

**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)	

DECLARATORY RULING AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 3, 2006

Released: May 9, 2006

Comment Date: (45 days after date of publication in the Federal Register)

Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairman Martin, Commissioners Copps, Adelstein, and Tate issuing separate statements.

I. INTRODUCTION

1. In this *Declaratory Ruling*, we address a petition (Petition) requesting the Commission to declare that a Video Relay Service (VRS)¹ provider may not receive compensation from the Interstate TRS Fund (Fund) if it blocks calls to competing VRS providers.² We agree, and conclude that the practice of restricting the use of VRS to a particular provider – sometimes termed “call blocking” – is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns.³ All VRS consumers should be able to place a VRS call through any of the VRS providers’ service, and all VRS providers should be able to receive calls from, and make calls to, any VRS consumer. Accordingly, as discussed below, effective 60 days after publication of this *Declaratory Ruling* in the Federal Register, any VRS provider restricting the use of its service, as described below, will be ineligible for compensation from the Fund.⁴

¹ As further discussed below, VRS is a form of telecommunications relay service (TRS) that allows a deaf person whose primary language is ASL to access the telephone system to call voice telephone users via a video link through a communications assistant (CA). The CA makes a voice telephone call to the party the VRS user desires to call, and relays the call back and forth between the parties. See 47 U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. §§ 64.601(14) & (17).

² California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH or Petitioner), *Petition for Declaratory Ruling on Interoperability*, CC Docket No. 98-67, CG Docket No. 03-123, filed February 15, 2005. CCASDHH is a coalition of eight community-based nonprofit agencies providing various social services to deaf and hard-of-hearing consumers in California. See Petition at 1 n.1.

³ As discussed below, the practice of call blocking proscribed herein includes providing degraded service quality for connections to the service of other VRS providers. See para 29, *infra*

⁴ The Interstate TRS Fund compensates eligible providers for their costs of providing certain forms of TRS, including all VRS calls. See 47 C.F.R. § 64.604(c)(5)(iii); para. 8-9, *infra*.

2. Petitioner also raises the issue of VRS providers using a proprietary database of “proxy” or “alias” numbers that allow their customers to use their existing telephone number (or some other number) as a proxy for their Internet Protocol (IP) address.⁵ This arrangement permits a VRS provider to determine automatically the IP address of a VRS user when a hearing person initiates a VRS call. These databases, however, are generally used only for calls made via one provider’s service and using that provider’s equipment. In the corresponding *Further Notice of Proposed Rulemaking (FNPRM)*, we seek comment on whether and how an open and global database of proxy numbers for VRS users may be created so that a hearing person may call a VRS user through any VRS provider without having to ascertain first the VRS user’s current IP address. We also seek comment in the *FNPRM* on whether we should adopt specific Internet protocols or standards to ensure that all VRS providers can receive calls from, and make calls to, any VRS consumer, and all VRS consumers can make calls through any VRS provider.

II. BACKGROUND

A. Section 225 and the Regulation of TRS

3. Congress mandated a nationwide TRS program in Title IV of the Americans with Disabilities Act of 1990 (ADA).⁶ Title IV added Section 225 to the Communications Act of 1934, as amended (Act),⁷ which requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to persons with hearing or speech disabilities in the United States.⁸ Congress recognized that persons with such disabilities have long experienced barriers in their ability to access, utilize, and benefit from telecommunications services.⁹ The legislative history of Title IV notes that “the inability of over 26 million Americans to access fully the Nation’s telephone system poses a serious threat to the full attainment of [the goal of universal telephone service].”¹⁰ Congress therefore found TRS necessary to “bridge the gap between the communications-impaired telephone user and the community at large,” and emphasized that to “participate actively in society, one must have the ability to call friends, family, business[es] and employers.”¹¹ TRS is now available nationwide, twenty-four hours a day, seven days a week, so that persons with hearing and speech disabilities can access the telephone system to make calls to, and receive calls from, voice telephone users.

4. Title IV places the obligation on common carriers offering “telephone voice transmission services” to offer TRS throughout the areas in which they offer service.¹² As the Commission has explained, TRS is an accommodation under the ADA for persons with disabilities.¹³ Carriers providing

⁵ Petition at 3-4 & n.3.

⁶ Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990); 47 U.S.C. § 225.

⁷ 47 U.S.C. § 225.

⁸ 47 U.S.C. § 225(b)(1).

⁹ See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 and 98-67 and CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12479-12480, para. 3 (June 30, 2004) (*2004 TRS Report and Order*) (discussing legislative history of Title IV of the ADA).

¹⁰ See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129 (1990) (House Report).

¹¹ *Id.*

¹² 47 U.S.C. § 225(c). Covered carriers may do so “individually, through designees, through a competitively selected vendor, or in concert with other carriers.” *Id.*

¹³ *2004 TRS Report and Order*, 19 FCC Rcd at 12543, para. 179. The legislative history of the ADA makes clear that Title IV was directed at remedying the discriminatory effects of a telephone system inaccessible to persons with disabilities. See, e.g., *id.* at 12480, para. 3 n.17.

voice telephone service must *also* offer TRS so that persons with hearing and speech disabilities will have access to their services.¹⁴ As the legislative history of Title IV emphasizes, TRS is meant to provide “opportunities for communications that are equivalent to those provided to individuals able to use voice telephone services.”¹⁵

5. In view of the purpose of TRS, Congress specifically mandated in Section 225 that relay services offer access to the telephone system that is “functionally equivalent” to voice telephone services.¹⁶ The “functional equivalency” standard serves as the benchmark in determining the services and features TRS providers must offer to consumers, and is reflected in the TRS mandatory minimum standards contained in the Commission’s rules.¹⁷ These standards ensure that TRS users have the ability to access the telephone system in a manner that approximates, as closely as possible, the experience of a voice telephone user.¹⁸ These standards, however, do not address equipment consumers may use to make a TRS call. Rather, the standards address how relay service providers must handle calls that are made to the relay center, and the duties and responsibilities of the CAs in relaying the conversation between the parties.

6. One of the mandatory minimum standards requires TRS providers to answer calls within a specific time period.¹⁹ The Commission has stated that “[t]he ability to make a telephone call without delay ... is fundamental to our concept of a rapid, efficient, Nationwide communications system.”²⁰ The Commission has further emphasized that the “[s]peed-of-answer requirements are a cornerstone of the Commission’s TRS rules,” and the “ability of a TRS user to reach a CA prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call,

¹⁴ *Id.*; *see also id.* at 12545, para 182 n.521 (TRS is “an accommodation that is required of telecommunications providers, just as other accommodations for persons with disabilities are required by the ADA of businesses [Title III] and local and state governments [Title II].”).

¹⁵ House Report at 24.

¹⁶ 47 U.S.C. § 225(a)(3).

¹⁷ 47 C.F.R. § 64.604. The legislative history of Section 225 makes clear that “[t]elecommunications relay services are to be governed by standards that ensure that telephone service for hearing- and speech-impaired individuals is functionally equivalent to voice services offered to hearing individuals.” House Report at 129; *see also Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (July 26, 1991) (*TRS I*) (adopting the TRS regulations). We note that failure to meet the mandatory minimum standards could subject a TRS provider to enforcement action.

¹⁸ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, at 5196-5197, para. 138 (March 6, 2000) (*Improved TRS Order*); *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, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, at 12415-12416, para. 62 (June 17, 2003) (*Second Improved TRS Order*).

¹⁹ *See* 47 C.F.R. § 64.604(b)(2) (speed of answer rule, requiring 85 percent of all calls to be answered within 10 seconds, measured on a daily basis); *see also 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, Report and Order, 20 FCC Rcd 13165 (July 19, 2005) (*2005 VRS Speed of Answer Order*) (phasing in speed of answer requirements for VRS beginning January 1, 2006).

²⁰ *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Notice of Proposed Rulemaking, 13 FCC Rcd 14187, 14289, at para. 3 (May 20, 1998) (*1998 TRS NPRM*).

is fundamental to the concept of ‘functional equivalence.’”²¹

7. The TRS mandatory minimum standards also require TRS CAs to handle emergency (*e.g.*, 911) calls.²² The Commission has noted that despite regulations requiring state and local governments to make emergency services directly accessible to TTY users (*i.e.*, for direct TTY to TTY calls), many individuals with hearing and speech disabilities use TRS to contact emergency services.²³ As a result, providers must make relay calls to 911 “functionally equivalent to a direct call to 911.”²⁴ Accordingly, TRS providers must route emergency TRS calls to the appropriate Public Safety Answering Point (PSAP).²⁵ As noted below, the Commission has presently waived this requirement for VRS.²⁶

8. Congress also mandated that TRS users cannot be required to pay for the service costs of using TRS.²⁷ Because Title IV requires certain common carriers to offer TRS so that persons with disabilities can have access to their services, the costs of providing TRS are considered another cost of doing business, *i.e.*, of providing voice telephone service.²⁸ At the same time, Congress determined that TRS providers would be compensated for their “reasonable” costs of providing TRS.²⁹ As a result, for *interstate* TRS calls,³⁰ the Commission adopted a cost recovery framework that entails collecting contributions from providers of interstate telecommunications services to create a fund from which

²¹ *Id.* at 14207, para. 49.

²² See 47 C.F.R. § 64.604(a)(4); *see also TRS I*, 6 FCC Rcd at 4659, para. 10.

²³ *1998 TRS NPRM*, 13 FCC Rcd at 14203, para. 41.

²⁴ *Improved TRS Order*, 15 FCC Rcd at 5183, paras. 99-100.

²⁵ *Second Improved TRS Order*, 18 FCC Rcd at 12406-12408, paras. 40-42. Because of jurisdictional boundaries, the “appropriate” PSAP is not always the geographically closest PSAP to the calling party. The Commission has therefore clarified that the “appropriate” PSAP is “either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.” *See also 2004 TRS Report and Order*, 19 FCC Rcd at 12559, para. 216 (modifying the definition of “appropriate” PSAP.)

²⁶ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, DA 05-3139 (Dec. 5, 2005) (extending waiver of emergency call handling requirement for VRS until January 1, 2007, or upon release of an order addressing the issue, whichever comes first); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Notice of Proposed Rulemaking, FCC 05-196 (Nov. 30, 2005) (*VRS 911 NPRM*) (seeking comment on how VRS providers might handle emergency calls and determine the appropriate PSAP to call).

²⁷ See 47 U.S.C. § 225(d)(1)(D); 47 C.F.R. §§ 64.604(c)(4). In addition, VRS consumers presently do not pay for any long distance charges in connection with a VRS call. *See, e.g., 2004 TRS Report and Order*, 19 FCC Rcd at 12524-12525, paras. 127-129 & n.364. Therefore, there is no cost to the consumer for placing a VRS call.

²⁸ *2004 TRS Report and Order*, 19 FCC Rcd at 12543, para. 179.

²⁹ *Id.* at 12543-12544, paras. 179-181. “Reasonable” costs compensable by the Fund do not include profit or a markup on expenses. Rather, they include only those direct and indirect costs necessary to provide relay service consistent with all applicable TRS mandatory minimum standards. *Id.* at 12543-12544, paras. 179-182.

³⁰ Section 225 distinguishes between intrastate and interstate TRS services, and provides that states are responsible for the reimbursement of the costs of intrastate TRS and the Interstate TRS Fund is responsible for the reimbursement of the costs of interstate TRS. 47 U.S.C. § 225(d)(3)(B). Presently, however, all VRS calls are compensated from the Fund because it is not possible to determine if a particular call is intrastate or interstate. The issue of separation of costs for the provision of VRS is pending pursuant to the Further Notice of Proposed Rulemaking in the *2004 TRS Report & Order*. *See 2004 TRS Report & Order*, 19 FCC Rcd at 12565-12567, paras. 234-242.

eligible TRS providers are compensated for the costs of eligible TRS services.³¹ Contributions to the fund are based on the carrier's interstate end-user revenues. All contributions are placed in the Interstate TRS Fund, which is administered by the TRS Fund Administrator, currently the National Exchange Carrier Association (NECA).³²

9. The Fund administrator uses these funds to compensate eligible TRS providers³³ on a per-minute basis for the costs of providing the various forms of TRS.³⁴ Each month the providers submit their minutes of use to NECA for reimbursement.³⁵ The regulations provide that the Fund administrator "shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604."³⁶ The size of the Fund for the 2005-2006 Fund year is approximately \$441 million, and it compensates providers for more than 10 million minutes of TRS per month.³⁷ Nearly half of the \$441 million compensates providers of VRS.³⁸

B. Traditional TRS and VRS

10. When Congress enacted Section 225, and the Commission implemented the TRS, relay calls were placed using a text telephone device (TTY) connected to the Public Switched Telephone Network (PSTN). In such a "traditional" TRS call, a person with a hearing (or speech) disability dials a telephone number for a TRS facility using a TTY. In this context, the first step for the TRS user, the completion of the outbound call to the TRS facility, is functionally equivalent to receiving a "dial tone."³⁹ Both persons

³¹ See 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5). The regulations, addressing these matters separately, characterize the former as "cost recovery," see 47 C.F.R. §§ 64.604(c)(5)(ii) & (iii)(A) – (D), and the latter as "payments to TRS providers," 47 C.F.R. §§ 64.604(c)(5)(iii)(E) & (F).

³² The amount of each carrier's contribution is the product of the carrier's interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission. 47 C.F.R. § 64.604(c)(5)(iii).

³³ 47 C.F.R. § 64.604(c)(5)(iii)(E) & (F) (setting forth the eligibility requirements for TRS providers seeking to receive compensation from the Interstate TRS Fund). Recently the Commission released an order providing for Commission certification of IP Relay and VRS providers eligible for compensation from the Fund. See *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, CG Docket No. 03-123, FCC 05-203 (Dec. 12, 2005) (*2005 VRS Provider Order*) (adopting new provider eligibility rules).

³⁴ 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 (June 28, 2005) (*2005 TRS Rate Order*) (adopting rates for the July 1, 2005 to June 30, 2006 fund year). Presently, interstate traditional TRS calls are compensated at the rate of \$1.440 per minute; VRS calls are compensated at the rate of \$6.644 per minute.

³⁵ See generally 47 C.F.R. § 64.604(c)(5)(iii)(E).

³⁶ See *id.*; see also *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order on Reconsideration, 20 FCC Rcd 5433, 5443, at para. 32 (March 9, 2005) (emphasizing that providers must offer service in compliance with the mandatory minimum standards to be eligible for compensation from the Fund); *2004 TRS Report & Order*, 19 FCC Rcd at 12547-12548, para. 189 (same).

³⁷ *2005 TRS Rate Order*, 20 FCC Rcd at 12248, para. 29; TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA) as of March 31, 2006, www.neca.org (under Resources, then TRS Fund).

³⁸ See, e.g., TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA) as of October 31, 2005, www.neca.org (under Resources, then TRS Fund).

³⁹ The caller then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. When the called party answers, the CA serves as the "link" in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed

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with hearing and speech disabilities and voice telephone users can initiate a traditional TRS call by dialing 711 to reach a TRS provider.⁴⁰

11. VRS allows persons using American Sign Language (ASL) to access the telephone system through a broadband Internet video connection between the VRS user and the CA. A VRS user may initiate a VRS call either via a VRS provider's website or directly through VRS equipment connected to the Internet. With VRS, the dial tone equivalent is when the VRS user establishes a video connection with the CA, who then places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the VRS user and by voice with the hearing person. As a result, the conversation between the two end users flows in near real time and in a faster manner than with a TTY or a text-based TRS call. VRS therefore provides a degree of "functional equivalency" that is not attainable with text-based TRS by allowing those persons whose primary language is ASL to communicate in sign language, just as a hearing person communicates in, *e.g.*, spoken English.

12. A hearing person may also initiate a VRS call by calling a VRS provider through a toll-free telephone number. However, unlike the voice telephone network, VRS equipment is not linked to a uniform numbering system that correlates to a VRS user's IP address. Most VRS users have "dynamic" IP addresses, which are temporary addresses assigned to the user by an Internet service provider, and change periodically.⁴¹ This makes it difficult for a hearing person to know in advance the IP address of the VRS user he or she desires to call. If the calling party is not calling a VRS user through a VRS provider that maintains a database of its customers' IP addresses, the calling party must determine in advance the VRS user's correct IP address and give that address to the VRS provider.

C. VRS Equipment and Provider Marketing Practices

13. VRS usage has grown rapidly. VRS first began in January 2002, with approximately 7,200 monthly minutes of use. By January 2004, there were nearly a half million monthly minutes of use. In December 2005, the number of VRS minutes surpassed three million.⁴² Further, there are now eight VRS providers, and more are expected.⁴³ The growth in minutes and the number of providers has contributed to a competitive VRS environment and marketing plans by the providers seeking to increase their minutes and market share.⁴⁴

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messages for the TTY user. A voice telephone user can also initiate a TRS call to a person with a hearing or speech disability (the TTY user), in which case this process is performed in reverse.

⁴⁰ See, *e.g.*, 47 C.F.R. § 64.601(1).

⁴¹ Because there are more Internet users than possible IP addresses, Internet service providers generally assign a temporary "dynamic" IP address to a computer. Dynamic addressing generally assigns an available address to the computer each time a connection is established. See R. Horak, *Communications Systems and Networks* (3rd ed.) at 489 (2002). By contrast, a "static" IP address is a number assigned to a computer by an Internet service provider as a permanent Internet address.

⁴² See TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA), www.neca.org (under Resources, then TRS Fund).

⁴³ The following VRS providers presently receive compensation from the Interstate TRS Fund: AT&T; Communications Access Center (CAC); Hamilton Relay, Inc. (Hamilton); Hands On Video Relay Service, Inc. (Hands On); MCI; Nordia; Sorenson Media, Inc. (Sorenson); and Sprint Corporation, Inc. (Sprint). See <http://www.neca.org/media/1205TRSStatus.pdf>. As noted above, the 2005 VRS Provider Order adopted a new means by which entities may become eligible to offer VRS and receive compensation from the Fund. See note 33, *supra*.

⁴⁴ See, *e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466 (Jan. 26, 2005) (continued....)

14. VRS consumers can use a variety of equipment to communicate with the VRS CA in the video-to-video leg of a VRS call.⁴⁵ Most commonly, VRS consumers use a videophone device that attaches to a television. These devices are popular because they do not require a computer and are easy to use.⁴⁶ The D-link (also called “i2eye”) videophone⁴⁷ and the VP-100 videophone,⁴⁸ both developed by Sorenson, are the most widely used videophone devices. The VP-100 videophone has additional features that distinguish it from the D-Link and other videophones.⁴⁹ Also, the VP-100 videophone is available only from Sorenson, with the restrictions Sorenson places on the use of device, as discussed below.

15. The popularity of VRS and the competition between the VRS providers to increase their share of the VRS market has resulted in the providers using a variety of marketing practices to gain new customers and a larger market share. These include the practice of distributing and installing VRS equipment at consumers’ premises at no charge to the consumer.⁵⁰ The Commission has made clear that the costs of consumer equipment that a provider may give to a consumer are not compensable from the Fund.⁵¹

16. Sorenson distributes VP-100s to its customers free of charge, but Sorenson currently does not permit its customers to use a VP-100 to make an outgoing VRS call through any VRS provider’s service except its own.⁵² Presently, a consumer who desires to obtain and use the Sorenson VP-100 can only make VRS calls through Sorenson’s relay service, unless the consumer has a second piece of equipment and the ability to use his or her broadband Internet connection with either piece of equipment.⁵³ Another

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2005) (*VRS Marketing Practices Declaratory Ruling*) (addressing VRS marketing plan); *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May not be Used as a Video Remote Interpreting Service*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 1471 (Jan. 26, 2005) (*Call Handling Practices PN*) (addressing certain kinds of marketing practices).

⁴⁵ Consumers generally use either a small camera that connects to a personal computer (generally called a “webcam”) or a videophone that directly attaches to a television. Both must have a broadband Internet connection.

⁴⁶ See, e.g., http://www.i-tech.com.au/products/4890_D_LINK_DVC_1000_DLink_i2eye_Broadband.asp (an example of how to set up a videophone).

⁴⁷ Petition at 4 n.4. The D-Link i2eye is available for purchase on the retail market for approximately \$200 and also is offered for free by some VRS providers. The D-Link is essentially a more basic model than the VP 100, with fewer user interface features and a slightly lower quality of video image. Both use the same proprietary video compression technology that enables these devices to work effectively with TVs.

⁴⁸ See generally http://www.sorensonvrs.com/options/vp100_info.php.

⁴⁹ See http://www.sorensonvrs.com/options/vp100_info.php.

⁵⁰ See <http://207.188.238.148/DLink/> (Hamilton); <https://secure.hovrs.com/equipment/requestform.aspx> (Hands On); and <http://www.sorensonvrs.com/apply/index.php> (Sorenson).

⁵¹ See NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CC Docket No. 98-67 at Appendix A (Relay Service Data Request Instructions), p. 4 (filed April 25, 2005) (stating that “[t]he cost of equipment given to, sold to, and/or used by relay callers, and call incentives, are NOT to be reported as expenses” (emphasis in original)); *VRS Marketing Practices Declaratory Ruling*, 20 FCC Rcd at 1469, para. 8 n.30.

⁵² See *Sorenson Ex Parte* (Jan. 6, 2006) at 12 (“Sorenson has decided to offer users a VP-100 only in conjunction with access to its interpreters”). We note that on February 20, 2006, Sorenson issued a press release announcing plans to allow, by July 1, 2006, users of its videophones to use the services of other VRS providers. See <http://www.sorensonvrs.com>. That announcement, addressing Sorenson’s future marketing plans, does not preclude us from ruling on the Petition.

⁵³ See Sorenson Reply Comments at 4; <http://www.sorensonvrs.com/apply/index.php>. Sorenson allows customers to make peer-to-peer calls – i.e., direct videophone-to-videophone calls – to other individuals free of charge even if the

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provider, Hands On, has engaged in a similar market practice that involves the distribution and installation of a free pre-configured router and videophone that restricts its customers to using its VRS service. The customers agreeing to this arrangement receive reimbursement from Hands On for their broadband access charge.⁵⁴

D. The Petition.

17. Petitioner requests the Commission to mandate that VRS providers receiving compensation from the Fund be prohibited from restricting VRS equipment from accessing other VRS providers, arguing that this practice violates the principle of functional equivalency.⁵⁵ Petitioner asserts that although consumers could access multiple providers by having two sets of equipment, “having two sets of devices creates a considerable burden for consumers,” who must, for example, “keep separate lists of contacts, unique names and passwords[,] and learn how to operate two systems.”⁵⁶ Petitioner states that “[j]ust as hearing people are not expected to have two separate devices to make or receive calls ... neither should VRS users be expected to have dual equipment.”⁵⁷ The Petition also emphasizes that because it is not always possible to promptly reach an available CA, if VRS equipment is restricted consumers have no choice but to wait for an available CA; they cannot, instead, try to place a call through another provider.⁵⁸ Petitioner also argues that a consumer’s consent cannot justify compensating a provider from the Interstate TRS Fund, if that provider is restricting the use of its equipment.⁵⁹ Petitioner states that as “the final arbiter of the [Interstate TRS] Fund, the [Commission] has a duty to ensure that all providers of VRS act in a manner that does not frustrate the purposes of Section 225 [or] interfere with the other objectives of the Communications Act.”⁶⁰

18. Petitioner also asserts that requiring interoperability is in the public’s interest. Petitioner emphasizes that blocking access to other VRS providers creates a serious danger for VRS consumers

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other party is not using a VP-100. These calls are not TRS calls and therefore are not regulated or compensated under Section 225. Sorenson states that these calls constitute more than 80 percent of all Sorenson calls. Sorenson *Ex Parte* (Jan. 6, 2006) at 10-11.

⁵⁴ See Sorenson *Ex Parte* (Jan. 6, 2006) at 12-13 n.33; CSD *Ex Parte Letter* (Nov. 7, 2005). Hands On asserts that it adopted the practice of blocking access to competitors over the broadband service it provides “out of competitive necessity to prevent loss of market share.” Hands On *Ex Parte* (Nov. 11, 2005) at 13 (attachment). Hands On further asserts, however, that it does not block videophones supplied by competitors, and that in any event it “believes all blocking of consumer access to competitors should be prohibited” because otherwise other providers will do the same and “balkanize the VRS market.” *Id.*

⁵⁵ Petition at iii-iv, 8-10; see 47 U.S.C. § 225(a)(3). Petitioner focuses in particular on Sorenson’s practice of giving its VP-100 videophone to consumers for free but restricting its use to Sorenson’s VRS service and blocking customers from contacting any other VRS provider. Petitioner asserts that this practice violates functional equivalency because Sorenson’s customers are unable to use the services of other VRS provider for any incoming or outgoing calls. Petition at iii.

⁵⁶ Petition at iv.

⁵⁷ *Id.*

⁵⁸ *Id.* at 5. As noted above, speed of answer rules became effective for VRS on January 1, 2006. The initial benchmark is answering 80 percent of all calls within three minutes, measured on a monthly basis. See note 19, *supra*.

⁵⁹ *Id.* Petitioner also asserts that deaf VRS consumers accepting Sorenson’s equipment often do not have a full understanding of restrictions placed on their use of the equipment. *Id.* at 10.

⁶⁰ *Id.* at 24.

attempting to place a VRS call in the event of an emergency.⁶¹ Petitioner notes that many videophone users have abandoned their TTYs and choose to use VRS exclusively for calls to hearing individuals.⁶² As a result, in the event of an emergency, if a consumer cannot promptly reach a CA through the only VRS provider they are allowed to use with their equipment, they will not be able to call emergency services at all.⁶³ Petitioner contends that a “practice that prohibits customers from accessing another VRS provider [during an emergency] conflicts with our nation’s homeland security policies, which are designed to facilitate, not restrict, access to emergency support – especially when an emergency strikes a sizeable area.”⁶⁴ Petitioner also notes that there may be times when a provider’s service is shut down or overwhelmed by an influx of calls, and that in such cases it is imperative that consumers have access to all VRS providers, as well as all available interpreters.⁶⁵

19. Finally, Petitioner asserts that restricting the use of VRS equipment to a single provider is at odds with the Commission’s emphasis on open and integrated telecommunications networks, including the Internet, and interconnection principles.⁶⁶ Petitioner states that “Congress and the Commission have consistently renewed their commitment to policies that promote the interconnection of services and equipment, in the interest of both furthering competition and facilitating use of the nation’s public telecommunications networks by the broadest number of consumers.”⁶⁷ Relatedly, Petitioner asserts that requiring interoperability would level the playing field and foster competition by encouraging new providers to offer service.⁶⁸

20. Petitioner also addresses Sorenson’s practice of using a database of “proxy” numbers that allow its customers to use their existing telephone number (or some other number) as a proxy for their IP address.⁶⁹ This arrangement permits a hearing person to call a VRS user through Sorenson without having to know the VRS user’s IP address. Petitioner asserts that this “restricted database” precludes a hearing person from making a VRS call through another provider’s service using the VRS user’s proxy number.⁷⁰ Petitioner notes that although a hearing person may still be able to call a VRS user by providing the VRS provider with the VRS user’s IP address, most VRS users have dynamic IP addresses

⁶¹ *Id.* at 19-22.

⁶² *Id.* at 19-20.

⁶³ *Id.* at 20; *see also* note 26, *supra* (citing recent NPRM on using VRS to call emergency services and the extension of the waiver of this requirement until January 1, 2007).

⁶⁴ *Id.* at 20-21.

⁶⁵ *Id.* at 22.

⁶⁶ Petitioner maintains that this practice is “contrary to the Commission’s overall efforts to achieve a seamless and integrated network of communications services, and inconsistent with national policies promoting competition, nondiscriminatory practices, and dialing parity.” Petition at iii.

⁶⁷ *Id.* at 8. Petitioner emphasizes that the requirement in the TRS rules that providers offer consumers their long distance carrier of choice “is a form of interoperability designed to foster competition for relay calls made over long distance.” *Id.*

⁶⁸ *Id.* at 22-23. Petitioner also asserts that Sorenson’s practice prohibits *hearing* persons from using another VRS providers’ service to call a deaf person who uses Sorenson’s VRS equipment. Petition at 5, 18-19. The record reflects, however, that this is no longer the case. *See Sorenson Ex Parte* (Jan. 6, 2006) at 11-12 n.29 (“Sorenson subscribers can use their VP-100s to receive incoming calls from any VRS provider ... There are no longer any contractual restrictions preventing Sorenson VRS customers from receiving calls over their VP-100s from customers of other VRS providers.”); *see also* Reply Comments by CCASDHH at 2 n.1 (May 2, 2005) (acknowledging that Sorenson now allows its customers to receive calls from other VRS providers).

⁶⁹ Petition at 3-4 & nn.3, 5-6.

⁷⁰ *Id.* at 6.

so that they likely do not know their IP address to give to the calling party.⁷¹

E. The Comments

21. On March 1, 2005, the Petition was placed on Public Notice.⁷² Six TRS providers⁷³ and six organizations filed comments and reply comments.⁷⁴ Of these commenters, only Sorenson opposes the Petition. Numerous individuals also filed comments and reply comments, most of which generally support the Petition. Many *ex parte* meetings and paper filings also occurred.⁷⁵

22. *The Comments.* Supporting commenters generally make the same arguments as Petitioner.⁷⁶ They assert that because equipment restrictions limit the ability of the consumers to use their VRS provider of choice, the practice violates the functional equivalency mandate.⁷⁷ The commenters argue that consumers should not be locked into using one provider's relay service simply because the provider gave the consumer free VRS equipment.⁷⁸ Commenters further assert that this practice compels

⁷¹ *Id.* The Petition asserts that acquiring a static (*i.e.*, permanent) IP address is costly and that consumers generally do not have such IP addresses. *Id.* at 3 & nn.3, 6.

⁷² See *Petition for Declaratory Ruling filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) concerning Video Relay Service (VRS) Interoperability*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 4162 (March 1, 2005) (*Interoperability PN*).

⁷³ Comments and reply comments were filed by the following TRS providers: Communication Services for the Deaf (CSD) (April 15, 2005 and May 2, 2005); Hamilton (April 15, 2005 and May 2, 2005); Hands On (April 15, 2005 and May 2, 2005); MCI (April 15, 2005); Sorenson (April 15, 2005 and May 2, 2005); and Ultratec, Inc. (May 2, 2005).

⁷⁴ Comments and reply comments were filed by the following organizations: Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell) (April 15, 2005); Orange County Deaf Advocacy Center (OCDAC) (March 4, 2005); National Association of the Deaf (NAD) (April 15, 2005 and May 2, 2005); Telecommunications for the Deaf, Inc. (TDI) and Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN) (filed together on April 15, 2005 and May 2, 2005) (TDI/DHHCAN); RERC on Telecommunications Access (RERC-TA) (April 15, 2005); and CCASDHH (May 2, 2005).

⁷⁵ Letters of *Ex Parte* presentations were filed by the following parties: CSD (May 14, 2005, June 16, 2005, June 23, 2005, August 24, 2005, October 20, 2005, November 7, 2005, December 14, 2005, January 24, 2006, and January 25, 2006); Hamilton (September 27, 2005; October 24, 2005, November 17, 2005, December 14, 2005, January 24, 2006, and January 30, 2006); Hands On (November 10, 2005, December 14, 2005, and January 27, 2006); National Video Relay Service Coalition (NVRSC) (June 28, 2005); Sorenson (April 13, 2005, May 4, 2005, July 10, 2005, July 21, 2005, November 30, 2005, December 20, 2005, January 4, 2006, January 19, 2006, January 24, 2006, February 2, 2006, February 6, 2006, February 23, 2006, March 7, 2006, and March 29, 2006); Sprint (April 20, 2005, November 3, 2005); TDI (October 20, 2005); and Snap Telecommunications, Inc. (March 22, 2006). The following parties filed late comments: CSD (November 30, 2005); Hamilton (December 2, 2005 and December 23, 2005); Hands On (December 19, 2005); NAD, NorCal Center on Deafness (NorCal), Northern Virginia Resource Center (NVRC), and TDI (November 9, 2005) (joint filing); Sorenson (January 6, 2006); and the FCC Consumer Advisory Committee (CAC) (January 9, 2006). Petitioner, along with TDI, NAD, DHHCAN, and the Association of Late Deafened Adults, filed a written *ex parte* on February 15, 2006. Petitioner, along with TDI, NAD, and the National Council on Disability filed an *ex parte* letter on February 17, 2006.

⁷⁶ CAC notes that the Petition "has received the support of all leading national organizations by and for people who are deaf and hard of hearing," and that "hundreds of consumer comments, constituting 80-90% of all commenters to this proceeding, have been filed in support of the petition's objectives." CAC Comments at 1.

⁷⁷ See, e.g., CAC Comments at 3; CSD Comments at 9-10; AG Bell Comments at 1; Hamilton Comments at 3-4; MCI Comments at 1-2; NAD Comments at 7-8, 14-15; OCDAC Comments; RERC-TA Comments at 3-4; TDI/DHHCAN Comments at 8-9; Hamilton Reply Comments at 2.

⁷⁸ NAD Comments at 9, n. 12; RERC-TA Comments at 5; TDI/DHHCAN Comments at 5.

consumers who desire to have access to multiple providers to have more than one videophone device, which is burdensome and costly.⁷⁹ Commenters state that it is inconsistent with functional equivalency to require consumers using VRS to use two or more separate video devices to ensure that they can promptly reach a VRS CA (the equivalent of reaching a dial tone when hearing people can use a single conventional voice phone).⁸⁰ Commenters also emphasize that restricting the use of VRS equipment can thwart a consumer's ability to contact promptly emergency services.⁸¹ If the consumer cannot promptly reach a CA (*e.g.*, because of long wait times), the inability to place a call through another VRS provider puts their safety at risk.⁸² Most individual commenters also express the desire to be able to call any of the VRS providers in an emergency.⁸³

23. Commenters also address the use of proxy numbers for the IP addresses of VRS users. CSD notes, for example, that presently "there is no uniform means of identifying and accessing VRS users that offers the ease of the North American Numbering Plan (NANP) enjoyed by voice users."⁸⁴ Instead, CSD asserts, each VRS provider has its own system for enabling hearing persons to make a relay call to a VRS user.⁸⁵ CSD maintains that this results in serious confusion for hearing individuals who want to make a VRS call and requires them to have "the specific provider information and extension of the individual they are trying to reach."⁸⁶ CSD states that a "seamless numbering scheme" is needed that will allow all VRS users – deaf and hearing – to contact each other with the same ease that other telephone users do so.⁸⁷ Finally, CSD notes that such a numbering scheme would facilitate the handling of emergency calls.⁸⁸

24. *Sorenson's Response.* Sorenson opposes the Petition. Sorenson acknowledges that it currently does not permit a consumer to use its VP-100 device to place a VRS call through any other VRS provider's service.⁸⁹ But Sorenson asserts that consumers using the VP-100 still remain free to use any

⁷⁹ CSD Comments at 15; NAD Reply Comments at 7; TDI/DHHCAN Reply Comments at 3.

⁸⁰ CAC Comments at 2-3; CSD Comments at 15 (burdensome, inefficient and expensive for a consumer to acquire more than one equipment); NAD Reply Comments at 7 (additional equipment requires a financial commitment on the part of consumer).

⁸¹ CAC Comments at 3-4; AG Bell Comments at 2; CSD Comments at 21-22; TDI/DHHCAN at 3; RERC-TA Comments at 4; Hands On Reply Comments at 1; NAD Comments at 8. The commenters note that many individuals have abandoned their TTYs in favor of videophones, and now use their videophones as their only means of telephone communication. As a result, a consumer's only access to emergency services may be by making a VRS call.

⁸² TDI/DHHCAN Comments at 3; RERC-TA Comments at 5. Hands On also notes that the shortage of interpreters, which may make it more difficult to reach promptly a CA in the event of an emergency if restricted to calling one provider, supports requiring interoperability so that consumers have access to any interpreters available and on duty during the time of an emergency. Hands On Comments at 14; Hands On *Ex Parte* (Nov 10, 2005).

⁸³ *See, e.g.*, Comments of Mary C. Carr (March 3, 2005), Thomas J. DellaMonica (April 20, 2005), Diane Plassey Gutierrez (April 7, 2005), Michelle Klenz (March 22, 2005), Michelle Michaels (March 16, 2005).

⁸⁴ CSD *Ex Parte* (Oct. 20, 2005) at 3.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Sorenson Reply Comments at 4; Sorenson *Ex Parte* (Jan. 6, 2006) at 12. As noted above (note 52), on February 20, 2006, Sorenson announced its intention to end this practice by July 1, 2006.

providers' VRS service with any other equipment they may have.⁹⁰

25. Sorenson characterizes its VRS service as a "total service platform," which it states it has developed at considerable expense.⁹¹ According to Sorenson, this platform includes provision of the VP-100 with its "high-quality video imagery," access to highly trained interpreters, maintenance and repair of all elements of its service (including the VP-100), and unlimited point-to-point calling.⁹² Sorenson asserts that each provider "should be free to offer whatever service packages it thinks will be most attractive to consumers."⁹³ Sorenson also describes its total service platform approach as consistent with the approach used by most consumer communications today, such as wireless providers.⁹⁴ Sorenson argues that if it were forced to "unbundle its platform," *i.e.*, permit consumers to use its VP-100 with other VRS providers, the VP-100 would no longer be part of Sorenson's service and therefore, *e.g.*, Sorenson would not be responsible for maintaining and repairing the equipment.⁹⁵

26. Sorenson further asserts that if it is required to permit consumers to use its VP-100 to make calls through other providers' VRS service, "much of the incentive to develop innovations will disappear because any new technology will be shared with all other VRS providers, thus precluding the inventor from recovering or profiting on any investment made."⁹⁶ Sorenson contends that under Section 225, the Commission has the obligation to ensure that the TRS regulations encourage, not impair, the development of new technology and that it has a duty to make TRS available to all Americans in an expeditious manner as possible.⁹⁷ Sorenson therefore argues that allowing a competitive VRS market without regulatory intervention – such as an interoperability requirement – will "encourage providers to invest in advanced technology for VRS products and services, which will, in-turn, benefit the deaf and hard-of-hearing communities."⁹⁸

27. Sorenson also maintains that its proposed solution for handling emergency calls made via their VRS service – identifying emergency calls that are in queue and routing them to a CA trained in facilitating the VRS caller in reaching an appropriate PSAP – negates the argument that providing access to emergency service requires interoperability.⁹⁹ Sorenson explains that it "plans to integrate software that automatically moves the caller, in an emergency situation, to the front of the queue for the next

⁹⁰ Sorenson Comments at 4; Sorenson Reply Comments at 4. Sorenson also contrasts the competitive nature of VRS with the provision of intrastate TRS pursuant to state programs, noting because states generally select one provider, consumers have no choice of providers for their intrastate TRS calls. Sorenson Comments at 23; Sorenson Reply Comments at 6-7.

⁹¹ Sorenson *Ex Parte* (Jan. 6, 2006) at 4, 8, 10.

⁹² *Id.* at 4, 14.

⁹³ *Id.* at 12-13.

⁹⁴ *Id.* at 21-22.

⁹⁵ *Id.* at 14-15.

⁹⁶ Sorenson Reply Comments at 11; Sorenson *Ex Parte* (Jan. 6, 2006) at 17. Sorenson notes that it has spent approximately \$50 million to develop its videophone and provide VRS service. *Id.* at 8, 10. It further notes that it "is already working on developing an improved videophone, the VP-200." *Id.* at 9.

⁹⁷ Sorenson Reply Comments at 9-12.

⁹⁸ *Id.* at 12.

⁹⁹ Sorenson *Ex Parte* (Jan. 6, 2006) at 18-20. Sorenson asserts that they are implementing a process whereby incoming VRS customers calling 9-1-1 will automatically be moved to the front of the queue and that those incoming calls will be routed to CAs who are specially trained regarding proper handling of 9-1-1 calls. *Id.*

available operator.”¹⁰⁰

28. With regard to its database of proxy numbers for its customers’ IP addresses, Sorenson explains that, because VRS equipment is generally connected to the Internet through a dynamic IP address, it developed a means by which callers can reach a device identified by an IP address.¹⁰¹ Sorenson assigns a unique number to each videophone (usually the consumer’s telephone number), and the VP-100 and Sorenson’s servers “work together to match the unique identifier with the user’s dynamic IP address.”¹⁰² As a result, Sorenson creates a directory “that matches pseudo phone numbers (which remain constant) with dynamic IP addresses,” so that a hearing person seeking to call a Sorenson VRS user can do so by calling a Sorenson and providing the CA with the VRS user’s “phone number.”¹⁰³ Sorenson states that this “proprietary videophone number dialing feature is part of Sorenson’s integrated VRS solution and is not available independently of the VP-100.”¹⁰⁴ Although this feature only works for calls made via Sorenson to a Sorenson VRS user, Sorenson asserts that it does not violate any Commission rule because it does not restrict a consumer’s access to other VRS providers’ service.¹⁰⁵

III. DECLARATORY RULING

29. We conclude that a provider’s practice of restricting the use of VRS as described herein – including by blocking calls to other providers or providing degraded service quality for connections to the service of other VRS providers – is inconsistent with the functional equivalency mandate, the public interest, and the TRS regime as intended by Congress. We further conclude that all VRS consumers must be able to place a VRS call through any of the VRS providers’ service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. As a result, effective 60 days after publication of this *Declaratory Ruling* in the Federal Register, any VRS provider restricting the use of its service so that a consumer cannot use it to place or receive a call through any of the VRS providers’ relay service will be ineligible for compensation from the Interstate TRS Fund.¹⁰⁶

30. *Functional Equivalency.* We conclude that restricting access to competing VRS providers is inconsistent with Section 225’s functional equivalency mandate.¹⁰⁷ Voice telephone users reach a dial tone almost instantaneously every time they pick up the telephone. For TRS users, the Commission has recognized that reaching a CA ready to handle the call is essentially the same as reaching a dial tone.¹⁰⁸ Therefore, “the ability of a TRS user to reach a CA prepared to place his or her call ... is fundamental to the concept of ‘functional equivalency.’”¹⁰⁹ For this reason, the TRS regulations include a speed of

¹⁰⁰ Sorenson *Ex Parte* (Jan. 6, 2006) at 18.

¹⁰¹ *Id.* at 15.

¹⁰² *Id.* at 16. Sorenson explains that when there is a change in the user’s IP address, the VP-100 updates the Sorenson servers with the new information. *Id.*

¹⁰³ *Id.*

¹⁰⁴ Sorenson Comments at 12. Sorenson claims that “users find this feature very helpful because the videophone number does not change and there is no need to acquire a static (fixed) IP address or domain name.” *Id.* at 11.

¹⁰⁵ *Id.* at 11. Sorenson notes that other VRS providers use a similar system, although each provider’s system only works for calls made on the particular provider’s network. Sorenson *Ex Parte* (Jan. 6, 2006) at 16. Sorenson notes that calls made via a provider other than the one for which the VRS user has a proxy number require the caller to know in advance the IP address of the called party’s video device. *Id.*

¹⁰⁶ See para. 43, *infra* addressing effective date.

¹⁰⁷ 47 U.S.C. § 225(a)(3).

¹⁰⁸ See, e.g., 2004 TRS Report and Order, 19 FCC Rcd at 12480, para. 3 n.18.

¹⁰⁹ *Call Handling Practices PN*, 20 FCC Rcd at 1474 (internal quotation marks omitted).

answer requirement so that a TRS user does not have to wait to reach a CA.¹¹⁰ For text-based TRS services, the speed of answer requires that 85 percent of all calls be answered within 10 seconds.¹¹¹ Presently, for VRS, the speed of answer rule requires 80 percent of all calls to be answered within three minutes.¹¹²

31. If a consumer is limited to using only one provider's service, the consumer is dependent solely on that provider to reach a CA available to place a call. If there is a long wait time, or the call is urgent, the consumer cannot attempt to contact a CA of another provider's service because such calls are blocked. Therefore, at any particular moment in time, a VRS user is at a disadvantage compared to voice callers because a CA may not be available to handle the VRS user's call, and the VRS user cannot promptly reach a "dial tone."¹¹³ Although the VRS speed of answer requirement was adopted to address this issue, because compliance with the rule is measured on a monthly basis, and the compliance rate is presently 80 percent of all calls, even if the standard is met a VRS user may have to wait a significant amount of time to reach a CA. Therefore, in these circumstances, speed of answer does not necessarily ensure functional equivalency for any particular call.

32. We also believe that it is inconsistent with functional equivalency to require VRS users to have two sets of equipment to ensure that they can promptly reach a CA, and impractical in an urgent situation to expect users to have to switch out equipment if one provider is not available quickly enough.¹¹⁴ Voice telephone users are not required to have multiple sets of equipment to obtain a dial tone and access the telephone network. In addition, this is burdensome and costly.¹¹⁵ Further, requiring consumers to have two sets of equipment to access multiple providers adversely affects a VRS user's ability to receive incoming calls. If, for example, only one device is turned on, the router may nevertheless direct the incoming call to the device that is turned off, and as a result the VRS user will

¹¹⁰ See *2005 VRS Speed of Answer Order*, 20 FCC Rcd at 13168, para. 6 (noting that the ability to make a telephone call "without delay" is fundamental to rapid and efficient communications system).

¹¹¹ 47 C.F.R. § 64.604(b)(2).

¹¹² See *2005 VRS Speed of Answer Order*, 20 FCC Rcd at 13165, para.1 (although this requirement had been waived for VRS, effective January 1, 2006, 80 percent of all VRS calls must be answered within 3 minutes). This longer speed of answer period for VRS reflects concerns over the shortage of qualified interpreters available to handle VRS calls. *Id.* at 13174-13175, para. 18.

¹¹³ As CAC states, "[w]hen a hearing person picks up the telephone to make a call, that individual can immediately access anyone, anytime, regardless of the telephone carrier to which that person or the called party subscribes. This same capacity is not being made available to those VRS users who are restricted to one service provider. These consumers are presently unable to switch to another provider to make their calls, even when their primary provider has no dial tone (i.e., no interpreter available to place the call)." CAC Comments at 3.

¹¹⁴ For many consumers, particularly those that are not technologically sophisticated, switching relay equipment that is attached to the consumer's broadband Internet connection is not a simple matter. For example, at a minimum the consumer must ensure that: (1) he or she has selected the right piece of equipment for the particular provider; (2) the equipment is turned on and plugged into the Internet connection; (3) the other piece of equipment is turned off and disconnected from the Internet connection; and (4) the piece of equipment is properly configured to read the correct IP address of the VRS provider. Accordingly, we are not persuaded by the argument that a VRS user can use another provider's service on other VRS equipment the user may have. See, e.g., Sorenson *Ex Parte* (Jan. 6, 2006) at 11-13.

¹¹⁵ See CAC Comments at 2 (emphasizing that if a person has equipment that is not interoperable and "want[s] service that is functionally equivalent to that available to hearing people," the individual has "no choice but to acquire multiple video devices," which is "discriminatory and burdensome and inconsistent with services available to wireline voice users who can have a single telephone to reach their entire universe of contacts").

miss the call.¹¹⁶ Voice telephone users do not similarly risk missing incoming calls because of the necessity of having multiple equipment to ensure access to a dial tone.¹¹⁷

33. Further, call blocking adversely affects the ability of hearing person to successfully initiate a VRS call. If a hearing person is limited to calling a deaf person through one provider's service, the choices of the hearing person are constrained by an arrangement to which he or she is not a party and likely does not even know about. The hearing person may attempt to place a VRS call through several providers before reaching the one provider that can place a call to the VRS user. This not only discourages VRS calls initiated by hearing persons, but again is inconsistent with TRS as a service that must be available to give persons with hearing and speech disabilities access to the telephone system, regardless whether the person with a disability or the voice telephone user initiates the call.

34. In sum, consistent with functional equivalency, all VRS consumers must be able to place a VRS call through any of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. Therefore, a provider may not block calls so that VRS equipment cannot be used with other providers' service. In addition, a provider may not take other steps that restrict a consumer's unfettered access to other providers' service. This includes the practice of providing degraded service quality to consumers using VRS equipment or service with another provider's service. Finally, new providers seeking to offer service have the burden of ensuring that their service is interoperable with existing providers' service.

35. *The Public Interest and Access to Emergency Services.* The Commission has repeatedly emphasized the public interest importance of ensuring that consumers have access to emergency services.¹¹⁸ Because a VRS user, like all consumers, must be able to contact promptly emergency services, we also conclude that restricting consumers to contacting a single VRS provider is inconsistent with the public interest.

36. As noted above, many individuals with hearing and speech disabilities use TRS to contact emergency services.¹¹⁹ If a VRS user is restricted to placing a call with one provider, and that provider's wait time prevents the user from promptly reaching a CA in the event of an emergency, the consumer

¹¹⁶ See, e.g., *CSD Ex Parte* (Jan. 25, 2006) at 2 (attachment); see also CAC Comments at 2 (even if "a person acquires multiple devices, that person runs the risk of missing incoming calls when those calls are either directed to the device that is not turned on or routed to the wrong device by the Internet router").

¹¹⁷ Sorenson also argues that because nearly all state TRS programs select only one traditional TRS provider for traditional intrastate TRS service, most consumers of traditional TRS do not have a choice of providers. See, e.g., Sorenson Comments at 6-7. This argument is irrelevant in the federal context. Under Section 225, states have primary jurisdiction over the provision of intrastate TRS, including the compensation of providers of intrastate TRS, and may determine for themselves how TRS is provided to their residents. See 47 U.S.C. § 225(d)(3)(B).

¹¹⁸ See *VRS 911 NPRM*; see also *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, at 10247-10248, para. 4 (June 3, 2005) (*VoIP E911 Order*); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced [cite VoIP 911 Emergency Calling Systems]*, CC Docket No. 94-102, RM-8143, First Report and Order, 11 FCC Rcd 18676, 18679, para. 5 (July 26, 1996) (*E911 First Report and Order*) ("E911 saves lives and property by helping emergency services personnel do their jobs more quickly and efficiently.").

¹¹⁹ See para. 7, *supra*. Under the TRS rules, providers must route emergency TRS calls to the appropriate PSAP. *Second Improved TRS Order*, 18 FCC Rcd at 12406-12408, paras. 40-42. Although the Commission has presently waived this requirement for VRS, see para. 7, *supra*, VRS users nevertheless use VRS to contact emergency services. See generally *VRS 911 NPRM*. Some VRS users do not have a telephone line or a TTY and therefore cannot make a direct 911 call to a PSAP. Also, some TRS users exclusively use VRS because they have limited English or typing skills and therefore cannot effectively use a TTY. See Petition at 20.

may suffer serious harm.¹²⁰ Even assuming a VRS provider is able to develop a means of promptly handling emergency calls, this does not negate the broader public interest in ensuring full VRS access to all providers.¹²¹ In the event of an emergency, or an event that might temporarily affect a particular provider's ability to offer service, consumers must be able to call any CA to reach emergency services.¹²² Particularly in the aftermath of September 11, 2001, and recent hurricanes in the Gulf Coast, we find that it is essential to ensure that VRS consumers are not dependent on services of a single provider in the event of an emergency.¹²³

37. *Call Blocking Cannot be Justified as Part of a "Total Platform Service."* Sorenson contends that it may receive compensation from the Fund regardless of how it provisions relay service with equipment and other services. Sorenson's argument is premised on at least four points: (1) the provision of TRS is no different from the provision of other communication services to the public, including wireless telephone calls, traditional wireline telephone calls, and satellite television;¹²⁴ (2) TRS providers therefore may offer whatever "service package" they like, which may include bundling equipment, the relaying of calls, maintenance and repair of the equipment, and additional features;¹²⁵ (3) bundling equipment with service is essential to ensuring that the provider recovers the cost of developing the equipment (*i.e.*, a return on investment) and therefore can continue to innovate;¹²⁶ and (4) bundling equipment with service permits deaf consumers to use the equipment to make free peer-to-peer calls, which furthers the goal of improving communication for deaf people.¹²⁷ As summarized below, these arguments cannot support the use of the Interstate TRS Fund to compensate call blocking practices.

38. First, TRS is fundamentally different from the provision of wireless telephone, satellite television, or similar services that may bundle equipment and services in that these services are market-based and, unlike TRS, are paid for by any consumer wishing to subscribe. By contrast, TRS is an accommodation for persons with disabilities required of voice telephone providers as mandated by Congress. TRS is fully compensated by the states and the federal Interstate TRS Fund; it is not paid for by the consumer.¹²⁸ Moreover, Section 225 focuses on the provision of relay *service*.¹²⁹ Section 225

¹²⁰ See note 8, *supra* and accompanying text.

¹²¹ Sorenson has announced that it is adopting a means of handling emergency calls that will ensure that it promptly answers emergency calls. Sorenson *Ex Parte* (Jan. 6, 2006) at 17-20. Sorenson states that under its "call prioritization system" it will identify emergency calls that are in queue, move them to the head of the queue, and route them to a CA trained in facilitating the VRS caller in reaching an appropriate PSAP. *Id.* at 20.

¹²² See CAC Comments at 3 ("Allowing a VRS provider to block outgoing calls through other providers is extremely dangerous in emergency or urgent situations. If the provider blocking access is operating at full capacity and its wait times are long, consumers have no way to make their ... calls through another provider. This could have disastrous consequences, especially during a national crisis or a weather disaster when one provider's network may be shut down or exceedingly busy.").

¹²³ See, *e.g.*, CSD Reply Comments at 8-12; CCASDHH Reply Comments at 5-6; TDI/DHHCAN Reply Comments at 3.

¹²⁴ Sorenson *Ex Parte* (Jan. 6, 2006) at 20-22.

¹²⁵ *Id.* at 12-13.

¹²⁶ *Id.* at 1, 7-8.

¹²⁷ *Id.* at 10-11.

¹²⁸ A wireless customer pays his or her wireless provider for at least part of the call, regardless of which networks are involved. In addition, Sorenson's analogy to wireless service is misplaced because wireless handsets must be capable of making an emergency (911) on other carrier's networks. 47 C.F.R. § 22.291 (911 call processing procedures).

requires carriers to make relay service available to handle calls that consumers choose to make, and provides a mechanism whereby they will be compensated for their reasonable costs of operating relay facilities and relaying calls.¹³⁰ Relay service provides the means by which persons with disabilities can communicate with voice telephone users through the services of a third party, the CA.¹³¹ For this reason, relay users have traditionally purchased their own devices (e.g., TTYs) or received them from state programs.¹³² Although more recently some providers have distributed free TRS equipment to consumers, consistent with the purpose of Section 225 the Commission has made clear that the costs of consumer equipment are not compensable from the Fund.¹³³

39. Second, and for the same reason, not all “service packages” marketed by TRS providers are compensable from the Fund under Section 225. TRS is a service that certain common carriers are required to offer (and that some non-common carriers such as Sorenson have voluntarily chosen to offer) that is defined by Section 225 and the TRS mandatory minimum standards. If a provider offers service in compliance with these rules, it may be compensated from the Fund. But an entity cannot determine for itself that it is going to provide something different than or beyond the Commission’s rules, and still

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¹²⁹ Indeed, this is apparent from the plain language of Section 225, which is directed at “services” that carriers must offer in their service areas that enable communication between persons who use a TTY or other nonvoice terminal device and an individual who does not use such device. 47 U.S.C. §§ 225(a)(3) & (c); *see also* CSD and Hamilton *Ex Parte* (Jan. 25, 2006) at 5 (attachment) (“the FCC has always interpreted the ADA’s TRS mandates to require the provision of relay services, not the manufacture and distribution of equipment uses with those services”).

¹³⁰ Common carriers are not required to make VRS available. *See, e.g., 2004 TRS Report and Order*, 19 FCC Rcd at 12484, para. 9. At the same time, the Commission has permitted some entities that do not provide voice telephone service (and are not common carriers) to offer VRS if they are part of a certified state TRS program. *See, e.g., 2005 VRS Provider Order, supra*. State programs are not required to choose common carriers to provider relay service; some states, for example, have selected non-profit corporations. In the *2005 VRS Provider Order*, the Commission adopted new provider eligibility rules so that carriers can seek certification from the Commission that they are eligible for compensation from the Fund for providing VRS. *2005 VRS Provider Order, supra*, at paras. 19-16.

¹³¹ Section 225’s focus on service is reflected in NAD’s comments to the initial NPRM following the enactment of Section 225, which emphasized the need for the “seamless” provision of TRS, “providing equal service everywhere ... with no variation in quality, limits or range of service.” NAD Comments (CC Docket No. 90-571, Jan. 15, 1991) at 7. NAD also asserted that providers’ “[m]odems and other equipment [of the provider] shall be fully compatible with all [TTYs].” *Id.* at 23.

¹³² Indeed, nonvoice devices, such as TTYs, have been available since the 1960s. *See generally* Strauss, *Breaking Down the Telephone Barrier – Relay Services on the Line*, 64 Temple L.Rev. 583, 584-585 (Summer 1991) (overview of the history and evolution TTYs, including the development of portable, lightweight TTYs in the early 1980s); Bahr, *Ease of Access to Telecommunications Relay Services*, 344 F. Comm L.J. 473, 475 (May 1992). Relay service was necessary because *even with such devices* persons with disabilities could not communicate with voice telephone users. *See* Strauss at 586 (“Although the invention of the [TTY] enabled deaf people to use the telephone network to communicate, ...[they] were limited to communicating with friends, employers, or business establishments who also possessed [TTYs]. As a result, deaf individuals often could not perform the simplest of tasks ... that a hearing person ... could accomplish ... with a simple telephone call. [R]elay services enable [TTY] users to communicate with anyone who has a telephone, rather than only those individuals who have [TTYs].”).

¹³³ *See* para.15, *supra*; *see also VRS Marketing Practices Declaratory Ruling*, 20 FCC Rcd at 1469, para. 8 & n.30 (TRS requires providers to be available to handle calls consumers choose to make, when they choose to make them, but the statute does not address “associated issues” such as “the cost of the equipment necessary to make the various types of TRS calls” or “the cost of bringing high speed Internet access to the home”). When the ADA was enacted, customer premises equipment was not a component of voice telephone services offered over the PSTN. *See* House Report at 24; *see generally* 47 C.F.R. Part 68.

expect compensation from the Fund.¹³⁴

40. Sorenson's final argument, that its "bundled" approach permits deaf consumers to make free peer-to-peer calls,¹³⁵ is irrelevant to the fundamental point that to receive compensation from the Fund a company must allow full unrestricted access to this nation's communications network.¹³⁶

41. *Research and Development.* Some commenters assert that in connection with requiring interoperability the Commission should permit recovery of some costs for research and development relating to the improvement of VRS service.¹³⁷ The Commission has previously emphasized that, as a general matter, engineering and other expenses for research and development to meet waived mandatory minimum standards, or to provide enhancements beyond applicable non-waived mandatory minimum standards, are not compensable from the Fund.¹³⁸ We clarify, however, that to the extent providers engage in research and development directed at the provision of service to the consumer as required by the rules, *e.g.*, the routing and handling of calls at the relay center, such costs may be compensable subject to the "reasonableness" standard.¹³⁹

42. *Notification.* We require any VRS provider that has restricted the use of its service to notify their customers by the effective date of this *Declaratory Ruling* that they may make or receive a VRS call through any of the providers. Further, as of that date, it will be an impermissible marketing practice for any provider to tell or suggest to any consumer that the consumer may not make a relay call through another provider's service.¹⁴⁰

43. *Effective Date.* We recognize that because the provision of VRS is now subject to a speed of answer requirement, and as a result of this order some providers may experience an increase in call volume, all providers may need a period of time to adjust their operations to take into account the possible effect of this order.¹⁴¹ For these reasons, this *Declaratory Ruling* shall be effective 60 days after

¹³⁴ For example, Video Remote Interpreting (VRI) is a commercial service similar to VRS for which consumers must pay a fee. *See generally Call Handling Practices PN*, 20 FCC Rcd at 1475 (distinguishing VRI and VRS). Sorenson makes the related argument that call blocking is necessary to allow it to recover the cost of developing its equipment. *See, e.g.*, Sorenson Comments at 29. As noted above, entities that develop customer equipment are, of course, free to sell their equipment to consumers to recover their investment in the equipment.

¹³⁵ Sorenson *Ex Parte* (Jan. 6, 2006) at 10-11.

¹³⁶ In related contexts, the Commission has repeatedly adhered to policies favoring open access to networks and interoperability of terminal equipment. For example, in the context of connecting terminal equipment to the telephone network, the Commission has promulgated a series of rules to ensure open access and interoperability. *See* 47 C.F.R. § 68.1 *et seq.* Moreover, policies of open access and interconnection were fundamental to the Telecommunications Act of 1996. For example, Section 251 provides a duty of telecommunications carriers to interconnect with other carriers and "not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 (Access by Persons with Disabilities)." 47 U.S.C. § 251(a)(1) & (2).

¹³⁷ *See, e.g.*, Hamilton *Ex Parte* (Jan. 30, 2006) at 3; CSD and Hamilton *Ex Parte* (Jan. 25, 2006) at 5 (attachment); Hands On *Ex Parte* (Nov. 11, 2005) at 14-15 (attachment).

¹³⁸ *See, e.g.*, 2004 TRS Report and Order, 19 FCC Rcd at 12547-12548, paras. 188-189.

¹³⁹ Such costs do not include those directed at issues inherent in Internet-based services generally or the provision of Voice over IP (VoIP).

¹⁴⁰ *Cf. Call Handling Practices PN, supra* (addressing improper TRS marketing practices).

¹⁴¹ *See, e.g.*, Sorenson *Ex Parte* (January 24, 2006) at 1 (requesting if the if the Commission requires interoperability a reasonable amount of time "to implement software, hardware, and other modifications necessary to comply" with the new rule); Hands On *Ex Parte* (Jan. 27, 2006) (noting that elimination of call blocking may result in a

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publication in the Federal Register. Beginning on that date, any VRS provider restricting its service as described above will be ineligible for compensation from the Fund.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

44. In this *FNPRM* we address two issues: (1) the feasibility of establishing a single global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address; and (2) whether the Commission should adopt specific Internet protocols or standards to ensure that all VRS providers can receive calls from, and make calls to, any VRS consumer, and all VRS consumers can make calls through any VRS provider.

45. *Proxy Numbers for VRS Users.* As noted above, a hearing person may contact a VRS user by calling a VRS provider's toll free number. The VRS CA, however, will be able to establish the video-to-video link with the VRS user only if the CA knows the IP address of the VRS user's equipment. Often, that requires that the calling party know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA. Because most consumers' IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time.

46. Some providers have created their own database of "proxy" or "alias" numbers that associate with the IP addresses of their customers, even if a particular person's IP address is dynamic and changes.¹⁴² These numbers often resemble telephone numbers, which makes it easier for VRS users to give their "number" to hearing persons who may wish call them via VRS. These databases, however, are maintained by the service provider and, generally, are not shared with other service providers. Therefore, a person desiring to call a VRS consumer via the consumer's proxy number can only use the services of the VRS provider that generates the number.¹⁴³

47. In this *FNPRM*, we seek comment on the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address. In assessing the feasibility of this proposal, commenters should address both technical and the economic issues. Technical issues include the need for standard protocols so that the database system can work with all VRS equipment and services. We also seek comment on whether there are aspects of proxy numbers that are dependent on functionalities outside of a database, such as functionalities in the user's equipment. If so, parties should address whether standardization is required. Commenters should address any other technical issues they believe are relevant to this issue.

48. We also seek comment on nature of the proxy numbers that might be used and how they might be administered. As we have noted, some VRS databases associate users with ten-digit telephone numbers. Others allow the user to create their own unique identification. CSD states that "in order for VRS to be functionally equivalent to voice telephone services, deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers linked to the North American Numbering Plan (NANP) that will remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another."¹⁴⁴ Accordingly, CSD urges that this matter be

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"temporary dislocation of the market" as consumers will be free to choose any provider to make a VRS call, and therefore requesting a 90 day waiver of the speed of answer requirement).

¹⁴² See note 41, *supra* (addressing dynamic and static IP addresses).

¹⁴³ See, e.g., Sorenson *Ex Parte* (Jan. 6, 2006) at 16.

¹⁴⁴ CSD *Ex Parte* (Oct. 20, 2005) at 3.

referred to the North American Numbering Council (NANC).¹⁴⁵ We seek comment on this approach.

49. We further seek comment on the maintenance and operation of such a database. Commenters should address whether this type of database should be the responsibility of the Fund administrator, a separate entity, or a consortium of service providers. Commenters that urge creation of an oversight committee should specify the scope and composition of the committee.

50. Finally, we seek comment on the role of the Commission in creating and maintaining the database. Commenters should address what specific rule changes would be necessary to establish the database. Commenters should also address whether participation by service providers should be mandatory so that all VRS users can receive incoming calls. Finally, we seek comment on what ongoing Commission oversight or regulation, if any, would be necessary.

51. *Adoption of Specific VRS Internet Protocols or Standards.* Videophones and other devices that send video via the Internet to make VRS calls operate via specific call signaling protocols or standards that connect the two endpoints to the call.¹⁴⁶ In declining to mandate the provision of VRS in the *Improved TRS Order*, the Commission stated because VRS was in its early stages of technological development the Commission would “permit market forces, not the Commission, to determine the technology and equipment best suited for the provision of [VRS], and allow[] for the development of new and improved technology.”¹⁴⁷

52. With traditional TRS, the Commission initially proposed requiring TTYs to be capable of communicating in either ASCII or Baudot formats.¹⁴⁸ In adopting the TRS regulations, the Commission noted that both codes were being used by TTY users and existing TRS providers, although ASCII was the superior technology and had the advantage of being able to be used by personal computers.¹⁴⁹ The Commission concluded that it would not adopt a phase-out period for Baudot because many persons who rely on TRS have access only to Baudot terminals. Therefore, the Commission adopted the proposed rule requiring TRS to be capable of communicating in both ASCII and Baudot formats.¹⁵⁰

53. Subsequently, the Commission noted that new TTY transmission protocols had evolved since the initial TRS regulations were adopted, and therefore sought comment on whether these enhanced protocols, such as the V.18 protocol, should be required to be used by TRS providers.¹⁵¹ In the *2004 TRS*

¹⁴⁵ *Id.*

¹⁴⁶ Internet telephony requires standards or protocols so that the end-user devices can communicate with each other. H.323 is one standard for transmitting real-time voice and video over packet-based networks. Another newer standard is SIP (Session Initiation Protocol).

¹⁴⁷ *Improved TRS Order*, 15 FCC Rcd at 5153, para. 23.

¹⁴⁸ *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Notice of Proposed Rulemaking, 5 FCC Rcd 7187, 7188-7189, at para. 12 (Nov. 16, 1990) (noting that although ASCII offers a higher data transfer rate, not all TTY users have compatible equipment and rely instead “on Baudot code equipment”). Baudot code was developed in the late 1800’s and is a 5 bit coding scheme limited to 32 characters. ASCII was developed in the 1960’s and is a 7 bit coding scheme specifically intended for data processing. See generally R. Horak, *Communications Systems and Networks* at 196-198 (3rd ed. 2002).

¹⁴⁹ *TRS I*, 6 FCC Rcd at 4661, at para. 20.

¹⁵⁰ *Id.* The rule states that “TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.” 47 C.F.R. 64.604(b)(1).

¹⁵¹ *Improved TRS Order*, 15 FCC Rcd at 5197-5199, paras. 139-146. The Commission also noted that Baudot was still the dominant protocol. *Id.* In the June 2003 Second Report and Order, the Commission stated that it did not receive adequate comments on this issue and sought further comment on “the extent to which innovative non-

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Report and Order, the Commission concluded that the record did not reflect that there were any new non-proprietary TTY protocols available on the market.¹⁵² The Commission therefore declined to mandate the use of additional TTY protocols. At the same time, it recognized that it is desirable to make TRS “universal for all types of callers by ensuring its compatibility with various TTY protocols” and stated that it would continue to monitor this issue.¹⁵³

54. Presently, unlike with traditional TRS calls made using TTYs and the PSTN, the Commission has not mandated the use of particular protocols by VRS providers to ensure that all consumers and providers can communicate with each other. With the increasing use of VRS and changes in technology, we now seek comment on whether we should adopt specific protocols for VRS calls and if so, what protocol or protocols should be adopted.

55. As the provision of VRS has developed, nearly all VRS equipment (the VP-100, the D-Link, and webcams) uses the H.323 protocol, and all present providers use this protocol. As a result, this equipment is inherently interoperable with any of the VRS providers’ service, and vice versa. Some newer videophone equipment, however, uses other protocols, such as SIP. A SIP device cannot, without translation, communicate with an H.323 device. Without a translation mechanism, if a VRS consumer has a SIP-based videophone the consumer will only be able to use the relay services of a provider that can handle SIP-based calls. Similarly, if a provider can only accept SIP-based calls, a consumer with an H.323-based videophone will not be able to use that provider’s service, nor will a hearing person attempting to call a VRS user with an H.323-based videophone. As a result, it is clear that the development and use of videophones that use new Internet protocols that are incompatible with existing videophone protocols creates a barrier to realizing the goal of ensuring that all VRS providers can receive calls from, and make calls to, any VRS consumer, and ensuring that all VRS consumers can make calls through any VRS provider.

56. We therefore seek comment on whether, following the model of traditional TRS, we should mandate specific Internet protocols that VRS providers must use to receive and place VRS calls.¹⁵⁴ If so, we seek comment on what standard or standards we should mandate, and an appropriate transition period for the adoption of these standards. We also seek comment on what costs may be involved if we require all providers to be able to receive and make calls through specific multiple protocols, and whether such costs should be compensable by the Fund. We further seek comment on whether we should invite the providers, consumer groups, and other interested parties to work together to jointly propose standards to the Commission and if so, on the appropriate timing of such an endeavor.

57. We also seek comment on whether we can ensure interoperability in some way other than mandating protocols, and on any other issues relating to ensuring that VRS consumers can use VRS equipment to call any of the VRS providers, and the VRS providers can make calls to all VRS consumers.

VI. PROCEDURAL MATTERS

58. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.430 of the

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proprietary protocols for TTY products are currently being used, and any advantages or disadvantages such protocols may present to TRS providers.” *Second Improved TRS Order*, 18 FCC Rcd at 12440-12441, para. 127.

¹⁵² *2004 TRS Report and Order*, 19 FCC Rcd at 12512, para. 88.

¹⁵³ *Id.* at 12512, para. 89 (internal quotation marks omitted).

¹⁵⁴ We note that we do not regulate TRS equipment, but only providers to the extent they seek compensation from the Fund.

Commission's rules, 47 C.F.R. §§ 1.415, 1.419, 1.430, interested parties may file comments on or before the dates indicated on the first page of this document. All filings should refer to CG Docket No. 03-123. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹⁵⁵ For additional information on this proceeding, please contact Thomas Chandler in the Consumer & Governmental Affairs Bureau, Disability Rights Office, at (202) 418-1475.

59. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

60. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: CG Docket No. 03-123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecf@fcc.gov, and include the following words in the body of the message: "get form". A sample form and instructions will be sent in response.

61. Paper Filers: Parties who choose to file by paper must file an original and four copies 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 (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

62. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

63. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

64. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

65. People with Disabilities: To request materials in accessible formats for people with disabilities (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), 202-418-0432 (TTY). This Declaratory Ruling and Further Notice of Proposed Rulemaking can also be downloaded in Word and Portable Document Format at <<http://www.fcc.gov/cgb.dro>>.

66. *Ex Parte Rules*. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁵⁶ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence

¹⁵⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (April 6, 1998).

¹⁵⁶ 47 C.F.R. §§ 1.200 *et seq.*

description of the views and arguments presented is generally required.¹⁵⁷ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

67. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexible Act of 1980¹⁵⁸, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix.

68. As required by the Regulatory Flexibility Act of 1980,¹⁵⁹ 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. The IRFA is set forth in Appendix. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* specified in paragraph 57 above. The Commission will send a copy of the *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹⁶⁰

69. *Initial Paperwork Reduction Act of 1995 Analysis.* This document contains proposed or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due **60 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER.** Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,¹⁶¹ we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

V. CONGRESSIONAL REVIEW ACT

70. The Commission will not send a copy of the Declaratory Ruling pursuant to the Congressional Review Act¹⁶² because the adopted rules are rules of particular applicability.

VI. ORDERING CLAUSES

71. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152 and 225, this DECLARATORY RULING AND FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

¹⁵⁷ See 47 C.F.R. § 1.1206(b)(2).

¹⁵⁸ See 5 U.S.C. § 604.

¹⁵⁹ See 5 U.S.C. § 603.

¹⁶⁰ See 5 U.S.C. § 603(a). In addition, the *FNPRM* and *IRFA* (or summaries thereof) will be published in the *Federal Register*.

¹⁶¹ See 44 U.S.C. 3506(c)(4),

¹⁶² See 5 U.S.C. 801(a)(1)(A).

72. IT IS FURTHER ORDERED that CCASDHH's Petition IS GRANTED to the extent indicated herein.

73. IT IS FURTHER ORDERED that this DECLARATORY RULING AND FURTHER NOTICE OF PROPOSED RULEMAKING SHALL BE EFFECTIVE 60 days after publication in the *Federal Register*.

74. 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 Declaratory Ruling and Further Notice and proposed Rulemaking can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

VII. FINAL REGULATORY FLEXIBILITY CERTIFICATION

75. The Regulatory Flexibility Act of 1980, as amended (RFA)¹⁶³ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”¹⁶⁴ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁶⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁶⁶ 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 Small Business Administration (SBA).¹⁶⁷

76. This *Declaratory Ruling* addresses a petition requesting the Commission to declare that a VRS provider may not receive compensation from the Interstate TRS Fund if it blocks calls to competing VRS providers.¹⁶⁸ The Commission concludes that the practice of restricting the use of VRS to a particular provider is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns.¹⁶⁹ The Commission further concludes that all VRS consumers must be able to place a VRS call through any of the VRS providers’ service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, the Commission finds that it is in the public interest that all VRS consumers can place and receive calls through any VRS providers’ service in the event of emergency and urgency. Therefore, this *Declaratory Ruling* concludes that providers must ensure that all VRS consumers can place and receive calls through any of the VRS providers’ service in order to receive compensation from the Interstate TRS Fund. The Interstate TRS Fund administrator distributes the VRS providers for reasonable costs of providing VRS.¹⁷⁰ In order to be compensated for the costs of providing VRS, the providers are required to meet the applicable TRS mandatory minimum standards as required in §64.604.¹⁷¹ Reasonable costs of compliance with this *Declaratory Ruling* are compensable from the

¹⁶³ The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA).

¹⁶⁴ 5 U.S.C. § 605(b).

¹⁶⁵ *Id.*

¹⁶⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 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*.”

¹⁶⁷ 15 U.S.C. § 632.

¹⁶⁸ *See CCASDHH Petition*, note 1, *supra*.

¹⁶⁹ *See* 47 U.S.C. § 225(a)(3), note 2, *supra*.

¹⁷⁰ Each year, the Interstate TRS Fund administrator, the National Exchange Carrier Association, Inc. (NECA), proposes the compensation rates for the various forms of TRS, including VRS, to the Commission. NECA collects and reviews projected cost and minutes of use data submitted by TRS providers to determine the annual TRS compensation rates. Reasonable compliance cost is included in the projected cost submitted by TRS providers. *See* paras. 8-9, *supra*. *See also*, TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA) as of October 31, 2005, www.neca.org (under Resources, then TRS Fund).

¹⁷¹ *See generally* 47 C.F.R. § 64.604(c)(5)(iii)(E).

Fund. Because the providers will be recouped for the costs of compliance within a reasonable period, we assert that the providers will not be detrimentally burdened. Therefore, we certify that the requirements of the *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities.

77. We also note that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.¹⁷² Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund: AT&T Corp.; Communication Access Center for the Deaf and Hard of Hearing, Inc.; Hamilton Relay, Inc.; Hands On; MCI; Nordia Inc.; Sorenson; and Sprint. We note that two of the providers noted above are small entities under the SBA's small business size standard. Because two of the affected providers will be promptly compensated within a reasonable period for complying with this *Declaratory Ruling*, we conclude that the number of small entities affected by our decision in this Order is not substantial. Therefore, we certify that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Declaratory Ruling*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.¹⁷³ In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.¹⁷⁴

VIII. INITIAL REGULATORY FLEXIBILITY ANALYSIS

78. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁷⁵ the Commission has prepared this present 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 this Further Notice of Proposed Rulemaking (*FNPRM*). 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 *FNPRM* provided in paragraph 57 of the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).¹⁷⁶ In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.¹⁷⁷

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

79. Currently, it is difficult for a voice telephone user to call a VRS user because either the

¹⁷² 13 C.F.R. § 121.201, NAICS code 517110. According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.")

¹⁷³ See 5 U.S.C. § 801(a)(1)(A).

¹⁷⁴ See 5 U.S.C. § 605(b).

¹⁷⁵ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

¹⁷⁶ See 5 U.S.C. § 603(a).

¹⁷⁷ See *id.*

voice telephone user or the CA must know the IP address of the VRS user, and most VRS consumer's IP addresses are dynamic and therefore continually change. Some VRS have developed a solution to this problem by creating their own database of unique "proxy" number for their customers, which generally resemble telephone numbers. The provider has a method of ensuring that the proxy number will always correlate with the VRS user's IP address, even when the IP address changes. The record reflects, however, that these proxy numbers can be used only if the voice telephone user is using the VRS provider that assigned the consumer the proxy number.

80. The *FNPRM* therefore seeks comment on the feasibility of establishing and maintaining a single, open, and global database of proxy numbers for VRS users so that a hearing person may call a VRS user through any VRS provider and without having to ascertain first the VRS user's current IP address. This would permit VRS users to have one number for their VRS equipment that voice telephone users could "call" through any VRS provider, similar to the way that traditional TRS calls are presently made to the PSTN number of TTY users. The Commission asks if there are aspects of proxy numbers that are dependent on functionalities outside of a database, such as functionalities in the user's equipment and, if so we further ask whether standardization should be required. The Commission also seeks comment on any other technological considerations that may be relevant to this issue.

81. In addition, we seek comment on the nature of the proxy numbers that might be used and how they might be administered. We also ask whether this matter should be referred to North American Numbering Council (NANC).¹⁷⁸

82. We seek comment on the maintenance and operation of such a database. We specifically seek comment on whether the maintenance and operation of such a proposed database be the responsibility of the Fund administrator, a separate entity, or a consortium of service providers. We invite further comment on the role of the Commission in creating and maintaining the database, including whether participation by service providers should be mandatory so that all VRS users can receive incoming calls. Finally, we ask what ongoing Commission oversight or regulation, if any, would be necessary.

83. The Commission notes that the development and use of videophones that use new Internet protocols are incompatible with existing videophone protocols, which creates a barrier to realizing the goal of ensuring that all VRS providers can receive calls from, and make calls to, any VRS consumer, and ensuring that all VRS consumers can make calls through any VRS provider.

84. We therefore invite comment on whether we should mandate specific Internet protocols that VRS providers must use to receive and place VRS calls.¹⁷⁹ If so, we seek comment on what standard or standards we should mandate, and an appropriate transition period for the adoption of these standards. We seek comment on what costs may be involved if we require all providers to be able to receive and make calls through specific multiple protocols, and whether such costs should be compensable by the Fund. We further seek comment on whether we should invite the providers, consumer groups, and other interested parties to work together to jointly propose standards to the Commission and if so, on the appropriate timing of such an endeavor.

85. We also seek comment on whether we can ensure interoperability in some way other than mandating protocols, and on any other issues relating to ensuring that VRS consumers can use VRS equipment to call any of the VRS providers, and the VRS providers can make calls to all VRS consumers.

¹⁷⁸ *Id.*

¹⁷⁹ We note that we do not regulate TRS equipment, but only providers to the extent they seek compensation from the Fund.

B. Legal Basis

86. The authority for the actions proposed in this *FNPRM* may be found in Sections 1, 4(i) and (j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 218 and 225, and Sections 64.601-64.608 of the Commission's regulations, 47 C.F.R. §§ 64.601-64.608.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

87. 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, if adopted.¹⁸⁰ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁸¹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁸² 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.¹⁸³

88. As noted above, the *FNPRM* seeks comment on establishing a global database of proxy IP addresses for VRS users that would be available to all VRS providers. As a result, we believe that the entities that may be affected by the proposed rules are only VRS providers. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward VRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees.¹⁸⁴ Currently, there are eight VRS providers. Approximately two or fewer of these entities are small entities under the SBA size standard.¹⁸⁵

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

89. The proposed rule establishing an open, global database of VRS proxy numbers would require VRS providers to provide information to populate the database and to keep the information current. Further, the proposed rule mandating specific Internet protocols and or standards would require VRS providers to use compatible video protocols in order to receive and place VRS calls.

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

¹⁸⁰ 5 U.S.C. § 603(b)(3).

¹⁸¹ 5 U.S.C. § 601(6).

¹⁸² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to the 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."

¹⁸³ 15 U.S.C. § 632.

¹⁸⁴ 13 C.F.R. § 121.201, NAICS Code 517110.

¹⁸⁵ See National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

Significant Alternatives Considered

90. The RFA requires an agency to describe any significant, alternatives, specific to small businesses, 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 therefore, for small entities.”¹⁸⁶

91. As noted above, a hearing person may contact a VRS user by calling a VRS provider’s toll free number. The VRS CA, however, will be able to establish the video-to-video link with the VRS user only if the CA knows the IP address of the VRS user’s equipment. Often, that requires that the calling party know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA. Because most consumers’ IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time.

92. Some providers have created their own database of “proxy” or “alias” numbers that associate with the IP addresses of their customers, even if a particular person’s IP address is dynamic and changes.¹⁸⁷ These numbers often resemble telephone numbers, which makes it easier for VRS users to give their “number” to hearing persons who may wish call them via VRS. These databases, however, are maintained by the service provider and, generally, are not shared with other service providers. Therefore, a person desiring to call a VRS consumer via the consumer’s proxy number can only use the services of the VRS provider that generates the number.¹⁸⁸

93. In this *FNPRM*, we contemplate the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user’s current IP address. In assessing the feasibility of this proposal, commenters should address both technical and the economic issues. Technical issues include the need for standard protocols so that the database system can work with all VRS equipment and services. We ask whether there are aspects of proxy numbers that are dependent on functionalities outside of a database, such as functionalities in the user’s equipment. If so, parties should address whether standardization is required. We request that commenters address any other technical issues they believe are relevant to this issue. We consider the potential impact of these technical and economic issues on small business and the alternatives in easing the burden on small businesses.

94. We also invite comment on nature of the proxy numbers that might be used and how they might be administered. As we have noted, some VRS databases associate users with ten-digit telephone numbers. Others allow the user to create their own unique identification. CSD states that “in order for VRS to be functionally equivalent to voice telephone services, deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers linked to the North American Numbering Plan (NANP) that will remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another.”¹⁸⁹ Accordingly, CSD urges that this matter be

¹⁸⁶ 5 U.S.C. § 603(c)(1) – (4).

¹⁸⁷ See note 41, *supra* (addressing dynamic and static IP addresses).

¹⁸⁸ See, e.g., Sorenson *Ex Parte* (Jan. 6, 2006) at 16.

¹⁸⁹ CSD *Ex Parte* (Oct. 20, 2005) at 3.

referred to the North American Numbering Council (NANC).¹⁹⁰ We seek comment on this approach and the alternatives to this approach that may have a minimal burden on small businesses.

95. We further seek comment on the maintenance and operation of such a database. We invite commenters to address whether this type of database should be the responsibility of the Fund administrator, a separate entity, or a consortium of service providers and whether the proposed responsibility would pose a significant burden on small businesses. We ask that commenters that urge creation of an oversight committee should specify the scope and composition of the committee.

96. Finally, we contemplate the role of the Commission in creating and maintaining the database. We provisionally consider that specific rule changes may be necessary to establish the database and that the alternatives to these rule changes may be needed to alleviate the burden on small businesses. We request that commenters address whether participation by service providers should be mandatory so that all VRS users can receive incoming calls. We consider the exemption of a mandatory participation by small entities as it may create a significant burden on small businesses. Finally, we seek comment on what ongoing Commission oversight or regulation, if any, would be necessary and on what would be the alternatives in considering the impact on small businesses.

97. Videophones and other devices that send video via the Internet to make VRS calls operate via specific call signaling protocols or standards that connect the two endpoints to the call.¹⁹¹ In declining to mandate the provision of VRS in the *Improved TRS Order*, the Commission stated because VRS was in its early stages of technological development the Commission would “permit market forces, not the Commission, to determine the technology and equipment best suited for the provision of [VRS], and allow [...] for the development of new and improved technology.”¹⁹²

98. With traditional TRS, the Commission initially proposed requiring TTYs to be capable of communicating in either ASCII or Baudot formats.¹⁹³ In adopting the TRS regulations, the Commission noted that both codes were being used by TTY users and existing TRS providers, although ASCII was the superior technology and had the advantage of being able to be used by personal computers.¹⁹⁴ The Commission concluded that it would not adopt a phase-out period for Baudot because many persons who rely on TRS have access only to Baudot terminals. Therefore, the Commission adopted the proposed rule requiring TRS to be capable of communicating in both ASCII and Baudot formats.¹⁹⁵ Subsequently, the Commission noted that new TTY transmission protocols had evolved since the initial TRS regulations were adopted, and therefore sought comment on whether these enhanced protocols, such as the V.18

¹⁹⁰ *Id.*

¹⁹¹ Internet telephony requires standards or protocols so that the end-user devices can communicate with each other. H.323 is one standard for transmitting real-time voice and video over packet-based networks. Another newer standard is SIP (Session Initiation Protocol).

¹⁹² *Improved TRS Order*, 15 FCC Rcd at 5153, para. 23.

¹⁹³ *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Notice of Proposed Rulemaking, 5 FCC Rcd 7187, 7188-7189, at para. 12 (Nov. 16, 1990) (noting that although ASCII offers a higher data transfer rate, not all TTY users have compatible equipment and rely instead “on Baudot code equipment”). Baudot code was developed in the late 1800’s and is a 5 bit coding scheme limited to 32 characters. ASCII was developed in the 1960’s and is a 7 bit coding scheme specifically intended for data processing. See generally R. Horak, *Communications Systems and Networks* at 196-198 (3rd ed. 2002).

¹⁹⁴ *TRS I*, 6 FCC Rcd at 4661, at para. 20.

¹⁹⁵ *Id.* The rule states that “TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.” 47 C.F.R. 64.604(b)(1).

protocol, should be required to be used by TRS providers.¹⁹⁶ In the *2004 TRS Report and Order*, the Commission concluded that the record did not reflect that there were any new non-proprietary TTY protocols available on the market.¹⁹⁷ The Commission therefore declined to mandate the use of additional TTY protocols. At the same time, it recognized that it is desirable to make TRS “universal for all types of callers by ensuring its compatibility with various TTY protocols” and stated that it would continue to monitor this issue.¹⁹⁸

99. Presently, unlike traditional TRS calls made using TTYs and the PSTN, the Commission has not mandated the use of particular protocols by VRS providers to ensure that all consumers and providers can communicate with each other. However, with the increasing use of VRS and changes in technology, we now contemplate whether we should adopt specific protocols for VRS calls and if so, what protocol or protocols should be adopted. We further contemplate the effects of adopting specific protocols on small businesses.

100. As the provision of VRS has developed, nearly all VRS equipment (the VP-100, the D-Link, and webcams) uses the H.323 protocol, and all present providers use this protocol. As a result, this equipment is inherently interoperable with any of the VRS providers’ service, and vice versa. Some newer videophone equipment, however, uses other protocols, such as SIP. A SIP device cannot, without translation, communicate with an H.323 device. Without a translation mechanism, if a VRS consumer has a SIP-based videophone the consumer will only be able to use the relay services of a provider that can handle SIP-based calls. Similarly, if a provider can only accept SIP-based calls, a consumer with an H.323-based videophone will not be able to use that provider’s service, nor will a hearing person attempting to call a VRS user with an H.323-based videophone. As a result, it is clear that the development and use of videophones that use new Internet protocols that are incompatible with existing videophone protocols creates a barrier to realizing the goal of ensuring that all VRS providers can receive calls from, and make calls to, any VRS consumer, and ensuring that all VRS consumers can make calls through any VRS provider.

101. We therefore contemplate, following the model of traditional TRS, mandating specific Internet protocols that VRS providers must use to receive and place VRS calls.¹⁹⁹ If so, we seek comment on what standard or standards we should mandate, and on an appropriate transition period for the adoption of these standards. We provisionally consider what costs may be involved if we require all providers to be able to receive and make calls through specific multiple protocols, and whether such costs should be compensable by the Fund as a way to ease financial burden on small businesses. We further seek comment on whether we should invite the providers, consumer groups, and other interested parties to work together to jointly propose standards to the Commission and if so, on the appropriate timing of such an endeavor.

102. We also consider the alternatives of ensuring interoperability other than mandating protocols. We further ask for comments on any other issues relating to ensuring that VRS consumers can

¹⁹⁶ *Improved TRS Order*, 15 FCC Rcd at 5197-5199, paras 139-146. The Commission also noted that Baudot was still the dominant protocol. *Id.* In the June 2003 Second Report and Order, the Commission stated that it did not receive adequate comments on this issue and sought further comment on “the extent to which innovative non-proprietary protocols for TTY products are currently being used, and any advantages or disadvantages such protocols may present to TRS providers.” *Second Improved TRS Order*, 18 FCC Rcd at 12440-12441, para. 127.

¹⁹⁷ *2004 TRS Report and Order*, 19 FCC Rcd at 12512, para. 88.

¹⁹⁸ *Id.* at 12512, para. 89 (internal quotation marks omitted).

¹⁹⁹ We note that we do not regulate TRS equipment, but only providers to the extent they seek compensation from the Fund.

use VRS equipment to call any of the VRS providers, and the VRS providers can make calls to all VRS consumers. We also request for comments that will propose any alternative that will minimize adverse economic impact on small entities.

F. Federal rules that may duplicate, overlap, or conflict with the proposed rules.

103. None.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

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

Since being recognized as a form of TRS in March 2000, Video Relay Service (VRS) has seen tremendous growth. Given the huge positive impact VRS has had on the lives of so many Americans, I anticipate that its growth will only continue. Although most providers are using compatible equipment, certain providers have modified their software so that it cannot be used to contact other providers' services. This has meant that a VRS user wishing to access different providers must keep multiple terminals which is cumbersome and frustrates the goal of functionally equivalent access to a dial-tone. Also troublesome is that, in the event of an emergency, a VRS user with access to only one provider could effectively be denied access to emergency responders, raising serious public safety concerns. I am pleased that we conclude that restricting access to competing VRS providers is inconstant with the functional equivalency mandate for TRS. Today's Order continues the Commission's work to ensure that all Americans have full access to communications and emergency services.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech*, Declaratory Ruling and Further Notice of Proposed Rulemaking (CG Docket No. 03-123)

The Americans with Disabilities Act charges the Commission with doing everything we can to ensure that people with disabilities have access to functionally equivalent services. For the millions of Americans with disabilities, functional equivalency is a huge step towards equal opportunity. It means an equal right to access the tools they need to contribute to our communities, participate in our economy and ensure that their talents and energies have a fighting chance to reach their full potential. Because today's decision honors the mandate of functional equivalency, I am pleased to support it.

This Declaratory Ruling follows from a petition filed last year by the California Coalition of Agencies Serving the Deaf and Hard of Hearing. In it, the deaf and hard of hearing community described a situation they were facing with Video Relay Service (VRS) that would have been untenable for anyone accustomed to using voice communications. Imagine if your primary means of communication blocked access to any other voice provider. You'd be unable to make calls seamlessly to anyone in the country. You'd be limited to calling only others who subscribe to the same provider. Your desk at work and your coffee table at home could be cluttered with a jumble of calling equipment from multiple providers—just to ensure that you could call someone who might use a different network provider. And because VRS requires the use of a Communications Assistant, if none were available from your provider you could be forced to wait—perhaps for a long, long time—until one became available to make your call. If your call is to public safety or 911, that waiting could be life-threatening.

Today's decision remedies this injustice by requiring VRS providers that receive compensation from the interstate TRS fund to ensure consumers can place calls to and from any VRS consumer. Doing so restores integrated VRS communications and ensures the kind of functional equivalency the disabilities community must have.

I appreciate my colleagues' willingness to make adjustments to this Declaratory Ruling. In particular, I am pleased that our prohibition on **blocking** calls also restricts any attempts at **degrading** service quality for connections to the service of other VRS providers. Similarly, I think it is significant that we clarify here that new providers will need to ensure that their services are **interoperable** with the services of existing providers.

With communications technologies evolving at a blistering pace, we have a special duty to ensure that our rules relating to functional equivalency are reviewed with a speed and vigor that reflects changes in the larger marketplace. This is not an easy task. But it is our obligation under the Americans with Disabilities Act. It is one we live up to in this Declaratory Ruling and Further Notice of Proposed Rulemaking and for this reason I am pleased to support this item. Thanks to the Bureau, to my colleagues, and—most of all—to our friends in the affected communities who worked so hard to resolve this problem.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: 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 (May 3, 2006).

I'm pleased to support this Order which will significantly enhance the access to and the quality of communications services for the deaf and hard of hearing community. It ensures that Video Relay Service (VRS) providers do not block or degrade consumers' access to the VRS provider of their choosing. This Order will improve the ability of Americans with disabilities to communicate using VRS technology, increase access to emergency services, and better achieve the "functional equivalency" standard of the Americans with Disabilities Act (ADA).

VRS is an increasingly important tool for those portions of the deaf and hard of hearing community who rely on American Sign Language (ASL). VRS allows ASL and hearing individuals to have real-time conversations that more closely mirror the speed and natural flow of voice-to-voice conversations. For anyone who has had the chance to use VRS services or see them demonstrated, it is not surprising that VRS has been widely embraced by the deaf and hard of hearing community, particularly given that VRS more vividly conveys emotions than traditional relay services. It also opens a world of new communications opportunities for many senior citizens, children, and others who may be unable to type on a TTY phone easily. Users of VRS rely on these services not only to communicate with friends and family, but also to run successful businesses, reach operators in the event of an emergency, and complete everyday tasks that many of us take for granted.

Given the increasing adoption of VRS, I'm pleased that we are able to respond to concerns about VRS blocking practices. This Order finds that restricting access to competing VRS providers is inconsistent with the ADA, Section 225 of the Communications Act, and the public interest. The approach we take here was supported by the leading national organizations for people who are deaf and hard of hearing, hundreds of individual consumers, and the FCC's own Consumer Advisory Committee. So, I'm glad that we take another step toward ensuring that every person who is deaf or hard of hearing will have access to a dial tone and the critical link to the rest of the world that our telephone system provides.

We also move forward with a Further Notice that seeks comment on how we can make it easier for hearing persons to contact VRS users through any VRS provider. VRS has a reciprocal role as a valuable tool for those many hearing Americans who wish to reach members of the deaf and hard of hearing community, so this is an important inquiry and I look forward to the record that we will develop here.

Finally, I want to commend Chairman Martin and my colleagues for their commitment on these issues, and would like to thank Monica Desai and the staff of our Consumer and Governmental Affairs Bureau for their hard work on this item. I look forward to working with my colleagues and with the hearing and speech impaired communities as we continue to work towards the ADA's enduring standard of accessibility and functional equivalency for all Americans.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123

Today, we not only ensure more independence for the hearing impaired, but, by requiring interoperability among Video Relay Service (VRS) providers receiving interstate Telecommunications Relay Services funding, we ensure that VRS consumers are more likely to have access to this tool in the event of an emergency.

There are over 31 million Americans with some degree of hearing loss. This number is rising dramatically with the aging of baby boomers, and is expected to reach 78 million by 2030. I recently discussed the difficulties and challenges with one of my good friends and a respected attorney just diagnosed with a disease which causes hearing loss for men as they reach 50. His courage and faith touched me and I hope to do as much as possible to keep all Americans connected to vital information, whether in everyday life or in an emergency.

In March I attended a meeting of the FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks in Jackson, Mississippi. At that meeting, Cheryl Heppner, a representative for the Deaf and Hard of Hearing Consumer Advocacy Network, reminded us that, in the event of an emergency, while people with hearing loss use many strategies and tools for communications, the very nature of the emergency or disaster can stress those options and take away many tools ordinarily available to the hearing impaired.

In the case of Hurricane Katrina, for example, many of the hearing impaired were cut off from their support service providers who facilitate communication. Moreover, network outages made it difficult or impossible for the hearing impaired to reach the professionals who provide visual interpretation to facilitate communication with the hearing world. As we review our response to Hurricane Katrina, and look to disaster plans that provider interoperability and redundancy of communications systems for hearing consumers, it is imperative that we also consider the needs of the hearing impaired.

Prohibiting a VRS provider from blocking access to other VRS providers ensures that, if a consumer cannot promptly reach help through the VRS provider associated with his/her equipment, that consumer is not simply stranded, but is able to reach help through another VRS provider. Moreover, in the event of a large-scale emergency, if a VRS provider's service is shut down or overwhelmed by an influx of calls, interoperability will allow consumers to have access to all other VRS providers, as well as all available interpreters, no matter who they work for.

Even in the non-emergency context, interoperability is important. As stated in our Order, if a consumer is limited to using only one provider's service, the consumer is dependent solely on that provider to place a call. Thus, absent interoperability, a VRS user is at a disadvantage compared to voice callers – unlike voice callers, the VRS user cannot promptly reach a “dial tone.”

Finally, I agree that that requiring interoperability will help to level the playing field and foster competition by encouraging new providers to offer this service. It is my hope that our action today, including our Further Notice of Proposed Rulemaking addressing technical issues such as the feasibility of establishing a single global database of proxy number for VRS uses, is an important step toward providing not only functionally equivalent services to the hearing impaired, but equivalent access to, and choice of, VRS providers.

I want to thank the many people who have shared with us the unique challenges faced by the hearing impaired. I look forward to working with my colleagues to see that we are always cognizant of the needs of the hearing impaired and those with disabilities as we address critical issues such as disaster preparedness and response.