

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
)	
)	

NOTICE OF PROPOSED RULEMAKING AND ORDER

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By the Commission: Acting Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on the adoption of compensation rates for Telecommunications Relay Services (TRS) Fund support of providers of video relay service (VRS) for a new compensation period beginning January 1, 2022. In the accompanying Order, the current VRS compensation rates, which are set to expire June 30, 2021, are extended through

December 31, 2021, or the effective date of compensation rates adopted pursuant to this Notice, whichever is earlier.¹

II. NOTICE OF PROPOSED RULEMAKING

A. Background

2. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Federal Communications Commission (Commission) to ensure the availability of TRS to persons who are deaf, hard of hearing, deafblind, or have speech disabilities, “to the extent possible and in the most efficient manner.”² TRS are defined as “telephone transmission services” enabling such persons to communicate by wire or radio “in a manner that is functionally equivalent to the ability of [a person without hearing or speech disabilities] to communicate using voice communication services.”³ VRS is a form of TRS that “allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment.”⁴ VRS is supported entirely by the Interstate TRS Fund (TRS Fund),⁵ and VRS providers are paid compensation for the provision of VRS in accordance with the Commission’s rules and orders.⁶

3. In 2007, the Commission introduced a tiered rate structure for compensating VRS providers.⁷ At the time (as continues to be the case today), VRS providers handled widely varying volumes of VRS minutes, with one provider, Sorenson Communications, LLC (Sorenson), serving as the largest provider, and with significant disparities in providers’ per-minute costs.⁸ The Commission

¹ This action does not preclude a true-up of compensation, should the Commission deem that to be necessary after adopting a VRS compensation methodology and rate structure. *See infra* para. 45.

² 47 U.S.C. § 225(b)(1).

³ *Id.* § 225(a)(3).

⁴ 47 CFR § 64.601(a)(50). The VRS user signs to a Communications Assistant who voices the conversation to the telephone user and signs the conversation back to the VRS user. *See 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, 5548-49, para. 2 (2011).

⁵ When it authorized VRS as a form of TRS, the Commission decided that, to “reduce costs and spur industry and consumer investment in the equipment and technologies necessary to use” VRS, intrastate as well as interstate VRS calls should be supported by the TRS Fund, rather than through state-administered TRS programs. *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, 5153-54, para. 24 (2000) (*2000 VRS Authorization Order*). In 2020, the Commission adopted a Notice of Proposed Rulemaking in which it proposed to expand the contribution base for the portion of the TRS Fund that supports VRS, to include intrastate as well as interstate end-user revenues. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 12-38, Notice of Proposed Rulemaking, 35 FCC Rcd 13370 (2020).

⁶ The TRS Fund administrator, currently Rolka Loube Associates LLC (Rolka Loube), reviews monthly compensation requests and supporting information submitted by providers of VRS and other forms of TRS and makes monthly payments of compensation in accordance with the applicable compensation rates. In addition, the administrator annually collects cost and demand data from each provider and submits an annual report that includes recommendations regarding those TRS Fund compensation rates subject to renewal for the following TRS Fund Year, which begins July 1. *See* 47 CFR § 64.604(c)(5)(iii)(D), (E).

⁷ Under this type of tiered rate structure, providers supplying the same number of minutes of service receive identical compensation.

⁸ *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, 20167, para. 52 (2007) (*2007 TRS Rate Methodology Order*) (noting that “[f]or several years now, one provider has a dominant

(continued....)

adopted a tiered rate structure to reflect the per-minute cost differentials among VRS providers and to “ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger and more established providers are not overcompensated due to economies of scale.”⁹ Under a tiered rate structure, a VRS provider’s monthly compensation payment is calculated based on the application of different rates to specified “tiers” of minutes. The highest rate is applied to an initial tier of minutes up to a defined maximum number, a lower rate is applied to the next tier, again up to a second defined maximum number of minutes, and a still lower rate is applied to any minutes in excess of the second maximum.¹⁰ Since 2007, the Commission has periodically modified the tier structure and rates to align them more closely with the actual costs incurred by providers of varying size and levels of usage.¹¹

4. In setting tiered compensation rates for VRS, the Commission ordinarily determines the per-minute rates of compensation for a multi-year rate period.¹² A multi-year rate period conserves administrative resources, allows TRS providers greater certainty for business planning, and enhances provider incentives for innovation and cost reduction.¹³

5. The Commission also has sought to align annual TRS Fund expenditures more closely with allowable provider costs (i.e., those for which TRS Fund support is allowed). In the early years of the VRS program, a substantial gap emerged between allowable costs and TRS Fund compensation payments.¹⁴ Since 2009, the Commission’s VRS compensation rate decisions have sought to close this

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market share, and thus this individual provider’s projected minutes and costs largely determine the rate”); *see also Sorenson Communications, Inc. v. FCC*, 765 F.3d 37, 42 (D.C. Cir. 2014) (*Sorenson 2014*) (estimating that “Sorenson provides about 80% of the VRS minutes logged every month, and its two principal competitors each provide another five to ten percent”).

⁹ *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20167, para. 53.

¹⁰ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Order, 32 FCC Rcd 5891, 5892, para. 2 (2017) (*2017 VRS Compensation Order*), *aff’d sub nom. Sorenson Communications, LLC v. FCC*, 897 F.3d 214 (D.C. Cir. 2018) (*Sorenson 2018*). This description does not apply to the separate “emergent rate” added to the VRS rate structure in 2017. This special rate applies only to providers (including any new entrants) that had no more than 500,000 total monthly minutes as of July 1, 2017. In the event that a provider subject to the emergent rate exceeds 500,000 minutes, the additional minutes are subject to the tiered rate that would otherwise be applicable. For example, an emergent provider’s monthly minutes from 500,001 through 1 million would be subject to the Tier I rate—the same rate that applies to the first 1 million monthly minutes of other providers. *2017 VRS Compensation Order*, 32 FCC Rcd at 5916-17, para. 49.

¹¹ *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8699, 8703-05, paras. 201, 212-14 (2013) (*2013 VRS Reform Order*); *2017 VRS Compensation Order*, 32 FCC Rcd at 5916-17, 5918-20, 5922-24, paras. 49-50, 52-54, 59-63.

¹² *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20169, para. 56; *2013 VRS Reform Order*, 28 FCC Rcd at 8703-04, para. 212; *2017 VRS Compensation Order*, 32 FCC Rcd at 5921-22, para. 58. In 2007, the Commission set a three-year rate period. In 2013, the Commission shifted to a four-year rate period, which was repeated in 2017. In 2010, the Commission deviated from the multi-year approach because it simultaneously launched a broad-gauged inquiry into, among other things, VRS compensation methodology. *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, 8693, para. 7 (2010) (*2010 TRS Rate Order*). Compensation was set for a one-year period in 2010, and because the broader inquiry was not completed until 2013, the rates set in 2010 were extended in 2011 and 2012. *See 2013 VRS Reform Order*, 28 FCC Rcd at 8693, paras. 184-85.

¹³ *2017 VRS Compensation Order*, 32 FCC Rcd at 5910-12, 5921-22, paras. 38, 40, 58.

¹⁴ *2010 TRS Rate Order*, 25 FCC Rcd at 8694, para. 9 (identifying a gap of approximately \$2.00 between VRS compensation rates and allowable provider costs per minute).

gap.¹⁵ From 2009-10 to 2020-21, average per-minute provider compensation declined by 47%, from approximately \$6.30 to \$3.33 per minute.¹⁶

6. In 2013, the Commission made numerous regulatory changes affecting the VRS program, some of which were specifically aimed at altering the structure within which VRS providers competed with one another.¹⁷ The Commission directed the Managing Director to contract with a neutral third party to build, operate, and maintain a video communications service platform, which would enable smaller VRS providers to compete more effectively, without having to operate their own service platforms.¹⁸ By enabling VRS providers to focus their competitive efforts more narrowly on the provision of high-quality sign-language interpretation, the Commission hoped to eliminate waste from the costly duplication of VRS infrastructure by multiple providers.¹⁹ The Commission also expected that the development of a standard user-device interface would make it easier for smaller providers to compete for customers without having to replace the free devices routinely distributed by the largest VRS provider.²⁰ After completing such structural reforms, the Commission anticipated being able to transition from the tiered rate structure to a single compensation rate for each element of the relay service.²¹ To that end, the Commission adopted a four-year interim compensation plan, whereby all the tiered rates would be reduced in stages on a “glide path” toward closer alignment with the weighted-average cost of providing VRS.²² The Commission also sought comment on how to use a market-based approach to set future VRS compensation.²³

¹⁵ See, e.g., *id.* at 8695-96, para. 12 (stating “we decline to perpetuate the large discrepancy between actual costs and provider compensation in the face of substantial evidence that providers are receiving far more in compensation than it costs them to provide service”); *2013 VRS Reform Order*, 28 FCC Rcd at 8703-06, paras. 212-216 (setting VRS compensation rates on a four-year “glide path” toward the average-cost level); *2017 VRS Compensation Order*, 32 FCC Rcd at 5922, para. 59 (stating an objective to “limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin”).

¹⁶ See National Exchange Carrier Association, Inc., Interstate Telecommunications Relay Service Fund: Supplement to Annual Filing for TRS Contribution Factor Decrease, CG Docket Nos. 03-123 and 10-51, Exh. 1 (filed Mar. 30, 2010), <https://ecfsapi.fcc.gov/file/7020399490.pdf> (showing projected VRS expenditures and demand for TRS Fund Year 2009-10); see also Rolka Loubé, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 2 (filed May 1, 2020), <https://ecfsapi.fcc.gov/file/105013048227177/2020%20Annual%20TRS%20Fund%20Report.pdf> (2020 TRS Rate Filing) (showing projected VRS expenditures and demand for TRS Fund Year 2020-21).

¹⁷ See *2013 VRS Reform Order*, 28 FCC Rcd at 8628-91, paras. 19-180 (discussing the numerous VRS reforms).

¹⁸ See *id.* at 8623-24, para. 8. As planned, the neutral service platform would perform “user registration and validation, authentication, authorization, automatic call distribution (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.” *Id.* at 8657, para. 89.

¹⁹ See *id.* at 8698-99, para. 199.

²⁰ *Id.* at 8641, para. 43 (“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.”).

²¹ See *id.* at 8698, para. 196; see also *id.* at 8707-08, 8710, paras. 222, 224, 236 (proposing to set separate compensation rates for the provision of video communication service and “VRS CA service”).

²² The Commission planned to reduce the rate gap between highest and lowest priced tiers with the expectation that the tiered rate structure would eventually be replaced by a unitary compensation rate for all minutes. See *2013 VRS Reform Order*, 28 FCC Rcd at 8704-06, paras. 213-15, Tbl. 2. The term “weighted average,” when used to describe multiple providers’ costs, means an average of provider costs weighted in proportion to each provider’s total minutes. Thus, in the current VRS market, the weighted average costs are much closer to the costs of the provider with the largest share of minutes.

²³ *Id.* at 8706-07, para. 217.

7. In 2017, the Commission reassessed its VRS compensation policy in light of intervening developments.²⁴ Most significantly, the neutral VRS platform had proved to be impracticable.²⁵ Therefore, each VRS provider continued to incur all the costs associated with an end-to-end relay service operation, including marketing, transmission, call routing, and customer service, as well as the provision of sign language interpreting. Although interoperability had improved, the Commission found that the expectations and assumptions underlying the plan to transition from tiered rates to a unitary rate had not been borne out.²⁶ A single provider, Sorenson, continued to be the largest provider, and major disparities between providers' per-minute costs persisted.²⁷ In short, to the extent that the 2013 reforms had been implemented, they had not changed market conditions sufficiently to justify adoption of a single compensation rate.²⁸

8. Accordingly, the Commission chose to defer consideration of major changes in the compensation system.²⁹ Instead, to preserve choice among suppliers for VRS users, the Commission decided to maintain tiered compensation rates for the next four years.³⁰ The Commission adopted a 3-tier rate structure for the four-year period and added an emergent rate to the tiered rate structure applicable to VRS providers with no more than 500,000 total monthly minutes for each year of the four-year rate plan.³¹ The Commission set rate levels for each tier “to limit the likelihood that any provider’s total compensation will be insufficient to provide a reasonable margin over its allowable expenses, and to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin.”³² The Commission also sought to “avoid any risk of setting a rate for any tier that is either below the marginal cost of a provider subject to that tier or excessively above such marginal cost.”³³

²⁴ See *2017 VRS Compensation Order*, 32 FCC Rcd at 5905-07, paras. 27-31. In 2016, the Commission granted a limited “freeze” of the compensation rate reductions for the smallest VRS providers to allow those providers additional time to “reach the optimum scale to compete effectively.” *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, 31 FCC Rcd 2339 (2016) (*2016 Rate Freeze Order*). The Commission found that while smaller VRS providers had made strides in improving efficiency and reducing their per-minute costs, they had fallen short of reducing their costs to or below the applicable per-minute compensation rate. See *id.* at 2342-43, para. 8.

²⁵ The Commission requested bids to build the platform, but no acceptable bids were received, and the Commission cancelled the procurement. See *2017 VRS Compensation Order*, 32 FCC Rcd at 5931, para. 75. In 2017, the Commission eliminated the rules establishing the neutral video communications platform. *Id.* at 5931, para. 76.

²⁶ *Id.* at 5905-06, para. 28. The Commission expected the 2013 structural reforms would generate a more competition-friendly environment for small providers. See *id.* at 5905, para. 27.

²⁷ *Id.* at 5906-07, paras. 30-31.

²⁸ *Id.* at 5905-07, paras. 28-30.

²⁹ *Id.* at 5908, para. 33.

³⁰ *Id.* at 5908-09, paras. 33-35.

³¹ *Id.* at 5916-18, paras. 49, 52.

³² *Id.* at 5922, para. 59.

³³ *Id.*

Table 1

Tier	2017-2018 rate year (per minute rate)	2018-2019 rate year (per minute rate)	2019-2020 rate year (per minute rate)	2020-2021 rate year (per minute rate)
Emergent: less than 500,000 minutes per month)	\$5.29	\$5.29	\$5.29	\$5.29
I: 0 – 1 million minutes per month	\$4.82	\$4.82	\$4.82	\$4.82
II: 1 – 2.5 million minutes per month	\$3.97	\$3.97	\$3.97	\$3.97
III: more than 2.5 million minutes per month	\$3.21	\$2.83	\$2.63	\$2.63

B. Retaining a Tiered-Rate Methodology

9. In setting VRS compensation for Fund Year 2021-22 and beyond,³⁴ we propose to continue using a tiered rate structure, i.e., one in which a VRS provider’s monthly compensation payment is calculated based on the application of different rates to specified “tiers” of minutes, where the highest rate is applicable to a provider’s initial quantum of minutes, up to a defined maximum, and a lower rate (or rates) is applicable to additional minutes. We seek comment on the costs and benefits of this proposal and on the underlying rationale, discussed below.

10. First, developments over the last four years do not appear to warrant reconsideration of the Commission’s 2017 assessment that the expectations and assumptions underlying the Commission’s 2013 proposal to transition away from tiered compensation rates “have not been borne out by experience.”³⁵ The reforms introduced in 2013 appear to have run their course, and further competitive improvements resulting from their implementation do not seem likely. For example, although interoperability among providers appears to have improved, a standard user device interface—which the Commission hoped would make it easier for smaller providers to compete for customers without having to provide free devices to users—has not been adopted.³⁶

³⁴ In the accompanying Order, we extend the current compensation rates through December 31, 2021, or the effective date of compensation rates adopted pursuant to this Notice, whichever is earlier, subject to a possible true-up.

³⁵ *2017 VRS Compensation Order*, 32 FCC Rcd at 5905-06, para. 28.

³⁶ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Order on Reconsideration and Order Suspending Compliance Deadline, 35 FCC Rcd 1878, 1878, para. 1 (CGB 2020) (“Although VRS providers have successfully implemented the Provider Interoperability Profile, for technical and other reasons the mandate to implement the [Relay User Equipment] Profile has never taken effect.”). Efforts to improve interoperability continue through standards bodies, such as the SIP Forum and the Internet Engineering Task Force (IETF), working to revise and improve voluntary, consensus interoperability and portability standards.

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11. Second, certain fundamental facts also appear unlikely to change. VRS addresses a limited segment of the communications marketplace—calls for which one party is a sign-language user. As a result, there are built-in limitations on total demand for VRS, which appears to have stabilized relative to the high growth rates that occurred 10-15 years ago.³⁷ Further, we are unaware of any innovations substantial enough to cause a major change in the economics of providing VRS in the foreseeable future.³⁸

12. Third, in light of the above, there appears to be little reason to expect major changes in most VRS providers' relative per-minute costs. Today, there are only four certified VRS providers. No new entrants have sought certification to provide VRS since 2011. The current providers continue to operate at dramatically different scales, and there continues to be vast differences in the per-minute costs of VRS providers.

13. Notwithstanding the foregoing limitations, we see no reason to change the VRS compensation policy objectives the Commission has long pursued: (1) to continue bringing total TRS Fund payments into closer alignment with allowable costs, and (2) to preserve and promote quality-of-service competition among multiple providers. By offering VRS users a choice among multiple providers, the Commission has found, it can most effectively carry out the statutory mandate to ensure that “functionally equivalent” VRS is available to all eligible individuals, “to the extent possible and in the most efficient manner,” in accordance with the Commission’s minimum TRS standards and subject to rules that “do not discourage or impair the development of improved technology.”³⁹ Enabling multiple

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However, it is still unclear whether and how such changes might improve the ability of smaller providers to compete.

³⁷ Compare National Exchange Carrier Association Inc., Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket No. 03-123, Exh. 3-7 (filed Apr. 29, 2011), <https://ecfsapi.fcc.gov/file/7021341474.pdf> (showing, e.g., 12% growth in VRS demand from 2008 to 2009) with Rolka Loube, Interstate Telecommunications Relay Service Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Rev. Appx. F, “2019-2020 Rates & Demand Forecast,” Slide 20 (filed May 3, 2019), <https://ecfsapi.fcc.gov/file/10503037094514/Appendix%20F%20-%20RL%20%20April%202019.pdf> (showing less than 3% annual growth in VRS demand from 2017 to 2019). Cf. *Misuse of Internet Protocol (IP) Captioned Telephone Service; 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. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10889, para. 46 (2020) (*2020 IP CTS Compensation Order*) (declining to adopt tiered compensation rates for Internet Protocol Captioned Telephone Service (IP CTS) because, among other reasons, “IP CTS’s continuous record of rapid growth suggests that there are substantially greater opportunities than in the VRS context for a provider to reach efficient scale within a relatively short period of time”).

³⁸ Cf. *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10889, para. 46 (noting “the new opportunities for small providers and new entrants to use advanced ASR technology to offer fully automatic IP CTS at greatly reduced operating cost”).

³⁹ See 47 U.S.C. §§ 225(a)(3), (b)(1), (d)(1)(B), (2); *2000 VRS Authorization Order*, 15 FCC Rcd at 5152-54, paras. 22-26 (authorizing TRS Fund-supported VRS under a regime of nationwide competition among multiple service providers); *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20167, para. 53 (adopting a tiered rate structure to further competition in VRS); *2010 TRS Rate Order*, 25 FCC Rcd at 8697-98, para. 17; *2013 VRS Reform Order*, 28 FCC Rcd at 8622-23, para. 5 (“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”); see also *2013 VRS Reform Order*, 28 FCC Rcd at 8699, para. 200 (continuing tiered rates to preserve competition while the Commission implements structural reforms to create a more competition-friendly environment for VRS); *2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31 (explaining that the Commission “has consistently sought to encourage and preserve the availability of a competitive choice for VRS users, because it ensures a range of service offerings analogous to that afforded voice service users and because it provides a competitive incentive to improve VRS offerings”).

VRS providers to compete for customers based on service quality, the Commission has found, will best ensure that: (1) diverse service offerings are available, analogous to those afforded voice service users; (2) niche services are provided to meet the needs of certain segments of the sign language-using population, such as individuals who speak Spanish or are deafblind; and (3) VRS providers have incentives to maintain high standards of service quality and improve their VRS offerings.⁴⁰ As the Commission noted in 2017, it might be less costly in the short run to set TRS Fund compensation in such a way that only the lowest-cost VRS provider can continue offering service.⁴¹ However, we continue to believe that in the long run, the removal of competitive choices risks degradation of service quality and elimination of diverse offerings, both of which are needed for functionally equivalent service to all eligible users.⁴² And, because “efficient service is not just about cost but also quality,”⁴³ we also believe that a policy of maintaining a choice of service offerings can be pursued consistently with the mandate that TRS be made available “in the most efficient manner.”⁴⁴ As the D.C. Circuit has explained, “competition promotes efficiency by preventing subpar service from a monopolist who has no fear of losing customers; i.e., it promotes compliance with the service quality required by the mandatory minimum standards.”⁴⁵ We seek comment on these beliefs.

14. Accordingly, in setting compensation policy for the next period, under the current regulatory structure, we tentatively conclude that it will best serve the purposes of section 225 if we structure VRS compensation to continue supporting an ecosystem in which multiple VRS providers can compete for minutes of use based on quality of service. We seek comment on this tentative conclusion and the premises set forth above, as well as any relevant data. We also seek comment on how best to set VRS compensation so as to promote the above benefits of allowing consumers a choice of VRS providers. Which past measures have succeeded or failed in this regard? What should the Commission’s role be, if any, in supporting more effective quality-of-service competition?

15. We invite commenters to suggest alternatives to retaining a tiered-rate compensation methodology. In the *2017 VRS Compensation Order*, the Commission rejected the alternatives of moving to a single rate or conducting a reverse auction, on the grounds that they force the Commission to choose between preserving the benefits of multi-provider competition and setting the compensation rate so high as to provide wasteful, windfall profits to the lowest-cost provider.⁴⁶ We urge commenters advocating alternatives to tiered compensation rates to explain their proposals in detail, including how such proposals can deliver the benefits that the Commission has found are achievable through VRS competition (i.e., making functionally equivalent TRS available to all eligible individuals in the most efficient manner, in accordance with minimum TRS standards, without discouraging or impairing the development of improved technology).

⁴⁰ See *2013 VRS Reform Order*, 28 FCC Rcd at 8699, para. 200; *2017 VRS Compensation Order*, 32 FCC Rcd at 5908-10, paras. 34-36.

⁴¹ *2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31.

⁴² *Id.*; see also *Sorenson 2018*, 897 F.3d at 229 (recognizing that “two propositions can be true at once: (1) a tiered-rate structure may not be maximally efficient in terms of minimizing spending in the short term and (2) the tiered-rate structure may be necessary for the long-term efficiency of the market because it preserves multiple market participants”).

⁴³ *Sorenson 2018*, 897 F.3d at 228.

⁴⁴ 47 U.S.C. § 225(b)(1).

⁴⁵ *Sorenson 2018*, 897 F.3d at 229.

⁴⁶ *2017 VRS Compensation Order*, 32 FCC Rcd at 5914, para. 46.

C. Alternative Approaches for Setting Tiered Compensation Rates

16. Before addressing the specifics of future compensation rates, we seek comment on two overarching issues. First, should we adopt modified VRS compensation rates at this time, or “freeze” the current rates until a reliable, post-COVID-19 pandemic baseline for cost and demand has been established? Second, if we decide to move forward with rate-setting at this time, should we retain the current setup, with an emergent rate and the current tier structure, or should we eliminate the emergent rate and adopt a modified tier structure, to improve provider incentives and move expenditures closer to costs?

1. Deferring Rate Changes to After the Pandemic

17. In light of the protracted duration of the COVID-19 pandemic, the significant demand changes associated with it, and the consequent increase in uncertainty as to future costs and demand, we seek comment about the feasibility of setting new VRS compensation rates at this time.⁴⁷ In 2020, following the outbreak of the COVID-19 pandemic and efforts to reduce its spread, VRS providers experienced an unanticipated increase in VRS traffic levels. Providers incurred some additional costs resulting from the need for operational adjustments, such as migrating communications assistants from call centers to working at home, and hiring additional staff to cope with increased demand.⁴⁸

18. The TRS Fund administrator reports that the increased expenses incurred by VRS providers during the pandemic were more than offset by increased call volumes, resulting in a significant reduction in providers’ average cost per minute from 2019 to 2020.⁴⁹ Specifically, average demand has risen during the pandemic period by approximately 25%, and average per-minute provider costs declined from 2019 to 2020 by approximately 5.3%.⁵⁰ At this time, the effects of the pandemic continue to be felt across the VRS industry, and it is unclear whether VRS traffic levels will return to a lower, pre-pandemic level.⁵¹ For many years, the Commission has found that the most reliable reference points in setting VRS compensation rates are the actual costs reported for the previous calendar year (in this case 2020) and the projected costs for the current calendar year (in this case 2021).⁵² Parties have raised the concern that, if the Commission relies on 2020 and 2021 data (as it would under the current practice), its estimate of per-minute costs could turn out to be understated in relation to actual post-pandemic costs, and rates set in

⁴⁷ See, e.g., Letter from Jeff Rosen, Convo Communications, LLC, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (filed Mar. 22, 2021) (Convo March 22 *Ex Parte*).

⁴⁸ 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, Order, DA 21-195 (CGB Feb. 18, 2021) (*February 2021 Waiver Extension Order*).

⁴⁹ Rolka Loube, 2021-2022 Rates & Demand Forecasts, Slides 20, 23 (April 15, 2021) (Rolka Loube Forecast).

⁵⁰ *Id.*

⁵¹ The Commission also granted emergency waivers for a number of rules, including speed of answer, VRS at-home call handling, VRS call-center status notifications, international VRS calling, VRS subcontracting, and emergency call handling. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 2715 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 3018 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 4894 (CGB 2020). The current waivers expire August 31, 2021. See *February 2021 Waiver Extension Order*, DA 21-195. The Commission has not yet ruled on whether these waivers should be extended further.

⁵² See *2017 VRS Compensation Order*, 32 FCC Rcd at 5927-28, para. 69.

reliance on 2020-21 data might not reasonably compensate VRS providers for the costs they will incur in the next rate period.⁵³

19. In light of these uncertainties regarding future VRS costs and demand, should we maintain the existing VRS compensation tiers and rates for the next two TRS Fund rate periods, i.e., until June 30, 2023, to allow the effects of the COVID-19 pandemic to resolve, so that future rates can be set based on cost and demand data that more reliably reflect post-pandemic conditions?⁵⁴ Or should we move forward with adopting modified compensation rates based on current cost and demand estimates, which could be adjusted to address the likelihood of a reversion to pre-pandemic demand levels?

20. What are the likely costs and benefits of freezing current compensation rates for two years? We invite advocates of this approach to explain and document the dimensions of any risk of further demand fluctuations they perceive. We also seek comment on whether such risks could or could not be mitigated by adopting a more conservative approach to ratemaking, such as by relying on 2019 costs as an additional benchmark for rate-setting. According to the TRS Fund administrator's estimate, the current rates allowed providers, on average, to recover 31.4% above allowable expenses in TRS Fund Year 2020-21⁵⁵—operating margins that are substantially above the zone of reasonableness (7.75%-12.35%) the Commission set in 2017. Is the risk of future changes in costs and demand so substantial that it warrants maintaining what appear to be over-compensatory compensation rates? Are there other effects that changing the compensation rate during this period could have on the provision of VRS?

21. In addition, it has been suggested that increased VRS demand, as well as limitations on in-person education during the pandemic, has constricted the current supply of VRS communications assistants as well as the number of American Sign Language (ASL) interpreters entering the training “pipeline” for future availability for VRS employment.⁵⁶ We invite commenters to submit any evidence that would support a prediction of additional increases in such labor costs, the likely extent of such increases, and whether such increases are likely to be temporary or permanent.

22. If we decide to move forward and set revised compensation rates for 2022 and beyond, we invite parties to comment on how cost and demand estimates should be adjusted, if at all, to account for possible post-COVID costs and demand. Are 2020 and projected 2021 cost and demand data sufficiently reliable to serve as a reasonable basis to set rates for a new multi-year rate cycle?⁵⁷ Should we look only at provider-projected costs, e.g., for 2021 and 2022, without considering historical costs? Alternatively, should we substitute 2019 cost and demand data, in anticipation that VRS costs and demand may decrease to pre-pandemic levels once the pandemic subsides? Or should we assume that demand will remain higher than 2019 levels, and if so, how much higher?⁵⁸ What labor cost adjustments, if any, should be applied?

⁵³ See, e.g., Convo March 22 *Ex Parte* at 1-2.

⁵⁴ Under a rate freeze approach, providers receiving compensation at the emergent rate on June 30, 2021, as well as any new entrants, would continue to be compensated at the emergent rate. In other words, extending the current rates and tiers would override the statement in the 2017 order indicating that (1) the emergent rate would be terminated and not renewed after June 30, 2021. See *2017 VRS Compensation Order*, 32 FCC Rcd at 5917-18, para. 51. As under the current plan, such providers would be compensated at the emergent rate for their first 500,000 monthly minutes, and at the Tier I rate for any monthly minutes in excess of the 500,000-minutes ceiling. See *id.* at 5916-17, para. 49.

⁵⁵ Rolka Loube Forecast at Slide 24.

⁵⁶ Convo March 22 *Ex Parte* at 1-2.

⁵⁷ See *infra* para. 37 (seeking comment on the duration of a new rate cycle).

⁵⁸ See, e.g., Gertrude Chavez-Dreyfuss, *The number of permanent remote workers is set to double in 2021*, World Economic Forum (Oct. 23, 2020), <https://www.weforum.org/agenda/2020/10/permanent-remote-workers-pandemic-coronavirus-covid-19-work-home/>.

2. Retaining or Modifying the Current Rate Structure

23. If we decide to move forward and adopt a modified VRS compensation plan, what, if any, changes to the current rate structure would be warranted?

24. *Emergent rate.* We seek comment on whether to retain or eliminate the emergent rate. In adopting a separate rate for “emergent” VRS providers with no more than 500,000 monthly minutes, the Commission stated that this approach recognized “the still unbalanced structure of the VRS industry, as well as the incompleteness of VRS reforms intended to enhance competition.”⁵⁹ The Commission explained that this special rate was “appropriate for a limited period, to take into account the generally much higher cost of service for very small providers, encourage new entry into the program, and give such providers and new entrants appropriate incentives to grow.”⁶⁰ The Commission also stated, however, that it did “not intend that this rate structure continue to apply to any currently operating providers after the end of the four-year rate plan.”⁶¹ Noting that “the adopted rate structure is grounded in [the Commission’s] experience in developments in the VRS market over the last four years,”⁶² the Commission stressed that the likely benefit to consumers from providing a special rate for emergent providers would “remain very limited unless these emergent companies manage to use this four-year window of opportunity to expand their market share.”⁶³

25. We seek comment on whether there has been any change in circumstances since 2017 that would justify retaining the emergent rate, notwithstanding the Commission’s stated intention to terminate it after June 2021. We note that no new applicants have requested certification to provide VRS since 2011. Are any firms currently planning or considering whether to apply for VRS certification? Have relevant circumstances changed for current beneficiaries of the emergent rate? For example, has any provider subject to the emergent rate “manage[d] to use this four-year window of opportunity to expand [its] market share,”⁶⁴ and if so, to what extent is continued application of the emergent rate still necessary?⁶⁵ We also note that the Commission in 2017 did not purport to assure cost recovery for *every* emergent VRS provider, but only to provide a reasonable opportunity for cost recovery, on a temporary basis, for those that have demonstrated an ability to grow substantially.⁶⁶ Alternatively, are there other benefits from continuing to support very high-cost providers, even if they fail to reduce their per-minute costs substantially? Among the advantages of the tiered-rate system, as mentioned above, is that it allows support for smaller providers offering “niche” services to meet the needs of subsets of the signing population.⁶⁷ Should we make the continued application of the emergent rate conditional on a provider’s success in providing specific niche services not offered by others? To assist our determinations regarding tier structure, we seek comment on the specific services and features offered by each VRS provider. To what extent do providers offer niche services or features targeted to specific user populations, to provide functionally equivalent communication for such users? For example, GlobalVRS states that in addition to

⁵⁹ *2017 VRS Compensation Order*, 32 FCC Rcd at 5916-17, para. 49.

⁶⁰ *Id.* (footnotes omitted).

⁶¹ *Id.* at 5917-18, para. 51.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 5917, para. 50.

⁶⁶ *See id.* (noting that the rate set for the emergent class “is generally lower than the actual costs reported by emergent providers” but that, to the extent that such providers have demonstrated the ability to grow substantially, “provider cost projections indicate that this rate will afford such providers a reasonable opportunity to meet their expenses and earn some profit”).

⁶⁷ *Id.* at 5909-10, para. 36.

providing ASL-to-English VRS, it provides ASL-to-Spanish VRS.⁶⁸ Do other providers currently offer ASL-to-Spanish VRS, and to how many customers? Are there significant qualitative differences among such offerings? Which providers, if any, offer a service to deafblind users—and to how many users—that permits the deafblind user to speak using ASL, while the CA communicates to the deafblind user in English or Spanish text that can be read by a refreshable Braille reader?⁶⁹ Do other providers offer this type of service, or others, to deafblind users, and if so, what kind of service is offered to how many users?

26. As for costs, in addition to the greater TRS Fund expenditures needed to support very high-cost providers, would the costs of perpetuating a special rate for such providers include lessened incentives to innovate, reduce costs, and grow market share? What other costs result from the emergent rate? Are the benefits of retaining the emergent rate sufficient to justify the costs? If retained, should the Commission alter the maximum-minutes criterion for applying the emergent rate?

27. *Tier Structures.* We also seek comment on whether to retain or modify the current tier structures, whereby Tier I includes a provider's first 1 million monthly minutes, Tier II includes additional minutes up to 2.5 million, and Tier III includes all minutes above 2.5 million. In 2017, the Commission adopted a proposal by the smaller VRS providers to collapse two pre-existing tiers (from 0 to 500,000 monthly minutes, and from 500,001 to 1 million minutes, respectively) into a single Tier I, applicable to a provider's first 1 million minutes. This tier boundary was adopted to ensure that as providers grew "large enough to leave the 'emergent' category, they would be subject to a rate that reflects their size and likely cost structure and that is appropriately lower than the marginal rate applicable to larger providers."⁷⁰ Does this tier boundary continue to be appropriate? For example, has the ZVRS-Purple merger resulted in increased efficiencies? If so, what is the scale of such efficiencies, and does the existence of such efficiencies support the conclusion that substantial economies of scale can be achieved by growing above the benchmark of 1 million monthly minutes? Alternatively, if the emergent rate is eliminated, should Tier I be subdivided, so as to apply different rates, for example, to a provider's first 500,000 and second 500,000 minutes, or to a provider's first 300,000 minutes and its next 700,000 minutes? Are such changes warranted by relevant scale economies in the provision of VRS or a need to support niche services, as discussed above? Would these alternatives unduly limit a provider's incentive to increase its monthly minutes beyond 300,000 or 500,000?

28. We also seek comment on whether to retain or modify the structures of Tiers II and III. In 2017, the Commission divided what was formerly the final tier, covering all monthly minutes after the first million, into two separate tiers: Tier II for monthly minutes from 1,000,001 to 2,500,000, and Tier III for all additional monthly minutes. The Commission adopted this structure because, "[b]ased on real-world evidence, which consistently shows the existence of substantial disparities among the per-minute costs incurred by VRS providers, which are broadly in line with the similarly wide disparities in their volumes of minutes, [the Commission concluded] that there are likely to be substantial economies of scale in administrative costs, marketing, and other areas."⁷¹ To what extent has the gap in per-minute costs between Sorenson and ZP Better Together, LLC (ZP), narrowed? We seek comment on whether the retention of a tier boundary at 2.5 million minutes is supported by experience over the past four years. Is the Commission's 2017 finding—that substantial scale economies are likely to be present even at the 2.5 million minutes level—still supportable or are scale economies exhausted below that level? Alternatively, does experience show that substantial economies are likely present above the current boundary? If the current Tier II upper boundary is no longer appropriate, should the boundary be

⁶⁸ See Letter from Angela Roth, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 10-51 and 03-123, at 2-3 (filed Apr. 13, 2021) (GlobalVRS April 13 *Ex Parte*).

⁶⁹ GlobalVRS claims to offer "Deafblind English" and "Deafblind Spanish" services, but does not describe them in detail. *Id.*

⁷⁰ 2017 VRS Compensation Order, 32 FCC Rcd at 5919-20, para. 54.

⁷¹ *Id.* at 5918, para. 52.

increased or decreased, and to what level? Alternatively, should the Commission create a fourth tier, and with what boundaries? Should the current Tiers II and III be merged? More broadly, how should the Commission account for increasing economies of scale in setting VRS rates, and at what scale do such economies stop increasing? We encourage providers to submit recent real-world data relevant to whether the provision of VRS continues to be characterized by substantial scale economies and the appropriate boundaries for setting tiered rates that reasonably reflect those economies.

29. With respect to all three tiers, what marketplace distortions, if any, may be created by retaining tier boundaries—or drawing new ones—that are not closely correlated to scale economies? What other costs and benefits are relevant to retaining or adjusting the number of tiers or the tier boundaries?

30. *Additional Compensation for Specialized Services.* We also seek comment on whether it would serve the objectives of section 225 for a VRS provider to receive additional per-minute compensation from the TRS Fund (in addition to the amount payable under the tiered formula) for the provision of certain specialized services, such as, for example, service to deafblind consumers, Spanish-ASL interpreting, or responding to requests that Certified Deaf interpreters be added to a call.⁷² What criteria should the Commission use to decide which, if any, specialized services should be supported by additional compensation and how to define the circumstances in which such services will be compensated? How should the additional reasonable costs of such services be determined for the purpose of setting an appropriate amount of additional compensation? What measures should the Commission take to prevent waste, fraud, and abuse in the provision of, or requests for, such specialized services?

D. Setting Tiered Rate Levels

31. Assuming that we adopt adjusted compensation rates at this time, we seek comment on the appropriate rate level for each tier. In 2017, the Commission sought to set the rates for each tier to “limit the likelihood that any provider’s total compensation will be insufficient to provide a reasonable margin over its allowable expenses, and to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin.”⁷³ We believe we should maintain this goal in setting tiered rates, although by setting rates for providers in discrete size classes based on general cost differentials between large, medium-sized, and small providers, we do not seek or purport to guarantee all providers recovery of their individual costs.⁷⁴ We seek comment on this belief.

32. *Operating Margin.* We propose that VRS compensation rates for the next cycle should aim to ensure that the total compensation paid to all providers allows an average recovery of an operating margin above allowable expenses that is within the zone of reasonableness (7.75%-12.35%) established in the Commission’s *2017 VRS Compensation Order*.⁷⁵ We are unaware of relevant changes in financial markets or other conditions affecting the VRS industry that would warrant reassessment of this prior determination. We seek comment on this proposal, including any changes that would justify setting a

⁷² See Letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 10-51 and 03-123, at 6-7 (filed May 12, 2021) (Sorenson May 12 *Ex Parte*) (suggesting that the Commission consider such additional compensation).

⁷³ *2017 VRS Compensation Order*, 32 FCC Rcd at 5922, para. 59.

⁷⁴ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd 2436, 2476, para. 98 (2017) (*2017 VRS Compensation Further Notice*); *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20167, para. 53 (establishing tiers “to reflect likely cost differentials between small providers (including new entrants); mid-level providers who are established but who do not hold a dominant market share; and large, dominant providers who are in the best position to achieve cost synergies”).

⁷⁵ *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, para. 26.

higher or lower range of reasonable operating margins. Is the current allowable operating margin sufficient to attract capital, new entry, and promote functionally equivalent VRS services? What has been providers' experience since 2017? Further, should we set a specific allowed operating margin within this range, and if so, at what percentage?

33. *Allowable Costs.* In 2017, as well as earlier decisions, the Commission extensively addressed and resolved numerous issues regarding whether the TRS Fund should support various categories of provider costs.⁷⁶ To the extent that, notwithstanding the Commission's history of comprehensive consideration of allowable cost issues, parties believe it is important to revisit any of them,⁷⁷ we urge commenters to state specifically in what respects the Commission's prior determinations are no longer valid, describe in detail any respects in which relevant circumstances have changed in the intervening period, and explain how the outcome they seek is consistent with, and furthers the purposes of, section 225 of the Act.

34. *Marginal Cost Benchmarks.* In 2017, the Commission sought "to avoid any risk of setting a rate for any tier either below the marginal [allowable] cost of a provider subject to that tier or excessively above such marginal cost."⁷⁸ The Commission found that "to the extent that tiered rates bring the rate applicable to a marginal minute of traffic closer to a provider's marginal cost of providing that minute, [the tiered rate] structure can be helpful" in limiting "incentives to engage in disruptive and wasteful marketing practices."⁷⁹ Nonetheless, because it could not, at that time, "determine the magnitude by which marginal costs fall below average costs," the Commission took a "more conservative approach and map[ped] rates onto average costs[,] even though doing so is likely to be somewhat over-compensatory."⁸⁰ Lacking sufficient information at that time, the Commission chose to avoid the risk of "setting a rate too low and deterring a provider from competing for additional minutes of use."⁸¹ We continue to believe that marginal cost for a provider of relevant size would be an appropriate benchmark for Tier II or Tier III rates, if it can be reasonably estimated. Of particular concern, some VRS providers distribute substantial amounts of free user equipment as a marketing device to add or retain customers.⁸² In light of the waste and market disruption that can result from the use of device giveaways to recruit customers,⁸³ we seek comment on whether to limit the compensation rates for tiers above Tier I to levels that do not exceed a reasonable percentage above a relevant provider's marginal allowable cost of

⁷⁶ See *2017 VRS Compensation Order*, 32 FCC Rcd at 5895-903, paras. 10-22, and prior Commission decisions cited therein.

⁷⁷ Sorenson May 12 *Ex Parte* at 4-6; Letter from Gregory Hlibok, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 10-51 and 03-123, at 6-7 (filed May 6, 2021) (ZP May 6 *Ex Parte*) (advocating expansion of Tier II up to 5 million monthly minutes).

⁷⁸ *2017 VRS Compensation Order*, 32 FCC Rcd at 5922, para. 59. For example, setting a rate that is inappropriately high or low in relation to marginal cost could excessively reward growth, encourage marketing abuses, or inappropriately discourage sustainable growth.

⁷⁹ *Id.* at 5910-11, para. 38 n.113.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See *2017 VRS Compensation Further Notice*, 32 FCC Rcd at 2476, para. 99; *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 3396, 3400, para. 7 (2019) (*2019 VRS Program Management Order*); *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Declaratory Ruling, 35 FCC Rcd 7017, 7027, para. 24 (CGB 2020) (*Non-Service-Related Inducements Ruling*).

⁸³ See *2019 VRS Program Management Order*, 34 FCC Rcd at 3414-15, para. 35.

providing an additional minute of service.⁸⁴ We also believe this approach to setting rates will help ensure that the TRS Fund is not providing *de facto* support for the costs of user devices, contrary to section 225 and our longstanding rule precluding the use of the TRS Fund to support such distribution of user devices.⁸⁵ We seek comment on the above-stated beliefs, and on how the Commission should estimate marginal allowable cost for purposes of applying a marginal-cost benchmark. For example, what expense categories should be included or excluded when calculating the marginal cost of providing an additional minute of VRS? Would a per-minute average of the operating expenses reported in Part B of the TRS Fund administrator's annual expense reporting form for VRS providers—which includes salaries and benefits for relay center staff, including communications assistants, telecommunications expenses, billing expenses, and relay center expenses—serve as a reasonable proxy for the marginal expense of providing an additional VRS minute?⁸⁶ Should the marginal cost benchmark for a given tier be calculated as a weighted average of the marginal cost for those VRS providers for which that tier currently defines (or is projected to define) the highest applicable rate? We seek comment on whether marginal cost is an appropriate metric, or whether the Commission should consider alternative metrics.⁸⁷ Would marginal-cost benchmarks for Tiers II and III deter continued investment in the service? Would they cause providers to “put on the brakes” and stop competing as the Commission feared in 2017? Or would they appropriately discourage providers from incurring wasteful marketing and other costs? What increment over marginal cost would be needed to ensure that beneficial effects are achieved and detrimental effects are avoided?

35. *Rate Levels.* We also seek comment on where to set rates for the emergent rate (if retained) and Tiers I-III. If the emergent rate is retained, should we increase it, e.g., to the weighted average 2019 cost per minute for the current emergent providers, plus a 10% operating margin, maintain it at the current level of \$5.29, or decrease it, e.g., to the weighted average of the emergent providers' projected cost per minute for 2022, plus a 10% operating margin? For Tier I, we seek comment on whether to increase the rate, e.g., to \$5.29 (the current emergent rate), maintain the current \$4.82 rate, or reduce it, e.g., to the weighted average of the emergent providers' projected cost per minute for 2022, plus a 10% operating margin. For Tier II, we seek comment on whether to maintain the rate at \$3.97, or decrease it, e.g., to the level of the weighted-average marginal allowable expense per minute (plus a reasonable operating margin) of those providers for which the Tier II rate is the lowest applicable rate. For Tier III, we seek comment on whether to maintain the current \$2.63 rate or decrease it, e.g., to the level of the weighted-average marginal allowable expense per-minute (plus a reasonable operating margin) of those providers for which the Tier III rate is the lowest applicable rate. We also invite parties to submit other suggested rate levels for each tier, with justification and supporting data.

36. To the extent the current tier structure is modified, as discussed above, we seek comment on appropriate rates for the modified tiers. Are there other factors we should consider in determining appropriate rates of compensation for each tier? As an alternative, should the Commission consider Sorenson's suggestion to establish a unitary compensation rate for non-emergent providers at or about

⁸⁴ See *2017 VRS Compensation Further Notice*, 32 FCC Rcd at 2476, para. 99. By “relevant provider,” we mean a provider for which the rate in a particular tier provides their marginal revenue for adding an additional customer. For Sorenson, for example, that rate is currently the Tier III rate, but for another provider, that rate could be the Tier II rate.

⁸⁵ See, e.g., *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, para. 17 (2006); see also *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20177, para. 82; *2017 VRS Compensation Order*, 32 FCC Rcd at 5897, para. 12.

⁸⁶ See 2020 TRS Rate Filing, Appx. B. The form is entitled “Interstate TRS Fund: Video Relay Service Expense and Capital Investments Data.” Part B of the form is entitled “Annual Recurring Variable Expenses (Direct TRS Operating Expenses).”

⁸⁷ See, e.g., Sorenson May 12 *Ex Parte* at 6-7.

\$3.33, the current average per-minute compensation paid across all VRS providers?⁸⁸ Should we also consider ZP's proposal that the Commission keep the existing rates but increase the benchmark for Tier II from 2.5 million to 5 million minutes, under the theory, in ZP's view, that doing so would allow continued competition and increased investment in the community?⁸⁹ We seek comment on these proposals.

E. Rate Period and Adjustments

37. *Rate Period.* We seek comment on the duration of the next rate period. In the current circumstances, what rate period will appropriately balance the needs for administrative efficiency, rate certainty, and cost-reduction incentives with the need for a timely review of how VRS costs may change in the future?

38. *Glide Path.* If the Commission makes substantial reductions in any tiered rate, should it transition to that level in stages, to avoid disruption of service to VRS consumers? What would be a reasonable annual percentage rate reduction for this purpose? For IP CTS, the Commission recently adopted a "glide path" for the IP CTS compensation rate, with a 10 percent annual reduction towards cost-based rates.⁹⁰ Would a 10 percent annual reduction be appropriate for VRS?

39. *Price Indexing Adjustments.* We seek comment on whether a price indexing formula, analogous to price-cap factors, should be applied to tiered rates during a multi-year rate period, and on the appropriate indices to use to reflect inflation and productivity. In 2007, the Commission adopted a compensation plan that included annual adjustments for inflation and productivity based on a pre-set formula.⁹¹ In 2017, the Commission decided against applying such factors, in part because "the multi-year, tiered transition plan [it adopted would] provide many of the same benefits as a price cap, such as predictability in rates and incentives to become more efficient."⁹² Is the application of price indexing factors needed to ensure that VRS providers have a reasonable opportunity to recover costs, to provide a sufficient incentive to reduce costs, or to prevent overcompensation of providers due to predictable future productivity-related cost declines?⁹³ If adopted, how should a price-indexing approach be structured in the context of tiered rates, e.g., to account for any disparities in expected productivity gains between small and large providers?

III. ORDER EXTENDING THE EXPIRATION DATE FOR VRS COMPENSATION

40. The Commission, on its own motion, grants a limited-duration waiver of the June 30, 2021 expiration of the current TRS Fund compensation rate for VRS. The current emergent and tiered rates are extended through December 31, 2021, or the effective date of Commission action adopting a VRS compensation rate, whichever is earlier. This action will ensure the continued provision of VRS until the Commission completes review of the record developed in response to the accompanying Notice and sets prospective compensation rates for VRS.

⁸⁸ Sorenson May 12 *Ex Parte* at 4.

⁸⁹ ZP May 6 *Ex Parte* at 2-4.

⁹⁰ See *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, 5816, para. 26 (2018); *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10884-86, paras. 34-37.

⁹¹ *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20169, para. 56 (adopting a price cap formula for adjusting VRS compensation); see also *id.* at 20163, para. 43 (explaining how the formula operates).

⁹² *2017 VRS Compensation Order*, 32 FCC Rcd at 5913, para. 45.

⁹³ See *2017 VRS Compensation Further Notice*, 32 FCC Rcd at 2477-78, para. 103.

41. *Waiver Standard.* A Commission rule may be waived for “good cause shown.”⁹⁴ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁹⁵ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹⁶ Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁹⁷

42. *Discussion.* We find good cause to waive the June 30, 2021 expiration of the current VRS compensation rate. While waivers of Commission-set deadlines are subject to a high bar, establishing a methodology and rate for VRS compensation is inherently complex.⁹⁸ Adding to the complexity of the Commission’s task is the need to consider how potentially short-term changes in cost and demand during the COVID-19 pandemic should factor into determining a reasonable compensation rate.⁹⁹ Given these complexities and the notice period required for parties to provide informed comment on our compensation proposals, we do not anticipate that a Commission determination on the prospective compensation rate can be made before the June 30, 2021 expiration date.

43. Continuing the current VRS compensation methodology and rates provides certainty and stability to VRS providers pending final Commission action on the accompanying Notice.¹⁰⁰ Without compensation rates in place by July 1, 2021, VRS providers would not be able to receive compensation payments, resulting in potential disruption of service to consumers with disabilities who use sign language and have come to rely on VRS as their primary means of making telephone calls.¹⁰¹ We believe that extending all VRS compensation rates at current levels will ensure VRS providers are reasonably

⁹⁴ 47 CFR § 1.3.

⁹⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁹⁷ *Northeast Cellular*, 897 F.2d at 1166.

⁹⁸ 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, Order, 32 FCC Rcd 5142, 5147, para. 15 (CGB 2017) (*2017 TRS Compensation Order*) (extending the compensation period for VRS pending further action by Commission to establish a new compensation methodology); *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, Order, 26 FCC Rcd 9972, 9980-81, paras. 22-23 (2011) (*2011 TRS Compensation Order*) (adopting interim VRS rates pending Commission completion of a proceeding addressing VRS market structure and compensation method issues); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 21 FCC Rcd 7018, 7027, paras. 28-29 (CGB 2006) (extending the VRS compensation rate for one year or until the Commission adopts new VRS rates pursuant to new cost recovery rules); see also *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, Order, 35 FCC Rcd 5469 (CGB 2020) (*2020 IP CTS Compensation Waiver Order*) (extending IP CTS compensation rates for three months to allow the submission of additional data for the Commission to reach an informed decision on IP CTS compensation); *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, 12832-33, paras. 24, 26, 28 (CGB 2003) (adopting interim cost recovery rates for TRS providers subject to modification pending further analysis of relevant cost data).

⁹⁹ See *supra* paras. 17-22.

¹⁰⁰ See *2011 TRS Compensation Order*, 26 FCC Rcd at 9980-81, para 23.

¹⁰¹ See *2017 TRS Compensation Order*, 32 FCC Rcd at 5147, para. 15.

compensated for the actual costs of providing VRS pending Commission action to set the compensation rate going forward.¹⁰²

44. Therefore, until December 31, 2021, or the effective date of further action by the Commission adopting VRS compensation rates, whichever is earlier, we direct Rolka Loube to continue compensating VRS providers for the provision of VRS at the same rate levels in effect on June 30, 2021. These provisional compensation rates are: (1) \$5.29 per minute to providers whose monthly minutes did not exceed 500,000 as of July 1, 2017; (2) \$4.82 for minutes that fall within Tier I (applicable to other providers' first 1,000,000 monthly minutes); (3) \$3.97 for Tier II (applicable to a provider's monthly minutes between 1,000,001 and 2,500,000); and (4) \$2.63 for Tier III (applicable to monthly minutes in excess of 2,500,000).

45. This action to temporarily waive the June 30, 2021, expiration date does not predetermine the compensation rate or rate structure that will ultimately apply to any particular time period, and does not preclude a true-up of compensation, should the Commission deem that to be necessary after adopting a VRS compensation methodology and rate structure.¹⁰³ The waiver we issue today simply suspends the June 30, 2021, expiration date for the current VRS compensation rates, thereby ensuring that compensation will be paid for VRS provided after that date. The Commission retains discretion to adopt a compensation methodology and corresponding rate structure for VRS and to specify when such compensation shall be deemed applicable.

IV. PROCEDURAL MATTERS

46. *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.¹⁰⁴ The IRFA is set forth in the Appendix. 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.¹⁰⁵ In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.¹⁰⁶

47. *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.¹⁰⁷ 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.¹⁰⁸

¹⁰² See Rolka Loube Forecast, Slide 24 (showing average operating margin for VRS providers of 31.4% at current rates in TRS Fund Year 2020-21).

¹⁰³ See *2017 TRS Compensation Order*, 32 FCC Rcd at 5147, para. 15; *2020 IP CTS Waiver Order*, 35 FCC Rcd at 5473, para. 11.

¹⁰⁴ Pub. L. No. 96-354, 94 Stat 1164 (1980) (codified at 5 U.S.C. §§601-612).

¹⁰⁵ See 5 U.S.C. § 603(a).

¹⁰⁶ *Id.*

¹⁰⁷ 44 U.S.C. §§ 3501-3520.

¹⁰⁸ *Id.* § 3506(c)(4).

48. *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.¹⁰⁹ Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹¹⁰

- 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.
 - Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission’s office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.¹¹¹
 - 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.
 - During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

49. *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 or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

50. *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.¹¹² Persons making *ex parte*

¹⁰⁹ 47 CFR §§ 1.415, 1.419

¹¹⁰ See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

¹¹¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closesheadquarters-open-window-and-changes-hand-delivery-policy>.

¹¹² 47 CFR § 1.1200 *et seq.*

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.

V. ORDERING CLAUSES

51. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, (4)(i), (4)(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, and section 64.604(c)(5)(iii)(E) of the Commission's rules, 47 CFR 64.604(c)(5)(iii)(E), the foregoing Notice of Proposed Rulemaking and Order Extending the Expiration Date for VRS Compensation ARE ADOPTED.

52. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of VRS, through December 31, 2021, or the effective date of further action by the Commission adopting VRS compensation rates, whichever is earlier, at the compensation rates in effect on June 30, 2021, pending further Commission action.

53. IT IS FURTHER ORDERED that the Order Extending the Expiration Date for VRS Compensation shall be effective upon release.

54. 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

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ 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).² In addition, the NPRM and the IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. In the NPRM, the Commission intends to develop a multi-year cost-based compensation rate methodology for video relay service (VRS). To develop a complete record the Commission seeks comment on maintaining a tiered rate structure, including the specifics for the tiered structure and for setting such rates, and in the alternative, freezing the current rates. The Commission is making these proposals for the purpose of allowing recovery of reasonable provider costs and ensuring that functionally equivalent VRS is provided in the most efficient manner. In the NPRM, the Commission is seeking comment on these proposals, which include a number of various policy questions and alternatives for consideration.⁴

B. Legal Basis

3. 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.

C. Description and Estimate of the Number of Small Entities Impacted

4. 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.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ 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.⁸

¹ 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).

² See 5 U.S.C. § 603(a).

³ *See id.*

⁴ See NPRM, paras. 9-36.

⁵ 5 U.S.C. § 603(b)(3).

⁶ *Id.* § 601(6).

⁷ *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.”

⁸ 15 U.S.C. § 632.

5. The proposals in the NPRM will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications. There are currently four providers that have received certification to provide VRS and receive compensation from the TRS Fund for providing VRS: ASL Services Holdings, LLC d/b/a GlobalVRS, Convo Communications, LLC, Sorenson Communications, LLC, and ZP Better Together, LLC.

6. *All Other Telecommunications*. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁹ The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with gross annual receipts of \$35 million or less.¹⁰ For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had gross annual receipts less than \$35 million.¹¹ Thus, a majority of “All Other Telecommunications” firms potentially affected by the proposed rules can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

7. The proposed compensation methodologies will not create reporting, recordkeeping, or other compliance requirements.

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

8. 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.¹²

9. In the NPRM, the Commission is taking steps to minimize the impact on small entities and considering significant alternatives by identifying multiple methodologies for compensating VRS providers for the provision of VRS. It seeks comment on maintaining tiered rates, including the specifics for the tiered structure and for setting such rates, and in the alternative, freezing the current rates. The Commission will consider these proposals to determine the best compensation methodology for ensuring choice among suppliers for VRS users and to help maintain functionally equivalent service and maintain an efficient VRS market over the long term in accordance with the Commission statutory obligations.

⁹ 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>.

¹⁰ See 13 CFR § 121.201, NAICS Code 517919.

¹¹ 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, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012_EC1251SSSZ4&hidePreview=false.

¹² 5 U.S.C. § 603(b).

The NPRM seeks comment on the effect these proposals will have on all entities that provide VRS, including small entities.

10. 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 acting in this proceeding.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

11. None.

**STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

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 Services Program*, CG Docket No. 10-51.

Under the Americans with Disabilities Act, functional equivalency is the foundation of our telecommunications relay service policies. Functional equivalency may sound like lingo only a lawyer could love. But for millions of Americans, it means they have the ability to reach out, connect, and participate more fully in the world. And for those who are deaf and hard-of-hearing, having access to functionally equivalent services means having access to video relay service—or VRS.

The way VRS works is simple. A person using sign language signs over a video call to a specially trained Communications Assistant. The Communications Assistant interprets the sign language and relays it to the person on the other end of the call. When the caller speaks, the Communications Assistant signs the response back to the person using sign language.

If the service is relatively straightforward, the compensation system that supports it is anything but. The companies providing this service are paid by the Telecommunications Relay Services Fund, administered by the Federal Communications Commission. For years, the agency has tried to set rates that permit providers of VRS to cover their costs while also promoting consumer choice and competition. The result is a three-tiered system that compensates providers based on their monthly volume of VRS traffic.

It has been more than four years since the FCC last considered compensation policy for VRS. Since that time, there have been changes in technology and the marketplace and a global pandemic that has challenged our assumptions and projections about who will use this service and how often.

So it's the right time to refresh our thinking. That's what this effort is about today. We ask what the compensation system should look like going forward and what needs changing. We ask if our current tiers get it right or if they should be adjusted. For example, we seek comment on updating the current rates and ask questions if our existing volumetric break points used to differentiate rate tiers continue to make sense. On top of this, we ask if in light of the pandemic it even makes sense to make big changes to our cost structure right now. Finally, to give commenters plenty of time to provide their thoughts and ideas, we've decided to extend the current compensation system through the end of this year.

A special thank you to the Disability Rights Office for their commitment to functional equivalency and to all of the staff responsible for today's effort. From the Consumer and Governmental Affairs Bureau that's Bob Aldrich, Diane Burstein, Eliot Greenwald, Halie Peacher, Michael Scott, Bill Wallace, and Patrick Webre; from the Office of Economics and Analytics that's Susan Lee, Virginia Metallo, Eric Ralph, and Emily Talaga; from the Office of General Counsel that's Terry Cavanaugh, Richard Mallen, and Bill Richardson; and from the Office of Managing Director, that's Andrew Mulitz and Dave Schmidt.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

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 Services Program*, CG Docket No. 10-51.

For an agency, it is typically good governance to develop more of a record than less—in that way, the additional questions sought by VRS industry participants add important context to this discussion. I believe this will ultimately lead to improved functional equivalence and service quality that will benefit those who need VRS to communicate and function seamlessly in our society. It is also prudent to extend the current rates while we gather more data and insight on what service levels will look like on the other side of the COVID pandemic. I am therefore pleased to support this Notice and Order, and I thank the Consumer and Governmental Affairs Bureau staff for their hard work on the item.