

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

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

FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, and Pai issuing
separate statements; Commissioner O’Rielly approving in part, dissenting in part, and
issuing a statement.

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APPENDIX – Initial Regulatory Flexibility Analysis

I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (FNPRM), we propose to modify in part the four-year compensation rate plan for video relay service (VRS) adopted in 2013, by adopting a limited-duration compensation rate freeze applicable to VRS providers with 500,000 or fewer monthly minutes. Under this proposed modification, such providers will receive compensation at a rate of \$5.29 per minute for a maximum of 16 months beginning July 1, 2015. We also seek comment on whether to adopt a number of measures that could enhance the functional equivalence of VRS.

II. VRS COMPENSATION RATES

A. Background

1. The VRS Reform Order

2. In 2013, the Commission adopted a report and order amending its telecommunications relay service (TRS) rules to improve the structure, efficiency, and quality of the VRS program, reduce the risk of waste, fraud, and abuse, and ensure that the program makes full use of advances in commercially-available technology.¹ Relevant to the instant proceeding, the *VRS Reform Order* addressed and established the rates at which VRS providers are compensated from the TRS Fund for a four-year period beginning July 1, 2013.² In addition, to provide opportunities for multiple providers to continue offering VRS, the Commission adopted structural reforms, including interoperability measures, designed to establish a more level playing field for all VRS providers. In a Notice of Proposed Rulemaking that accompanied the *VRS Reform Order*, the Commission sought comment on various policy measures to improve VRS efficiency and service quality. These included authorizing the use of at-home interpreting and modifying the standard for how quickly VRS calls should be answered (speed of answer), two of the VRS measures discussed below.

2. The Four-Year VRS Compensation Rate Plan

3. Under the current compensation methodology for VRS, providers submit the number of minutes of service they provide to the TRS Fund administrator on a monthly basis and are compensated for these minutes based on rates set annually by the Commission.³ The Commission currently uses a three-tier compensation rate structure that allows smaller providers to receive a higher average per-minute

¹ *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013) (*VRS Reform Order*), *aff’d in part and vacated in part sub nom. Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014) (*Sorenson*).

² In order to implement the statutory requirements that TRS users “pay rates no greater than the rates paid for functionally equivalent voice communication services” and that “costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service” (47 U.S.C. §§ 225(d)(1)(D), (3)(B)), the Commission established the Interstate TRS Fund, which enables TRS providers to recover the reasonable costs of providing interstate TRS. *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993).

³ 47 C.F.R. § 64.604(c)(5).

rate than larger providers.⁴ In the *VRS Reform Order*, the Commission found that, for many years, VRS compensation rates had exceeded providers' average allowable costs, causing overcompensation of VRS providers.⁵ Although interim rates set a few years earlier had begun to close the gap between rates and provider costs, the Commission explained that providers' average allowable costs had continued to decline significantly, leaving average provider revenues substantially higher than allowable costs and increasing the gap between them.⁶ To address this issue, the Commission proposed basing VRS compensation rates largely on competitively established pricing – *i.e.*, prices that would be set through a competitive bidding process, and which would be instituted after the completion of structural reforms to the VRS program.⁷ Pending the resolution of these matters, however, in the *VRS Reform Order*, the Commission took steps to continue reducing VRS compensation rates to bring them closer to average provider costs as calculated by the Fund administrator.

4. As an alternative to immediately reducing rates to a level based on average costs, which “would represent a significant and sudden cut to providers’ compensation with potentially negative consequences for consumers,” the Commission adopted a four-year schedule for gradually adjusting VRS compensation rates downward towards cost-based levels.⁸ The Commission retained a modified version of the tiered rate structure during this transition period in order “to allow smaller providers an opportunity to increase the efficiency of their operations so as to maximize their chances of success after structural reforms are implemented.”⁹

5. By providing in advance for a step-by-step adjustment of the rates at six-month intervals over a four-year period, the Commission sought to improve the predictability of reimbursements and assist providers in planning efficiently for the completion of structural reforms.¹⁰ In addition, under the four-year rate adjustment plan, the rates for the lower compensation rate tiers – Tier I, applicable to a provider’s first 500,000 monthly VRS minutes, and Tier II, applicable to the next 500,000 monthly minutes – were set to be reduced at a slower pace than the rate for the highest rate tier – Tier III, applicable to a provider’s monthly minutes in excess of 1 million. This was done “to ensure that smaller VRS providers have a reasonable opportunity to improve the efficiency of their operations and to reach

⁴ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20164-70 ¶¶ 47-56, 20173-75 ¶¶ 67-72 (2007); *VRS Reform Order*, 28 FCC Rcd at 8697-8702 ¶¶ 197-208. Pursuant to the *VRS Reform Order*, Tier I rates apply to a provider’s first 500,000 monthly VRS minutes, Tier II rates apply to a provider’s second 500,000 monthly minutes, and Tier III rates apply to monthly minutes in excess of 1,000,000. *Id.* at 8702 ¶ 208.

⁵ *VRS Reform Order*, 28 FCC Rcd at 8692 ¶ 183, 8694 ¶ 188. Interim rates set in 2010 had been in effect for three years. The Fund administrator had calculated that the tiered VRS compensation rates for 2012-13 exceeded the average allowable costs of providers – by between \$1.67 and \$2.84 per minute. *Id.* at 8702 ¶ 209. In this FNRPM, the term “average,” when used to describe multiple providers’ costs, means a weighted average of provider costs weighted in proportion to each provider’s total minutes.

⁶ *Id.* at 8694 ¶ 188.

⁷ *Id.*

⁸ *Id.* at 8703-04 ¶ 212.

⁹ *Id.* at 8698 ¶¶ 199-200. The tiers were modified by enlarging Tier I, which previously covered a provider’s first 50,000 monthly minutes, to cover a provider’s first 500,000 monthly minutes. Tier II, which previously covered a provider’s monthly minutes from 50,001 to 500,000, was redefined to cover a provider’s second 500,000 monthly minutes (*i.e.*, monthly minutes from 500,001 to 1 million). Tier III, which previously covered a provider’s monthly minutes in excess of 500,000, was redefined accordingly to cover a provider’s monthly minutes in excess of 1 million. *Id.* ¶ 201.

¹⁰ *Id.* at 8704 ¶ 212.

the optimum scale to compete effectively after the implementation of structural reforms.”¹¹ The Commission explained that compensation rates would continue to be adjusted until June 30, 2017, in accordance with the schedule established by the Commission, and subject to exogenous cost adjustments, “unless implementation of structural reforms and/or related changes in methodology support revision of the rates prior to that time.”¹² The following table illustrates the rate plan’s downward adjustment in the VRS compensation rates over the four-year period:

	FY 2012-13 ¹³	FY 2013-14		FY 2014-15		FY 2015-16		FY 2016-17	
		Jul.– Dec. 2013	Jan.– June 2014	Jul.– Dec. 2014	Jan.– June 2015	Jul.– Dec. 2015	Jan.– June 2016	Jul.– Dec. 2016	Jan.– June 2017
Tier I (1 st 500,000 monthly minutes)	\$6.23/6.24	\$5.98	\$5.75	\$5.52	\$5.29	\$5.06	\$4.82	\$4.44	\$4.06
Tier II (2 nd 500,000 monthly minutes)	\$5.07	\$4.82	\$4.82	\$4.82	\$4.82	\$4.82	\$4.82	\$4.44	\$4.06
Tier III (monthly minutes exceeding 1 million)	\$5.07	\$4.82	\$4.63	\$4.44	\$4.25	\$4.06	\$3.87	\$3.68	\$3.49

3. Sorenson’s Petition for Review and Bankruptcy

6. On July 11, 2013, Sorenson Communications, Inc. (Sorenson), the largest VRS provider, petitioned for review of the compensation rates established in the *VRS Reform Order*.¹⁴ While its petition for review was pending, Sorenson filed for chapter 11 bankruptcy in order to restructure its long-term debt of more than \$1.2 billion, much of which had been incurred in order to pay a dividend to its private equity owners.¹⁵ Under the “pre-packaged” reorganization plan approved by the bankruptcy court, the “entities that formerly were holders of the senior secured notes” became the principal owners of the company.¹⁶ The reorganization did not result in a substantial reduction of Sorenson’s long-term debt, which remained on the company’s books in an amount exceeding \$1.2 billion, on which Sorenson expected to pay \$115.6 million in interest in 2015, according to financial projections filed with the

¹¹ *Id.* ¶ 214.

¹² *Id.* ¶ 212. *See also id.* n.555 (“We set the rates for a period of four years based on the assumption that implementation of the structural reforms will not take longer than four years. In the event that it takes a shorter or longer period, we will reassess the rates at the appropriate time.”).

¹³ FY 2012-13 rates were set prior to *VRS Reform Order*.

¹⁴ *Sorenson*, 765 F.3d 37.

¹⁵ *See Sorenson Communications, Inc., Application for Special Temporary Authority*, CG Docket No. 10-51 (filed Mar. 18, 2014) (Sorenson STA Application).

¹⁶ *Id.* at 4.

Commission.¹⁷ Nonetheless, in requesting the Commission to grant temporary certification to the reorganized company to continue providing VRS and IP CTS pending a final certification decision by the Commission,¹⁸ Sorenson stated that “[t]he restructuring contemplated by the [prepackaged chapter 11 plan] will improve [the Sorenson companies’] ability to service their indebtedness and will permit [them] to pay down their indebtedness on an extended time frame, as the new first and second lien debt issued under the Plan will mature in 2020 and 2021, respectively.”¹⁹ Accordingly, Sorenson assured the Commission that, following the restructuring, and taking account of the compensation rate reductions and other changes established by the *VRS Reform Order*, Sorenson “will continue to provide service in accordance with the applicable mandatory minimum standards.”²⁰

7. On review, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission’s compensation rate decision, finding that the Commission’s determinations regarding allowable costs were reasonable and that Sorenson’s financial difficulties were of its own making.²¹ In 2015, another provider, CSDVRS, LLC (CSDVRS), refinanced its operations and similarly assured the Commission that it could continue providing service in accordance with the mandatory minimum standards for VRS.²²

4. The Joint VRS Providers Proposal

8. The per-minute VRS compensation rates established by the *VRS Reform Order* for the second half of the 2014-15 Fund Year and subsequent periods are as follows:

	Jan. – June 2015	July – Dec. 2015	Jan. – June 2016	July – Dec. 2016	Jan. – July 2017
Tier I (1 st 500,000 monthly minutes)	\$5.29	\$5.06	\$4.82	\$4.44	\$4.06
Tier II (2 nd 500,000 monthly minutes)	\$4.82	\$4.82	\$4.82	\$4.44	\$4.06
Tier III (monthly minutes exceeding 1 million)	\$4.25	\$4.06	\$3.87	\$3.68	\$3.49

¹⁷ See *id.*, Exh. B at 3, 4.

¹⁸ *Notice of Grant of Conditional Certification for Sorenson Communications, Inc., as Reorganized Pursuant to Chapter 11, to Provide Internet-Based Telecommunications Relay Services Pending Commission Action on Sorenson’s Application for Certification*, CG Docket Nos. 03-123, 10-51, 13-24, Public Notice, 29 FCC Rcd 4111 (CGB 2014).

¹⁹ Sorenson STA Application at 4.

²⁰ *Id.* at 6.

²¹ *Sorenson*, 765 F.3d at 49 (“A private equity firm, having acquired the Company, then caused it to incur substantial debt in order to fund a dividend to its new owner.”). As discussed in ¶ 3232, *infra*, the court vacated the Commission’s amendments to its speed-of-answer rules, finding that the Commission had failed to consider the cost impact of these changes.

²² *Notice of Grant of Conditional Certification for CSDVRS, LLC, to Provide Video Relay Service After Its Acquisition by Kinderhook Capital Fund IV, L.P.*, CG Docket Nos. 03-123, 10-51, Public Notice, 29 FCC Rcd 16237, 16238-39 (CGB 2014).

9. On March 30, 2015, the six currently certified VRS providers jointly filed a petition in which they urged the Commission to freeze the currently applicable VRS compensation rates of \$5.29, \$4.82, and \$4.25 per minute, maintaining them in effect “until [the Commission] implements a permanent rate methodology in the ongoing rulemaking proceeding.”²³ The providers contend that a rate freeze is needed because: (1) a stable rate environment is necessary to support investments in service innovation and improvements, including specialized hardware and software and interoperability with non-VRS video conferencing technology; (2) a permanent rate methodology may not be implemented before the end of the four-year rate reduction schedule; and (3) the Commission has not yet implemented all the reforms contemplated by the *VRS Reform Order*.²⁴ Following submission of the Joint VRS Providers Proposal, the providers met with Commission staff both individually and collectively. Each provider individually submitted, under confidentiality requests, additional information regarding its costs and how it believed its operations would be affected if the scheduled 2015-16 rates went into effect or if the compensation rates were frozen as the providers recommend. According to the data filed by the three smallest providers, in the years since the *VRS Reform Order*, each has made strenuous and, to some extent, successful efforts to reduce their per-minute costs, but each has fallen short of achieving the cost reductions necessary to break even under the *VRS Reform Order* compensation rates.²⁵

10. As part of their proposal, the providers support the following measures to improve the service quality of VRS: (1) a faster speed-of-answer standard, under which 80 percent of calls must be answered within 45 seconds, measured monthly; (2) a limited trial of “skills-based routing” in order to assess the cost and feasibility of offering that service feature; and (3) authorization for providers to use deaf sign language interpreters, to supplement hearing interpreters who are communications assistants, for the purpose of achieving functionally equivalent relay calls to or from certain categories of deaf users.²⁶

11. In the *2015 TRS Rate Filing*, filed April 24, 2015, the Interstate TRS Fund (Fund) administrator, Rolka Loube Associates LLC (Rolka Loube), discussed the Joint Providers Proposal and provided an analysis of the average historical and projected allowable costs reported by the six providers, as well as the average historical and projected allowable costs reported by the three smallest providers.²⁷

²³ See Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates, CG Docket Nos. 10-51, 03-123, at 7 (filed Mar. 30, 2015) (Joint VRS Providers Proposal).

²⁴ *Id.* at 7.

²⁵ See, e.g., Letter from Angela Roth, Managing Member, President, and Chief Executive Officer, ASL Services Holdings, LLC (ASL Global), to Marlene H. Dortch, FCC Secretary, & Appx. A (filed Apr. 28, 2015); Letter from Jeremy M. Jack, Vice President, Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Access Ability Group (CAAG), to Marlene H. Dortch, FCC Secretary, & Appx. B (filed Apr. 28, 2015); Letter from Jeff Rosen, General Counsel, Convo Communications, LLC (Convo), to Marlene H. Dortch, FCC Secretary, & attached confidential handout (filed June 12, 2015).

²⁶ Joint VRS Providers Proposal at 2-7. The providers’ support for these non-rate measures is conditioned on the Commission’s adoption of their proposed rate freeze. *Id.* at 2. In addition, the providers state that, independently of their joint proposal, “the providers intend to work with the Commission’s Disability Advisory Committee (“DAC”) to resolve any interoperability issues remaining after the providers’ recent joint efforts to ensure complete interoperability. The providers also intend to work through the DAC to study the effects on video interpreters of the rate decreases that have occurred and the value-added services that providers propose to implement, and they support regulatory change to ensure that interpreters do not bear additional burdens.” *Id.* at 1.

²⁷ Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51 (filed April 24, 2015) (*2015 TRS Rate Filing*); see also Rolka Loube, Supplemental Filing, CG Docket Nos. 03-123, 10-51 (filed May 1, 2015) (*2015 TRS Rate Filing Supplement*). See generally 47 C.F.R. § 64.604(c)(5)(iii)(H) (requiring the Fund administrator to file TRS payment formulas and revenue requirements with the Commission by May 1 of each year, to be effective the following July 1). In accordance with past practice, Rolka Loube required providers to report their historical costs for calendar years 2013 and 2014 and their projected costs and usage for calendar years 2015 and 2016.

Rolka Loube states that, in the aggregate, providers' average projected allowable costs for 2015 and 2016 remain well below the rates established by the Commission for the 2015-16 Fund Year.²⁸ On the other hand, Rolka Loube states that the average projected allowable costs for the three smallest providers, while having decreased substantially from 2013 to 2016, will remain above even the Tier I rates scheduled for 2015-16, "potentially jeopardizing their continuation of service."²⁹ The *2015 TRS Rate Filing* includes an exhibit analyzing the impact on the Fund's 2015-16 revenue requirement and contribution factor in the event that the rate adjustments scheduled in the *VRS Reform Order* (1) take effect as scheduled, (2) are deferred for one year as proposed in the Joint VRS Providers Proposal, or (3) are deferred with respect to Tier I rates.³⁰ On June 30, 2015, the Consumer and Governmental Affairs Bureau (CGB) issued an order setting the TRS compensation rates, Fund revenue requirement, and Fund contribution factor for the 2015-16 Fund Year.³¹ Explaining that the VRS compensation rates established in the *VRS Reform Order* were not subject to modification by a bureau order, CGB noted that the TRS Fund revenue requirement and contribution factor set for 2015-16 was subject to adjustment if necessary as a result of subsequent Commission action.³²

B. Discussion

12. As discussed briefly above,³³ in establishing a four-year compensation rate plan in the 2013 *VRS Reform Order*, the Commission sought to provide a "glide path" to cost-based rates, in order to make TRS Fund compensation more predictable over time and to give VRS providers, especially the smaller companies, a reasonable opportunity to increase efficiency and grow their businesses during a transition period.³⁴ The four-year schedule of compensation rate adjustments was adopted by the Commission in lieu of a more immediate reduction of the rates to cost-based levels, in order to assist providers in adjusting to cost-based rates.³⁵ The Commission concluded that "[p]ending the implementation of structural reforms, we expect that the rate reduction plan adopted in this order will permit service providers to continue offering VRS in accordance with our mandatory minimum standards for high quality services, as we transition to structural reforms and a disaggregated, market-based compensation methodology."³⁶ As noted above, this rate reduction plan was upheld by the court of appeals. The third year of the four-year plan has begun, and the following VRS compensation rates

²⁸ *2015 TRS Rate Filing* at 24.

²⁹ *Id.* at 25. Rolka Loube's cost analysis indicates that the average allowable per-minute cost and average Tier I rate, respectively, for the three smallest providers from 2013 through 2016 were: 2013: \$6.94/\$6.11; 2014: \$6.01/\$5.64; 2015: \$5.33/\$5.18; 2016: \$4.72/\$4.63. For each year, the first number given is the total average cost of the three smallest providers for that year as shown in Table 4 of the *2015 TRS Rate Filing*, minus average outreach cost (because the Commission has determined that outreach costs should not be included in allowable TRS costs). For each year, the second number is the average of the Tier I compensation rates applicable for the first six months and last six months of that year, per the *VRS Reform Order*. Costs for 2013 and 2014 are actual reported costs, and costs for 2015 and 2016 are projected costs.

³⁰ *2015 TRS Rate Filing Supplement*, Updated Exhs. 2, 2-1, and 2-2.

³¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, Order, FCC 15-774 (rel. June 30, 2015) (*2015 TRS Rate Order*).

³² *Id.* ¶ 12.

³³ See ¶ 4, *supra*.

³⁴ *VRS Reform Order*, 28 FCC Rcd at 8703-06 ¶¶ 212-16.

³⁵ *Id.* at 8703 ¶ 212 ("Although the cost data would justify immediate adoption of RLSA's proposed cost-based rate of \$3.396 per minute, we concur with RLSA that taking a step-by-step transition from existing, tiered rates toward a unitary cost-based rate is appropriate.").

³⁶ *Id.* at 8706 ¶ 216.

became effective July 1, 2015: \$5.06 per minute for Tier I (a provider's 1st 500,000 monthly minutes), \$4.82 per minute for Tier II (a provider's 2nd 500,000 monthly minutes), and \$4.06 per minute for Tier III (a provider's monthly minutes in excess of 1 million). As a result, since June 2013, VRS compensation rates have been reduced \$1.175 (19%) in Tier I, \$0.25 (5%) in Tier II, and \$1.01 (20%) in Tier III.

13. Generally, we believe this rate plan continues to be justified. Providers have not reported any significant increases in VRS costs that would cause us to question whether a reasonably efficient provider is able to operate profitably at the rates set forth in the plan. According to the *2015 TRS Rate Filing*, the VRS compensation rates for 2015-16 are well in excess of average allowable costs for providers as a whole.³⁷ Further, in this FNPRM we do not reopen questions regarding rate methodology or the appropriateness of requiring VRS providers to recover only allowable costs.

1. Proposed Partial Freeze of the Tier I Rate

14. For the three smallest providers, however, the record does indicate that their average per-minute costs are higher than the applicable rates in effect as of July 1, 2015.³⁸ According to recent filings by the smallest providers, while these companies generally have achieved significant reductions in their per-minute costs over the last two years, and while they have begun to increase market share to some extent, they have yet to approach the size or efficiency levels of their larger rivals.³⁹

15. The Commission's four-year rate plan, which deferred the elimination of rate tiers pending the completion of structural reforms, was largely intended to provide a reasonable opportunity for the smallest providers to reach minimum efficient scale⁴⁰ while benefitting from the *VRS Reform Order* initiatives, which were intended to "address many of the issues that have made it difficult for small providers to operate efficiently."⁴¹ As the Commission then stated:

With only six providers currently providing VRS, eliminating the rate tiers immediately could force out some of the smallest remaining providers, unnecessarily constricting the service choices available to VRS consumers during the period prior to implementation of structural reforms. Some of these small providers may be able to operate more efficiently and compete more effectively under the structural reform conditions than under current conditions, in which technical barriers to interoperability and portability, as well as other limitations, continue to inhibit the full development of competition. Experienced providers, and the consumers who prefer to use their services, should have an opportunity to find out whether such providers are able to grow sufficiently to reach a more efficient scale under more hospitable conditions. We conclude that it is worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient providers in the future, in the more competition-friendly environment that we expect to result from our structural reforms. Therefore, we will allow tiered rates to remain in effect during the transition to structural reforms, but with a gradually reduced gap between highest and lowest tiers, in order to allow smaller providers

³⁷ *2015 TRS Rate Filing* at 23 (calculating average provider costs as \$2.93 to \$3.08 per minute).

³⁸ *Id.* at 25.

³⁹ *See* n.25, *supra*.

⁴⁰ *See Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 10-51, 03-123, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367, 17397 ¶ 58 (2011) (*2011 VRS Reform FNPRM*) (defining "minimum efficient scale" as "the point on the scale curve at which the volume of a firm's output is high enough to take substantial advantage of economies of scale so that the average costs are minimized," or "the point at which the per-unit cost begins to 'flatten' as the volume of output increases").

⁴¹ *VRS Reform Order*, 28 FCC Rcd at 8698 ¶ 199.

an opportunity to increase the efficiency of their operations so as to maximize their chances of success after structural reforms are implemented.⁴²

16. We continue to believe that, as stated in the *VRS Reform Order*, “it is worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient providers in the future, in the more competition-friendly environment that we expect to result from our structural reforms.”⁴³ Certain *VRS Reform Order* initiatives that will soon be implemented may be particularly relevant to the ability of providers who are currently operating well below the minimum efficient scale to grow sufficiently to be able to provide service at the same rate applicable to more efficient providers. For example, on May 1, 2015, the Commission announced the award of a contract to develop an open source video access platform, which, among other things, is intended to improve VRS interoperability and facilitate the use of point-to-point video communication by people who rely on American Sign Language (ASL).⁴⁴ We believe it is consistent with the intent of the *VRS Reform Order* that all existing providers should have a fair opportunity to participate in this important reform.

17. Further, small providers may offer service features that are either designed for niche VRS market segments or are significantly different from those currently available through other providers; such features may in turn be helpful in advancing the goal of functionally equivalent service for certain subsets of VRS consumers.⁴⁵ Finally, the three smallest providers report that they are operating without a substantial amount of long-term debt. If such providers prove able to improve the scale and efficiency of their operations while remaining largely debt-free, the avoidance of long-term debt can represent a potentially significant advantage, not only for the providers themselves, but for the long-term ability of the TRS Fund to support the provision of TRS “in the most efficient manner.”⁴⁶

18. In light of these considerations, we propose a limited modification of the *VRS Reform Order*, to allow small providers a reasonable measure of temporary relief from rate reductions that, according to the TRS Fund administrator, are potentially jeopardizing their continuation of service.⁴⁷ The cost filings submitted by the three smallest providers show that in recent years they have made strenuous

⁴² *Id.* at 8699 ¶ 200.

⁴³ *Id.*

⁴⁴ *See*

https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=609c2196c044d005a639de874a055d6f&_cviw=0 (last visited Oct. 22, 2015). We also recognize that, as indicated in the Joint VRS Providers Proposal, the business plans of small providers may have been adversely affected by the recent cancellation of the Commission’s request for proposals to develop and operate a neutral video communication service platform. Joint VRS Providers Proposal at 7;

https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=a46d5349dcf91a31fb11a85811526aef&_cviw=0 (last visited Oct. 22, 2015). In the *VRS Reform Order*, the Commission anticipated that “by transferring to a neutral entity many of the fixed cost components of VRS,” the neutral platform would “make it more feasible for smaller entities to compete efficiently in the provision of CA service without artificial supports such as rate tiers.” *VRS Reform Order*, 28 FCC Rcd at 8699 ¶ 199.

⁴⁵ For example, one of the three smallest providers specializes in Spanish-language interpreting, a specialty that may not be easy to integrate into the VRS offerings of larger providers. Another small provider seeks to address the particular needs of deaf-blind consumers. A third small provider offers unique features geared to deaf-owned businesses.

⁴⁶ 47 U.S.C. § 225(b)(1).

⁴⁷ 2015 TRS Rate Filing at 25 & Table 4. As discussed in n.29, *supra*, Rolka Loubé’s cost analysis indicates that the average allowable per-minute costs for the three smallest providers from 2013 through 2016 exceed the average Tier I compensation rate in each year, by amounts ranging from \$0.83 per minute in 2013 to \$0.09 per minute in 2016.

and, to some extent, successful efforts to reduce their per-minute costs.⁴⁸ Specifically, we propose to freeze for a maximum of 16 months the rate of compensation paid to “small” VRS providers, defined as providers whose monthly compensable minutes do not exceed 500,000 minutes. Under this proposal, therefore, the Tier I rate of \$5.29 per minute that was in effect prior to June 30, 2015, would be frozen only for those providers whose monthly minutes fall entirely within Tier I. Larger providers would be subject to the Tier I rate established in the *VRS Reform Order*, as well as the established Tier II and III rates. Defining a “small provider” for this purpose as one with monthly minutes not exceeding 500,000 appears reasonable because historically, this number appears to have marked a dividing line below which providers have significantly higher average per-minute costs.⁴⁹ However, we invite comment on whether a different dividing line is appropriate for purposes of a rate freeze. We also seek comment generally on this proposal and its costs and benefits.⁵⁰

2. Implementation of a Partial Rate Freeze

19. We next seek comment on how the proposed partial rate freeze should be implemented. The partial rate freeze proposed herein would extend, for qualifying providers and for a maximum of 16 months, beginning July 1, 2015, the Tier I rate of \$5.29 per minute that was in effect prior to June 30, 2015.⁵¹ We seek comment on this approach, including the precise duration of the proposed rate freeze. Specifically, would a period of time shorter than 16 months be sufficient to provide small providers a reasonable window of opportunity to achieve the necessary scale and efficiencies to be able to continue offering service? Based on Rolka Loube’s analysis in the *2015 TRS Filing*, it appears that the gap between average costs and rates applicable to the three smallest providers is narrowing over time.⁵² On the other hand, there is substantial variation in the individual per-minute costs reported by each of those providers, which is not captured in the averages reported by Rolka Loube. Further, some providers and consumers have expressed the view that the implementation of structural reforms has not progressed sufficiently to date to allow a fair test of small providers’ ability to compete on a level playing field.⁵³

⁴⁸ See n.25, *supra*.

⁴⁹ *VRS Reform Order*, 28 FCC Rcd at 8700 ¶ 203 n.536 (in 2010, the average per-minute costs of providers with 500,000 or fewer monthly minutes were substantially higher than those of larger providers); *id.* at 8701 ¶ 206 (in 2010, the Fund administrator found no significant cost differences between providers operating in the 50,000-500,000 minutes range and those operating in the below 50,000 range).

⁵⁰ We note that this proposed modification would not impose a heavy cost burden on TRS Fund contributors. Rolka Loube has projected that adoption of a 2015-16 Tier I rate freeze applicable to all six providers would increase the Fund revenue requirement by about \$5.68 million. *2015 TRS Rate Filing Supplement* at 3 & Updated Exh. 2-2. A rate freeze applicable to the smallest three providers alone (who account for less than half of Tier I payments) would cost less than half that amount, *i.e.*, less than \$2.84 million.

⁵¹ Thus, the Tier I rate as applied to qualifying providers would be modified retroactively to July 1, 2015. On a number of prior occasions, the Commission has applied adjustments, including changes in TRS compensation rates and contribution factors, retroactively to the beginning of a Fund Year. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order on Reconsideration, 21 FCC Rcd 8050, 8056 ¶¶ 12-13 (2006); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8072-73 ¶ 21 (2006); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 2993, 2996 ¶ 8 (CGB 2004); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 24981, 24982 ¶ 4 (CGB 2004); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 23 FCC Rcd 1680, 1682 ¶ 7 (CGB 2008).

⁵² See n.29, *supra*.

⁵³ See, e.g., Letter to Marlene H. Dortch, FCC Secretary, from Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), National Association of the Deaf (“NAD”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), Hearing Loss Association of America (“HLAA”), Association of Late Deafened Adults,

(continued....)

Therefore, we seek additional comment regarding these providers' actual expectations regarding their progress in closing the gap between rates and costs, what specific structural reform milestones are most critical to their ability to compete effectively, what criteria should be used in determining when such milestones were or will be achieved, and what specific dates for the end of a rate freeze result from that analysis. Given the substantial disparity that remains between currently applicable rates and average provider costs and the substantial window of opportunity already afforded to providers for adjustment to reduced compensation rates, we would be reluctant to extend the rate freeze beyond October 31, 2016. Parties should provide detailed information regarding when they believe it will be fair to require all providers to compete under the same unitary compensation rate.

20. In addition, we seek comment on how rate adjustments should be resumed upon the termination of a rate freeze period, regardless of its duration. For example, if we adopt a 16-month rate freeze that ends on October 31, 2016, should we then apply the rate previously established for the July 1 – December 31, 2016 period, pursuant to the *VRS Reform Order*? Or should we resume rate adjustments at the point where they left off, *i.e.*, with the rate previously established for the July 1 – December 31, 2015, period, in order to maintain a relatively gradual “glide path” for providers subject to the freeze?

21. We also seek comment on whether it is the case that some small providers may not be likely in the foreseeable future to achieve the “minimum efficient scale” described in the preceding paragraphs but may nevertheless provide significant value to certain consumer groups. In the *VRS Reform Order*, the Commission commented that “none of the commenting parties has presented a valid reason why the TRS Fund should support indefinitely VRS operations that are substantially less efficient” than those of other providers.⁵⁴ However, as noted earlier, some small providers may currently offer a service that is either designed for niche VRS markets or is significantly different from the service that is currently available through other providers, the features of which may provide some subset of VRS consumers with key features that help advance the goal of functionally equivalent service.⁵⁵ We seek comment on the extent to which small providers offer types of specialized features or services to specific segments of consumers, the nature of such specialized features or services, and the costs of providing them. We also seek comment on the extent to which larger companies are able to efficiently provide comparable features or services to the specific market segments served by smaller providers and whether they have an adequate incentive to do so notwithstanding the applicability of higher-tier compensation rates.

22. Generally, we seek comment on whether the Commission should apply different rates to well-defined categories of specialized service, and how such rate categories could appropriately be defined consistently with the objectives of section 225 and the need to prevent fraud, abuse and waste of the TRS Fund. For example, CAAG asserts that it offers a “unique service” to deaf-blind ASL users, with which the consumer “is able to call into CAAG’s service on video to a VRS Interpreter who is proficient in typing and place calls to a hearing individual.” In this service, according to CAAG, the VRS CA voices what the deaf-blind consumer signs and types what the hearing person speaks, and the deaf-blind individual receives the typed information via modified text or a refreshable Braille display.⁵⁶ Is this service unique, as CAAG reports? What specific features or services are necessary to ensure the provision of functionally equivalent VRS to deaf-blind individuals, what would be the additional per-

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Inc. (“ALDA”), American Association of the Deaf-Blind (“AADB”), Cerebral Palsy and Deaf Organization (“CPADO”), Deaf Seniors of America (“DSA”), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), CG Docket Nos. 10-51, 03-123, at 5-6 (filed Apr. 7, 2015) (Consumer Groups April 7, 2015 *Ex Parte*).

⁵⁴ *VRS Reform Order*, 28 FCC Rcd at 8698 ¶ 198.

⁵⁵ See n.45, *supra*.

⁵⁶ See Letter from Jeremy Jack, Vice President, CAAG, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 03-123, 10-51 (filed July 8, 2015).

minute cost for a company to provide such a service “in the most efficient manner,” and how could such a service be defined and an applicable VRS compensation rate be structured to best meet the statutory objectives? Are there any other specialized features or services that are or could be provided to specific segments of VRS consumers and that are necessary for such consumers to receive functionally equivalent VRS? If so, what is the per-minute cost for a company to provide such features or services “in the most efficient manner,” and how could such services or features be defined and an applicable VRS compensation rate be structured to best meet the statutory objectives?

3. Alternatives

23. For the reasons stated below, we tentatively conclude that it would *not* advance the objectives of section 225 to freeze VRS compensation rates in all rate tiers, for all providers, at the January 1 – June 30, 2015 levels, as proposed by the VRS providers, or to freeze the Tier I rate for all providers.⁵⁷ However, we invite comment on the merits, including the costs and benefits, of these alternatives and others that may be suggested by commenting parties.⁵⁸ We also seek comment on the appropriate duration and other parameters of such alternatives.

24. Notwithstanding the arguments advanced in the Joint VRS Providers Proposal, there does not appear to be any valid reason to adopt a rate freeze applicable to all providers. While claiming they face additional costs for service improvements and interoperability, the larger providers have not provided specific estimates of such additional costs; nor have they shown why any delay in adoption of an alternative rate methodology should prevent the Commission from continuing to apply its current methodology to adjust rates in the direction of cost-based levels.⁵⁹ Further, as noted above, the timing of structural reforms is of particular importance to the smallest VRS providers, who need a window of opportunity to grow and increase efficiency under fair competitive conditions; however, the need for more time to achieve efficiencies would not appear to justify a freeze on the rates applicable to larger providers.

25. Additionally, the VRS compensation rates for 2015-16 are well in excess of average allowable costs for providers as a whole,⁶⁰ and the excess of rates over average costs is even greater when one considers only the rates and costs applicable to the three largest VRS providers.⁶¹ This fact strongly suggests that the three largest VRS providers, or other providers of comparable size and efficiency, are capable of providing VRS of the same quality as the service they have offered to date, at the compensation rates that will be effective in 2015-16.

⁵⁷ We note that, in the 2015-16 Fund Year, no change in the Tier II rate is scheduled.

⁵⁸ Based on the compensation rates now in effect, the Fund revenue requirement is \$1,048 million and the carrier contribution factor is 0.01635. *2015 TRS Rate Filing Supplement* at 3. For VRS, the proposed funding requirement for 2015-16 is \$573,067,078 with the scheduled rate adjustments, \$578,745,902 with deferral of only the Tier I rate adjustments, and \$600,179,275 with deferral of all rate adjustments. *Id.*, Updated Exhs. 2, 2-1, 2-2. In the event that only the Tier I VRS rate adjustments are deferred, Rolka Loube estimates that the Fund revenue requirement would be about \$1,055 million and the carrier contribution factor would be 0.01645. *Id.*, Updated Exh. 2-2. In the event that the scheduled VRS rate adjustments are deferred in their entirety, as proposed by the VRS providers, Rolka Loube estimates that the Fund revenue requirement would be about \$1,080 million and the carrier contribution factor would be 0.01684. *Id.*, Updated Exh. 2-1.

⁵⁹ See Joint VRS Providers Proposal at 7 (arguing that an across-the-board rate freeze is needed because providers need to invest in service innovation and improvements, including interoperability with mainstream video conferencing technology, and because a permanent rate methodology may not be implemented before the end of the four-year rate reduction schedule).

⁶⁰ *2015 TRS Rate Filing* at 23.

⁶¹ *Id.* at 25 (calculating higher average costs for the three smallest providers). Costs for the three largest providers are not specifically presented in the *2015 TRS Rate Filing*. However, individual provider filings confirm that the costs of each of the three largest providers are lower than the average for all six providers.

26. Further, to the extent that cost issues are faced by the largest existing providers, they appear to be due to voluntarily incurred capital debt, the interest on which far exceeds the allowable return on investment.⁶² Accordingly, it appears that if we were to modify the rate plan as requested by the VRS providers, the result would be to compel all telecommunications and voice-over-Internet-protocol (VoIP) service providers and their customers to pay additional amounts into the TRS Fund, primarily so that some VRS providers may recover expenditures that were unauthorized by the Commission and unnecessary for the provision of VRS.⁶³

27. We also note that all of the three largest providers have benefitted for two years from the “freezing” of the Tier II rate pursuant to the *VRS Reform Order*. This rate tier was specifically carved out from the previous Tier III (which then included all minutes in excess of 500,000) “in order to allow smaller competitors a full opportunity to improve efficiencies and achieve scale.”⁶⁴ The Tier II rate, which applies to a substantial portion of these providers’ minutes, has not been reduced since July 1, 2013, when it was set at \$4.82 per minute, and will remain at the \$4.82 level until June 30, 2016, *i.e.*, through the end of the 2015-16 Fund year.

28. In addition to the rationales discussed above, some parties have suggested to the Commission that a rate freeze is necessary to prevent overall deterioration in the quality of VRS. We note that these assertions appear inconsistent with the recent assurances given by two of the three largest providers that, notwithstanding the four-year rate schedule, they could continue to provide service in accordance with the applicable mandatory minimum standards.⁶⁵ We invite any party advocating a more broadly applicable rate freeze to provide a detailed, fact-based showing as to why such a rate freeze is necessary to prevent service degradation rather than to provide debt service far in excess of the amounts for which recovery from the TRS Fund is allowed by the Commission’s rules and orders. We also invite commenters to suggest how any proposed alternative rate freeze could be structured to ensure that TRS Fund monies are no longer used to subsidize excessive levels of debt.

⁶² For example, as the D.C. Circuit has pointed out, any cost issues faced by the largest VRS provider are due to its having incurred a major long-term debt “to finance a leveraged buyout.” *Sorenson*, 765 F.3d at 49. Despite its recent bankruptcy and reorganization – which it entered into with full knowledge of the compensation rate plan and other requirements adopted in the *VRS Reform Order* – the dominant VRS provider still carries on its books some \$1.2 billion in debt, on which it was projected to pay \$115.6 million in interest in 2015. This projected interest payment of almost 10 percent represents approximately 30 percent of the largest provider’s projected VRS revenue in 2015 and 20 percent of the total projected Fund payment for VRS in 2015-16. *See Sorenson STA Application*, Exh. B at 3, 4. In other words, approximately \$1.28 of the \$4.25 that the largest provider collected on each Tier III minute in January-June 2015 was earmarked to make payments on its long-term debt. There does not appear to be any legitimate reason why these costs, which apparently were incurred largely to generate significant profits for private equity owners, should continue to be subsidized by telecommunications and VoIP providers and consumers generally.

⁶³ As noted in n.58, *supra*, Rolka Loube projects that the 2015-16 funding requirement for VRS is \$573,067,078 with the scheduled rate adjustments, \$578,745,902 with a freeze of Tier I rates for all providers, and \$600,179,275 with a freeze of both Tier I and Tier III rates. *2015 TRS Rate Filing Supplement* at 3 & Updated Exhs. 2, 2-1, 2-2. (Tier II rates would be unaffected by a rate freeze implemented in 2015-16, because the rate plan does not provide for any adjustment of Tier II rates in 2015-16.) Thus, if an across-the-board rate freeze were implemented, Tier III rate adjustments to effectuate this freeze would represent approximately \$21.4 million, or almost 80 percent, of the \$27.1 million additional cost to ratepayers.

⁶⁴ *VRS Reform Order*, 28 FCC Rcd at 8704 ¶ 214.

⁶⁵ *Sorenson STA Application* at 6; *CSDVRS, LLC (d/b/a ZVRS) and Kinderhook, LLC, Application of CSDVRS, LLC, and Kinderhook for Conditional Certification to Provide Video Relay Service*, CG Docket No. 10-51, at 3, 7 (filed Nov. 25, 2014).

III. VRS IMPROVEMENTS

29. The Commission is charged with ensuring that TRS is made available to the extent possible, and in the most efficient manner, and that it provides the ability for individuals with hearing or speech disabilities to engage in communication by telephone in a manner that is functionally equivalent to the ability of individuals who do not have such disabilities.⁶⁶ In accordance with this obligation, we seek comment on a number of measures that may improve the functional equivalence of VRS, several of which were proposed in the Joint VRS Providers Proposal.⁶⁷ Specifically, we seek comment on whether to: (1) impose a faster speed-of-answer standard; (2) adopt a limited trial of “skills-based routing”; (3) authorize providers to use qualified deaf sign language interpreters, in addition to the hearing interpreters as communications assistants (CAs); (4) authorize the use of at-home interpreters under certain conditions; and (5) permit the assignment of ten-digit numbers for phones used by hearing individuals. In raising these possible service improvement measures, we are mindful of the need to consider both their benefits and the additional costs that providers may incur to provide these features, and also to consider how the additional costs of providing such features should be recovered if they are adopted.⁶⁸ Therefore, we invite commenters to address with as much specificity as possible the costs and benefits of each alternative discussed below.

30. In general, we seek comment on whether and how the proposals and alternatives set forth below, and any other proposals submitted by commenting parties, comport with section 225 of the Act and any other relevant legal authorities. For example, to what extent would such proposals be consistent with the Commission’s responsibility to ensure that TRS is available “to the extent possible and in the most efficient manner?”⁶⁹

A. Speed of Answer

1. Strengthening the Speed-of-Answer Requirement

31. Among the various reforms to the VRS program adopted by the Commission in the *VRS Reform Order* was an increase in the required speed of answer for VRS. The speed-of-answer standard governs how promptly a party attempting to initiate a TRS call must be connected to a CA. The existing speed-of-answer standard for VRS requires providers to answer 80 percent of all VRS calls within 120 seconds, as measured on a monthly basis.⁷⁰ This contrasts with the speed-of-answer requirement for all other forms of TRS, which requires 85 percent of all calls to be answered within 10 seconds, as measured on a daily basis.⁷¹

32. In the *VRS Reform Order*, the Commission amended the VRS speed-of-answer standard, requiring that (1) effective January 1, 2014, VRS providers must answer 85 percent of all VRS calls within 60 seconds, measured on a daily basis, and (2) effective July 1, 2014, VRS providers must answer 85 percent of all VRS calls within 30 seconds, measured on a daily basis.⁷² The Commission concluded that it was feasible for providers to meet these higher standards and that, accordingly, this change to its rules was justified based on the longstanding principle that the “ability of a TRS user to reach a CA

⁶⁶ 47 U.S.C. §§ 225(a)(3), (b)(1).

⁶⁷ Joint VRS Providers Proposal at 2-7. The providers’ support for these non-rate measures is conditioned on the Commission’s adoption of their proposed rate freeze. *Id.* at 2.

⁶⁸ See *Sorenson*, 765 F.3d at 50-51. We may also consider any cost savings that could result from adopting a measure (such as, for example, the increased efficiency that could result from authorizing at-home interpreting).

⁶⁹ 47 U.S.C. § 225(b)(1).

⁷⁰ 47 C.F.R. § 64.604(b)(2)(iii).

⁷¹ *Id.* § 64.604(b)(2)(ii).

⁷² *VRS Reform Order*, 28 FCC Rcd at 8673 ¶ 141.

prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of ‘functional equivalence.’”⁷³ However, in response to a petition for review brought by Sorenson in 2014, the U.S. Court of Appeals for the District of Columbia Circuit vacated the amended requirements, ruling that the Commission had failed to consider the cost impact of the strengthened requirements.⁷⁴

33. We again propose to strengthen the speed-of-answer requirement for VRS. In the Joint VRS Providers Proposal, the providers endorse strengthening the speed-of-answer rule to require that 80 percent of all VRS calls be answered within 45 seconds, measured on a monthly basis. On June 23, 2015, the Disability Advisory Committee (DAC) to the Commission submitted the same recommendation as was made in the Joint VRS Providers Proposal.⁷⁵ The DAC further recommended that the Commission use the following formula to assess compliance: [Calls unanswered and disconnected by the caller in 45 seconds or less + calls answered in 45 seconds or less] divided by [all calls (unanswered and answered)].⁷⁶ Finally, the DAC recommended that the Commission determine that calls handled via an interactive voice system not be considered answered. In other words, speed-of-answer compliance would be achieved when an interpreter actually answers the call.⁷⁷

34. We concur with the recommendation of the providers and the DAC and therefore propose to amend the speed-of-answer rule to require that 80 percent of all VRS calls to be answered within 45 seconds, measured on a monthly basis. We believe this proposed change will improve functional equivalence for VRS because the faster calls are answered by CAs, the more closely VRS will be able to approximate the immediate “dial tone” response usually attained by voice telephone users. We recognize that the wait time for other forms of TRS is only 10 seconds 85 percent of the time, measured daily, and that consequently, full functional equivalence may not be achieved by this proposed modification. However, we tentatively conclude that there are factors besides functional equivalence – including the availability of sign language interpreters, the need to ensure adequate working conditions for CAs who handle VRS calls, and the need to ensure a high quality of interpreting – that merit consideration in setting the speed-of-answer standard. On balance, at this time, we believe that these factors support the proposed VRS wait time of 45 seconds, 80 percent of the time. In this regard, we note that one part of the DAC recommendation was for the FCC to “ensure that the rates used to support a revised speed of answer reflect the providers’ resources and staffing needed to provide high quality VRS interpreting necessary to

⁷³ *Id.* at 8671 ¶ 136. See also *2000 TRS Order*, 15 FCC Rcd at 5166 ¶ 60 (“For a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer’s ability to place a call through the relay center clearly compromises the functional equivalence of relay service.”), 5167 ¶ 63 (“Just like voice calls, TRS calls should be answered within a reasonable time period, regardless of the traffic load.”).

⁷⁴ *Sorenson*, 765 F.3d at 50-51.

⁷⁵ DAC Recommendation to the Commission Regarding VRS Speed of Answer (June 23, 2015), available at <<https://www.fcc.gov/disability-advisory-committee>>; <http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0629/DOC-334156A1.pdf> (last visited Oct. 22, 2015) (DAC Recommendation).

⁷⁶ The DAC explained that this is the current method used by the TRS Fund administrator to calculate speed-of-answer performance. Specifically, their recommendation states: “If a VRS user abandons a call in 45 seconds or less, it doesn’t count against the company. If a VRS provider were to answer all calls in 45 seconds or less and all abandoned calls wait less than 45 seconds, the VRS provider would score a 100% compliance rate. If a VRS provider delays answers beyond 45 seconds, and a person hangs up after 46 seconds, then this formula assumes that the call was abandoned and answer performance begins to be less than 100 percent.” *Id.*

⁷⁷ The recommendation explains that “[s]peed of answer calculation begins once a call arrives at the provider’s switch and/or platform and continues until an interpreter is connected to the call. Calls answered by an IVR are NOT answered as defined herein. Rather calls must be answered by an interpreter before the speed of answer calculation ends.” *Id.*

satisfy functional equivalency.” We invite parties to comment on the costs and benefits of this proposal to modify the speed-of-answer requirement for VRS. Parties that suggest alternative wait times for VRS should explain why such times would be more appropriate than the proposed 80 percent/45 second standard, and address the costs and benefits of such alternatives.

35. In order to continue allowing VRS providers some additional flexibility in setting interpreters’ work schedules, we propose to continue to measure compliance with the speed-of-answer requirement for VRS on a monthly rather than a daily basis. We seek comment on this proposal and on whether, as the VRS providers assert, a daily measurement requirement, under which a provider must meet the requirement every day or lose compensation for that day, can be counterproductive because providers are subject to random variation in demand that cannot reasonably be anticipated.⁷⁸ We also seek comment on the providers’ claim, discussed further below, that if they are subject to a daily measurement, once they miss the speed of answer on any given day, they will lose the incentive to meet the speed-of-answer requirement for the remainder of the day because they will be pre-destined to lose compensation for the entire day. Given these considerations, if the Commission does adopt a monthly standard to allow for flexibility, to what extent will such standard enable the Commission to meet its obligation to ensure functionally equivalent service? Will a daily measurement have value because it would encourage providers to maintain sufficient staffing to ensure a consistent level of service over time? Is it likely that competitive forces will prompt providers to exceed the level of service that we set by this rulemaking?

36. Next, we seek comment on the costs that would be incurred by providers in order to comply with a strengthened requirement that mandates 80 percent of all VRS calls to be answered within 45 seconds. To ascertain the feasibility of compliance with various possible standards based on the costs currently incurred by providers, Rolka Loube has analyzed the speed-of-answer data reported by providers. According to Rolka Loube, over a 12-month period from May 2014 through April 2015, the reported data indicate that providers were in full compliance with the current speed-of-answer rule requiring that 80 percent of calls be answered within 120 seconds, measured monthly.⁷⁹ In addition, if a requirement to answer 80 percent of calls within 45 seconds, measured monthly, as proposed by the providers and the DAC, were in effect during that period, all the providers would have been in full compliance with that requirement.⁸⁰ Therefore, we tentatively conclude that compliance with the proposed standard could be achieved without any provider incurring additional costs in excess of those incurred over the past year. We seek comment on this tentative conclusion. In addition, we seek comment on the costs providers would incur in order to comply with other speed-of-answer proposals that may be made by commenters.

2. Withholding of Compensation

37. The VRS providers ask the Commission to recognize that an “all-or-nothing” withholding policy, under which a provider that misses the speed-of-answer requirement on a particular day or month loses all compensation from the TRS Fund for that period, can be counterproductive because providers are subject to random variation in demand that cannot reasonably be anticipated.⁸¹ They claim that such a policy encourages providers to overstaff at unsustainable levels to avoid withholdings and to reduce staffing if it becomes apparent that they will miss the speed of answer

⁷⁸ Joint VRS Providers Proposal at 2.

⁷⁹ Analysis by Rolka Loube based on provider-submitted compliance data.

⁸⁰ Indeed, no provider reported a percentage of calls answered within 45 seconds that was lower than 90 percent for any month in the period. Rolka Loube also reported that for the 12-month period analyzed, based on the data submitted by all providers, there were only 9 occasions on which a provider missed compliance with a hypothetical requirement to answer 85 percent of calls within 60 seconds, measured daily.

⁸¹ Joint VRS Providers Proposal at 2.

requirement for a day.⁸² Providers propose instead a “sliding scale” approach, whereby the consequence for missing the speed-of-answer requirement in a given period should be limited to withholding that percentage of the provider’s total VRS billing that corresponds to the percentage by which the provider fell short of the applicable standard during that period.⁸³

38. Generally, we seek comment on the relative costs and benefits of the two approaches. We seek comment specifically on the providers’ claim that the existing, “all-or-nothing” approach reduces providers’ incentive for compliance. In prior decisions, the Consumer and Governmental Affairs Bureau (CGB) has questioned whether, under the “all or nothing” approach, providers would in fact lose any of their incentive to provide adequate staffing after discovering they have missed the metric for a particular day.⁸⁴ We invite parties to submit any evidence that providers have actually reduced staffing in such circumstances in the past.

39. We also seek comment on the merits of the providers’ sliding scale proposal, including whether, if adopted, the proposed sliding scale should be modified to ensure that providers have a sufficient incentive to hire and deploy the necessary number of CAs to meet the standard. Should we include a penalty and/or a more streamlined process of refusal to pay for service for failure to meet such requirements, if this proposal is adopted? Further, given that providers appear to be easily meeting the DAC’s proposed standard at present, we seek comment and supporting data for the providers’ assertion that a “sliding scale” approach would reduce stress on CAs.

40. Alternatively, or in addition, should the Commission adopt an incentive-based system, as suggested by the providers, in which providers who meet stricter speed of answer thresholds receive additional compensation in order to meet the increased costs of providing faster service?⁸⁵ Further, should the Commission publish summaries of each provider’s speed-of-answer performance data, so that consumers can compare the performance of various providers in this regard? Could such publication enhance providers’ incentives to improve their speed-of-answer performance? We seek comments on the benefits and the costs or harms of publishing such data and on the amount of detail that would be useful for consumers to know regarding a provider’s speed-of-answer performance.

41. The providers also urge the Commission to adopt a self-executing exemption (*i.e.*, one that can be effective without prior Commission approval in each instance) from the speed-of-answer standard for calls occurring as a result of specific extraordinary events beyond a provider’s control and a streamlined waiver procedure to address other events that may justify a waiver of the speed-of-answer standard.⁸⁶ Comments are invited on these proposals.

3. Calculation Methodology

42. Finally, we seek comment on whether any changes or clarifications are needed in the methodology for calculating whether the speed-of-answer standard has been met. Currently, our rules state that the speed of answer for VRS is measured beginning from the time a VRS call reaches facilities operated by the VRS CA service provider.⁸⁷ We seek comment on whether this language adequately

⁸² *Id.*

⁸³ *Id.* at 3.

⁸⁴ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Video Relay Service Provider Requests for Temporary Waiver of the Speed-of-Answer Rule*, CG Docket Nos. 10-51, 03-123, Order, 29 FCC Rcd 7569, 7575 ¶ 19 n.52, 7578 ¶ 26 n.72 (CGB 2014); *Purple Communications, Inc., Request for Review of the Decision of the TRS Administrator to Withhold TRS Payments*, CG Docket No. 10-51, Order, 27 FCC Rcd 8014, 8024 ¶ 27 (CGB 2012).

⁸⁵ Joint VRS Providers Proposal at 4.

⁸⁶ *Id.* at 3-4.

⁸⁷ 47 C.F.R. § 64.604(b)(2)(iii)(B).

defines when the speed-of-answer “clock” starts. Regarding when a VRS call is “answered,” the 2005 *VRS Speed of Answer Order* stated that a “call is ‘answered’ when either a CA or an automated system responds to the incoming call and begins taking instructions from the calling party about the outbound call the calling party wishes to make.”⁸⁸ Our rules governing the speed of answer for other types of TRS calls specify that calls may be answered “by any method which results in the caller’s call immediately being placed, not put in a queue or on hold.”⁸⁹ In the *VRS Reform Order*, the Commission clarified that, because “VRS users can now dial the number they wish to call, and the connection of the call to the called party no longer requires the VRS provider to obtain telephone numbers and other information from VRS users,” the same definition of “answer” applicable to other TRS calls is also applicable to VRS calls.⁹⁰ We propose to amend the speed-of-answer rule so that it expressly incorporates the same language applicable to other TRS calls, *i.e.*, that the call must be “answered . . . by any method which results in the caller’s call immediately being placed, not put in a queue or on hold.” We seek comment on this proposal. Further, as noted above, the DAC recommends that the speed-of-answer be measured based on when the interpreter is connected to the call, and that a response by an interactive voice response (IVR) system not be allowed to count as an “answer” for speed-of-answer purposes.⁹¹ We seek comment on the costs and benefits of this proposal, and of alternative approaches to calculating a provider’s speed-of-answer when an IVR system is used.

B. Skills-Based Routing

1. Background

43. In the *VRS Reform Order*, the Commission considered comments advocating the authorization of “skills-based routing,” a practice whereby VRS callers could request that calls be routed to VRS CAs with particular skill sets – such as particular spoken-language abilities, interpreting, transliteration, and signing styles and skills, or knowledge of specific subject matters (*e.g.*, medicine, law, or technology).⁹² With skills-based routing, for example, legal, medical, and technical support calls that might not be familiar to the typical VRS interpreter could be routed to an interpreter with specialized knowledge in the relevant field. Raising the concern that allowing skills-based routing would increase the incentive of VRS users to substitute VRS for in-person sign language interpreting or video remote interpreting (VRI) services⁹³ and would pose a number of implementation issues, the Commission declined to permit additional forms of skills-based routing at that time.⁹⁴ Among other things, the

⁸⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, CC Docket No. 98-67, 20 FCC Rcd 13165, 13176 ¶ 21.

⁸⁹ 47 C.F.R. § 64.604(b)(2)(ii).

⁹⁰ *VRS Reform Order*, 28 FCC Rcd at 8673 ¶ 140.

⁹¹ DAC Recommendation at 1-2. IVR is interaction between a human and a computer in which the human caller inputs commands and requests to the computer, which responds in either pre-recorded or synthesized speech form. The human input can be in the form of spoken words or as tones sent via the telephone keypad. Ray Horak, *Webster’s New World Telecom Dictionary* 265 (2008).

⁹² *VRS Reform Order*, 28 FCC Rcd at 8691 ¶ 180.

⁹³ VRI is used when an interpreter cannot be physically present to interpret for two or more persons who are in the same location, and it may also be used when persons are in different locations. This service uses a video connection to provide access to an interpreter who is at a remote location. As with “in-person” interpreters, VRI services are generally contracted, arranged in advance, and paid for on a fee-for-service basis. *See id.* n.465.

⁹⁴ *Id.* at 8691, ¶ 180. *See also* *Reminder that Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot Be Used As A Substitute For “In-Person” Interpreting Services or Video Remote Interpreting (VRI)*, Public Notice, 20 FCC Rcd 14528, 14529 (2005) (“VRS cannot be used as a substitute for using an in-person interpreter or VRI in situations that would not, absent one of the parties’ hearing disability, entail the use of the telephone”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC

Commission also raised concerns that skills-based routing would be difficult to reconcile with the current requirements that VRS calls be answered in the order received and be subject to certain speed of answer specifications.

44. Notwithstanding the above concerns, in the Joint VRS Providers Proposal, the providers propose that the Commission conduct an eight-month trial of skills-based routing to assess the cost and feasibility of such an offering and to gain experience regarding its risk of abuse.⁹⁵ Some consumer groups similarly urge that allowing skills-based routing could substantially improve the quality of VRS by ensuring that, for specialized calls such as legal, medical, and technical support calls, interpretation is performed based on a level of familiarity with the field that is comparable to that of the communicating party.⁹⁶ In light of these requests, we now seek comment generally on whether to authorize “skills-based routing” on a trial basis.

2. General Considerations

45. First, we seek additional comment on the merits of skills-based routing generally. To what extent is skills-based routing necessary to achieve a telephone service that is functionally equivalent to the service provided to voice telephone users? Is skills-based routing consistent with the fundamental nature of TRS, which is currently subject to requirements that TRS calls must be answered in the order received,⁹⁷ that providers must not unreasonably discriminate in the handling of calls,⁹⁸ and that CAs must not refuse calls?⁹⁹

46. If skills-based routing is authorized on a permanent basis, how should the types of calls appropriate for skills-based routing be defined? Would it be appropriate to provide compensation for the cost of such interpreters from the TRS Fund as a cost of providing service that meets minimum TRS standards? Generally, what additional costs would be incurred by providers for the provision of skills-based routing? What indirect impact might its provision have on the TRS Fund?

47. For example, we seek comment on whether providers expect that they would need to pay higher wages to interpreters employed in the provision of skills-based routing. In general, when a person with specialized or unique skills is hired, such an employee often can command a significantly higher salary than can employees with more general skills. Would that be the case for skills-based routing? Should such additional labor costs be recoverable in VRS compensation rates, and if so, in what manner? To what extent could the provision of skills-based routing using higher-paid interpreters cause a migration of the most qualified interpreters to those positions, lowering the average quality of interpretation available on non-specialized calls?

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Docket Nos. 90-571, 98-67, CG Docket No. 03-123, 19 FCC Rcd 12475, 12537 ¶ 162 n.466, 12540 ¶ 172 n.490 (2004); *FCC 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*, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 1471 (2005) (*2005 TRS Marketing Practices PN*). VRS calls may be routed to Spanish-speaking ASL interpreters, however. *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 on Reconsideration, 20 FCC Rcd 13140 (2005). A consumer may also request that calls be routed to a male or female CA. 47 C.F.R. § 64.604(a)(1)(vi).

⁹⁵ Joint VRS Providers Proposal at 4.

⁹⁶ Consumer Groups April 7, 2015 *Ex Parte* at 3-4.

⁹⁷ *2005 TRS Marketing Practices PN*, 20 FCC Rcd at 1472, 1474.

⁹⁸ 47 C.F.R. § 64.604(c)(12).

⁹⁹ 47 U.S.C. § 225(d)(1)(E).

3. Trial of Skills-Based Routing

48. If we were to authorize a trial of skills-based routing, how should it be structured? Should skills-based routed calls during a trial period be exempt from all speed-of-answer compliance but subject to collection and reporting of speed-of-answer data, as the providers suggest?¹⁰⁰ What types of skills-based routing (*e.g.*, medical, legal, other call categories) should be included in the trial, or should the Commission leave it up to each provider to define the skills subject to special routing, as the providers suggest?¹⁰¹ Should skills-based routing be used for CAs who are skilled in addressing the communications needs of specific categories of persons with disabilities, such as individuals who are deaf-blind or have mobility disabilities in addition to their hearing loss? How would each of these call types benefit from skills-based routing, and what percentage of calls or minutes in each of these categories are likely candidates for skills-based routing? If a trial is limited to specific types of skills, should those be the same for all providers or should each provider be assigned a specific skill for trial purposes? Should Spanish-language interpreting, which is currently permitted but subject to the speed-of-answer requirement, be included in the trial in order to test whether exempting Spanish-language calls from the speed-of-answer rule will encourage greater availability of the service?¹⁰² Should the Commission limit the percentage of calls that can be subject to skills-based routing? Should the Commission waive the “sequential call rule” for successive calls not requiring specialized interpretation, so that such calls can be routed to a generalist interpreter?¹⁰³ Should the Commission impose a requirement that a caller requesting a specialist interpreter be given an estimate of the expected wait time and the option of waiting for a skills-based CA or proceeding with a regular interpreter?

49. If the Commission were to authorize a trial of skills-based routing, how long should that trial last? Is an eight-month test period, as proposed by the providers, sufficient for the public and the Commission to obtain sufficient data on the benefits, detriments, feasibility and costs of such system, and to determine what, if any, additional rules would be necessary to ensure that skills-based routing is not abused? What types of data should be collected during the trial to assess the costs and benefits of skills-based routing, including, *e.g.*, (1) quantity of calls and minutes subject to skills-based routing, (2) consumer satisfaction and service quality (including any changes in the quality of interpretation on generalist calls due to diversion of skilled interpreters to specialized calls), and (3) the potential for fraud, abuse, and waste, *e.g.*, by users substituting VRS for VRI or in-person interpreting, or by providers unjustly discriminating among users, such as by allowing high-volume users preferential access to highly skilled interpreters for calls that do not require specialized skill? What standards should be applied in assessing whether the interpreters to whom calls are routed actually have the relevant specialized skills and whether specialized interpreting is actually provided on such calls?

50. We believe that any provider’s participation in a trial of skills-based routing should be voluntary and thus that any costs incurred by providers to participate in such a trial would not be billable to the TRS Fund as exogenous costs or otherwise. We seek comment on this assumption.

C. Deaf Interpreters

51. We seek comment on whether to amend our rules to permit compensation for the use of deaf interpreters where needed to achieve functionally equivalent service on VRS calls. In the Joint VRS Providers Proposal, the providers contend that for some consumers of VRS, the provision of a hearing video interpreter in a VRS call is not sufficient for effective communications. According to the providers,

¹⁰⁰ Joint VRS Providers Proposal at 4.

¹⁰¹ *Id.*

¹⁰² *Id.* at 5-6.

¹⁰³ *Id.* at 6. The TRS rules currently provide that “[c]onsistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.” 47 C.F.R. § 64.604(a)(2)(vi).

some VRS consumers—including some who have limited English or ASL proficiency, some children, and some consumers with cognitive or motor disabilities—require the assistance of a deaf interpreter in addition to a hearing interpreter (on the same call) in order to communicate in a functionally equivalent manner. The providers further assert that the availability of deaf interpreters will help alleviate stress on the general interpreter pool by allowing the generalist interpreter to rely on the specialized interpretation provided by the deaf interpreter, rather than having to interpret the rudimentary sign language. The providers therefore urge the Commission to “encourage but not require providers to offer the assistance of qualified deaf interpreters.”¹⁰⁴

52. We seek comment on the merits of this proposal, including the types and estimated percentage of VRS users who would benefit from the availability of deaf interpreters. We also seek comment on the costs of providing deaf interpreters. How many minutes per month is it likely that such interpreters would be needed to participate in VRS calls? How many additional interpreter-hours would be needed and at what hourly rate?

53. In the event that the Commission decides to adopt a rule that supports the provision of deaf interpreters, how should we define the necessary qualifications for a deaf interpreter? To permit the efficient deployment of deaf interpreters, should the Commission allow these individuals to be added to a call remotely from another VRS call center, as the providers propose?¹⁰⁵ What recordkeeping and reporting requirements are appropriate?

54. The providers also propose that the Commission treat deaf interpreters as a form of skills-based routing, which would exempt calls requiring a deaf interpreter from the speed-of-answer calculations. Providers contend that this policy would mitigate the risk to deaf interpreter health and well-being by not demanding more productivity out of them than is required for a generalist interpreter. We seek comment on this approach, including the extent to which such an exemption would impede or contribute to the Commission’s general goal of achieving functional equivalency for VRS consumers, while ensuring that service is provided efficiently and protecting the TRS Fund from fraud, abuse, and waste.

55. We also seek comment on whether, before authorizing the use of deaf interpreters on a permanent basis, the Commission should first conduct a trial of this practice, similar to the trial of skills-based routing discussed in the previous section. Regarding such a trial, we invite parties to comment on the types of data that should be collected during the trial to assess the costs and benefits of using deaf interpreters, including, *e.g.*, (1) the quantity of interpreters that would be needed per call center, (2) consumer satisfaction and service quality (including any changes in the quality of interpretation on calls using such interpreters), and (3) the potential for fraud, abuse, and waste if such interpreters are used.

D. At-Home Interpreting

56. In 2011, the Commission adopted a comprehensive set of rules intended to substantially reduce fraud, abuse, and waste in the VRS program.¹⁰⁶ Previously, as many as fifty companies that were not directly eligible for payment from the Fund were nevertheless independently offering VRS under their own names. Such entities had little or no direct accountability to the Commission with respect to the provision of their services. In the April 2011 *VRS Call Practices R&O* and the July 2011 *iTRS Certification Order*, the Commission took steps to curtail the proliferation of ineligible VRS providers, as well as other measures to exercise greater control over the provision of VRS to prevent fraud. Fearing

¹⁰⁴ Joint VRS Providers Proposal at 6.

¹⁰⁵ *Id.* at 7.

¹⁰⁶ See *Structure and Practices of the Video Relay Services Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (*VRS Call Practices R&O*); *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, CG Docket No. 10-51, 26 FCC Rcd 10898 (2011) (*iTRS Certification Order*).

that allowing VRS CAs to work from home without direct supervision would pose more risks of abuse than benefits to the VRS program, the Commission adopted a rule prohibiting VRS interpreters from working from their homes.¹⁰⁷ The Commission took this measure, it explained, because during its ongoing investigations of fraud in the VRS industry, it had “identified numerous incidents in which unsupervised VRS CAs may have been complicit in facilitating fraudulent calls.”¹⁰⁸

57. Shortly after the Commission adopted its rule prohibiting home interpreting, CSDVRS, LLC (CSDVRS) filed a Petition for Temporary Waiver, seeking a temporary waiver of the Commission’s prohibition against VRS interpreting from the home.¹⁰⁹ CSDVRS outlined fraud prevention techniques utilized in its program,¹¹⁰ and suggested a fixed maximum percentage of interpreters and calls to be served through the remote program, which it set at 10%.¹¹¹

58. In the *VRS Reform Order*, the Commission sought comment on whether to permit VRS CAs to work from home during the overnight hours when the safety and security of CAs may be endangered from travelling to or from VRS call centers.¹¹² Commenters were mixed in their reaction to this proposal, but all urged strict safeguards if such a proposal is adopted.¹¹³

59. We now seek comment on whether CAs should be permitted to work from home at any time, subject to appropriate safeguards. In light of our previous findings and ongoing concerns about abuse, we specifically ask commenters whether the circumstances that resulted in this prohibition have changed sufficiently to warrant a rule change, and ask what specific safeguards are needed to ensure protection against fraud and abuse of the VRS program were such rule change to take place. We further note that in addition to fraud concerns, the *VRS Call Practices R&O* raised concerns that home interpreting arrangements might fall short of achieving full compliance with the Commission’s mandatory

¹⁰⁷ 47 C.F.R. § 64.604(b)(4)(iii).

¹⁰⁸ *VRS Call Practices R&O*, 26 FCC Rcd at 5556 ¶ 16. As one example, VRS CAs working from home had “handled lengthy relay calls solely on behalf of family members who placed these calls daily. In one situation, a family member regularly placed VRS calls to another family member through yet a third family member serving as a VRS CA, and spent the entirety of those calls reading from a book for hours at a time.” *Id.*, n.56, citing Transcript of Testimony at 197-199, *United States v. Pena*, D.N.J. (2010) (No. 09-858) (VRS CAs knew that caller was being paid to make bogus calls); *See also United States v. Hawkins et al.*, Criminal No. 857, D.N.J. (Nov. 18, 2009); *United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009).

¹⁰⁹ *See* Petition for Temporary Waiver of CSDVRS, LLC, CG Docket No. 10-51 (filed Aug. 12, 2011) (CSDVRS Petition).

¹¹⁰ *Id.* at 7-8. CSDVRS reports that the fraud prevention techniques that it utilizes include “a rigorous screening process which qualifies the interpreter to be part of this program after three years of call center performance” and which “ensures a minimum level of proven integrity and ethical decision making of the selected interpreter.” *Id.* at 6. CSDVRS also cites its remote monitoring software, which automatically records the interpreters’ clicks and operations for the entire duration of every call. *Id.* at 6-7. In addition, CSDVRS points to its use of an external camera, which permits random checks by upper management and regular checks by the supervisor. *Id.* at 4. If any of these systems is altered in any way, CSDVRS states that the interpreter is subject to immediate termination from the program. *Id.* *See also* Letter from Mike Strecker, CSDVRS, to Marlene H. Dortch, FCC Secretary, CG Docket No. 10-51, at 1 (filed June 17, 2015).

¹¹¹ CSDVRS Petition at 8-9.

¹¹² *VRS Reform Order*, 28 FCC Rcd at 8724-25 ¶¶ 280-82.

¹¹³ For example, the Registry of Interpreters for the Deaf (RID) expressed support for the CSDVRS proposal, as well as other work from home possibilities, but urged that, if allowed, “guidelines and safeguards . . . be put in place to protect the health and safety of the interpreter, the experience of the consumer, and the integrity of VRS.” RID Comments at 21; *see also* RID Reply Comments at 4-5. All citations to comments and reply comments in this FNPRM refer to the comments and reply comments filed in CG Docket Nos. 10-51 and 03-123 on August 19 and September 18, 2013, in response to the further notice of proposed rulemaking contained in the *VRS Reform Order*.

minimum standards for TRS, including standards protecting call privacy, requiring the handling of 911 calls, mandating service redundancy, and assuring certain call quality.¹¹⁴ Finally, we ask commenters to address the costs and benefits of permitting CAs to work from home and how such costs and benefits would differ, based on whether CAs are permitted to work from home at any time or only during overnight hours.

E. Assigning Ten Digit iTRS Numbers to Hearing Individuals

60. We propose to allow VRS providers to assign ten-digit iTRS numbers to hearing individuals so that they are able to place and receive direct (point-to-point) video calls to and from other VRS users. In the *VRS Reform Order*, the Commission sought comment on whether to allow such use,¹¹⁵ and every commenter urged the Commission to do so.¹¹⁶ In this FNPRM, we ask commenters to refresh the record and provide additional comment on a number of points.

61. *Statutory authority.* We seek comment on whether we have statutory authority to allow providers to assign ten-digit iTRS numbers to hearing individuals. Section 225 requires the Commission to ensure that TRS are available “to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States,”¹¹⁷ and section 225(a)(3) defines TRS to mean:

[T]elephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communications by wire or radio.¹¹⁸

The objective of section 225 is thus to make services that enable functionally equivalent communication available to consumers who are deaf, hard-of-hearing, deaf-blind or have speech disabilities. Although the forms of TRS authorized to date utilize CAs, prior Commission decisions recognize that functionally equivalent service may occur without the assistance of a CA and have authorized point-to-point video service among registered VRS users pursuant to the Commission’s ancillary authority.¹¹⁹ As the Commission stated in the *Second TRS Numbering Order*, “point-to-point services even more directly support the [purposes of section 225]: they are more rapid in that they involve direct, rather than interpreted, communication; they are more efficient in that they do not trigger the costs involved with

¹¹⁴ *VRS Call Practices R&O*, 26 FCC Rcd at 5556-58 ¶¶ 17-19.

¹¹⁵ *VRS Reform Order*, 28 FCC Rcd at 8713 ¶ 243.

¹¹⁶ ASL/Global Comments at 40; CAAG Comments at 5-6; Convo Comments at 14-15, CSDVRS Comments at 34-39; Purple Comments at 12-14; RID Comments at 11; Sorenson Comments at 33-34; Comments of Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, American Association of the Deaf-Blind, California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc., Speech Communications Assistance By Telephone, Inc., and Rehabilitation Engineering Research Center on Telecommunication Access (Consumer Groups Comments) at 14-16; Sorenson Reply Comments at 26-27; Video Relay Services Consumer Association (VRSCA) Reply Comments at 3.

¹¹⁷ 47 U.S.C. § 225(b)(1).

¹¹⁸ *Id.* § 225(a)(3).

¹¹⁹ *Id.* § 154(i); see *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 822 ¶ 67 (2008) (*Second TRS Numbering Order*). See also *VRS Reform Order*, 28 FCC Rcd at 8659 ¶ 97 n.224 (noting that the provisioning of routing capability for point-to-point calls is appropriately supported by the TRS Fund).

interpretation or unnecessary routing; and they increase the utility of the Nation's telephone system in that they provide direct communication – including all visual cues that are so important to persons with hearing and speech disabilities.”¹²⁰ We seek comment on whether enabling direct video communication between eligible VRS users and ASL-using hearing persons will likewise further efficient access to functionally equivalent communication and, generally, whether we have authority, either directly under section 225 or pursuant to our ancillary authority,¹²¹ to allow the use of VRS facilities for direct video communication between hearing individuals and VRS users.

62. *Benefits.* We seek comment on whether permitting eligible VRS users to communicate directly with hearing people who can use ASL will increase the functional equivalence of TRS by facilitating telephone communication between members of the deaf and hearing communities.¹²² Currently, our rules permit deaf consumers to use their ten-digit videophone numbers to place direct calls to and from one another without using a CA; however, consumers who wish to use their ten-digit numbers to communicate with hearing individuals must do so through a CA. Prior comments suggest that enabling eligible VRS users to communicate directly with hearing individuals who can sign will not only conserve the resources of the TRS Fund but will also allow more natural, efficient, and effective communication between the parties.¹²³ We seek further comment on these apparent benefits and on whether, to ensure that the benefits of such direct communication become available, we should require or merely authorize providers to register hearing individuals for this service.

63. *Costs.* We tentatively conclude that assigning hearing individuals their own numbers would cause no significant increase in the costs incurred by VRS providers, as they already handle a substantial volume of point-to-point calls among registered VRS users. We seek comment on this tentative conclusion. Would authorizing direct video communications between hearing persons who speak ASL and VRS users reduce the number of VRS calls between such parties and thereby reduce the compensable minutes of VRS billed to the TRS Fund?¹²⁴ We invite commenters to submit estimates, with supporting documentation to the extent this is available, of any such cost savings and of any incremental costs that would be incurred as a result of this proposal, *e.g.*, to register hearing persons as users, to assign users ten-digit VRS numbers, and to provide back office services needed to support user registration and the provision of these direct communications services.¹²⁵

64. *Cost Recovery.* We seek additional comment on who should bear such costs as will be incurred to provide this service – a question on which commenters took varying positions in response to the *VRS Reform Order*.¹²⁶ We do not propose that either eligible VRS users or hearing persons should be

¹²⁰ *Second TRS Numbering Order*, 24 FCC Rcd at 822 ¶ 67.

¹²¹ In the *Second TRS Numbering Order*, the Commission relied on ancillary authority to authorize point-to-point communication between eligible VRS users, because such communication “occurs between persons with hearing or speech disabilities, not between a person with such a disability and a hearing person” and thus did not fit the statutory definition of TRS. *Id.* The type of point-to-point service we propose to authorize here, by contrast, will facilitate communication between a deaf, hard-hearing, or deaf-blind person and a hearing person. In any event, the statute has since been amended to define TRS in terms of communication between “an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability” and “one or more individuals.” 47 U.S.C. § 225(a)(3).

¹²² Consumer Groups Comments at 14 (“Deaf and hard of hearing consumers should not exist in silos.”).

¹²³ *See id.* at 16; VRSCA Reply Comments at 3.

¹²⁴ CAAG Comments at 5-6.

¹²⁵ By “back office services,” we mean verification of the hearing person’s identity by the provider or the TRS-URD, the placement of the user in the iTRS database, and any other similar tasks necessary to the provision of this service.

¹²⁶ *See* CSDVRS Comments at 34-39 (proposing that hearing persons pay a monthly subscription fee); Purple Comments at 12-14 (providers could charge a hearing user a processing fee and pass on any equipment costs to the

(continued....)

required to pay any per-call or per-minute charges to use this service. Although both parties to a point-to-point video call would benefit from this service, the incremental costs of such point-to-point calls appear to be negligible, and we believe that imposing a per-call or per-minute charge could create an unnecessary disincentive for hearing persons to register for or use point-to-point video service.¹²⁷ Further, in accordance with our longstanding policy regarding point-to-point calls generally, we also do not propose to authorize per-call compensation for such calls from the TRS Fund.¹²⁸

65. As to initial and monthly costs, in keeping with our existing policies we do not propose that the TRS Fund should be used to pay the costs of video equipment and broadband subscriptions necessary for hearing users to access this service. Regarding number assignment, back office services, and the like, we propose that such costs be handled in the same manner as the costs of comparable functions performed in connection with number assignment and point-to-point communications for eligible VRS users. We seek comment on this proposal.

66. *Prevention of fraud, abuse, and waste.* We also propose to adopt measures to prevent fraud, abuse, and waste in connection with ten-digit numbers assigned to hearing individuals. Specifically, we propose that the default provider must transmit a hearing person's registration information, as well as the assigned ten-digit number, to the TRS-URD and must notify both the TRS Numbering Directory and the TRS-URD that the registrant is a hearing person who is not entitled to place or receive VRS calls. We seek comment on what additional registration information, if any, beyond that collected for eligible VRS users, we should require the default provider to collect and provide to the TRS-URD for hearing users.¹²⁹ Should we require a self-certification from hearing registrants, and if so, what language should be included?¹³⁰ We invite comment on these proposals and on any alternatives that parties may suggest.

IV. PROCEDURAL MATTERS

67. *Regulatory Flexibility.* As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, 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 FNPRM. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the FNRPM and must have a separate and distinct heading designating them as responses to the IRFA.

68. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹³¹ interested parties may file comments and reply comments regarding the Second Further Notice

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user); Sorenson Comments at 33-34 (providers should not bear any new costs); CAAG Comments at 5 (costs should be covered by the Fund).

¹²⁷ *See also* 47 U.S.C. § 225(d)(1)(D) (Commission must "require that users of [TRS] pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination"). Although point-to-point video communication is different from CA-based TRS, charging higher rates for such service than for functionally equivalent voice communications would not appear to serve the Congressional purposes underlying section 225.

¹²⁸ *Second TRS Numbering Order*, 24 FCC Rcd at 822 ¶ 66, n.228 (point-to-point calls are not compensable from the Fund); *VRS Reform Order*, 28 FCC Rcd at 8659 ¶ 97, n.224 ("We continue to believe it is not appropriate to provide compensation for each minute of point-to-point traffic carried based on existing TRS rates, which include many costs that do not arise in the case of point-to-point calls").

¹²⁹ *See* 47 C.F.R. § 64.611(a)(4) (specifying the registration information VRS providers must collect and transmit to the TRS-URD).

¹³⁰ *See id.* § 64.611(a)(3) (self-certification rule for VRS users).

¹³¹ *Id.* §§ 1.415, 1.419.

on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹³²

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <<http://fjallfoss.fcc.gov/ecfs2/>>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours 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.
 - 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.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

69. *Ex Parte Presentations.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).¹³⁴ In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

70. *Initial Paperwork Reduction Act of 1995.* This Further Notice seeks comment on proposed rule amendments that may result in new or revised information collection requirements. If the Commission adopts any such proposals, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995.¹³⁵ In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-

¹³² See *Electronic Filings of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹³³ 47 C.F.R. §§ 1.1200–1.1216.

¹³⁴ *Id.* §§ 1.1206(b).

¹³⁵ Pub. L. 104-13; 44 U.S.C. § 3501 *et seq.*

198,¹³⁶ we seek comment on how the Commission might “further reduce the information collection for small business concerns with fewer than 25 employees.”¹³⁷

71. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

V. ORDERING CLAUSES

72. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 201(b), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201(b), 225, 303(r), this Further Notice of Proposed Rulemaking IS ADOPTED.

73. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³⁶ 44 U.S.C. § 3506(c)(4).

¹³⁷ *Id.* § 3506(c)(4).

APPENDIX

**Initial Regulatory Flexibility Analysis
CG Docket Nos. 10-51, 03-123**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the 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 deadline for comments on the FNPRM provided in the item. The Commission will send a copy of the entire FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the FNPRM and the IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. The Commission proposes to modify in part the four-year compensation rate plan for video relay service (VRS) adopted in 2013 and also seeks comment on whether to adopt a number of measures that could enhance the functional equivalence of VRS.

3. Although the Commission believes that the four-year schedule of VRS compensation rate reductions continues to be justified in order to gradually move compensation rates close to a level close to average allowable provider costs, the Commission proposes to modify the schedule as applied to the smallest VRS providers, i.e., those providing 500,000 or fewer compensable minutes of use of VRS per month. Spreading rate reductions over a four-year period was largely intended to provide a reasonable opportunity for the smallest providers to reach minimum efficient scale while benefitting from the *VRS Reform Order* initiatives which were intended to address many of the issues that have made it difficult for small providers to operate efficiently.⁴ The smallest providers have achieved significant reductions in their per-minute costs but have yet to approach the size or efficiency levels of their larger rivals. Further, some relevant *VRS Reform Order* initiatives, such as the open source video access platform, will soon be implemented, and the Commission believes all existing providers should have a fair opportunity to participate in this important reform. Finally, some small providers offer service features that may be helpful in advancing the goal of functionally equivalent service for certain subsets of VRS consumers, such as Spanish language speakers, deaf-blind consumers, and deaf-owned businesses.

4. Therefore, the Commission proposes to temporarily “freeze” the rate applicable to providers with monthly call volumes that do not exceed 500,000 compensable minutes per month, effective July 1, 2015, at the level of the Tier I rate (\$5.29 per minute) in effect on June 30, 2015. The Commission proposes that this rate remain in effect for a maximum of 16 months and seeks comment on the specific duration of the rate freeze and the rate that should apply upon its expiration. The Commission also seeks comment on whether there are unique types of VRS that are inherently more expensive to provide and to which an alternative rate level should apply. Finally, the Commission invites

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

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8698-99 ¶¶ 199-200 (2013) (*VRS Reform Order*), *aff'd in part and vacated in part sub nom. Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014) (*Sorenson*).

comment on alternatives to its rate freeze proposal, such as freezing rates in all tiers, for all providers, or freezing rates for all providers for their first 500,000 minutes.

5. In addition to the proposed VRS compensation rate freeze, the FNPRM seeks comment on a number of rule changes that may improve the functional equivalence of VRS. Specifically, the FNPRM seeks comment on whether to: (1) impose a faster speed-of-answer standard, *e.g.*, requiring VRS providers to answer 80 percent of all VRS calls within 45 seconds, as measured on a monthly basis, in lieu of the current requirement to answer 120 percent of all VRS calls within 45 seconds, as measured on a monthly basis; (2) adopt a limited trial of “skills-based routing,” allowing VRS callers to request that calls be routed to VRS CAs with particular skill sets, such as particular spoken-language abilities, interpreting, transliteration, and signing styles and skills, or knowledge of specific subject matters (*e.g.*, medicine, law, or technology); (3) authorize providers to use qualified deaf sign language interpreters, in addition to the hearing interpreters, as communications assistants (CAs) for those consumers who need such additional assistance for effective communication; (4) authorize the use of at-home interpreters under certain conditions; and (5) permit the assignment of ten-digit numbers for video phones used by hearing individuals who know American Sign Language (ASL) to communicate directly with deaf consumers. The Commission seeks comment on the costs and benefits of each of these measures.

B. Legal Basis

6. The authority for this proposed rulemaking is contained in sections 4(i), 201(b), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201(b), 225, 303(r).

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

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

8. *VRS Providers.* These services can be included within the broad economic category of All Other Telecommunications. Six providers currently receive compensation from the TRS Fund for providing VRS: ASL Services Holdings, LLC; CSDVRS, LLC; Convo Communications, LLC; Hancock, Jahn, Lee and Puckett, LLC d/b/a “Communications Axess Ability Group”; Purple Communications, Inc.; and Sorenson Communications, Inc. .

9. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: “This U.S. industry comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.

⁵ 5 U.S.C. § 603(b)(3).

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁹ The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of \$32.5 million or less.¹⁰ All the authorized VRS providers can be included within the broad economic census category of All Other Telecommunications. Under this category and the associated small business size standard, approximately half of the VRS providers can be considered small.

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

10. No additional compliance requirements would be imposed by the VRS compensation rate freeze proposed in this FNPRM. If the Commission were to adopt some or all of the service improvement measures on which comments are sought in the FNPRM, the adoption of such measures could result in additional reporting, recordkeeping, and other compliance requirements. Specifically, in seeking comments on whether to authorize a limited trial of “skills-based routing,” provide for the use of qualified deaf sign language interpreters to provide additional communications assistance for VRS users who need such additional assistance for effective communication, or permit the assignment of ten-digit numbers for video phones used by hearing individuals to communicate directly with deaf consumers, the Commission has also sought comment on whether additional reporting and recordkeeping requirements would be needed to document the use of such features in order to prevent fraud, abuse, and waste. There may also be associated recordkeeping, reporting, or compliance requirements if the Commission were to allow the use of at-home interpreters, but such compliance requirements would apply only if a provider chooses to permit its interpreters to work from home. If the Commission were to increase the required speed of answer for VRS calls, no additional reporting and recordkeeping requirements are contemplated, and the cost of compliance would increase only to the extent that the new standard exceeded providers’ current performance.

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

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹¹

12. The temporary compensation rate freeze proposed in this FNPRM would not impose additional compliance burdens and would temporarily ease the impact of existing VRS regulations on small entities by temporarily increasing the VRS compensation rate for small entities above the rate currently in effect. Similarly, if the Commission were to amend its rules to authorize at-home interpreting for VRS, the impact of existing VRS regulations on small entities could be reduced because providers would have additional flexibility to structure their VRS operations so as to minimize cost and maximize efficiency.

⁹ U.S. Census Bureau, North American Industry Classification System, Definition of NAICS Code 517919. See <<http://www.census.gov/cgi-bin/sssd/naics/naicsrch>>.

¹⁰ See 13 C.F.R. § 121.201, NAICS Code 517919.

¹¹ 5 U.S.C. § 603(b).

13. Regarding the possible additional record-keeping and reporting requirements that could be adopted if the Commission were to authorize skills-based routing, deaf interpreters, or assignment of ten-digit numbers to hearing individuals using video phones, the Commission is seeking comment on the alternative of allowing providers to choose whether to provide such features and incur the associated compliance requirements.

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

14. None.

**STATEMENT OF
CHAIRMAN TOM WHEELER**

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51;
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Further Notice of Proposed Rulemaking

Video Relay Service (VRS) is a revolutionary communications tool for people with hearing and speech disabilities. It allows individuals whose primary language is American Sign Language (ASL) to communicate over the phone system with hearing persons without having to type what they want to say.

The Commission has acted responsibly to ensure that the fees paid for this service to VRS providers – fees generated from consumers' phone bills – are just and reasonable. To this end, in 2013, the Commission unanimously adopted reforms that began a four-year, four-step reduction in VRS rates, to be more closely aligned with provider costs. We are currently in the third year of these reforms.

However, as is typical in telecommunications services, some providers have scale economies and others do not. In an effort to assure opportunity for small operators, the TRS Fund's payment schedule is tiered and adjusted gradually to reflect the declining costs of VRS, while providing a reasonable opportunity for all providers to grow and increase their efficiencies during this glide path.

This further notice proposes action to ensure the fairness of these rates. By temporarily freezing the VRS rates for the smallest providers, we can afford these companies an additional opportunity to make this a competitive market. Among other things, the notice recognizes that smaller providers may serve niche disability communities that larger VRS providers do not. At the same time, the item adopted recognizes our fiduciary responsibility to telephone subscribers whose payments contribute to the TRS Fund.

The further notice also reflects the Commission's interest in ensuring high quality, functionally equivalent communications services for consumers who rely on VRS. It proposes or seeks comment on service feature improvements for the VRS program, including an improved speed by which VRS calls are answered; a trial for sign-language interpreters that are skilled in certain subject matters (e.g., medical, legal, and technical) to more easily handle calls dealing with these issues; the use of deaf interpreters to supplement hearing interpreters on calls from persons with limited language skills; the use of at-home interpreting services to address interpreter shortages and facilitate the provision of VRS during overnight hours and unforeseen emergencies; and the assignment of ten-digit numbers to hearing individuals to facilitate direct (point-to-point) video calls between individuals with and without disabilities. As discussed in the FNPRM, these measures have been proposed in this item because it appears they can be implemented or at least given a trial without significantly increasing VRS costs. Each of these measures is designed to address the communications needs of VRS users, and to ensure that VRS is functionally equivalent to its voice telephone counterparts.

Video Relay Service was a significant leap for communications equality for people who are deaf or hard-of-hearing. With this item we take a step forward to improve the effectiveness of this critical tool.

**STATEMENT OF
COMMISSIONER MIGNON CLYBURN**

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51;
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Further Notice of Proposed Rulemaking

In 2013, the Commission took action to modernize and reform our Video Relay Service (VRS) program by adjusting the rates and making other programmatic changes that have benefited deaf, hard of hearing, deaf-blind, or consumers with speech disabilities who rely on this critical service to communicate with family, friends, and emergency personnel. I am pleased to support today's Further Notice of Proposed Rulemaking, which seeks comment on ways to further enhance the program for consumers while ensuring that we have constraints to guard against waste, fraud and abuse.

One aspect of the 2013 Order that has fallen a bit under the radar is the open platform initiative. I am excited to note that the initiative, known as Accessible Communications for Everyone (ACE), is scheduled for launch in mid-2016, with a beta version available in early 2016. Once implemented, ACE will be available to everyone as an app and should facilitate some of the proposals in the Further Notice, including an option to have the first available VRS provider answer the call, which should encourage competition among VRS providers. And, if the Commission decides to launch skills-based routing, the app will support this functionality as well. I look forward to the benefits of the ACE initiative being available to everyone and thank the Commission staff for their dedication to ensure that this vision becomes a reality.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51;
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Further Notice of Proposed Rulemaking

Under the Americans with Disabilities Act, functional equivalency has been the foundation of our telecommunications relay service policies. Functional equivalency may sound like the kind of regulatory lingo that only a lawyer could love. But for millions of Americans with hearing and speech impairments, it means that they have the right and ability to pick up the phone, reach out and connect, and participate more fully in the world.

Our video relay service program, which allows deaf and hard-of-hearing persons to communicate using the phone system in a conversational way, plays a vital role in providing functional equivalency. But with the march of time comes changes in technology. So in order to keep our VRS policies current and honor the spirit and substance of functional equivalency we need to make adjustments. This rulemaking seeks to do just that. We seek comment on reexamining VRS compensation for the smallest VRS providers and reaffirm our goal of fostering a competitive VRS marketplace. We also seek comment on service improvements, including the time it takes to answer a VRS call. At the same time, in light of the history of this program, we seek comment on appropriate safeguards to guard against the potential for any new waste and abuse.

I look forward to the record that develops in this proceeding.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51;
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Further Notice of Proposed Rulemaking

Twenty-five years ago, President George H.W. Bush signed the Americans with Disabilities Act (ADA), which signaled our national commitment to help individuals with a hearing or speech impairment benefit from communications services functionally equivalent to those that many people take for granted.¹ And with this item, we take another step towards following through on that commitment.

Take the issue of skills-based routing for video relay service (VRS) calls. More than three years ago, organizations such as Telecommunications for the Deaf and Hard of Hearing, the National Association of the Deaf, Deaf Seniors of America, and the National Black Deaf Advocates told the FCC that “randomly placing VRS [interpreters] with callers . . . falls short of functional equivalence.”² That’s because a typical interpreter may not be able to convey unfamiliar words or phrases like “nephrolithiasis” and “*force majeure*.” Only specialized interpreters trained in medical or legal terminology and familiar with the relevant signs can easily relay conversations using these terms to VRS users.

So when the *VRS Reform Order* was pending at the Commission two years ago, I proposed a trial of skills-based routing. Unfortunately, I was unable to persuade my colleagues at the time.³ But thanks to the tireless efforts of dedicated advocates like Claude Stout, the Executive Director of Telecommunications for the Deaf and Hard of Hearing, we have turned the corner.

For in this *Further Notice*, we seek comment on opening a skills-based routing trial. A trial will give participating VRS providers the opportunity to route designated calls to specialized relay interpreters. That will allow, for example, interpreters trained in medical terminology to handle calls made to hospitals and clinics. I’ll bet that most VRS users will appreciate that opportunity. And those who aren’t interested need not participate, since the trial will be wholly voluntary. Moreover, this trial will give us the facts we need to assess the costs and benefits of skills-based routing and evaluate whether or not it works.

Skills-based routing is not the only quality of service improvement on the table. We are now proposing to strengthen the speed-of-answer requirement for VRS, as recommended by our own Disability Advisory Committee. We are seeking comment on a separate trial on the use of deaf interpreters. And we are structuring these improvements so that moving forward will not require us to second-guess the VRS rate framework that was unanimously adopted back in 2013.

I appreciate the willingness of my colleagues to accommodate these improvements to the service. And I hope to see soon these long-delayed improvements for the deaf and hard-of-hearing Americans who use VRS. To borrow from former Kansas Senator Bob Dole, one of my personal heroes and the prime force behind the ADA, this is one more step toward ending the “exclusion of persons with disabilities from the mainstream of American life.”⁴

¹ Americans with Disabilities Act, Pub. L. No. 101-336, § 401(a) (1990).

² Deaf and Hard of Hearing Consumer Advocacy Network *et al.* Comments, CG Docket Nos. 10-51, 03-123, at 9 (Mar. 9, 2012).

³ *Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8691, para. 180 (2013).

⁴ Robert Dole, Statement on the Signing of the Americans with Disabilities Act (July 16, 1990), *available at* <http://doleinstitute.org/about-bob-dole/a-legacy-of-leadership/disabilities/>.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART, DISSENTING IN PART**

Re: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51;
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Further Notice of Proposed Rulemaking

I was not at the Commission when it established the rate structure for Video Relay Service (VRS), but I understand that one purpose was to ensure that consumers who pay fees on their phone bills to support Telecommunications Relay Services (TRS), including VRS, do not have to contribute more than what is necessary. That is an extremely worthy directive and one we shouldn't dismiss haphazardly.

Overall, I support seeking comment on whether freezing VRS rates for the three smallest providers for a time period is justified given their costs. At the same time, however, I was troubled to learn that some providers are potentially receiving reimbursement for costs that may not be directly related to the provision of service. Specifically, it appears that some providers include expenditures for travel, meals, sponsorships, and other similar items. My concerns are two-fold.

First, as a general matter, those who follow our universal service proceedings know that the Commission has renewed its focus on ensuring that funding from consumers is targeted to the intended purposes. Indeed, we recently issued a Public Notice reminding recipients of high-cost universal service support that certain expenses—including personal travel, food, and sponsorships—are not necessary to the provision of supported services and, therefore, may not be recovered through USF. It is just as critical that we ensure that consumer dollars devoted to TRS are targeted to providing service.

Second, the premise of this rate freeze would be that rates are too low to enable providers to recover the costs of providing service. If, however, costs are above rates because of non-essential expenditures, then a rate freeze would not appear to be warranted. I hope that by seeking comment we will be able to better understand the data and whether a limited freeze for the smallest providers is justified. At a minimum, we will need more detail on the various categories of expenses and, if they are warranted, whether they fall within a reasonable range.

Moreover, given these outstanding issues on costs, I do not think it is appropriate, in this item, to open the door to new TRS expenses for additional services. These additional services may or may not be good ideas that we may or may not have authority to implement. While I was not completely opposed to putting them out for comment through our standard procedures to better understand these issues, making specific proposals on the services in this Further Notice and linking the proposals to the rate freeze, is flatly wrong. Specifically, we are suggesting that any costs associated with them could be included when determining whether to continue down the VRS glide path. If providers want to offer these new services, let them pay for them, not TRS, and not by making it a quid pro quo for stopping the rate reductions already in the works.

To be clear, I am already skeptical that these services would impose additional costs or are actually beneficial. For example, the Notice proposes to reduce the speed of answer to a level that all providers are already able to meet today. Accordingly, there should be no additional expenses associated with this proposal.

That said, I am sure it will be argued that at least some of these proposals increase providers' expenses and, therefore, the Commission should freeze or even raise rates. That seems extremely dubious at this point but it seems prudent that we first understand whether the current rate structure is justified based on the existing services and requirements before complicating the picture by adding a bevy of new ones. Therefore, I must dissent from this portion of the Further Notice.

Moving forward with various TRS reforms in the future, my hope is that we will be able to take advantage of new technologies, apps, and services to further reduce both the burden on ratepayers and the Commission's reliance on rate regulation as a means to keep TRS fund growth in check. As I have stated before, we must change our overall mindset to embrace technologies, such as free texting applications, that may serve as a better and more effective means of service to the disabled community, while increasing price efficiency for those paying into the system.