

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

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

ORDER

Adopted: June 29, 2006

Released: June 29, 2006

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. As set forth below, we set the following per minute compensation rate for the various forms of telecommunications relay service (TRS)¹ for 2006-2007 Fund year: \$1.291 for interstate traditional TRS²; \$1.409 for interstate STS³; and \$1.293 for interstate and intrastate IP Relay.⁴ With respect to interstate and intrastate Video Relay Service (VRS),⁵ this *Order* freezes the 2005-2006 VRS rate of \$6.644 per minute for a one-year period ending June 30, 2007, or until such time as the Commission adopts a new VRS rate pursuant to new VRS cost recovery rules, whichever is sooner.⁶

¹ TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability through a communications assistant (CA) at a relay center. See 47 U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. § 64.601(14); see generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479-12480, para. 3 n.18 (June 30, 2004) (*2004 TRS Report and Order*) (discussing how TRS works). As noted below, TRS is provided in a variety of ways. Interstate TRS calls, and for some forms of TRS, both intrastate and interstate TRS calls, are compensated from the Interstate TRS Fund (Fund).

² Traditional TRS is accomplished via text-to-voice or voice-to-text, with the text provided via a text telephone (TTY) over the Public Switched Telephone Network (PSTN). See 46 C.F.R. § 64.601(14).

³ STS is a form of TRS that allows persons with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with disabilities and can repeat the words spoken by that person. See 47 C.F.R. § 64.601(12).

⁴ IP Relay is a form of TRS that is similar to traditional TRS except that the text is provided to, and received from, the CA via the TRS consumer's computer or other web-enabled device and the Internet. See *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (April 22, 2002) (*IP Relay Declaratory Ruling*).

⁵ VRS is a form of TRS that allows users to communicate with the CA via a video link and sign language, rather than text, through a broadband Internet connection. See 47 C.F.R. § 64.601(17) (defining VRS).

⁶ In the *2004 TRS Report and Order's* Further Notice of Proposed Rulemaking (FNPRM), the Commission sought comment on the appropriate cost recovery methodology for VRS, including whether the Commission should

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Based on these compensation rates, and NECA's projected minutes of use for each service,⁷ this *Order* also adopts a total Fund size of \$419,724,291 and carrier contribution factor of 0.00535.

II. BACKGROUND

A. NECA's May 1, 2006, Filing

2. Each year, the Fund administrator, currently the National Exchange Carrier Association, Inc. (NECA), collects and reviews projected cost and minutes of use data submitted by TRS providers to determine the annual TRS compensation rates for the various forms of TRS, presently traditional TRS, STS, IP Relay,⁸ and VRS. As a general matter, each rate is determined by the same methodology – the providers' total *projected* costs of providing each service is divided by the providers' total *projected* minutes of use, subject to possible adjustments to the underlying data by NECA or the Commission based on review of the providers' submissions.⁹ On May 1, 2006, NECA filed its annual Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for the period of July 1, 2006 through June 30, 2007.¹⁰

1. Data Collection Analysis

3. NECA describes in its filing the development of the proposed 2006-2007 TRS compensation rates and Fund size.¹¹ Following prior Commission directives, NECA reviewed the cost data submitted by providers to ensure that only the "reasonable" costs of providing TRS are reflected in the compensation rates.¹² NECA concluded that in some instances costs were submitted that were not reasonable or were not directed at meeting applicable mandatory minimum TRS standards.¹³ In those instances, NECA made cost disallowances. NECA also concluded that some providers' data was inconsistent with other providers' data, or lacked sufficient detail, and in those cases the provider's data

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permanently adopt the current per minute methodology for VRS or some other approach, such as periodic payments of estimated actual costs with a "true-up" at the end of the Fund year. *See 2004 TRS Report and Order*, 19 FCC Rcd at 12565-12567, paras. 234-240. We anticipate seeking additional comment on this issue, as well as related cost recovery matters, in a future notice of proposed rulemaking.

⁷ *See* para. 14, *infra*.

⁸ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Order, 20 FCC Rcd 12237, 12243-12245, paras. 16-20 (June 28, 2005) (*2005 TRS Rate Order*) (adopting, for the first time, separate compensation rates for traditional TRS and IP Relay).

⁹ *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 12224, 12228-12230, paras. 10-16 (June 30, 2004) (*2004 Bureau TRS Order*) (2004-2005 rate order addressing disallowances by NECA to submitted costs); *see also 2006 NECA Filing* at 6.

¹⁰ NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket No. 03-123, filed May 1, 2006. On May 10, 2006, NECA filed an Errata to the May 1st filing. NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Errata*, CG Docket No. 03-123, filed May 10, 2006. We refer herein to NECA's filing, as corrected by the Errata, as the *2006 NECA Filing*.

¹¹ *2006 NECA Filing* at 7-9; *see also 2004 Bureau TRS Order*, 19 FCC Rcd at 12228-12230, paras. 11-16 (addressing the process of NECA's data collection and analysis).

¹² *Id.* at 7 (citing *2004 TRS Report and Order*, 19 FCC Rcd at 12543-12544, para. 181).

¹³ *Id.* at 7-9.

was excluded in its entirety.¹⁴

4. More specifically, NECA excluded marketing and advertising expenses for each of the services.¹⁵ NECA determined that some outreach to inform users of the availability of TRS is compensable from the Fund, but concluded that the costs of “marketing” was not compensable.¹⁶ As discussed more fully below, NECA also made adjustments to certain providers’ costs in the areas of indirect costs, CA costs, outreach, strategic consulting services, and certain specialized CAs.¹⁷ Finally, with respect to VRS, NECA determined that the 2006-2007 projected demand submitted by the providers was unreasonably low, and therefore NECA used a projected minutes of use number based on historical growth.¹⁸ Because the additional minutes of projected demand would likely add costs to the relay center operations, NECA also increased certain VRS-related costs to correspond to NECA’s larger projected minutes of use.¹⁹

2. Traditional TRS

5. For interstate traditional TRS (or TTY-based services),²⁰ NECA disallowed the marketing and advertising expenses of certain providers, as well as some indirect expenses of one provider, and excluded the cost and demand data of another provider in its entirety.²¹ Based on the data provided and the adjustments made, NECA’s calculations resulted in a proposed compensation rate for interstate traditional TRS of \$1.262 per minute.²² This rate reflects a decrease of approximately 18 cents from the 2005-2006 rate of \$1.440 per minute.²³

6. For purposes of determining the Fund size requirement and carrier contribution rate, NECA projected demand for traditional TRS based on prior actual usage.²⁴ NECA used a growth rate based on average daily minutes of use for the 13 month period of February 2005 to February 2006.²⁵ As NECA notes, because traditional TRS minutes have been declining over this thirteen month period,

¹⁴ *Id.* Because the providers submit their cost data submissions as confidential, we do not discuss in detail the adjustments made to individual submissions. *See generally 2004 Bureau TRS Order*, 19 FCC Rcd at 12232, para. 18 n.57; *2006 NECA Filing* at 12.

¹⁵ *2006 NECA Filing* at 8.

¹⁶ *Id.*

¹⁷ *Id.* at 9-20.

¹⁸ *Id.* at 18-19; *see* para. 11, *infra* (addressing projected VRS minutes of use).

¹⁹ *Id.* at 19.

²⁰ For traditional TRS, only the costs of providing interstate service are considered. *See id.* at 9.

²¹ *Id.* at 11. There were no disallowances to the submitted costs of two providers. Currently, seven providers receive reimbursement for interstate traditional TRS service. *Id.* at 9.

²² This figure was determined by dividing the 2006-2007 total interstate costs of \$41,324,780 by the total projected interstate minutes of 33,214,297, and applying the 1.4 percent rate of return allowance for working capital to the resulting cost per minute. *Id.* at Ex. 1A. *See also 2004 Bureau TRS Order*, 19 FCC Rcd at 12230, para. 16 & n.53 (explaining allowance for working capital and derivation of the 1.4 percent figure).

²³ Since its inception, the compensation rate for traditional TRS has ranged from \$1.168 to \$1.705 per minute. *See 2004 Bureau TRS Order*, 19 FCC Rcd at 12231, para. 17 n.56 (history of traditional TRS compensation rates).

²⁴ *2006 NECA Filing* at 12. NECA explains that although in calculating the compensation rate it uses the providers’ own *projections* of minutes of use, in calculating the Fund size it uses *actual* growth rates to estimate minutes of use that will be paid by the Fund. *Id.*

²⁵ *Id.* at 12-13.

NECA applied a negative growth rate in projecting minutes.²⁶ Using this growth rate, NECA forecasts 15.8 million minutes of use for the period of July 2006 through June 2007 for traditional TRS.²⁷ By multiplying the proposed compensation rate (\$1.262) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need approximately \$19.9 million to compensate TRS providers for providing interstate traditional TRS.²⁸

3. Speech-to-Speech (STS)

7. For interstate STS,²⁹ NECA disallowed the marketing and advertising expenses of certain providers, as well as some indirect expenses of one provider, and excluded the cost and demand data of two providers in its entirety.³⁰ Based on the data provided and the adjustments made, NECA calculations resulted in a proposed compensation rate for interstate STS of \$1.352 per minute.³¹ This figure represents a decrease of approximately 23 cents from the 2005-2006 rate of \$1.579 per minute.³²

8. For purposes of determining the Fund size requirement and carrier contribution rate, NECA projected demand for STS using the same methodology it used for traditional TRS (*i.e.*, applying an average daily growth rate).³³ Using this growth rate, NECA forecasts 158,808 minutes of use for the period of July 2006 through June 2007 for traditional TRS.³⁴ By multiplying the proposed compensation rate (\$1.352) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need \$214,709 to compensate STS providers for providing interstate STS.³⁵

4. IP Relay

9. For IP Relay, NECA disallowed the marketing and advertising expenses of certain providers, some indirect expenses of one provider, and the expenses attributable to a strategic consultant of another provider.³⁶ Based on the data provided and the adjustments made, NECA's calculations

²⁶ *Id.* at 13.

²⁷ *Id.* at Ex. 4.

²⁸ *Id.* The \$19.9 million, added to the funding requirements for the projected use of STS, IP Relay, and VRS, as noted below, plus certain administrative costs, determines the total projected Interstate TRS Fund size estimate. *See id.*

²⁹ For STS, only the costs of providing interstate service are considered. *See 2006 NECA Filing* at 15-17.

³⁰ *Id.* at 15-16. NECA explained that those two providers had projected costs per minute "well in excess of" the projected cost per minute of the other providers, due to "significantly higher interpreter costs." *Id.*; *cf. 2005 TRS Rate Order*, 19 FCC Rcd at 12239-12240, para. 6 (addressing exclusion of one STS's provider's data in calculating rates for the 2005-2006 Fund year). There were no disallowances to the submitted costs of one provider. Currently, six providers receive compensation for providing interstate STS service.

³¹ *See 2006 NECA Filing* at 16-17 & Ex.1C. This figure was determined by dividing the 2006-2007 total interstate costs of \$400,628 by the total projected interstate minutes of 300,406, and applying the 1.4 percent rate of return allowance for working capital to the resulting cost per minute. *Id.* at Ex. 1C.

³² Since its inception, the compensation rate for STS has ranged from \$1.596 to \$4.263 per minute. *See 2004 Bureau TRS Order*, 19 FCC Rcd at 12233, para. 21 n.63 (history of STS compensation rates).

³³ *2006 NECA Filing* at 16-17. As with traditional TRS, a negative growth rate was applied to STS. *Id.* at 16.

³⁴ *Id.* at Ex. 4.

³⁵ *Id.* The \$214,709, added to the funding requirements for the projected use of traditional TRS, IP Relay, and VRS, plus certain administrative costs, determines the total projected Interstate TRS Fund size estimate. *See id.*

³⁶ *Id.* at 14. There were no disallowances to the submitted costs of two of the seven providers that receive compensation for providing IP Relay, and no provider had its costs disallowed in their entirety. For IP Relay, presently all calls are compensated from the Fund.

resulted in a proposed compensation rate for IP Relay of \$1.223 per minute.³⁷ This rate reflects a decrease of approximately 5 cents from the 2005-2006 rate of \$1.278 per minute.

10. For purposes of determining the Fund size requirement and carrier contribution rate, NECA projected demand for IP Relay using the same methodology it used for traditional TRS (*i.e.*, applying an average daily growth rate).³⁸ Using this growth rate, NECA forecasts 75.6 million minutes of use for the period of July 2006 through June 2007 for IP Relay.³⁹ By multiplying the proposed compensation rate (\$1.223) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need approximately \$92.5 million to compensate providers of IP Relay.⁴⁰

5. Video Relay Service (VRS)

11. For VRS, NECA disallowed the marketing and advertising expenses of certain providers, expenses for certified deaf interpreters for one provider, expenses attributable to a strategic consultant of another provider, outreach expenses for one provider, and made adjustments to CA costs for one provider.⁴¹ In addition, NECA noted that the providers' submitted data reflected virtually no growth in the projected use of VRS for 2006 and 2007.⁴² Since January 2003, however, use of VRS has been rapidly growing at the rate of approximately 9 percent per month.⁴³ As a result, instead of using the providers' flat demand estimates, NECA projected demand based on an average daily growth rate for VRS for the period of February 2005 to February 2006.⁴⁴ This calculation resulted in a projected demand of 51.7 million VRS minutes for the Fund year.⁴⁵ Further, NECA recognized that because it was upwardly adjusting the number of projected minutes of use of VRS, a corresponding adjustment had to be made to projected costs because the provision of these additional minutes will add to the cost of relay operations.⁴⁶ Accordingly, NECA also upwardly adjusted submitted costs in the areas of relay center operations and certain indirect categories of expense.⁴⁷

12. Based on the data provided and the adjustments made, NECA's calculations resulted in a

³⁷ This figure was determined by dividing the 2006-2007 total costs of \$234,440,103 by the total projected minutes of 194,357,391 and applying the 1.4 percent rate of return allowance for working capital to the resulting cost per minute. *Id.* at Ex. 1B.

³⁸ *Id.* at 15.

³⁹ *Id.* at Ex. 4.

⁴⁰ *Id.* The \$92.5 million, added to the funding requirements for the projected use of traditional TRS, STS, and VRS, plus certain administrative costs, determines the total projected Interstate TRS Fund size estimate. *See id.*

⁴¹ *Id.* at 18. The costs of two of the eight providers that receive compensation for providing VRS were excluded in their entirety. *Id.* For VRS, presently all calls are compensated from the Fund.

⁴² The providers projected 36.4 million minutes for 2006 and 37.1 million minutes for 2007. *Id.* at Ex. 1D.

⁴³ For example, in August 2003, there were approximately 250,000 actual minutes of use; in August 2004 there were over 1 million minutes of use; in June 2005 there were over 2 million minutes of use; and in December 2005 there were over 3 million minutes of use. We note that in the past VRS provider's demand estimates have been particularly unreliable. *See* NECA Reply Comments at 5-7 & Ex. 4 (indicating that providers' estimates in May 2003, May 2004, and May 2005 of VRS minutes of use were significantly below actual minutes). When demand is underestimated, the compensation rate is higher, and as a result, when actual demand exceeds projected demand, providers are overcompensated

⁴⁴ 2006 NECA Filing at 19.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

proposed compensation rate for IP Relay of \$6.138 per minute.⁴⁸ This rate reflects a decrease of approximately 50 cents from the 2005-2006 rate of \$6.644.⁴⁹

13. For purposes of determining the Fund size requirement and carrier contribution rate, in this instance NECA used the same projected demand (51.7 million minutes) that was used to determine the compensation rate.⁵⁰ By multiplying the proposed compensation rate (\$6.138) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need approximately \$317.2 million to compensate VRS providers.⁵¹

6. Interstate TRS Fund Size and Carrier Contribution Rate

14. Once NECA has calculated its proposed compensation rates for traditional TRS, STS, IP Relay, and VRS, NECA calculates the proposed Interstate TRS Fund size and the carrier contribution factor.⁵² The total annual Fund requirement is determined by adding together the projected payments to TRS providers for each form of TRS, plus certain administrative expenses, less (in this instance) surplus amounts from the 2005-2006 Fund year that can be used to offset the 2006-2007 Fund year requirement.⁵³ The contribution factor is based on the ratio between total expected TRS Fund expenses and interstate end-user telecommunications revenues.⁵⁴

15. Making these calculations, NECA determined that the total 2006-2007 Fund size requirement would be \$387,814,950.⁵⁵ NECA divided that number by the total 2005 common carrier end user revenues (\$78.5 billion) to arrive at a contribution factor of 0.00494.⁵⁶ NECA submitted all of its data to the Commission for approval or modification.⁵⁷

B. Commenters

16. On May 2, 2006, the Commission released a Public Notice requesting comment on NECA's filing.⁵⁸ Eight comments and six reply comments were filed.⁵⁹ In general, comments are

⁴⁸ This figure was determined by dividing the 2006-2007 total adjusted projected costs of \$628,126,368 by the total adjusted projected minutes of 103,774,728, and applying the 1.4 percent rate of return allowance for working capital to the resulting cost per minute. *Id.* at Ex. 1D.

⁴⁹ Since its inception (March 2000), the compensation rate for VRS has ranged from \$5.143 to \$17.044 per minute. *See 2004 Bureau TRS Order*, 19 FCC Rcd at 12234, para. 24 n.68 (history of VRS compensation rates).

⁵⁰ *See* paras. 11-13, *supra*; *2006 NECA Filing* at Ex. 4.

⁵¹ *Id.* The \$317.2 million, added to the funding requirements for the projected use of traditional TRS, IP Relay, and STS, plus certain administrative costs, determines the total projected Interstate TRS Fund size estimate. *See id.*

⁵² *Id.* at 20-21 & Ex. 4 (Erratum). Under the Commission's rules, "[e]very carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues." 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁵³ *2006 NECA Filing* at 20-21 & Ex. 4.

⁵⁴ *Id.*

⁵⁵ *Id.* This amount includes the actual costs of providing TRS for all four services (\$429,814,950), plus NECA's administrative costs (\$800,000), less interest income on retained funds (\$2,800,000), and less a 2005-2006 Fund surplus offset (\$40,000,000) applied to the 2006-2007 Fund year. *See id.*

⁵⁶ *Id.*

⁵⁷ *See* 47 C.F.R. §§ 64.604(c)(5)(iii)(E), (H).

⁵⁸ *National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for the July 2006 through June 2007 Fund Year.*, Public Notice, CG Docket No. 03-123, DA 06-970 (May 2, 2006) (*2006 TRS Rate PN*). On May 12, 2006, the

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directed at the process by which NECA and the Commission determine the rates,⁶⁰ the disallowance of marketing and outreach expenses (particularly with regard to VRS),⁶¹ and the other disallowances made by NECA to the cost submissions.⁶² Some commenters also request that the Commission freeze the existing 2005-2006 rates for the 2006-2007 Fund year.⁶³

III. DISCUSSION

17. We have reviewed the 2006 NECA Filing, as well as the underlying cost data. Based on this review, as well as the concerns raised in the comments, we have restored certain disallowed costs with respect to traditional TRS, STS, and IP Relay. As a result, we adopt compensation rates of \$1,291 for traditional TRS, \$1,409 for STS, and \$1,293 for IP Relay. With respect to VRS, and as explained in more detail below, in view of the recent speed of answer and interoperability requirements, as well as the open issue concerning the appropriate cost recovery methodology for VRS,⁶⁴ we freeze the 2005-2006 rate of \$6,644 for the 2006-2007 Fund year, or until such time as the Commission adopts a new VRS rate pursuant to new VRS cost recovery rules, whichever is sooner. Because we have modified NECA's proposed rates, we also modify NECA's proposed total Fund size and carrier contribution factor. Based on the rates adopted herein, we adopt a Fund size of \$419,724,291 and a carrier contribution factor of

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Commission issued a second Public Notice reflecting the Errata filed by NECA on May 10, 2006. *National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for the July 2006 through June 2007 Fund Year*, Public Notice, CG Docket No. 03-123, DA 06-1030 (May 12, 2006).

⁵⁹ Comments were filed by Hands On Video Relay Services, Inc. (Hands On) (May 17, 2006); Verizon (Verizon) (May 17, 2006); Hamilton Relay, Inc. (Hamilton) (May 17, 2006) (Errata filed on May 18, 2006); Sprint Nextel Corporation (Sprint Nextel) (May 17, 2006); Sorenson Communications, Inc. (Sorenson) (May 17, 2006); Communication Services for the Deaf, Inc. (CSD) (May 17, 2006); Bob Segalman (May 17, 2006); and Telecommunications for the Deaf, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, and California Coalition of Agencies Serving the Deaf and Hard of Hearing (collectively, Consumer Groups) (May 17, 2006). Reply comments were filed by Hands On (May 24, 2006); Hamilton (May 24, 2006); Sorenson (May 24, 2006); CSD (May 24, 2006); Consumer Groups (May 24, 2006); and NECA (May 24, 2006). Sorenson filed *ex parte* comments on June 7, 2006, and June 13, 2006.

⁶⁰ See generally Sprint Nextel Comments at 1-2; CSD Comments at 6-8; Hamilton Comments at 2-6; Hands On Reply Comments; Consumer Groups Relay Comments; CSD Reply Comments.

⁶¹ See generally Hands On Comments at 11-18; CSD Comments at 6-11; Verizon Comments at 2-9; Hamilton Comments at 2-8; Sorenson Comments at 17-25; Consumer Group Comments; Bob Segalman Comments at 1-2; Hands On Reply Comments; Consumer Group Relay Comments; Sorenson Reply Comments at 6; NECA Reply Comments at 3-4; Sorenson *Ex Parte* (June 7, 2006) at 2-6.

⁶² See, e.g., Hands On Comments at 8-11 (addressing disallowance of certified deaf interpreters); Consumer Group Comments (addressing disallowance of certified deaf interpreters and need to meet quality standards); Sorenson Comments at 17-32 (addressing disallowance of rural outreach program, need to meet quality standards, and adjustment to VRS projected minutes of use and corresponding cost increase); Verizon Comments at 9-12 (addressing adjustment to VRS projected minutes of use and corresponding cost increase); Hamilton Comments at 8-10 (addressing sharing provider cost data with the TRS Advisory Council and calculation of the carrier contribution factor); CSD Reply Comments (addressing disallowance of certified deaf interpreters and adjustment to VRS projected minutes of use and corresponding cost increase); Sorenson Reply Comments at 8-9 (addressing sharing provider cost data with the TRS Advisory Council); see also NECA Reply Comments; Sorenson *Ex Parte* (June 7, 2006).

⁶³ See Hamilton Reply Comments at 2 (freeze existing TRS rates); CSD Reply Comments at 6-7 (freeze current VRS rate); Hands On Reply Comments at 3-4 (freeze existing TRS rates). Sorenson asserts that the Commission should adopt a VRS rate of \$7.073. Sorenson Reply Comments at 4-5.

⁶⁴ See note 6, *supra*.

0.00535.

A. NECA's Cost Disallowances and Adjustments

18. *Traditional TRS, STS, and IP Relay.* As noted above, NECA made certain adjustments to the cost and demand data submitted by the providers in calculating the TRS compensation rates proposed to the Commission. With respect to traditional TRS, STS, and IP Relay, NECA disallowed certain advertising and marketing expenses, limited the indirect expenses of one provider, and disallowed the costs of a strategic consultant of one provider for IP Relay. We conclude that NECA correctly limited the indirect costs of one provider and disallowed the costs of a strategic consultant. At the same time, we restore all disallowed advertising and marketing expenses for these services.

19. First, with respect to the indirect costs, NECA determined that one provider's indirect expenses were, on a relative basis, significantly higher than those of the other providers.⁶⁵ As NECA explains, for each provider (and for each service) NECA compared the total indirect expenses to the sum of the provider's CA and relay operator expenses.⁶⁶ NECA determined that for traditional TRS, the ratio of one provider's indirect expenses to CA and relay operator expenses was approximately 60 percent, but that the weighted average of the same ratio for the other providers was approximately 6 percent.⁶⁷ Because the one provider had an indirect expense ratio that was more than ten times the weighed average of the other providers, NECA applied the weighted average ratio (6.09 percent in 2006 and 6.35 percent in 2007) to the outlier's indirect expenses and reduced them accordingly.⁶⁸ NECA made a similar adjustment to the indirect costs of this provider for STS and IP Relay.⁶⁹

20. We conclude that this approach is reasonable given the significant disparity in indirect costs of one provider in comparison to the other providers. Providers are aware, as the Instructions to the Data Collection Form state, that NECA (or the Commission) may perform "a comparative analysis of all providers' data as part of determining reasonable costs."⁷⁰ This approach is also consistent with what NECA and the Commission have previously done with regard to other costs.⁷¹ Providers should have no expectation that they will be compensated for costs that are grossly excessive compared to the similar costs claimed by the other providers.

21. Second, we conclude that NECA appropriately disallowed the costs for a strategic advisor for one IP Relay provider.⁷² As NECA explained, this expense was excluded because it "did not appear to be consistent with finance expenses required to support a relay center provider's efforts to meet the minimum requirements of providing service."⁷³ We agree that expenses relating to the provision of

⁶⁵ See *id.* at 9, 11 (traditional TRS), 14 (IP Relay), 16 (STS). By "indirect expenses," we mean those expenses listed in subsection C (Annual Administrative Expenses) of the Instructions to the Data Collection Form. See *2006 NECA Filing* at Appendix A.

⁶⁶ See, e.g., *id.* at 9; NECA Reply Comments at 2-3 & Exs. 1-3. NECA did not include providers whose data was excluded from consideration in its entirety.

⁶⁷ See *2006 NECA Filing* at 11; NECA Reply Comments at Ex. 1.

⁶⁸ See *2006 NECA Filing* at 11.

⁶⁹ See *id.* at 14-16; NECA Reply Comments at Ex. 2-3.

⁷⁰ See *2006 NECA Filing* at Appendix A.

⁷¹ See, e.g., *2004 Bureau TRS Order*, 19 FCC Rcd at 12229, paras 13 & n.45 (noting NECA's exclusion of costs that were out of range with other providers).

⁷² See *2006 NECA Filing* at 14.

⁷³ *Id.*

general corporate strategy, budgeting, and securing capital for future business needs cannot be considered a reasonable cost of providing TRS compensable from the Fund.⁷⁴

22. At the same time, we have restored all disallowed advertising and marketing expenses for these services. As noted above, most commenters address the exclusion of marketing costs and request further Commission guidance on this issue.⁷⁵ We also recognize that uncertainty regarding this issue may be compounded by the Fund's administrator's Data Collection Form and Instructions.⁷⁶ We note that the instructions separately include "Outreach" and "Marketing/Advertising" as "Other TRS Expenses" that may be included on providers' cost submissions.⁷⁷ Moreover, "Outreach" is defined in the Data Collection Form as "[e]xpenses of programs to educate the public on TRS," and "Marketing/Advertising" is defined as "[e]xpenses associated with promoting TRS within the community."⁷⁸ These similar definitions may have led to confusion concerning the nature of outreach expenses that may appropriately be submitted to the Fund administrator. As a result, in this instance we have restored all disallowed marketing and related costs to the providers' cost submissions for traditional TRS, STS, and IP Relay. In so doing, we do not prejudge whether the Commission may subsequently determine, for future Fund years, that certain costs in this area are not compensable from the Fund.⁷⁹

23. *VRS*. As noted above, in calculating the proposed compensation rate of \$6.138 per minute, NECA made adjustments to the providers' cost and demand data, particularly with regard to marketing and outreach expenses, certified deaf interpreters, and an increase in projected minutes of use and a corresponding increase in certain costs.⁸⁰ All commenters addressing this issue are opposed to the proposed rate and, generally, the disallowances and the process used to calculate the rate.⁸¹

24. Because, as noted below, we have concluded that it is in the public interest to extend the 2005-2006 rate for the 2006-2007 Fund year, we do not address NECA's disallowances or adjustments to the VRS provider's cost and demand data, or the providers' arguments set forth in their comments directed at these adjustments. We further note that many of the commenters' concerns, including whether an alternative cost recovery methodology and process should be adopted for VRS, have been raised in the *2004 TRS Report & Order's* FNPRM⁸² and may also be addressed in an upcoming notice of proposed rulemaking.

B. The Compensation Rates for Traditional TRS, STS, IP Relay, and VRS

25. *Traditional TRS*. Based on the adjustments noted above, we conclude that eligible interstate traditional TRS calls shall be compensated at \$1.291 per minute for the period of July 2006

⁷⁴ This issue is not addressed in the comments.

⁷⁵ See, e.g., Sorenson Comments at 17-25; Verizon Comments at 2-9; CSD Comments at 6-11; Hamilton Comments at 1-8; Hands On Comments at 11-18.

⁷⁶ See *2006 NECA Filing* at Appendix A.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ This issue may be raised in a future notice of proposed rulemaking addressing cost recovery issues. See note 6, *supra*.

⁸⁰ See para. 11, *supra*.

⁸¹ See notes 59-63, *supra*.

⁸² See *2004 TRS Report & Order*, 19 FCC Rcd at 12565-12567, paras. 234-240. In addition, as noted above (note 6), we anticipate that a broad range of VRS cost recovery issues will be raised in a future notice of proposed rulemaking.

through June 2007. This rate is determined by dividing the providers' adjusted total projected interstate costs for traditional TRS of \$42,271,712 by the providers' total projected interstate minutes of traditional TRS of 33,214,297, and applying the 1.4 percent rate of return for an allowance for working capital to the resulting average cost per minute.⁸³

26. *STS*. Based on the adjustments noted above, we conclude that eligible interstate STS calls shall be compensated at \$1.409 per minute for the period of July 2006 through June 2007. This rate was determined by dividing the providers' total projected interstate costs of \$417,524 by the providers' total projected interstate minutes of 300,406, and applying the 1.4 percent rate of return for an allowance for working capital to the resulting average cost per minute.⁸⁴

27. *IP Relay*. Based on the adjustments noted above, we conclude that intrastate and interstate IP Relay shall be compensated at \$1.293 per minute for the period of July 2006 through June 2007. This rate is determined by dividing the providers' total projected costs for IP Relay of \$247,857,066 by the providers' total projected minutes of IP Relay of 194,357,391, and applying the 1.4 percent rate of return for an allowance for working capital to the resulting average cost per minute.⁸⁵

28. *VRS*. We conclude that it is in the public interest to freeze the 2005-2006 VRS compensation rate and extend that rate for the 2006-2007 Fund year.⁸⁶ First, the *2006 Interoperability Order*⁸⁷ requires providers to ensure that their VRS equipment and service is interoperable so that all VRS consumers can place a VRS call through any VRS provider's service. As a result, we recognize that it may have been difficult for providers accurately to estimate minutes of use and related costs for the 2006-2007 Fund year. In addition, the recent phase-in of speed of answer benchmarks for VRS may have created similar uncertainty.⁸⁸

29. For these reasons, we conclude that it is in the public interest to extend the 2005-2006 VRS compensation rate of \$6.644 for a one-year period ending June 30, 2007, or until such time as the Commission adopts a new VRS rate pursuant to new VRS cost recovery rules, whichever is sooner. We note that several commenters support extending the 2005-2006 VRS rate until the Commission adopts a permanent VRS rate methodology and clarifies other costs recovery issues.⁸⁹

C. Interstate TRS Fund Size and Carrier Contribution Rate

30. Because we have modified the compensation rates proposed by NECA, we have

⁸³ See generally *id.* at Ex. 1C.

⁸⁴ See generally *id.* at Ex. 1D.

⁸⁵ See generally *id.* at Ex. 1B.

⁸⁶ We note that this rate, adopted in the *2005 TRS Rate Order*, was not based on the providers' projected costs and minutes of use, but rather was the median rate of all providers submitting data, and reflected a 72 cent increase over NECA's proposed rate. *2005 TRS Rate Order*, 20 FCC Rcd at 12246-12248, paras. 23-28. The Commission adopted this rate because it concluded that, given the then uncertainty over certain standards for the provision of VRS (e.g., speed of answer), the proposed rate would not be fair and reasonable. *Id.*

⁸⁷ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, FCC 06-57 (May 9, 2006) (*2006 Interoperability Order*). Providers must comply with the requirements of this order by July 31, 2006. See 71 FR 30818 (May 31, 2006).

⁸⁸ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, CC Docket No. 98-67, Report and Order, 20 FCC Rcd 13165 (July 19, 2005).

⁸⁹ See note 63, *supra*.

recalculated the Interstate TRS Fund size and carrier contribution factor. Using projected minutes of use as calculated by NECA,⁹⁰ and the compensation rates adopted above, we adopt a total Interstate TRS Fund size of \$419,724,291 and a carrier contribution factor of 0.00535 for the July 2006 through June 2007 Fund year.⁹¹ That figure reflects the funds necessary to compensate providers for projected minutes of use for the various forms of TRS, plus NECA's administrative costs, less interest income and an offset deriving from a surplus from the 2005-2006 Fund year.⁹²

D. Other Issues

31. In its comments, Hamilton asserts that greater transparency is necessary in the rate setting process, and that the TRS Advisory Council should be provided with substantive data by the Fund administrator so that it can effectively monitor cost recovery issues.⁹³ Sorenson responds that providers' cost data should not be publicized, but supports the provision of data to the Advisory Council if it can be done in a way that does not reveal "competitively sensitive information."⁹⁴ We anticipate raising this issue in a future notice of proposed rulemaking, and therefore do not address it here.⁹⁵

IV. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED, pursuant to the authority contained in Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and Sections 0.141, 0.361, and 64.604(c)(5)(iii) of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 64.604(c)(5)(iii), that this ORDER IS hereby ADOPTED.

⁹⁰ As noted above (note 24), as a general matter NECA uses the providers' own projected minutes of use in calculating the compensation rates, but uses a figure extrapolated from prior actual minutes of use in calculating the Fund size. In this case, although we have rejected NECA's calculations of the rates, we nevertheless use NECA's projected minutes of use for each form of TRS in calculating the necessary Fund size.

⁹¹ These figures are calculated as follows: For each of the four services, the total projected minutes of use is multiplied by the compensation rate to determine the projected reimbursement amount for the particular service for the 2006-2007 Fund year. These sums are: (1) for traditional TRS: \$20,375,754; (2) for STS: \$223,760; (3) for IP Relay: \$97,769,647; and (4) for VRS: \$343,355,130. These amounts are then added together to determine the Fund size requirement to reimburse all eligible forms of TRS (\$461,724,291). This amount is then increased by NECA's administrative expenses (\$800,000), and decreased by interest income (\$2,800,000) and the 2005-2006 Fund year surplus that will be carried over to offset the 2006-2007 Fund requirement (\$40,000,000). This total Fund requirement (\$419,724,291) is divided into the 2005 total interstate carrier end-user revenues of \$78.5 billion to determine the carrier contribution factor (0.00535). *See generally 2006 NECA Filing* at 20-21 & Ex. 4. In adopting this contribution factor, we reject Sorenson's request that we freeze the 2005-2006 contribution factor of 0.00564. *See Sorenson ex parte* (June 13, 2006). As NECA explains, based on the recommendation of the TRS Advisory Council, NECA proposed using \$40 million of the 2005-2006 surplus to offset the 2006-2007 Fund, which resulted in a safety margin of \$24 million. *See 2006 NECA Filing* at 20; note 55, *supra*. We believe this approach is reasonable, particularly because the Fund size is based on NECA's projected minutes of use of VRS derived from historical growth trends, which in this instance is substantially greater than the providers' projected minutes of use. *See* para. 11, *supra*.

⁹² *See generally id.* Hamilton asserts that NECA, in proposing a smaller carrier contribution factor, did not address "the continued decline in the interstate revenue base used to fund the TRS program." Hamilton Comments at 10. Under the present rules, however, the carrier contribution factor is simply a result of dividing the necessary size of the Fund by the total interstate carrier end-user revenues. *See* 47 C.F.R. § 64.604(c)(5)(iii)(B); *see also* NECA Reply Comments at 7.

⁹³ Hamilton Comments at 8-9.

⁹⁴ Sorenson Reply Comments at 8-9.

⁹⁵ *See* note 6, *supra*.

33. IT IS FURTHER ORDERED that NECA shall compensate providers of traditional TRS, Speech-to-Speech relay service (STS), IP Relay service, and Video Relay Service (VRS) for the July 1, 2006 through June 30, 2007 Fund year at the following rates: traditional TRS – \$1.291 per completed interstate conversation minute; STS providers – \$1.409 per completed interstate conversation minute; IP Relay providers – \$1.293 per completed interstate and intrastate conversation minute; and VRS providers – \$6.644 per completed interstate and intrastate conversation minute.

34. IT IS FURTHER ORDERED that the Interstate TRS Fund size shall be \$419,724,291 and the carrier contribution factor shall be 0.00535, for the July 1, 2006, through June 30, 2007, Fund year.

35. IT IS FURTHER ORDERED that this *Order* is effective upon release.

36. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

FEDERAL COMMUNICATIONS COMMISSION

Monica S. Desai, Chief
Consumer & Governmental Affairs Bureau