, and Objectives of, the Proposed Rules**

2. In the NPRM and Appendix A, the Commission proposes to expand the Interstate Telecommunications Relay Services (TRS) Fund contribution base for Video Relay Service (VRS) and Internet Protocol Relay Service (IP Relay). Currently, TRS Fund contributions to support these services are collected from telecommunications carriers and Voice over Internet Protocol (VoIP) service providers based on a percentage of each contributor's annual interstate and international end-user revenues. The Commission proposes to amend this rule to require contributions based on a percentage of interstate, international, *and intrastate* end-user revenues. This proposal would not change the total amount of required contributions to the TRS Fund; rather, it would more fairly allocate the contribution obligations among telecommunications carriers and VoIP providers. Requiring TRS Fund contributions to include intrastate revenue would remove contribution asymmetry that unfairly burdens providers of interstate services who are contributing more than their fair share because providers of intrastate services are not participating in the contribution obligations. In addition, the Commission finds that increased demand for VRS and IP Relay and the decreasing contribution base for the Interstate TRS Fund, among other factors, support the proposed rule amendments.

3. The NPRM also seeks comment on how the Commission should proceed in the event that a state requests certification to include VRS or IP Relay in a state TRS program.

**A. Legal Basis**

4. The authority for this proposed rulemaking is contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225.

**B. Description and Estimate of the Number of Small Entities Impacted**

5. 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 proposed rules and policies, if adopted.<sup>4</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>5</sup> In addition, the term "small business" has

---

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

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> *Id.* § 603(b)(3).

<sup>5</sup> *Id.* § 601(6).

the same meaning as the term “small business concern” under the Small Business Act.<sup>6</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>7</sup>

6. If the proposed rule amendments are adopted, various categories of providers of telecommunications and VoIP services may have to increase their contributions to the TRS Fund.

7. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>8</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>9</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>10</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>11</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

8. *Telecommunications Resellers.* The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>12</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>13</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>14</sup> U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services

---

<sup>6</sup> *Id.* § 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>7</sup> 15 U.S.C. § 632.

<sup>8</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>9</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>10</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>11</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>12</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517911 Telecommunications Resellers”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

<sup>13</sup> See 13 CFR § 121.201, NAICS Code 517911.

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

during that year.<sup>15</sup> Of that number, 1,341 operated with fewer than 1,000 employees.<sup>16</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

9. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>17</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>18</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>19</sup> Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.<sup>20</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

10. *All Other Telecommunications*. The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>21</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>22</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>23</sup> The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less.<sup>24</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>25</sup> Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had

---

<sup>15</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>16</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>17</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517312&search=2017+NAICS+Search&search=2017>.

<sup>18</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>19</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

<sup>20</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>21</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

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

<sup>23</sup> *Id.*

<sup>24</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>25</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919,

(continued...)



annual receipts of \$25 million to \$49,999,999.<sup>26</sup> Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

**C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

11. Because TRS Fund contributors’ intrastate end-user revenues are currently included in the contribution base for Internet Protocol Captioned Telephone Service (IP CTS), the Commission’s existing rules require telecommunications carriers and VoIP providers that provide intrastate telecommunications services to register with the TRS Fund administrator and submit contribution payments to the TRS Fund. The NPRM proposes no new reporting, recordkeeping, or other compliance requirements.

**D. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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 or reporting requirements under the rule for 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 small entities.<sup>27</sup>

13. If the Commission adopts its proposal to require TRS Fund contributions from intrastate end-user revenue to support VRS and IP Relay, the contributions required from interstate and international end-user revenue would be correspondingly reduced. As a result, while some small entities may be required to make increased payments to the TRS Fund, other small entities would experience a reduction in TRS Fund contributions. The proposal would not increase the total contributions required, and the additional costs incurred by some small entities would be offset by cost reductions for other small entities and by the benefits of appropriately allocating the funding of the provision of VRS and IP Relay among all telecommunications carriers and VoIP providers. By including intrastate revenues in the contribution base, the VRS and IP Relay programs, including the providers and users, would be supported by a broader, more sustainable contribution base.

14. The NPRM seeks comment from all interested parties. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

**E. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission’s Proposals**

15. None.

(Continued from previous page) \_\_\_\_\_  
<https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>26</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>27</sup> 5 U.S.C. § 603(b).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

***Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51; Misuse of Internet Protocol Relay Service, CG Docket No. 12-38.***

Today, we move once again to ensure that telecommunications relay services (or TRS) for those Americans who are deaf or hard of hearing will continue to be available in the most efficient manner and on the cutting-edge platforms consumers most want.

We propose to modernize the funding structure for video relay service (or VRS) and IP relay. VRS has matured to become the second largest TRS program, and IP relay now accounts for more annual minutes than all state TRS programs combined. Currently, the TRS Fund spends about \$575 million a year on these two programs. The steady growth of these programs and their associated costs indicate that the time has come to put the funding for these programs on a more equitable, sustainable footing.

Specifically, we begin the process of moving away from funding VRS and IP relay through contributions based solely on interstate telecommunications revenue. Just as we did last year for Internet protocol captioned telephone service, we propose to expand the contribution base for VRS and IP relay to include intrastate telecommunications revenues.

This step would allocate the burden of funding these two programs more fairly without increasing the size of the TRS Fund. No longer would providers of interstate-only services have to contribute end-user revenues to fund VRS and IP relay while providers of intrastate-only services contribute nothing. Moreover, by broadening the base of the support, we would place the future of these two programs on a sounder footing and eliminate artificial regulatory distinctions that can cause unintended market distortions.

I'd like to thank all of the guardians of the public interest who have worked on this item: Bob Aldrich, Kelley Bregenzer, Diane Burstein, Eliot Greenwald, Michael Scott, Bill Wallace, and Patrick Webre of the Consumer and Governmental Affairs Bureau; Sharon Lee of the Enforcement Bureau; Susan Lee, Virginia Metallo, Eric Ralph, and Emily Talaga from the Office of Economics and Analytics; Michael Carlson, Valerie Hill, Richard Mallen, Linda Oliver, and Bill Richardson from the Office of General Counsel; and Andrew Mulitz and David Schmidt from the Office of the Managing Director.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

***Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51; Misuse of Internet Protocol Relay Service, CG Docket No. 12-38.***

Throughout my time at the Commission, I have focused on maximizing the efficiency of our Telecommunications Relay Services (TRS) and minimizing burdens on ratepayers, with the goal of ensuring the long-term viability of our subsidy programs. We have recently made some progress on this front, for example, by granting conditional certification to several providers to offer Internet Protocol Captioned Telephone Service (IP CTS) using only automatic speech recognition (ASR) technology, a development that should promote both innovation and greater efficiency in the IP CTS program. At the same time, we have a long way to go in terms of controlling unsustainable TRS spending, which has ballooned to over \$1.6 billion for the current funding year. Unfortunately, certain market-based improvements that I have advocated, such as distributing subsidies through reverse auctions, rather than inefficient rate regulation and artificial competition, haven't quite yet won the day, even though they would make a real difference in addressing the fund's needs and controlling costs to make it sustainable.

Today's item, which proposes to broaden the contributions base for our video relay service (VRS) and Internet Protocol Relay Service (IP Relay) to include intrastate voice revenues, recognizes that TRS contributions are unduly burdensome for certain classes of providers (and in turn their customers), and seeks to make cost recovery more equitable. I will vote to approve the item, but I believe that failing to address the underlying spending problem is incredibly myopic and that its elimination of asymmetric burdens will be of limited value as a result.

Finally, under no circumstances should states be allowed to engage in "double-dipping" with respect to intrastate contributions, or to assess fees on the same intrastate revenues as the federal government to support a state VRS or IP Relay program. And, that's especially true when there is no "intrastate" component of these IP-based services of which to speak. While the item notes that no state TRS program currently includes VRS or IP Relay, it seeks comment on how to modify the proposed cost recovery method in the event that a state were to request certification to include VRS or IP Relay in a state TRS program, and asks whether referral to a Federal-State Joint Board would be appropriate to determine the jurisdictional separation of TRS costs. The answer to the latter question is a resounding "no." I have repeatedly stated that jurisdictional separations rules are increasingly obsolete in our IP-driven industry and it would be completely inappropriate to waste time and resources reviving this regulatory anachronism and imposing additional burdens on legacy providers through this proceeding.