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ROLKA LOUBE SALTZER ASSOCIATES SUBMITS PAYMENT FORMULAS AND FUNDING REQUIREMENT FOR THE INTERSTATE TELECOMMUNICATIONS RELAY SERVICES FUND FOR THE 2014-2015 FUND YEAR

CG Docket No. 03-123 CG Docket No. 10-51

Comments: May 23, 2014

Reply Comments: June 3, 2014

By this Public Notice, the Consumer and Governmental Affairs Bureau (CGB) seeks comment on the Interstate TRS Fund (Fund) administrator's proposed provider compensation rates, funding requirement, and carrier contribution factor for the period from July 1, 2014, through June 30, 2015, for telecommunications relay services (TRS) compensated by the Fund. The matters on which we seek specific comment are indicated below.

On May 1, 2014, Rolka Loube Saltzer Associates (RLSA), the Fund administrator, submitted Fund payment formulas for the period from July 1, 2014, through June 30, 2015. RLSA also submitted an estimate of the TRS funding requirement and a proposed carrier contribution factor for the same period. RLSA's submission fulfills the requirement for the Fund administrator to file TRS payment formulas and revenue requirements with the Commission by May 1 of each year, to be effective the following July 1.2

MARS Plan Rates

RLSA proposes new per-minute compensation rates for forms of TRS that are subject to the Multistate Average Rate Structure (MARS) plan methodology,³ as follows: \$2.1170 for interstate traditional TRS;⁴ \$3.2480 for interstate Speech-to-Speech relay service (STS);⁵ and \$1.8205 for interstate

¹ Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51 (filed May 1, 2014) (2014 TRS Rate Filing).

² See 47 C.F.R. § 64.604(c)(5)(iii)(H).

³ 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, 20151-61, ¶¶ 16-38 (2007) (2007 TRS Rate Methodology Order).

⁴ 2014 TRS Rate Filing at 12. The current compensation rate for interstate traditional TRS is \$2.1647 per minute.

captioned telephone service (CTS) and interstate and intrastate Internet Protocol Captioned Telephone Service (IP CTS).⁶ We seek comment on whether these rates correctly apply the MARS methodology.

Additionally, although rates for IP CTS are currently set based on the MARS methodology, the Commission has an open rulemaking to consider whether to adopt a different compensation rate methodology for IP CTS, such as one based on an analysis of providers' actual and projected costs. Because the question of revising the IP CTS rate methodology is awaiting a Commission decision in an open proceeding, RLSA requested IP CTS providers to submit historical and projected cost data, using the same cost categories reported by service providers for Internet Protocol Relay Service (IP Relay). Based on the average of the projected costs submitted for 2014 and 2015, RLSA calculated an alternative compensation rate in the amount of \$1.7180 per minute. To help inform the Commission's decision on an appropriate rate methodology for IP CTS and to be prepared should the Commission determine to use a cost-based methodology to determine a new rate for IP CTS, we seek comment on whether RLSA has correctly calculated the average projected costs for IP CTS.

IP Relay

The 2014-15 Fund Year is the second year of a three-year period during which the IP Relay compensation rate is determined pursuant to a price cap methodology. For the 2013-14 Fund Year, the first year of this period, the per-minute compensation rate was set at \$1.0391 initially and then reduced to \$1.0147, effective September 2013, to reflect the removal of outreach costs from recoverable costs pursuant to the *VRS Reform Order*. The new base rate of \$1.0147, while substantially lower than the compensation rates in effect during the previous rate cycle, was still well in excess of average reported provider costs. In the *2013 TRS Rate Order*, the Bureau also adopted RLSA's proposed efficiency factor of 6.0 percent, to be used in determining adjustments to the IP Relay rate for subsequent years of

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⁵ 2014 TRS Rate Filing at 12. The traditional TRS rate also applies to interstate STS. 2007 TRS Rate Methodology Order, 22 FCC Rcd at 20159, ¶ 34. Consistent with the 2007 TRS Rate Methodology Order, however, RLSA's proposed STS rate includes an additional per-minute amount of \$1.1310 to be used for STS outreach. See 2007 TRS Rate Methodology Order, 22 FCC Rcd at 20170, ¶ 57. The current STS compensation rate is \$3.2957 per minute.

⁶ *Id.* at 13. The current compensation rate for CTS and IP CTS is \$1.7877 per minute.

⁷ 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 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420, 13472-79, ¶¶ 111-27 (2013), review pending sub nom. Sorenson Communications, Inc. and CaptionCall, LLC v. FCC (D.C. Cir., No. 13-1246, filed Sept. 6, 2013) (IP CTS Reform Order).

⁸ 2014 TRS Rate Filing at 13-14, Appx. B.

⁹ *Id.* at 14, Exh. 1-4.

¹⁰ *Id.* at 15; 2007 TRS Rate Methodology Order, 22 FCC Rcd at 20163-64, ¶¶ 43-46 (adopting a price cap plan for IP Relay with a three-year cycle).

¹¹ 2014 TRS Rate Filing at 15; 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, 10-51, 28 FCC Rcd 9219, 9224, ¶ 17 (CGB 2013) (2013 TRS Rate Order); Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8696, ¶ 192 (2013) (VRS Reform Order).

¹² 2013 TRS Rate Order, 28 FCC Rcd at 9222, ¶ 11.

the three-year price cap cycle.¹³ The Bureau found that this efficiency factor, while much larger than the 0.5 percent factor applied during the previous rate cycle, "is justified because of the need to take account of the rapid cost declines characteristic of this industry segment and because, given the excess of the base rate over average costs, it is appropriate for rates to be adjusted downward in subsequent years so that they reach levels close to average provider costs before the end of the three-year cycle."¹⁴

In a currently pending petition for reconsideration of the *2013 TRS Rate Order*, Sprint Corporation (Sprint) has urged the Bureau to revisit both the base compensation rate and the efficiency factor.¹⁵ Among other things, Sprint points out that the IP Relay market changed significantly after the costs supporting those determinations were reported to RLSA.¹⁶ Specifically, of the five providers who reported costs to RLSA, three subsequently terminated their provision of IP Relay.¹⁷ According to Sprint, this change not only rendered the cost computations underlying the base rate obsolete, but also led to a situation in which the two remaining providers must incur additional exogenous costs in order to handle the traffic formerly carried by the other providers.¹⁸

In its discussion of the IP Relay compensation rate for the 2014-15 Fund Year, RLSA also focuses on the changes in the IP Relay market. RLSA explains that applying the inflation and efficiency factors adopted last year to determine the rate for 2014-15 Fund Year would cause the IP Relay compensation rate to decline 6.0 percent from the current level of \$1.0147, or to \$0.9538 per minute. Noting the exit of three IP Relay providers and the continuing decline in demand for the service, however, RLSA cautions that the average projected 2014-15 costs of the two remaining providers, while not substantially *higher* than last year's five-provider average, do not demonstrate that these providers have realized any of the further productivity gains contemplated by the efficiency factor. Therefore, RLSA suggests that the Commission may wish to forego the application of the efficiency factor, thereby avoiding a rate decrease from the current level of \$1.0147 per minute. In addition, noting that the

¹³ *Id.* As the 2014 Rate Filing explains, the price cap plan for IP Relay applies three factors to a base rate − an inflation factor, an efficiency (or "X") factor, and exogenous costs. 2014 Rate Filing at 14. The formula takes a base rate and multiplies it by an adjustment percentage that reflects an increase due to inflation, offset by a decrease due to efficiencies. *Id.* at 14-15. The inflation factor is Gross Domestic Product − Price Index (GDP-PI)). The efficiency factor has been described as a figure equal to the Inflation Factor, less a designated amount to account for productivity gains. *Id.* at 15. See also 2007 TRS Rate Methodology Order, 22 FCC Rcd at 20163, ¶¶ 43-44.

¹⁴ 2014 TRS Rate Filing at 17.

¹⁵ Sprint Corporation, Petition for Reconsideration, CG Docket Nos. 03-123, 10-51 (filed July 31, 2013) (Sprint Petition).

¹⁶ *Id.* at 3-6.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3-6.

¹⁹ 2014 TRS Rate Filing at 17.

²⁰ Thus, the projected costs submitted for 2014-15 do not seem to support Sprint's argument that the exit of three IP Relay providers has rendered the cost calculations underlying the *2013 TRS Rate Order* "obsolete." Sprint Petition at 3. Further, despite Sprint's prediction, IP Relay providers have not submitted any claims for recovery of exogenous costs incurred in 2013-14. *2014 TRS Rate Filing* at 15.

²¹ The efficiency factor was set at a level that reflected the average annual decrease in the cost of providing IP Relay from 2007 to 2012. *2013 TRS Rate Order*, 28 FCC Rcd at 9222, ¶ 12. In other words, it was set based on the assumption that productivity gains, as reflected in declining per-minute costs, would continue to occur in the future at the same pace as in the past.

²² 2014 TRS Rate Filing at 17.

Commission-sponsored national outreach program is not yet operational, RLSA suggests that the Commission may wish to consider temporarily reinstating, as part of recoverable costs, the outreach costs incurred by providers.²³

We seek comment on whether to adopt RLSA's suggestion to forego the application of the efficiency factor in the 2014-15 Fund Year – which would thereby avoid a decrease in the current compensation rate of \$1.0147 per minute. Although the 2013 TRS Rate Order allowed a substantial margin of error by setting a base rate substantially above projected costs, ²⁴ we seek comment on whether the productivity gains contemplated by the efficiency factor are likely to materialize and whether a further rate decrease could result in another provider exiting the IP Relay market. ²⁵ We also seek comment on whether to adopt RLSA's suggestion to restore outreach costs as recoverable costs and whether the Bureau could take such action on delegated authority. ²⁶ Requesting comment on these suggestions will also serve to refresh and supplement the record, to the extent necessary, regarding Sprint's petition for reconsideration of the 2013 TRS Rate Order.

VRS

VRS compensation rates for the 2014-15 Fund Year were established in the *VRS Reform Order* as part of a "glide path" toward cost-based levels, which will continue during the Commission's implementation of the structural reforms directed in that order. The applicable per-minute VRS compensation rates for the period from July 1, 2014, through December 31, 2014, are: Tier I (0 - 500,000 minutes/month), \$5.52; Tier II (500,000.1 - 1 million minutes/month), \$4.82; and Tier III (over 1 million minutes/month), \$4.44. The applicable rates for the period from January 1, 2015, through June 30, 2015, are: Tier I (0 - 500,000 minutes/month), \$5.29; Tier II (500,000.1 - 1 million minutes/month), \$4.82; Tier III (over 1 million minutes/month), \$4.25. Because these specific rates were established by order of the Commission, we do not seek comment on whether to adopt them.

Funding Requirement and Contribution Factor

Based on RLSA's proposed new compensation rates for TRS, STS, CTS, IP CTS, and IP Relay, the established VRS compensation rates, and the projected Fund administration expenses, RLSA's *2014 Rate Filing* proposes a funding requirement of \$789.7 million and a carrier contribution factor of 0.01174.²⁹ CGB seeks comment on the proposed funding requirement and carrier contribution factor.

²³ *Id*.

²⁴ 2013 TRS Rate Order at 9225, ¶ 19. See also id., ¶ 20 (setting the base rate at a level higher than costs "represents a reasonable measure to take account of cost differentials among providers, to allow efficient providers to earn positive profits on a prospective basis, and to give inefficient providers an incentive to reduce their costs").

²⁵ See, e.g., Sprint, Ex Parte Letter at 1 (filed Apr. 24, 2014) (stating that Sprint cannot remain as an IP Relay provider at the level of compensation resulting from application of the efficiency factor).

The removal of outreach costs from the calculation of the base rate for IP Relay compensation was directed by the Commission in light of its decision to terminate providers' outreach responsibilities for VRS and IP Relay and to transfer those responsibilities to a national program. *VRS Reform Order*, 28 FCC Rcd at 8634-39, ¶¶ 31-39, 8706, ¶ 216. As RLSA notes, however, the Commission-sponsored outreach program is not yet operational. In light of this delay, and notwithstanding the Commission-directed removal of those costs from the base rate, it may be consistent with the *VRS Reform Order* for the 2014-15 IP Relay compensation rate to be adjusted, as an exogenous cost adjustment, to take account of the need for IP Relay providers to continue some outreach activities until the commencement of the national program.

²⁷ *Id*.

²⁸ 2014 TRS Rate Filing at 18-19.

²⁹ *Id.* at 32.

In this regard, comment is invited on RLSA's demand projections and funding requirements for the various relay services supported by the Fund, and for VRS and IP CTS in particular.³⁰ Regarding IP CTS, RLSA considers the sum of providers' demand forecasts to be reasonably valid as a projection and has used this forecast to calculate the proposed funding requirement and carrier contribution factor specified above.³¹ The total provider projections for IP CTS are 119,679,289 minutes for the period July 1, 2014 – June 30, 2015,³² and 115,893,606 for the period May 1, 2014 – April 30, 2015, on which the projected 2014-15 Fund requirement is based.³³ Noting, however, that recent fluctuations in the total minutes submitted for compensation, as well as rule changes and court action, have made it difficult to forecast demand, RLSA also offers an alternative forecast of IP CTS demand based on extrapolation from the trend of total monthly minutes for the period from June 2013 through February 2014.³⁴ RLSA's alternative forecast projects 130,883,347 minutes of IP CTS for the period July 1, 2014 – June 30, 2015,³⁵ and 125,245,818 for the period May 1, 2014 – April 30, 2015.³⁶ Adopting this alternative projection would increase the recommended carrier contribution factor by 0.00030, to 0.01204. We seek comment on whether to adopt the sum of providers' demand projections or RLSA's alternative demand projection as the basis for setting a funding requirement and carrier contribution factor for the 2014-2015 Fund Year.

We also seek comment on the Administrator's estimates and recommendations for additional funding to cover the estimated costs of Internet-based TRS database administration, Fund administrator compensation, the revenue data collection agent, the Interstate TRS Advisory Council, management of Fund investments, service provider audits, implementation of Office of Management and Budget Circular A-123, bankruptcy representation, and an administrator-recommended independent audit of the Fund.³⁷

Finally, we seek comment on RLSA's recommendation for an increase in the budgetary reserve, which historically has been included in the funding requirement to protect the Fund in case of unanticipated developments, to prevent running short of available funds before the end of the Fund Year.³⁸ RLSA proposes that the reserve be increased from one month to two months of average projected distributions, or \$134.3 million, in order to more appropriately reflect the practice of budgeting demand. This proposal takes into consideration that distributions in the Fund Year include payments for service provided in May and June of the prior year and only ten months of the service provided during the upcoming Fund year.³⁹

 $^{^{30}}$ *Id.*, Exh. 2. For VRS the proposed funding requirement for 2014-15 is \$559,434,455, and for IP CTS the proposed funding requirement for 2014-15 is \$210,404,615.

³¹ *Id.* at 22-23.

³² *Id.* at 22.

³³ As RLSA explains, projected Fund requirements are based on amounts expected to be paid out during the Fund Year. *Id.* at 30. As there is typically a two-month lag between the month of calling and the month of payment, the Fund requirement is based on the projected calling for the period May 1, 2014 – April 30, 2015. *Id.* For IP CTS, the minutes projected for May and June 2014 are 17,676,226, and the minutes projected for July- April 2015 are 98,217, 380. *Id.*, Exh. 2. The sum of these projections is 115,893,606.

³⁴ *Id.* at 23-26.

³⁵ *Id.* at 26.

³⁶ See id., Exh. 1-4.

³⁷ *Id.* at 28-30. Also included in the funding requirement is \$10 million mandated for the National Deaf-Blind Equipment Distribution Program. *Id.* at 27.

³⁸ *Id.* at 31.

³⁹ *Id*.

Interested parties may file comments on or before May 23, 2014, and reply comments on or before June 3, 2014. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, commenters should include their full name and U.S. Postal Service mailing address. All filings must reference CG Docket No. 03-123 and CG Docket No. 10-51.

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