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

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

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION AND SUMMARY

1. Today, the Federal Communications Commission (Commission) acts to revitalize one of our most important disability rights initiatives—enabling functionally equivalent communication for people with disabilities whose primary language is American Sign Language (ASL).[1] By strengthening the Telecommunications Relay Services Fund's (TRS Fund or Fund) support for Video Relay Service (VRS), we ensure consumers access to highly qualified ASL interpreters. Our renewed commitment to improving VRS also will encourage innovation and enhanced service quality, responding to recent changes in how people communicate that have outlasted the pandemic. For example, with the rapid growth of video conferencing as an essential communications tool, increased Telecommunications Relay Services (TRS) funding—in tandem with the Commission's recently proposed accessibility initiatives[2]—will enable VRS providers to explore technological solutions and collaborate with video platform engineers to enable an integrated, audio-visual presence for ASL interpreters in video conferences. In addition, investing in TRS Fund support for VRS will help fulfill the promise of the Commission's 911 initiatives[3]—e.g., ensuring that every VRS user's location can automatically be identified for every 911

[1] *See* 47 U.S.C. § 225(a)(3), (b)(1); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-53, para. 23 (2000) (*2000 TRS Order*) (explaining that VRS "will make relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language").

[2] *See Access to Video Conferencing; Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule*, CG Docket Nos. 23-161, 10-213, 03-123, Report and Order, Notice of Proposed Rulemaking, and Order, FCC 23-50 (June 12, 2023) (cited herein as *Video Conferencing Order* when referencing the Report and Order and Order and *Video Conferencing Notice* when referencing the Notice of Proposed Rulemaking).

[3] *See Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Notice of Proposed Rulemaking, FCC 22-96 (Dec. 22, 2022) (*Location-Based Routing Notice*) (location-based routing proposals); *Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, FCC 23-47 (June 9, 2023) (*NG911 Notice*) (Next Generation 911 proposals).

call[4]—and facilitate longer-term work on a one-number solution for VRS, to seamlessly merge the use of relay with mainstream voice, video, and texting services.

2. *Estimating the cost of VRS*. To ensure that VRS users have access to high-quality interpreting and state-of-the-art communications technology, we make several key changes in the VRS compensation plan. First, we expand the cost-recovery criteria for research and development and certain other expense categories. Second, to correct for the wide variations in VRS providers' cost projections, due to disparate assumptions about inflation, we use a relevant cost index to adjust providers' reported historical costs in most categories by a uniform factor of 7.23%. Using the same cost index, we institute annual, automatic adjustments of VRS compensation formulas. Third, to meet the technology and service-quality challenges described above, we estimate that VRS costs for engineering, research and development, and interpreter wages will increase faster than inflation. Again resolving disparities in VRS provider cost projections, we estimate that each provider's reported historical costs in these categories will increase by a uniform factor: 75% for engineering and research and development, and 65% for interpreter wages and benefits. We incorporate these cost estimates into the revised VRS compensation formulas for the new funding period. Given the increase in investment, we clarify that the information collected from providers in annual cost reports should include specific information quantifying (1) communications assistant (CA) wages and benefits, based on uniform definitions and methods of calculating key elements such as hourly CA compensation; and (2) expenditures on improved technology.

3. *Restructuring VRS Compensation*. We also modify the VRS compensation framework to address recent changes in the relative efficiency of the providers. Where the VRS arena used to be dominated by a single, very large provider, a second competitor now handles a substantial share of VRS minutes, at a per-minute cost that, while not the same as that of the largest provider, is somewhat nearer to parity. To address the change in these providers' per-minute costs, allocate TRS Fund support more equitably, and prevent waste, we modify the current tiered rate structure for large VRS providers, reducing the number of tiers from three to two and modifying the differential between the highest and lowest tiered rates. For small VRS providers (those handling 1 million or fewer monthly minutes), we retain a separate compensation formula so that new entrants and small providers have an opportunity to innovate in the provision of VRS. In addition, we adopt a per-minute compensation additive for the provision of a specialized form of VRS for users who are deafblind.

4. *Revised compensation formulas*. The compensation plan we adopt is applicable to the five-year period from July 1, 2023, to June 30, 2028.[5] For TRS Fund Year 2023-24, the compensation formula for VRS providers handling more than 1 million VRS minutes per month is: (1) $6.27 per minute for the first 1 million minutes; and (2) $3.92 per minute for all additional monthly minutes. For VRS providers handling 1 million or fewer VRS minutes per month, the compensation formula is $7.77 per minute for all minutes. For the provision of a specialized form of VRS to certain users who are deafblind, the compensation additive is $0.19 per minute, which is added to the per-minute amount applicable to those minutes under the relevant formula described above. For each subsequent TRS Fund year through June 30, 2028, these compensation formulas will be adjusted by the Consumer and Governmental Affairs Bureau (CGB or Bureau), based on the seasonally adjusted change in the Bureau of Labor Statistics (BLS) index of "Total compensation for Private industry workers in Professional, scientific, and technical services."[6]

[4] *See* 47 CFR § 9.14(d)(4)(ii) (requiring providers of non-fixed VRS and IP Relay providers to provide automated dispatchable location if technically feasible); *id*. § 9.14(d)(2)(iv) (911 call-routing requirement for VRS and IP Relay providers).

[5] To ensure that the higher levels of compensation under the new plan are applicable to the entire five-year period, we direct a true-up of compensation paid prior to the effective date of the Report and Order, for service provided on or after July 1, 2023.

[6] Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS2015400000000I.

5. In the Further Notice of Proposed Rulemaking (*Further Notice*) we seek further comment on providing additional compensation in special situations, such as when a Certified Deaf Interpreter is needed for a VRS call, and rule changes to facilitate the provision of specialized services.

II. BACKGROUND

A. VRS Compensation and Its History

6. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure the availability of TRS to persons who are deaf, hard of hearing, or deafblind or have speech disabilities, "to the extent possible and in the most efficient manner."[7] TRS are defined as "telephone transmission services" enabling such persons to communicate by wire or radio "in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services."[8] VRS, a relay service that "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment,"[9] is supported entirely by the TRS Fund.[10] VRS providers are compensated for the reasonable costs of providing VRS in accordance with payment formulas approved by the Commission.[11] In a number of decisions over the past 20 years, the Commission has addressed whether certain cost categories are "reasonable costs" eligible for recovery from the TRS Fund.[12] Reasonable costs are

[7] 47 U.S.C. § 225(b)(1).

[8] *Id*. § 225(a)(3).

[9] 47 CFR § 64.601(a)(51). Over a broadband video communications link, the registered VRS user signs to a CA, who then voices the signed language to the telephone user. When the telephone user replies, the CA signs the telephone user's voiced speech back to the registered VRS user, via the video link. *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5548-49, para. 2 (2011).

[10] *2000 TRS Order*, 15 FCC Rcd at 5153, para. 24; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 12-38, Notice of Proposed Rulemaking, 35 FCC Rcd 13370, 13374, para. 8 (2020) (proposing to continue supporting VRS entirely from the TRS Fund, while expanding the Fund's contribution base for support of VRS to include intrastate as well as interstate end-user revenues).

[11] *See* 47 CFR § 64.604(c)(5)(iii)(E)(*1*). The TRS Fund administrator, currently Rolka Loube Associates LLC (Rolka Loube), reviews monthly compensation requests and supporting information submitted by providers of VRS and other forms of TRS and makes monthly payments of compensation in accordance with the applicable compensation rates. In addition, the administrator annually collects cost and demand data from each provider, as well as intrastate compensation rates set by state TRS programs, and submits an annual report to the FCC that includes recommendations regarding TRS Fund compensation formulas for interstate TTY-based TRS, interstate Speech-to-Speech (STS), and interstate captioned telephone service, pursuant to the Multi-state Average Rate Structure (MARS) plan for the following TRS Fund Year, which begins July 1. *See id*. § 64.604(c)(5)(iii)(D), (E); *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, 20149-58, paras. 16-37 (2007) (*2007 TRS Compensation Order*).

[12] *See*, *e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571, 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12543-44, 12457-58, paras. 181, 188-190 (2004) (*2004 TRS Cost Recovery Order*); *2007 TRS Compensation Order*, 22 FCC Rcd at 20168-71, paras. 73-82; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11626-27, paras. 96-100 (2008) (*First TRS Numbering Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, CC Docket No. 98-67, Second Report and Order and Order on Reconsideration, 24

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generally defined as those costs that providers must incur to provide relay service in accordance with mandatory minimum TRS standards.[13]

7. *Tiered Compensation Formulas*. In 2007, to ensure that VRS users could choose from a range of service offerings, despite significant disparities in VRS providers' market shares and per-minute costs, the Commission introduced a tiered compensation structure for VRS.[14] Under this approach, a VRS provider's monthly compensation payment is calculated based on the application of different per-minute amounts to each of three specified "tiers" of minutes of service. The highest per-minute amount applies to an initial tier of minutes up to a defined maximum number, a lower amount applies to the next tier, again up to a second defined maximum number of minutes, and a still lower amount applies to any minutes of service in excess of the second maximum.[15] In setting tiered compensation formulas, the Commission continued to rely on provider-reported cost, demand, and other data and assessments of such data by the TRS Fund administrator.[16] Under the tiered approach, as the Commission explained, "providers that handle a relatively small amount of minutes and therefore have relatively higher per-minute costs will receive compensation on a monthly basis that likely more accurately correlates to their actual costs"—and the same is true of providers that have more minutes and lower per-minute costs.[17]

8. *Past Adjustments of VRS Compensation*. To conserve administrative resources, allow TRS providers greater certainty for business planning, and enhance efficiency incentives, the Commission ordinarily determines VRS compensation formulas for a three- or four-year period.[18] Upon the expiration

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FCC Rcd 791, 812-16, paras. 46-56 (2008) (*Second TRS Numbering Order*); *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8629-30, 8639, 8696, paras. 21-22, 39, 192 (2013) (*2013 VRS Reform Order*), *aff'd in part, vacated in part and remanded sub nom. Sorenson Communications*, *LLC v. FCC*, 765 F.3d 37 (D.C. Cir. 2014) (*Sorenson 2014*); *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Order, 32 FCC Rcd 5891, 5895-903, paras. 10-22 (2017) (*2017 VRS Compensation Order*), *aff'd sub nom. Sorenson Communications*, *LLC v. FCC*, 897 F.3d 214 (D.C. Cir. 2018) (*Sorenson 2018*).

[13] *2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12552, para. 199; *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, 8057-58, paras. 15-16 (2006) (*2006 Cost Recovery Order on Reconsideration*).

[14] *See 2007 TRS Compensation Order*, 22 FCC Rcd at 20162-63, para. 52 (noting that "[f]or several years now, one provider has a dominant market share, and thus this individual provider's projected minutes and costs largely determine the rate").

[15] *2017 VRS Compensation Order*, 32 FCC Rcd at 5892, para. 2.

[16] *2007 TRS Compensation Order*, 22 FCC Rcd at 20160-61, para. 47.

[17] *Id*. at 20163, para. 54.

[18] Before 2007, this was not the practice. Instead, on an annual basis, after reviewing VRS providers' reported costs, the TRS Fund administrator proposed per-minute compensation formulas for the upcoming year based on its assessment of projected costs and demand. *See* 47 CFR § 64.604(c)(5)(iii)(E). After seeking comment on the proposed compensation levels, the Commission, or the Consumer and Governmental Affairs Bureau acting on delegated authority, then approved or modified the administrator's proposed compensation levels. *2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12537-40, paras. 163-64, 167-70 (detailing the annual process for setting VRS compensation levels and the Bureau delegated authority). In 2007, the Commission began the practice of setting compensation levels for a multi-year period, setting VRS compensation for three years. *2007 TRS Compensation Order*, 22 FCC Rcd at 20164, para. 56. In 2010, the Commission reverted to setting VRS compensation levels for a one-year period, because in that year it had initiated a broad-gauged inquiry on VRS compensation. One-year extensions of those compensation levels were adopted in 2011 and 2012, while the compensation inquiry and a subsequent Further Notice of Proposed Rulemaking remained pending. *See 2013 VRS Reform Order*, 28 FCC Rcd

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of each multi-year period, the Commission has reset the compensation formulas, and on several occasions it has also modified the tier structure as well.[19] In 2010, after identifying a substantial gap between allowable provider costs and TRS Fund compensation payments,[20] the Commission reduced the tiered compensation amounts by $1.00 per minute. The Commission made further reductions in 2013, spread over a four-year period, to bring compensation closer to reported allowable provider costs.[21] Overall, from 2010 to 2017, average per-minute compensation declined approximately 38.4%, from $6.30 to $3.88 per minute.[22]

9. Also in 2013, the Commission amended its rules in an effort to restructure VRS competition—a step that carried significant implications for provider compensation. Among other things, the Commission directed the establishment of a neutral video communications service platform. By relieving smaller VRS providers of the need to duplicate the largest provider's infrastructure, the Commission hoped to enable them to compete more effectively based on the quality of their sign-language interpretation.[23] The Commission also sought comment on how to transition from the tiered compensation structure to single-rate, market-based compensation formulas.[24]

10. In 2017, the Commission again reassessed VRS compensation policy. Recognizing that the expectations and assumptions underlying the 2013 reforms had not been borne out,[25] the Commission decided to maintain a tiered compensation structure for at least the next four years, to preserve multiple service options for VRS users.[26] The Commission again modified the tier structure, expanding the

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at 8693, paras. 184-85. In 2013, the Commission shifted to a four-year compensation period. This approach was repeated in 2017. *Id*. at 8703-04, para. 212; *2017 VRS Compensation Order*, 32 FCC Rcd at 5921-22, para. 58.

[19] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8699, 8703-06, paras. 201, 212-16; *2017 VRS Compensation Order*, 32 FCC Rcd at 5916-17, 5918-20, 5922-24, paras. 49-50, 52-54, 59-63.

[20] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, 25 FCC Rcd 8689, 8694, 8695-96, paras. 9, 12 (2010) (*2010 TRS Compensation Order*).

[21] *2013 VRS Reform Order*, 28 FCC Rcd at 8703-06, paras. 212-16. The Commission also merged then-existing Tiers I (0-50,000 minutes) and II (50,001-500,000) into a new Tier I applicable to a provider's first 500,000 minutes, and split the existing Tier III (over 500,000 minutes) into Tiers II (500,001 – 1 million minutes) and III (over 1 million minutes). *Id*. at 8702, para. 208.

[22] *See* National Exchange Carrier Association, Inc., Interstate Telecommunications Relay Service Fund: Supplement to Annual Filing for TRS Contribution Factor Decrease, CG Docket Nos. 03-123 and 10-51, Exh. 1 (filed Mar. 30, 2010), https://www.fcc.gov/ecfs/document/6015546010/1 (showing projected VRS expenditures and demand for TRS Fund Year 2009-10); *see also* Rolka Loube, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 2 (filed May 4, 2016), https://www.fcc.gov/ecfs/document/60001737065/1 (showing projected VRS expenditures and demand for TRS Fund Year 2016-2017).

[23] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8623-24, 8657, 8698-99, paras. 8, 89-90, 199. The Commission also expected that the development of a standard user-device interface would make it easier for smaller providers to compete for customers without having to replace the free devices routinely distributed by the largest VRS provider. *Id*. at 8641, para. 43.

[24] *Id*. at 8706-07, para. 217.

[25] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5905-07, paras. 27-31. The Commission had requested bids to build the platform, but no acceptable bids were received; therefore, the Commission canceled the procurement. *See id*. at 5931, para. 75. In 2017, the Commission eliminated the rules establishing the neutral video communications platform. *Id*. at 5931, para. 76.

[26] *Id*. at 5908-09, paras. 33-35.

boundaries of the lower tiers.[27] In addition, the Commission added a separate formula for "emergent providers," applicable only to those VRS providers that, at the time, had no more than 500,000 total monthly minutes.[28]

11. In setting compensation levels, the Commission sought "to limit the likelihood that any provider's total compensation will be insufficient to provide a reasonable margin over its allowable expenses, and to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin."[29] To permit very small providers and new entrants an opportunity to recover their higher costs, the Commission set the compensation formula for providers with less than 500,000 monthly minutes at $5.29 per minute, and maintained it at that level for the next four years.[30] Similarly, to assure cost recovery for larger providers, the Commission increased the per-minute amount for the first 1 million monthly minutes (Tier I) from $4.06 to $4.82, and increased the per-minute amount for the next 1.5 million monthly minutes (Tier II) from $3.49 to $3.97.[31] The Tier III compensation amount, applicable to monthly minutes exceeding 2.5 million, was reduced by degrees, to $2.63.[32] Since July 1, 2019, there has been no change in these compensation formulas.[33]

12. *Effect of COVID-19 Outbreak*. In 2020, following the outbreak of the COVID-19 pandemic and efforts to reduce its spread, VRS use increased. Although providers incurred additional costs in some areas, these were offset by cost savings (e.g., from reduced need for office space and related infrastructure) and the effects of increased call volumes that were not accompanied by commensurate increases in expenses.[34] As a result, providers' average allowable cost per minute declined from $2.64 in 2019 to $2.49 in 2020 and $2.53 in 2021.[35] More recently, however, as the volume of VRS traffic has reverted towards pre-pandemic levels, and as costs have increased due to inflation, providers' average allowable cost per minute increased substantially to $2.98 per minute in 2022, and is projected to increase even further to $3.50 in 2023.[36]

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[27] *Id*. at 5918, para. 52. The upper boundary of Tier I was increased from 500,000 to 1,000,000 monthly minutes. Tier II, formerly applicable to monthly minutes between 500,001 and 1,000,000, was modified to apply to monthly minutes between 1,000,001 and 2,500,000. Tier III, formerly applicable to monthly minutes exceeding 1 million, became applicable to monthly minutes exceeding 2.5 million. *Id*. at 5894, 5918, 5934, paras. 6, 52, Appx. A.

[28] *Id*. at 5916-17, para. 49. Under this approach, if a VRS provider is initially subject to the emergent provider rate and then generates monthly minutes exceeding 500,000, the provider continues to be compensated at the emergent rate for their first 500,000 monthly minutes, and is compensated at the Tier I rate for monthly minutes from 500,001 to 1 million. *Id*.

[29] *Id*. at 5922, para. 59.

[30] *Id*. at 5917, para. 50.

[31] *Id*. at 5922-23, paras 60-61.

[32] *Id*. at 5923, para. 62.

[33] *Id*. at 5921-22, para. 58.

[34] *See* Rolka Loube, 2021-2022 Rates & Demand Forecasts, Slides 20, 23 (filed June 30, 2021), https://www.fcc.gov/ecfs/document/10630145161295/2 (Rolka Loube 2021 Forecast) (detailing calendar year costs and monthly demand); Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exhs. 1-4, 1-4a (filed May 1, 2023) (2023 TRS Fund Annual Report). In discussing provider cost and demand, when we reference a single year we are referring to a calendar year. When discussing cost and demand for a TRS Fund Year, which runs from July 1 through June 30 of the following year, we refer to both years involved in the TRS Fund Year, e.g., TRS Fund Year 2021-22.

[35] *See* Rolka Loube 2021 Forecast at Slides 20, 23; 2023 TRS Fund Annual Report, Exh. 1.4.

[36] 2023 TRS Fund Annual Report, Exh. 1.4; Letter from Eliot Greenwald, FCC, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, Attach. (filed May 9, 2023) (2023 Cost and Demand Data) (confidential).

B. The 2021 Notice

13. In May 2021, the Commission released a Notice of Proposed Rulemaking and Order seeking comment on the adoption of a new VRS compensation plan.[37] To allow additional time for this determination, the Commission extended the expiration of the current VRS compensation plan to December 31, 2021.[38] To allow consideration in this proceeding of individual VRS providers' cost and demand data, the Bureau submitted in the record the annual cost and demand data that each VRS provider reported to the TRS Fund administrator in 2021.[39] This information, designated as highly confidential, is subject to examination by third-party consultants pursuant to a protective order.[40]

14. As an initial matter, the Commission noted that after the outbreak of the COVID-19 pandemic there had been a sharp, unanticipated increase in demand for VRS and a substantial decrease in average per-minute costs.[41] In light of this change and the resulting uncertainties regarding future VRS cost and demand, the Commission asked whether it should defer revision of the current formulas until June 2023—when the effects of the pandemic might be resolved and available cost and demand data could serve as a more reliable predictor of future cost and demand.[42] In their comments on the 2021 *Notice*, VRS providers took different positions on whether to defer a compensation reset.[43] Although the Commission did not issue a decision on the deferral issue, in the absence of Commission action, the Consumer and Governmental Affairs Bureau extended the expiration of the current plan to June 30, 2022,[44] to June 30, 2023,[45] August 31, 2023,[46] and September 30, 2023.[47] In *ex parte* letters filed in 2023, all providers now support resetting the compensation formulas for the 2023-24 Fund Year.[48]

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[37] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021) (*Notice or May 2021 Compensation Extension Order*).

[38] *Id*. at 8817-19, paras. 40-45.

[39] *See* Letter from Eliot Greenwald, FCC, to Marlene Dortch, FCC Secretary, CG Docket Nos. 03-123 and 10-51, Attachments A, VRS Provider Expense Data 2018-22, and B, VRS Provider Demand Data 2018-22 (filed July 12, 2021) (2021 VRS Cost and Demand Data) (confidential version) (historical cost and demand data for calendar years 2018, 2019, and 2020 and projected cost and demand data for 2021 and 2022, as reported in 2021).

[40] *VRS Provider Cost and Demand Data to be Placed in the Record*, CG Docket Nos. 03-123 and 10-51, Public Notice, 36 FCC Rcd 9930 (2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 03-123, 10-51, and 13-24, Order and Third Protective Order, 33 FCC Rcd 6802, 6806, Appx. A, at para. 1 (CGB 2018) (*Third Protective Order*).

[41] *Notice*, 36 FCC Rcd at 8810-11, paras. 17-18.

[42] *Id*. at 8810-11, paras. 17-21.

[43] *See* Convo Comments at 4, 16-21 (supporting deferral of compensation reset); GlobalVRS Comments at 16 (opposing deferral); Sorenson Comments at 16-21 (supporting deferral); ZP Comments at 11-12 (opposing deferral).

[44] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 21-1417 (CGB Nov. 12, 2021) (*November 2021 Compensation Extension Order*).

[45] *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 No. 03-123 and 10-51, Order, DA 22-699, at 5, paras. 13-14 (CGB June 30, 2022) (*2022 TRS Funding Order*).

[46] *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 No. 03-123 and 10-51, Order, DA 23-577, at 6, para. 14 (CGB June 30, 2023) (*2023 TRS Funding Order*).

15. Regarding the substance of a new VRS compensation plan, the Commission proposed to maintain a tiered compensation structure, explaining that developments since 2017 did not appear to justify an expectation of major changes in most VRS providers' relative per-minute costs.[49] The Commission also found no reason to depart from the Commission's longstanding policy objectives of (1) bringing TRS Fund payments into closer alignment with allowable costs and (2) preserving and promoting quality-of-service competition among multiple providers.[50] The Commission sought comment on a tentative conclusion that it would "best serve the purposes of section 225 if we structure VRS compensation to continue supporting an ecosystem in which multiple VRS providers can compete for minutes of use based on quality of service."[51] In addition, the Commission sought comment on "how cost and demand estimates should be adjusted, if at all, to account for post-COVID costs and demand," and whether projected costs were reliable enough to serve as a reasonable basis to set rates for a new multi-year rate cycle.[52] The Commission also sought comment on whether to rely on historical costs only, "in anticipation that VRS costs and demand may decrease to pre-pandemic levels once the pandemic subsides?"[53] Further, the Commission asked what labor cost adjustments, if any, should be applied.[54] The Commission also sought comment on whether and how to modify the current compensation structure, whether to revisit any prior Commission determinations on allowable costs, what rate levels should be set, how to structure the compensation period, and whether to provide for rate adjustments during that period.[55] The Commission also invited commenters to suggest alternatives to retaining a tiered-rate compensation methodology, such as adoption of a single rate.[56] The Commission urged commenters advocating such alternatives to "explain their proposals in detail, including how such proposals can deliver the benefits that the Commission has found are achievable through VRS competition."[57]

16. The Commission received six comments and four replies to the *Notice*.[58] In their comments, a coalition of advocates for the deaf and hard of hearing community (Communications Equality Advocates), speaking in general terms, strongly urges the Commission to ensure adequate compensation and improved service.[59] NCTA - The Internet and Television Association, whose

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[47] *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 No. 03-123 and 10-51, Order, DA 23-801, at 2, para. 5 (CGB Aug. 31, 2023) (*August 2023 Compensation Extension Order*).

[48] *See* Letter from Jeff Rosen et al., Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 4 (filed May 9, 2023) (Convo May 9 *Ex Parte*); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Mar. 27, 2023) (Sorenson March 27 *Ex Parte*); Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Mar. 1, 2023) (ZP March 1 *Ex Parte*); Letter from Andrew Isar, GlobalVRS, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed February 24, 2023) (GlobalVRS February 24 *Ex Parte*).

[49] *Notice*, 36 FCC Rcd at 8807-08, paras. 9-12.

[50] *Id*. at 8808-09, para. 13.

[51] *Id*. at 8808-09, para. 14.

[52] *Id*. at 8811, para. 22.

[53] *Id*.

[54] *Id*.

[55] *Id*. at 8812-17, paras. 23-39.

[56] *Id*. at 8809, para. 15.

[57] *Id*.

[58] *See* Convo Comments; Communications Equality Advocates Comments; GlobalVRS Comments, NCTA Comments, Sorenson Comments; ZP Comments; Convo Reply; GlobalVRS Reply; Sorenson Reply; ZP Reply.

[59] Communications Equality Advocates Comments at 2-3.

membership includes TRS Fund contributors, urges the Commission to set rates that avoid undue burden on TRS Fund contributors and their subscribers.[60] In their comments, VRS providers oppose any reduction in average compensation, arguing that they need to incur additional costs to maintain high quality service and invest in modernizing VRS.[61] In a subsequent filing, Convo, Sorenson, and ZP jointly propose the following reforms to the VRS compensation framework: (1) adopt a 6-8 year compensation period;[62] (2) index compensation levels to account for inflation; and (3) deem allowable the costs incurred by providers for numbering, E911, outreach, and research and development to improve service beyond the mandatory minimum standards.[63]

17. Regarding the structure of compensation, Sorenson proposes an alternative to the tier structure whereby VRS providers with more than 500,000 monthly minutes would be subject to a single compensation formula based on the costs of the second-lowest-cost provider.[64] On the other hand, ZP urges the Commission to maintain a tiered structure, but with modifications to substantially increase compensation for those VRS providers with more than 2.5 million monthly minutes.[65] GlobalVRS and Convo urge the Commission to increase compensation for smaller providers so that they can continue and expand specialized services for, e.g., deafblind consumers, atypical ASL users, and non-English-speaking communities.[66] The Commission has also received approximately 1,300 express comments on the *Notice*, which generally urge the Commission to preserve and improve functional equivalency and provide equal access to the communications network for VRS users.

18. On May 9, 2023, to update the record, CGB submitted in this docket the cost and demand data that each VRS provider filed with the TRS Fund administrator in 2023.[67] This information, designated as highly confidential, is subject to examination by third-party consultants pursuant to a

[60] NCTA Comments at 1-2.

[61] ZP Comments at 14-19; Convo Comments at 15-16, n.26; Sorenson Comments at 32-39; GlobalVRS Comments at Appx. 2, Attach. at 15 (supporting outreach for specialized services as an allowable cost). Sorenson also argues for increasing the operating margin to attract new investment or entry into VRS. Sorenson Comments at 29-32.

[62] In a more recent filing, Convo advocates a four-year compensation period. *See* Convo May 9 *Ex Parte* at 4; Letters from Amanda Montgomery, Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed May 25, 2023) (Convo May 25 *Ex Partes*).

[63] Letter from Jeff Rosen, Convo, Bruce Peterson, Sorenson, and Greg Hlibok, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Oct. 27, 2021) (Joint VRS Providers October 2021 *Ex Parte*). GlobalVRS expresses qualified support for the joint providers' proposal. Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (filed Oct. 28, 2021) (GlobalVRS October 2021 *Ex Parte*).

[64] Sorenson Comments at 56-58.

[65] ZP Comments at 10-11 (urging that the upper boundary of Tier II be increased from 2.5 million to 5 million monthly minutes).

[66] GlobalVRS Comments at 10-13 (proposing a special compensation rate for small providers offering specialized services); Convo Comments at 11-12 (discussing service improvements and expansion if the emergent tier is maintained).

[67] 2023 VRS Cost and Demand Data (confidential) (historical cost and demand for calendar years 2021 and 2022 and projected cost and demand for calendar years 2023 and 2024, as reported in 2023); *see also* Letter from Eliot Greenwald, FCC, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, Attach. (filed May 30, 2023) (2023 Non-Allowable Cost Data) (confidential) (summary of historical and projected expenses for E911 and Numbering, Research and Development, Access Software, and Outreach reported by each VRS provider to the TRS Fund administrator as non-allowable expenses); Letter from John Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 9, 2023) (confidential) (Sorenson Updated Cost *Ex Parte*) (updating Sorenson's cost and demand reported for 2021 through 2024).

protective order.[68] Subsequently, three VRS providers submitted updated compensation proposals. All three providers continue to advocate the expansion of cost categories related to research and development, numbering, and outreach, and increased compensation to reflect higher costs, including CA wages. ZP and Sorenson continue to advocate a 6-8 year compensation period with adjustments for inflation.[69] While Convo continues to support a multi-year compensation period, it now recommends a four-year cycle with an annual adjustment factor to address further cost increases.[70] Convo also seeks an increase of at least $1.00 in the per-minute compensation rate for emergent providers, including $0.50 a minute to cover increases in the salary and benefits paid to CAs and $0.50 to cover additional costs for CA training, research and development, numbering, and outreach.[71]

19. As an alternative to its initial proposal, ZP now recommends that the Commission increase first-year per-minute compensation formulas, under the existing tiered framework, by 23.84% across the board, to match inflation since 2017.[72] On top of that overall increase, ZP recommends further increases based on its estimates of additional costs that should be counted if allowable cost criteria are expanded.[73] Specifically, ZP estimates: for additional costs of E911 and numbering, an $0.08 per minute increase in the Emergent Provider and Tier I rates and a $0.01 per minute increase in the Tier II and Tier III rates; for outreach, a $0.09 per minute increase in all rate elements; for research and development, a $0.16 increase in the Emergent Provider rate, an $0.08 per minute increase in the Tier I rate, and a $0.01 per minute increase in the Tier II and Tier III rates.[74] ZP's proposed increases would result in the following formulas: $6.88 per minute for Emergent Providers, $6.22 per minute for Tier I; $5.03 per minute for Tier II; and $3.37 per minute for Tier III.[75]

20. Pointing to inconsistencies in how the providers have reported their costs,[76] ZP also urges the Commission *not* to base its rate decision on an average of each provider's historical and projected expenses, as past practice would dictate.[77] If the Commission does rely on such costs, ZP contends, the Commission should consider a revised version of ZP's projected costs,[78] which ZP claims are the costs ZP

[68] *Video Relay Service Providers' Cost and Demand Data Placed in the Record*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 22-384 (CGB May 10, 2023); *Third Protective Order*, 33 FCC Rcd at 6806, Appx. A, at para. 1.

[69] *See* Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed June 9, 2023) (ZP June 9 *Ex Parte*); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (filed June 12, 2023) (Sorenson June 12 *Ex Parte*).

[70] Convo May 9 *Ex Parte* at 2.

[71] Convo May 25 *Ex Partes* at 1-2.

[72] *See* Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 23, 2023) (ZP May 23 *Ex Parte*); Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 1, 2023) (ZP June 1 *Ex Parte*).

[73] *See* ZP June 9 *Ex Parte*; Letter from Nicholas Degani, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 5, 2023) (ZP June 5 *Ex Parte*); ZP June 1 *Ex Parte*; Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 30, 2023) (ZP May 30 *Ex Parte*); ZP May 23 *Ex Parte*.

[74] *See* ZP June 9 *Ex Parte* at 1-3; ZP May 23 *Ex Parte* at 2-5.

[75] ZP June 9 *Ex Parte* at 2. The proposal in the ZP June 9 *Ex Parte* reflects an update to the compensation rates proposed in the ZP May 23 *Ex Parte* based on a new calculation of E911 and numbering costs. ZP's prior proposal was: $6.86 per minute for the Emergent Tier; $6.20 per minute for Tier I, $5.08 per minute for Tier II, and $3.42 per minute for Tier III. ZP May 23 *Ex Parte* at 5.

[76] Letter from Scott Delacourt, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2-3 (filed Aug. 11, 2023) (confidential) (ZP August 11 *Ex Parte*); Letter from Scott Delacourt, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed Aug. 22, 2023) (confidential) (ZP August 22 *Ex Parte*).

[77] ZP August 11 2023 *Ex Parte* at 2.

[78] *Id*. at 3; ZP August 22 *Ex Parte*. at 1.

would incur to remain competitive going forward, in the event that Sorenson actually incurs the costs projected in its annual 2023 cost filing.[79]

21. Sorenson describes its proposal, which would increase total compensation substantially more than ZP's, as one that would permit additional research and development, increase compensation of CAs to be more competitive with community interpreting, increase wages for customer support and field staff, and increase marketing support.[80] Sorenson's plan would increase the allowed operating margin for non-emergent VRS providers to almost 18%.[81] One option Sorenson proposes is to build on ZP's June 9, 2023 proposal for increasing rates under the existing tier structure. Sorenson recommends setting the Tier I rate at $6.22 per minute; the Tier II rate at $5.03 per minute, and the Tier III rate at $4.56 per minute.[82] Alternatively, Sorenson supports adoption of a single rate of $4.86 per minute for non-emergent providers.[83] Sorenson does not take a position on an appropriate compensation rate for the Emergent Tier.[84]

22. More recently, Sorenson suggests that, to address ZP's concerns about inconsistent cost projections, the Commission should rely on 2022 actual costs as a baseline, adjust those levels for inflation, make targeted adjustments for the necessary going-forward increases to CA wages, research and development, and engineering, and provide a reasonable operating margin.[85] Sorenson claims that under this approach, when providers make their cost filings during the compensation period, the Commission will have transparency into whether providers are raising interpreter wages and making necessary engineering and research and development investments in line with the compensation levels going forward.[86]

23. On June 5, 2023, accessibility advocates representing the National Association of the Deaf (NAD), DHHCAN, and TDI filed an *ex parte* letter urging the Commission to adopt compensation levels that encourage innovation, allow providers to improve service quality, support specialized services, such as skills-based routing and the use of Certified Deaf Interpreters.[87] The accessibility advocates argue that these changes are necessary to move VRS closer to being a functionally equivalent service.[88]

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[79] ZP August 11, 2023 *Ex Parte* at 3; ZP August 22, 2023 *Ex Parte* at 1-2.

[80] *See* Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 15, 2023) (Sorenson June 15 *Ex Parte*); Sorenson June 12 *Ex Parte*.

[81] Sorenson June 15 *Ex Parte*; Letter from Angela Giancarlo, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed June 13, 2023) (Sorenson June 13 *Ex Parte*); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 (filed June 13, 2023); Sorenson June 12 *Ex Parte*; Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed May 18, 2023); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed May 12, 2023) (Sorenson May 12 *Ex Parte*) (providing a report from FTI Consulting, Inc., (FTI) on operating margins for VRS and IP CTS).

[82] *See* Sorenson June 15 *Ex Parte* (updating its tiered proposal to align with ZP's proposal in the ZP June 9 *Ex Parte*); Sorenson June 12 *Ex Parte* (detailing its compensation plan).

[83] Sorenson June 12 *Ex Parte*; Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed June 22, 2023) (Sorenson June 22 *Ex Parte*).

[84] *See* Sorenson June 15 *Ex Parte*; Sorenson June 12 *Ex Parte*.

[85] Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 at 3 (filed Aug. 21, 2023) (Sorenson Corrected August 18 *Ex Parte*).

[86] *Id*. at 4.

[87] Letter from Zainab Alkebsi, NAD and DHHCAN, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 5, 2023).

[88] *Id*. at 1-2.

C. Related Matters

24. On December 23, 2021, Sorenson filed a petition seeking a declaratory ruling that (1) costs associated with a VRS provider's field staff are allowable to the extent they are performing tasks that are service related and not user equipment related; and (2) field staff time is an allowable cost of providing VRS even when it is part of a longer visit during which staff may perform equipment installation and maintenance.[89] In response to a public notice seeking comment on Sorenson's petition,[90] the Commission received four comments and one reply comment.[91]

25. On March 21, 2023, ASL Services Holdings, LLC dba GlobalVRS, filed a petition seeking reimbursement, on an emergency basis, for certain costs previously incurred to provide a specialized form of VRS to persons who are deafblind, as well as full recovery, going forward, of its costs of providing VRS.[92] On April 4, 2023, the Bureau released a public notice seeking comment on GlobalVRS's petition.[93] The Commission received two comments on the GlobalVRS petition.[94] On April 28, 2023, GlobalVRS informed the Commission that it would discontinue its provision of service on June 30, 2023, absent affirmative Commission action on the Petition.[95] Subsequently, GlobalVRS notified its users that it would cease providing VRS on June 30.[96] On June 30, 2023, GlobalVRS sent a notice to its users stating that it would remain open temporarily to provide VRS and that it was working with the Commission and Sorenson to provide a seamless transition so that its customers could have continuous access to VRS.[97] On July 24, 2023, Sorenson filed a request for an expedited waiver of certain Commission rules to facilitate the porting of GlobalVRS customers to Sorenson. Sorenson explained that it was preparing to begin providing a specialized service to deafblind users, comparable to the service

[89] Petition of Sorenson Communications, LLC for Declaratory Ruling, CG Docket Nos. 10-51 and 03-123, at 1-2 (filed Dec. 23, 2021), https://www.fcc.gov/ecfs/document/122330636542/1 (Sorenson Field Staff Petition).

[90] *Comment Sought on Petition for Declaratory Ruling Filed by Sorenson Communications, LLC, on Video Relay Service Cost Allocation Methodologies*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 21-1651 (CGB Dec. 29, 2021).

[91] Two VRS providers, Convo and GlobalVRS, oppose the request, while two IP CTS providers, Hamilton Relay and ClearCaptions, support the request. *See* Convo Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan. 10, 2022); GlobalVRS Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan 10, 2022); Hamilton Relay, Inc. Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan 10, 2022); ClearCaptions, LLC Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan 10, 2022); Sorenson Field Staff Reply, CG Docket No. 03-123 and 10-51 (rec. Jan 18, 2022).

[92] Emergency Petition of ASL Services Holdings, LLC dba GlobalVRS for DeafBlind Video Relay Services Exogenous Cost Reimbursement, CG Docket Nos. 03-123 and 10-51 (filed Mar. 21, 2023), https://www.fcc.gov/ecfs/document/10321175009780/1 (redacted).

[93] *See Comments Sought on Petition of GlobalVRS for Video Relay Service Exogenous Cost Reimbursement*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 23-289 (CGB Apr. 4, 2023).

[94] Sorenson supports the request for additional funding to provide specialized forms of VRS to individuals who are deafblind. Sorenson DeafBlind Relay Services Petition Comments, CG Docket Nos. 03-123 and 10-51 (rec. May 8, 2023). The American Association of the DeafBlind (AADB), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), and the DeafBlind Section, National Association of the Deaf (NAD) filed joint comments requesting "that the Commission host and/or facilitate a working group or a forum for DeafBlind consumers." *See* AADB, TDI, and NAD DeafBlind Relay Services Petition Comments, CG Docket Nos. 03-123 and 10-51 (rec. May 9, 2023).

[95] Letter from Gabrielle Joseph, GlobalVRS, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Apr. 28, 2023).

[96] *See* Sorenson Communications, LLC Petition for Expedited Waiver, CG Docket Nos. 03-123 and 10-51, at 2-3, Attachs. A, B (filed July 24, 2023) (Sorenson Waiver Petition) (detailing and providing a copy of letters from GlobalVRS to its users, dated May 26 and June 8).

[97] *See id*. at 2-3, Attach. C (detailing and providing a copy of the June 30, 2023 letter).

offered by GlobalVRS.[98]

III. REPORT AND ORDER

A. The Need for a Revised Compensation Plan

26. In setting VRS compensation formulas, we first determine the relevant costs of providing service. Relying on cost and demand data reported by VRS providers to the TRS Fund administrator, the Commission estimates each provider's average per-minute cost to provide VRS (the provider's total allowable expenses divided by its total minutes), and also calculates a weighted-average per-minute cost for the industry as a whole (all providers' total allowable expenses divided by their total minutes).[99] The Commission then adds an allowed operating margin.[100]

27. In the *Notice*, noting the sudden and potentially transitory impact of the COVID-19 pandemic on demand for VRS, the Commission sought comment on whether to defer revision of the VRS compensation plan to a later time—when the effects of the pandemic had subsided and available cost and demand data could serve as a more reliable predictor of future cost and demand.[101] At that time, some commenters supported such a deferral.[102] Since then, circumstances have changed.[103] The national emergency related to the pandemic has officially ended,[104] and the record indicates that the increased demand levels experienced in calendar year 2020 and 2021, which were substantially higher than those for prior years,[105] were not repeated in 2022.[106] Further, current data indicate that the pandemic-era reduction in average per-minute costs has been reversed. Average allowable expenses, which declined from \$2.64 per minute in 2019 to \$2.49 per minute in 2020, and which grew only marginally to \$2.52 per minute in 2021, increased by 18% in 2022, to \$2.98 per minute.[107] In light of these increased costs, all VRS providers now urge the Commission to revise the compensation formulas.[108]

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[98] Sorenson Waiver Petition.

[99] *See 2007 TRS Compensation Order*, 22 FCC Rcd at 20160-61, para. 47; *2017 VRS Compensation Order*, 32 FCC Rcd at 5928, para. 69.

[100] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, para. 26.

[101] *See Notice*, 36 FCC Rcd at 8810-11, paras. 17-22.

[102] Sorenson Comments at 16-21 (asserting in 2021 that historical cost and demand data for 2020 are an unreliable basis for setting compensation, and that demand projections for 2021 and 2022 are speculative because it is unclear when demand will stabilize and at what level); *id.* at 1-2 (asserting cost and demand data not predominantly impacted by COVID would not be available until February 2023); Convo Comments at 16-21 (asserting in 2021 that, due to the pandemic, forward-looking cost and demand projections are unreliable due to numerous unknown factors and escalating labor costs); Convo Reply Comments at 6 (arguing rates should remain frozen until June 30, 2023, at a minimum, for COVID-related data anomalies to resolve).

[103] *See* 2023 TRS Fund Annual Report at 12-13, Exh. 1-4, 1-4a; 2023 VRS Cost and Demand Data (confidential) (historical cost and demand for calendar years 2021 and 2022 and projected cost and demand for calendar years 2023 and 2024, as reported in 2023); Sorenson Updated Cost *Ex Parte*; *see also* 2021 VRS Cost and Demand Data (confidential) (historical cost and demand data for calendar years 2018, 2019, and 2020 and projected cost and demand data for 2021 and 2022, as reported in 2021).

[104] *See* Joint Resolution, Pub. L. No. 118-3, 137 Stat. 6 (codified at 50 U.S.C. § 1621 note) (termination of national emergency concerning COVID-19).

[105] *See* 2021 VRS Cost and Demand Data, Attach. B at 5 (redacted version).

[106] 2023 TRS Fund Annual Report, Exh. 1-4a. Demand is projected to continue decreasing in 2023. *Id*. Cost and demand data are reported by providers on a calendar-year basis.

[107] These averages are derived from the allowable expenses reported on each provider's expense worksheets, which Commission staff has submitted to the record. *See* 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data, Att. A at 5, Att. B at 5 (redacted); *see also* Sorenson Updated Cost *Ex Parte* (confidential) (filed

(continued….)

28. As explained in section III.C., we believe the cost data now available are sufficiently reliable so that—after making appropriate adjustments to correct for disparities in the assumptions underlying each provider's projections of future costs—we can set revised compensation formulas that approximate the reasonable cost of providing VRS. Our revised VRS compensation formulas increase average provider compensation to reflect the recent increases in reported costs, as well as our expectation of further increases in certain areas, as discussed below.

B. Changes in Allowable Cost Criteria

29. In the *Notice*, the Commission sought comment on whether to revisit any of its prior determinations regarding allowable costs, asking commenters to "state specifically in what respects the Commission's prior determinations are no longer valid, describe in detail any respects in which relevant circumstances have changed in the intervening period, and explain how the outcome they seek is consistent with, and furthers the purposes of, section 225 of the Act."[109] In response to comments on a number of cost categories previously deemed non-allowable in whole or in part, we modify the current criteria for allowable costs to allow recovery of additional expenses for which the justification for disallowance is no longer valid.

1. Research and Development

30. *Background*. Currently, the TRS Fund supports research and development conducted by a TRS provider to ensure that its service meets the applicable TRS mandatory minimum standards, but providers are not permitted to recover the cost of developing TRS enhancements that exceed this criterion.[110] In adopting this limitation, the Commission reasoned that its mandatory minimum TRS standards[111] define the level of functionality that TRS providers must provide, explaining that the TRS Fund was not intended to be a "source of funding for the development of TRS services, features, and enhancements that, although perhaps desirable, are not necessary for the provision of functionally

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by Sorenson to update its reported cost data). The averages stated in the text do not include expenses that are currently non-allowable. However, the staff also submitted to the record the non-allowable expenses reported in certain categories by each VRS provider. *See* 2023 Non-Allowable Cost Data (confidential). The above averages also do not include amounts reported as license fees paid to an affiliate. The Commission previously ruled that such amounts are not allowable, absent a showing that the transaction was arm's-length and that the accounting for such costs complies with the Commission's affiliate transaction rule. *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5902, para. 21 & n.69; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 03-123, 10-51, and 13-24, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10878-79, paras. 25-26 (2020) (*2020 IP CTS Compensation Order*). No such showings have been made by any affected providers. Appendix B to this Report and Order (confidential) shows allowable per-minute costs reported by the providers for each relevant calendar year, as well as adjustments to each provider's reported costs pursuant to the determinations in this Report and Order.

[108] *See* Convo May 9 *Ex Parte* at 4 (urging action on VRS compensation rates); Sorenson March 27 *Ex Parte* (discussing the urgent need to address VRS compensation rates); ZP March 1 *Ex Parte* (discussing the need to act on VRS Rates); GlobalVRS February 24 *Ex Parte* (discussing the impact of the VRS rate reimbursement). Commenters have had an opportunity for their outside experts to review the updated data, and several VRS providers have filed ex parte submissions that are consistent with having accessed the updated data.

[109] *Notice*, 36 FCC Rcd at 8815, para. 33.

[110] *2017 VRS Compensation Order*, 32 FCC Rcd at 5896, para. 11 (*citing 2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12547-48, paras. 189-90); *2013 VRS Reform Order*, 28 FCC Rcd at 8629, para. 21. Further, because the TRS Fund provides support for relay *services* but not user equipment, allowable research and development costs do not include the costs of developing end-user equipment. The TRS Fund also does not support research and development of non-TRS products, services, tasks, or functionalities.

[111] 47 CFR § 64.604.

equivalent TRS service."[112] In 2013, recognizing the value of research and development aimed at improving the efficiency, availability, and functional equivalence of TRS, the Commission authorized such research by independent entities under Commission direction.[113] However, the Commission did not alter the restriction on provider recovery of research and development costs, expressing concerns that removing the restriction "potentially could allow such funding to be unlimited and only end up benefitting the individual provider," and that "[s]uch a mechanism would allow spending in a duplicative way, because multiple providers would be able to expend R&D funds on similar or identical enhancements and would not share the results with existing or potential competitors."[114]

31. VRS providers urge the Commission to remove the limitation on cost recovery for VRS research and development,[115] arguing that the current restriction limits their ability to explore service improvement in a number of areas, including geolocation for 911 calling, direct-dial access to 988 and N11 services, a unified phone number for both relay services and SMS messaging, integration of VRS with videoconferencing services, interoperability improvements, and seamless access across VRS providers to VRS from home, work, or mobile devices.[116] Sorenson adds that it is not easy to determine whether a given research and development project is needed for service improvements that meet mandatory minimum standards or go beyond those standards.[117]

32. *Discussion*. We revise our allowable cost criteria to allow TRS Fund support for the reasonable cost of research and development to enhance the functional equivalency of VRS. No commenter opposes this change. We agree with commenters who assert that the current criterion is unnecessarily restrictive. First, in 2013, when it authorized TRS Fund support of Commission-directed (non-provider) research to improve the efficiency, availability, and functional equivalence of TRS, the Commission recognized that TRS Fund resources can appropriately be used to support research into service improvements that may exceed the existing minimum TRS standards.[118] Authorizing providers (as well as Commission-directed entities) to conduct such research is consistent with the Commission's policy of promoting service improvement by encouraging VRS providers to compete with one another based on service quality[119]—a form of competition that logically may lead a provider to develop innovative features not already required by our rules. We find that expenses incurred by VRS providers to develop such improvements are appropriately included as part of the "reasonable cost" of service supported by the TRS Fund.

33. Second, changed circumstances support removal of the current limitation. Recent changes in how people communicate are posing new technology challenges for VRS providers. To

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[112] *2017 VRS Compensation Order*, 32 FCC Rcd at 5896, para. 11.

[113] *2013 VRS Reform Order*, 28 FCC Rcd at 8630, para. 22.

[114] *Id*. at 8629, para. 21.

[115] *See* Joint VRS Providers October 2021 *Ex Parte* at 2; Convo Comments at 15, fn. 26; Sorenson Comments at 26-28, 34; ZP Comments at 8; ZP Comments at 17-18; ZP Supplemental Comments at 3; Convo Reply at 7-8; GlobalVRS Reply at 2; Sorenson Reply at 15-17; ZP Reply at 10-11; ZP Supplemental Reply at 1-2.

[116] *See* Sorenson Comments at 26-28 (*citing* Consumer Groups CVAA Comments at 5, 16-17); ZP Comments at 8, *quoting* Letter from Zainab Alkebsi, National Association for the Deaf, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 13, 2021); *see also* Letter from Zainab Alkebsi, DHHCAN, to Marlene Dortch, FCC. CG Docket Nos. 03-123 and 10-51 (filed Feb. 9, 2022).

[117] Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2 (filed Nov. 29, 2021) (Sorenson November 2021 *Ex Parte*).

[118] *2013 VRS Reform Order*, 28 FCC Rcd at 8626-27, 8630, paras. 13-14, 22.

[119] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31.

promote the integration of VRS with video conferencing,[120] even though it is not currently required by our rules, VRS providers need to conduct research and development on methods of achieving such integration. Further, the risk of wasting TRS Fund resources on unproductive research appears less likely today, because the Commission no longer resets compensation each year based on annual cost reporting as it did in 2004 when the current limitation on allowable research and development costs was established.[121] With compensation plans now being set for multi-year periods, providers that reduce costs during a compensation period are able to retain the resulting profit. Consequently, providers are less likely to spend money on wasteful or unnecessary research.[122]

34. Therefore, we conclude that the development of service improvements is deserving of TRS Fund support, even if such improvements exceed what is necessary for compliance with our minimum TRS standards. We stress that, as with all provider-reported expenses, expenses for research and development to improve VRS are allowable only if "reasonable."[123] In addition, expenses incurred to develop proprietary user devices or software (or any non-TRS product or service) are not recoverable from the TRS Fund. In Part III.E, we address how providers will be held accountable to ensure that when the Commission authorizes TRS Fund support for provider research to improve VRS, the amounts authorized are actually used for such purposes.

2. Number Acquisition and 911 Calling

35. *Background*. In 2008, the Commission adopted rules providing for the issuance of North American Numbering Plan (NANP) telephone numbers to VRS users and specifying how VRS providers must handle emergency calls.[124] In that rulemaking, the Commission determined that the TRS Fund *should* support provider expenses directly related to: updating and maintaining information in the TRS Numbering Directory; processing and transmitting calls made to TRS telephone numbers; routing emergency TRS calls to an appropriate Public Safety Answering Point (PSAP); and other implementation tasks directly related to facilitating ten-digit numbering and emergency call handling.[125] However, the Commission also found that the TRS Fund *should not* support: (1) costs associated with a consumer's acquisition of a telephone number for use with TRS; (2) costs associated with a TRS user's acquisition and usage of a toll-free telephone number;[126] and (3) any E911 charges that may be imposed on Interstate TRS providers under a state or local E911 funding mechanism.[127] Stating that such costs are not

[120] *See, e.g., Video Conferencing Notice* at 28-39, paras. 68-111 (proposing rules for integrating VRS and other relay services with video conferencing).

[121] *See 2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12547, para. 189.

[122] *See* Sorenson November 2021 *Ex Parte* at 3-4 ("Once the Commission establishes the rate, the Commission has capped the amount that it will disburse in funds, subject only to changes in demand. . . . [T]here is no automatic increase in the unlikely event that providers engaged in research and development that the Commission deemed to be imprudent."); Letter from Preston Wise, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2 (filed Dec. 22, 2021) (ZP December 2021 *Ex Parte*) ("ZP also agrees . . . that 'any increase in research and development is ultimately constrained by whatever compensation rate the Commission establishes.' In other words, the rate framework the Commission adopts will, by itself and by design, deter imprudent research and development spending.").

[123] *See* 47 CFR 64.604(c)(5)(iii)(E)(*1*) ("[Compensation] formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval.").

[124] *First TRS Numbering Order*, 23 FCC Rcd 11591; *Second TRS Numbering Order*, 24 FCC Rcd 791.

[125] *Second TRS Numbering Order*, 24 FCC Rcd at 812, para. 46.

[126] Before NANP telephone numbers were routinely assigned to VRS users, some VRS providers issued toll-free numbers to VRS users. In 2008, the Commission required that all VRS users be assigned geographically appropriate NANP telephone numbers. *See id*. at 805-07, paras. 29-32.

[127] *Id*. at 812-16, paras. 46-54.

attributable to the use of relay service to facilitate a call, the Commission reasoned that they should be treated analogously to numbering costs incurred by voice service providers, which are typically passed through to customers.[128] In response to the *Notice*, several VRS providers advocated removal of these limitations.[129]

36. *Discussion*. We revise our allowable-cost criteria to permit TRS Fund support for the reasonable cost of assigning and porting NANP telephone numbers for TRS users.[130] We agree with ZP and Sorenson that precluding recovery of such costs is no longer justified.[131] Based on the current record, we conclude that voice service providers and VRS providers are not similarly situated regarding the ability to recover such costs from users. As a threshold matter, since 2008 it has become clear that, notwithstanding the view stated in the *Second TRS Numbering Order*, a VRS provider's cost of obtaining the numbers it assigns to its registered users actually is "attributable to the use of relay service to facilitate a call."[132] If relay service were not provided, these numbers would not be needed by VRS users. Further, the current record indicates that, as a practical matter, these costs are never passed on to VRS users, but rather are absorbed by VRS providers.[133] As ZP points out, while voice service providers have a billing relationship with their customers, VRS providers typically do not, and there would be little point in creating such a relationship for the sole purpose of passing through what likely would be a *de minimis* monthly charge.[134]

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[128] *See, e.g.*, *id.* at 813, para. 47.

[129] Convo Comments at 15, fn. 26; Sorenson Comments at 32-33; ZP Comments at 14-16; ZP Supplemental Comments at 2; Convo Reply at 7-8; Sorenson Reply at 17-18; ZP Reply at 9-10; ZP Supplemental Reply at 1-2.

[130] We note that last year, the Commission similarly revised its allowable-cost criteria for IP Relay to permit recovery of number assignment costs by IP Relay providers. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Petition for Rulemaking of Sprint Corporation*, CG Docket No. 03-123, RM-11820, Report and Order, FCC 22-48, at 10-11, paras. 24-25 (June 25, 2022) (*2022 IP Relay Compensation Order*).

[131] *See* Sorenson Comments at 33; ZP Comments at 14-16; Sorenson Reply at 17-18; ZP Reply at 10. However, we do not agree with ZP that, for purposes of determining allowable costs, the Commission should treat TRS as comparable to the Lifeline and Emergency Broadband Benefit programs. *See* ZP Comments at 15. The Emergency Broadband Benefit and Lifeline programs target eligible low-income consumers and are specifically designed to provide assistance to such consumers in obtaining otherwise unaffordable communications services. *See Consolidated Appropriations Act*, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(b)(1), 134 Stat. 2130, 2135; *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10887, para. 3 (2019). In contrast, the TRS program is authorized by non-discrimination legislation, Title IV of the Americans with Disabilities Act, and is intended to enable *all* individuals in the United States who are deaf, hard of hearing, deafblind, or have speech disabilities—regardless of income—to communicate by telephone in a functionally equivalent manner. 47 U.S.C. § 225.

[132] *Second TRS Numbering Order*, 24 FCC Rcd at 813, para. 48 (stating that the cost of obtaining telephone numbers is "not attributable to the use of relay service to facilitate a call").

[133] ZP Comments at 15.

[134] *Id*. In this regard, there is an important difference between traditional TTY-based TRS and Internet-based TRS. To place a call using a TTY, a consumer must subscribe to traditional telephone service, for which a telephone number is automatically issued to the subscriber (and for which the number acquisition cost is bundled into the service rate). To place a call using VRS, a consumer must subscribe to broadband Internet access service, for which no telephone number is automatically provided (unless the consumer also subscribes to VoIP service—which a VRS user would have no reason to do). In 2008, some VRS providers were also providers of wireless or Internet access service, and arguably could have billed TRS numbering costs to those VRS users with whom they had a billing relationship. However, no VRS provider currently provides wireless or Internet access service.

37. As for costs associated with acquisition and use of toll-free numbers, the record does not indicate that any VRS provider still issues toll-free numbers to registered VRS users.[135] Therefore, we do not find it necessary to revisit that question.

38. Similarly, the record does not indicate that any VRS provider is currently assessed a fee under a state or local E911 funding mechanism.[136] As a general matter, we emphasize that under the Commission's prior decisions and our determination above regarding research and development expenses, the TRS Fund supports the reasonable cost of ensuring that E911 calls placed by VRS users are handled in a functionally equivalent manner.[137] FCC rules impose numerous E911-related requirements on VRS providers, including that they provide automatic location information for mobile VRS calls to 911 "if technically feasible."[138] We clarify that the TRS Fund supports reasonable expenses incurred by VRS providers to improve their ability to quickly connect a VRS user's 911 call to the PSAP nearest the user's location and to automatically provide specific location data to such PSAP.[139]

3. Outreach

39. *Background*. TRS outreach has a dual educational focus: (1) making the general public aware of the availability and use of relay services, e.g., to prevent the uninformed rejection of TRS calls by a called party;[140] and (2) providing "non-branded" information about relay services to potential users—i.e., members of the public who are deaf or hard of hearing—to make them aware of the availability and benefits of TRS.[141]

40. Before 2013, the TRS Fund compensated TRS providers for outreach activities. However, the Commission grew concerned about the effectiveness of provider outreach.[142] Regarding VRS and IP Relay, in particular, the Commission recognized that outreach expenditures often supported "branded" marketing campaigns by competing VRS and IP Relay providers, aimed largely at inducing existing registrants to change their service provider.[143] In 2013, the Commission directed the establishment of a pilot program to provide coordinated nationwide outreach for VRS and IP Relay

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[135] In the past, before the Commission mandated assignment of NANP telephone numbers to VRS users, some VRS providers issued toll free numbers to VRS users. In 2008, the Commission put a halt to this practice. *See Second TRS Numbering Order*, 24 FCC Rcd at 805-07, paras. 29-32.

[136] Such fees are typically assessed on providers of telephone service. *See, e.g., 911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291, 9-14, Report and Order, FCC 21-80, 2021 WL 2636980 (June 25, 2021).

[137] *See Second TRS Numbering Order*, 24 FCC Rcd at 812, para. 46 (authorizing TRS Fund support for routing emergency TRS calls to an appropriate PSAP and other implementation tasks directly related to facilitating emergency call handling).

[138] 47 CFR § 9.14(d)(4).

[139] Such costs are directly related to routing TRS calls to an appropriate PSAP and facilitating emergency call handling. Thus, such costs are allowable under the criteria adopted by the Commission in 2008. *Second TRS Numbering Order*, 24 FCC Rcd at 812, para. 46.

[140] *See 2022 IP Relay Compensation Order*, para. 15; *2013 VRS Reform Order*, 28 FCC Rcd at 8632-33, paras. 27-28; *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, 21 FCC Rcd 8379, 8394, para. 36 (2006).

[141] *See 2022 IP Relay Compensation Order*, para. 15; *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10875, para. 21; *2013 VRS Reform Order*, 28 FCC Rcd at 8632-33, paras. 27-28.

[142] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8632-34, paras. 28-29.

[143] *Id*. at 8632-35, paras. 28-31.

through contractors or other third parties.[144] The Commission also disallowed TRS Fund support for outreach conducted by VRS and IP Relay providers.[145]

41. *Discussion*. We conclude that VRS providers' reasonable outreach expenses should be recoverable from the TRS Fund.[146] First, as a number of commenters point out,[147] the pilot National Outreach Program expired in 2017 and has not been reauthorized. Although we continue to be skeptical about the extent to which provider-conducted outreach can be effective in educating the general public,[148] we find that, in the absence of a national outreach program, the TRS Fund should support outreach by VRS providers who choose to engage in it. However, outreach expenses of this kind are allowable only to the extent that the communication focuses on educating the public about the availability and use of VRS. Expenditures on advertisements about other matters do not constitute allowable outreach expenses.

42. Second, it appears that little is accomplished by continuing to prohibit TRS Fund support of provider outreach to potential VRS users. As the Commission has previously observed, outreach to potential TRS users (unlike outreach to the general public) is not always easy to distinguish from branded marketing,[149] and branded marketing is an allowable TRS expense. To the extent that VRS providers are motivated to communicate with potential users, whether through branded marketing or otherwise, such efforts can be effective in introducing the service to new users,[150] including subgroups that may lack awareness of the availability of a service or how it can meet their needs.[151]

43. In allowing outreach, we do not reopen the door to wasteful spending. As explained earlier in connection with research and development, with compensation plans being set for multi-year periods, providers that reduce costs during a compensation period are able to retain the resulting profit. Consequently, providers are less likely to spend wastefully on unproductive outreach activity—especially

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[144] *Id*. at 8636-39, paras. 32-39.

[145] *Id*. at 8696, para. 192.

[146] Last year, the Commission revised its allowable-cost criteria for IP Relay to permit recovery of outreach costs by IP Relay providers. *2022 IP Relay Compensation Order*, paras. 14-19. All VRS providers advocate a return to TRS Fund support of provider outreach. Convo Comments at 15, fn. 26; GlobalVRS Comments at 12; ZP Comments at 16-17; ZP Supplemental Comments at 2-3; Convo Reply at 7-8; Sorenson Reply at 19-20; ZP Reply at 10; ZP Supplemental Reply at 2-3.

[147] ZP Comments at 16; Sorenson Reply at 19.

[148] *See 2017 VRS Compensation Order,* 32 FCC Rcd at 5896, para. 11; *2013 VRS Reform Order*, 28 FCC Rcd at 8634-35, 8696, paras. 31, 192 ("continued concerns regarding the effectiveness of . . . VRS providers' outreach efforts").

[149] *See 2020 IP CTS Compensation Order*, 35 FCC Rcd at 10875, para. 21. Since the Commission's 2013 determination to cease TRS Fund support for outreach by VRS providers, the amounts reported by VRS providers as outreach have decreased, while the amounts reported as allowable marketing expenses have increased. For example, for 2012, VRS providers reported, on average, $0.24 per minute for outreach and $0.04 per minute for marketing. Rolka Loube, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 20 (filed May 1, 2013). For 2019, providers reported $0.08 per minute for outreach and $0.11 per minute for marketing. Rolka Loube, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 21 (filed May 3, 2021). For 2022-23, providers reported less than $0.001 per minute for outreach and $0.13 per minute for marketing. *See* 2023 TRS Fund Annual Report, Exh. 1-4; 2023 Cost and Demand Data.

[150] *See* GlobalVRS Comments at 15; ZP Comments at 16-17; Sorenson Reply at 19; ZP Reply at 10; *cf. 2020 IP CTS Compensation Order*, 35 FCC Rcd at 10875, para. 21 (stating that "provider outreach for IP CTS likely serves a reasonable purpose, by educating potential IP CTS users and their families about the nature of the service").

[151] ASL Services Holding, which operates GlobalVRS, explains that "[i]t takes additional time, resources, and knowledge to be able to adequately educate specialized communities [such as the Spanish-language deaf community served by GlobalVRS] about services available to them." GlobalVRS Comments at 15.

as the resources involved are more likely to lead to increased compensation revenue if used for branded marketing.

4. User Access Software

44. *Background*. Pursuant to longstanding Commission rulings, which have been upheld twice by the D.C. Circuit, the TRS Fund does not support the provision of equipment that a consumer may use to access TRS.[152] The current record does not warrant revisiting this prohibition. However, the Commission has also stated that the prohibition on TRS Fund support for user equipment also precludes compensation of providers for "any necessary software."[153] In prior Commission decisions discussing this prohibition, the Commission did not specifically address software applications used to enable "off-the-shelf" devices such as PCs, tablets, and smartphones to connect to a TRS provider's platform. Indeed, for much of this period, most VRS user software was developed specifically for provider-designed videophones that could only be directly connected to one provider's service.[154] Today, however, consumers increasingly use off-the-shelf devices to access VRS.[155] In light of this trend, commenters urge the Commission to revisit the prohibition on TRS Fund support for VRS user software.[156]

45. *Discussion*. We revise our allowable-cost criteria to allow TRS Fund support for the reasonable cost of providing downloadable software applications that are needed to enable users to access VRS from off-the-shelf user devices. We agree with ZP that the TRS Fund should support reasonable costs incurred by VRS providers in developing, maintaining, and providing "the software necessary to allow VRS users' non-proprietary equipment to route calls and connect to VRS."[157] We allow TRS Fund recovery of VRS providers' reasonable costs directly related to the provision of software that can be downloaded and self-installed by VRS users onto off-the-shelf user devices such as mobile phones, desktop computers, and laptops running on widely available operating systems. Such costs must be incurred by any provider to enable users to connect to its service platform; therefore, they are attributable to the provision of VRS.[158] Further, recovery of the cost of software needed to connect such user devices to VRS is consistent with the Commission's policy to promote the availability of off-the-shelf IP-enabled

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[152] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, para. 17 (2006) (*2006 TRS Order*); *see also 2007 TRS Compensation Order*, 22 FCC Rcd at 20170-71, para. 82; *2013 VRS Reform Order*, 28 FCC Rcd at 8696, paras. 193-94; *2017 VRS Compensation Order,* 32 FCC Rcd at 5897-901, paras. 12-19; *Sorenson Communications, Inc., v. FCC*, 659 F.3d 1035, 1044-45 (D.C. Cir. 2011) (*Sorenson 2011)* (statute does not require that "VRS users receive free equipment and training," only that they "pay no higher rates for calls than others pay for traditional phone services," and exclusion of CPE costs does not undermine section 225 goal of not discouraging or impairing development of improved technology); *Sorenson 2014,* 765 F.3d at 44.

[153] *2006 TRS Order*, 21 FCC Rcd at 8071, para. 17 ("Compensable expenses . . . do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or any necessary software.").

[154] *See, e.g.*, *2013 VRS Reform Order*, 28 FCC Rcd at 8697, para. 194 n.513 ("Most VRS software currently available is proprietary.").

[155] ZP Comments at 8; Sorenson Reply at 18 ("ZP estimates that up to 40 percent of VRS users currently use off-the-shelf technologies to access VRS. Sorenson believes the number is substantially higher."); Sorenson November 2021 *Ex Parte* at 4-5 (confidential).

[156] ZP Comments at 18-19; ZP Reply at 11 (advocating TRS Fund support of software used with non-proprietary, off-the-shelf user equipment); *see also* GlobalVRS Comments at 11; Sorenson Comments at 34-36 (urging the Commission to allow TRS Fund recovery of all user software costs); Convo Reply at 7-8; Sorenson Reply at 18-19.

[157] ZP Comments at 19.

[158] *Id*. (pointing out that "the specialized software needed to access VRS is a necessary part of the service—without which VRS cannot function").

devices for VRS use and decrease consumers' dependence on VRS equipment specifically designed for connection to a particular VRS provider.[159]

46. However, we decline Sorenson's request that we also allow recovery of costs incurred in developing, maintaining, or providing software for user devices that are distributed by one VRS provider and cannot be directly connected to other VRS providers' services.[160] While we agree with Sorenson that users need a software interface to access VRS,[161] they do not "need" proprietary devices that can be connected to and used with only one provider's service, nor do they need software designed for such devices. Although we have not prohibited providers from distributing such devices and software to consumers requesting them,[162] it is not necessary to support proprietary devices and software with TRS Fund resources.[163] Further, allowing recovery of such software costs would not advance the Commission's policy to enable users to access VRS from off-the-shelf IP-enabled devices and to avoid dependence on VRS equipment specifically designed for a particular provider's network.[164] By limiting TRS Fund support to user software that allows VRS access from off-the-shelf equipment that can be connected to any VRS provider, we promote the availability of multiple service options for consumers.

47. We recognize that it may often be difficult for a VRS provider to differentiate precisely between the portions of certain expenses that are attributable to, e.g., the development of software applications for connecting proprietary and non-proprietary equipment to the provider's platform. In cases where such expenses cannot be directly assigned, the provider should adopt a reasonable allocation method and specify the method used in its cost reports, so that it can be evaluated by the TRS Fund administrator and the Commission.[165]

5. Field Staff Issues

48. *Background*. In a petition for declaratory ruling, Sorenson urges the Commission to determine that costs incurred by a VRS provider when its staff provides in-person assistance to customers are allowable for TRS Fund compensation to the extent that the tasks performed by field staff are service

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[159] *Id*.; ZP Reply at 11. In 2013, when the Commission directed development of "a generally available, non-proprietary VRS access technology reference platform" to facilitate interoperability between VRS and off-the-shelf user devices, the Commission stated that "[b]ased on our experience with that program, we may reevaluate at a later time, if necessary the need for and propriety of Fund support for the distribution and maintenance of non-proprietary VRS access technology." *2013 VRS Reform Order*, 28 FCC Rcd at 8697, para. 194 n. 513.

[160] Sorenson Comments at 34-36.

[161] *Id*. at 35 (stating that "[s]oftware on the consumer's side of the service is as necessary as the software on the network side"); *see also id*. at 2 (adding that "the advent of the iPhone demonstrated how user interfaces can revolutionize services").

[162] *See* Sorenson November 2021 *Ex Parte* at 6 ("Consumers can choose the types of endpoints that best fit their needs and should not be confined only to softphones run on devices that are not Deaf-centric, as opposed to Sorenson's Deaf-centric videophones."). Sorenson asserts that the proprietary devices it distributes offer "higher video resolutions and more screen space" than off-the-shelf platforms, but provides no details supporting this claim. *Id*. at 4. Even if true, Sorenson fails to show that such alleged advantages necessitate the availability of TRS Fund payments for such features or the software supporting them.

[163] Sorenson acknowledges that {[xxxx xx xxxx]} of its customers (as well as 100% of the customers of other providers that do not distribute proprietary devices) use VRS software running on an off-the-shelf device, either alone or in addition to using a proprietary Sorenson device. *Id*. at 4 (confidential). Since Sorenson has {[xxxx]} of all customers (as of January 2022), *id*., at least {[xxx xx xxx xx xxxx xx xxxxx]} of all VRS users use generic devices. Therefore, whatever perceived advantages proprietary devices may have, as a practical matter they provide a useful but not essential means of accessing VRS. Material set off by double brackets {[ ]} is confidential information and is redacted from the public version of this item.

[164] *2017 VRS Compensation Order*, 32 FCC Rcd at 5901, para. 19.

[165] *See, e.g.*, 47 CFR § 64.901 (Allocation of Costs).

related, not equipment related.[166] In particular, Sorenson requests that, when field staff installs user equipment, a portion of the cost of that visit is allowable if service-related tasks are also performed during the visit.[167] Among the tasks that Sorenson describes as service-related are: assisting customers to register in the User Registration Database, including assisting with self-certification and obtaining consumer acknowledgement for mandatory disclosures, setting up VRS accounts, providing instructions on tasks such as providing a Registered Location for 911 calling, assisting with using VRS on a non-proprietary device, porting between VRS providers, and training a customer to use VRS.[168] Sorenson seeks this clarification following an audit finding of the TRS Fund administrator that, in its 2019 annual cost filing, Sorenson misclassified service-related field staff costs as Operations Support costs instead of non-allowable customer premises equipment (CPE) costs.[169]

49. *Discussion*. Because the costs of installing, maintaining, and training customers to use provider-distributed devices are not recoverable through TRS Fund compensation, providers must not report the costs of field staff visits for such purposes as allowable expenses.[170] However, we clarify that the reasonable cost of *service*-related work performed by field staff during a visit to a new or current user is an allowable cost of providing VRS. Reasonable costs incurred for service-related field staff visits for the purpose of, e.g., assisting customers with registration, use of VRS on a non-proprietary device, or completing a port are allowable.[171]

50. The above clarifications also apply to the reporting of field staff costs incurred by IP CTS providers.[172] However, any change in the allowability of field staff costs related to installation and provision of IP CTS equipment[173] is beyond the scope of this proceeding.

C. Estimating Costs

1. Need for Adjustment of Provider Cost Projections

51. For the past 13 years, the Commission has established the cost basis for provider compensation by averaging VRS providers' reported historical expenses for the prior calendar year with their projected expenses for the current calendar year.[174] The Commission has found this method to be a useful way to counteract providers' tendency to overestimate future costs.[175] However, for a number of reasons specific to this proceeding, our averaging approach requires modification to achieve reasonably

[166] Sorenson Field Staff Petition; *see also* Sorenson Comments at 36-37.

[167] Sorenson Field Staff Petition.

[168] *Id*. at 1, 3.

[169] *Id*. at 5-6.

[170] Sorenson Comments at 37; Sorenson November 2021 *Ex Parte* at 14. As discussed in the previous section, costs incurred to install and maintain software for a VRS provider's proprietary user devices are also non-allowable. *See supra* III.B.4. Therefore, field staff costs related to installation, maintenance, and training of customers to use such software also must be excluded. Sorenson Field Staff Petition; *see also* Sorenson Comments at 36-37; Sorenson November 2021 *Ex Parte* at 14-15.

[171] We do not agree with GlobalVRS's assertions that field visits are never necessary for users of off-the-shelf, third-party equipment, and that field staff visits serve only to keep consumers tied to proprietary equipment. GlobalVRS Field Staff Comments at 3-5. Convo's allegations that Sorenson's field staff engage in various improper and abusive practices are better addressed in a complaint proceeding. Convo Field Staff Comments at 1-2.

[172] *See* Hamilton Field Staff Comments at 1-2; ClearCaptions Field Staff Comments at 1-2.

[173] ClearCaptions Field Staff Comments at 3-5.

[174] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5928-29, para. 69.

[175] *Id*.

accurate estimates of provider costs for the purpose of establishing VRS compensation for the new compensation period.

52. First, due to a recent increase in the general inflation rate, which does not appear to be offset by comparable efficiency improvements, the average of VRS providers' historical 2022 and projected 2023 expenses is likely to understate the costs that will be incurred by VRS providers in many expense categories in the new compensation period.[176] Second, VRS providers may incur expenses in newly allowable cost categories, which are not reflected in their current reporting of allowable costs. Third, the record indicates that, due to a shortage of qualified ASL interpreters and the challenges posed by new modes of communication, VRS providers need to substantially increase CA wages and technology spending to continue providing high-quality, functionally equivalent service.[177]

53. Finally, recent inflation[178] and other factors appear to have caused an unusual amount of uncertainty and variation in VRS providers' estimates of future costs.[179] In projecting costs for 2023 and 2024, different providers appear to have made very different assumptions about future input costs, as well as the extent to which compensation levels will increase sufficiently to justify additional spending.[180] As a result, estimating each provider's cost of providing VRS based on an average of that provider's historical and projected expenses is likely to cause discrepancies.

54. Providers suggest different approaches for addressing these concerns. Though not disputing that VRS costs have risen substantially while this proceeding has been pending, ZP argues that we should abandon any attempt to estimate current provider costs.[181] Instead, ZP recommends applying an inflation adjustment (as well as certain adjustments meant to reflect newly allowable costs) to the compensation rates set in 2017.[182] We reject this approach because it incorrectly assumes that providers' 2016-17 costs (on which the rates set in 2017 were based) remain relevant for purposes of setting compensation for 2023-24 and beyond. There is no logical or record basis for this assumption.[183] As

[176] *See* U.S. Bureau of Labor Statistics, Consumer Price Index, https://www.bls.gov/cpi/; U.S. Bureau of Labor Statistics, Producer Price Index, https://www.bls.gov/ppi/; U.S. Bureau of Labor Statistics, Employment Cost Index, https://www.bls.gov/eci/. There is likely to be significant inflation during the 12-month lag between this 2022-23 reporting period and the 2023-24 Fund Year, which is the first year of the new compensation period.

[177] *See, e.g.*, Sorenson Corrected August 18 *Ex Parte* at 1; Letter from John Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2-5 (filed Aug. 28, 2023) (Sorenson August 28 *Ex Parte*); Convo May 9 *Ex Parte* at 3-5.

[178] *See* U.S. Bureau of Labor Statistics, Consumer Price Index, https://www.bls.gov/cpi/; U.S. Bureau of Labor Statistics, Producer Price Index, https://www.bls.gov/ppi/; U.S. Bureau of Labor Statistics, Employment Cost Index, https://www.bls.gov/eci/.

[179] For example, with respect to CA wages and benefits (Line B.1 of providers' annual cost report), Sorenson projected that its per-minute cost would {[xxxxxxx xxx xxx xxxx xx xxxx]}, while ZP projected {[xx xx xxxxx xx xxx xxxx]}, and Convo projected {[x xx x xxxxxx]}. 2023 VRS Cost and Demand Data (confidential).

[180] *See* ZP August 10 *Ex Parte* at 3 n.8 ("Notably, comparing projected costs in any scenario is premised on a number of assumptions that may wildly vary between providers. If one assumes that inflation has been tamed and another that inflation will accelerate, that can lead to widely divergent forecasts even though only one of those providers can be correct. Similarly, if one provider assumes that rates will remain the same (and thus no provider will have the financial ability to dramatically increase its costs) and another provider assumes that the Commission will increase rates to whatever is needed to cover their costs, that can lead to one projecting a cut-rate budget and another a gold-plated budget even though only one of those providers can be correct.").

[181] *Id*. at 2.

[182] *Id*. at 3-4.

[183] This assumption underlies a number of the assertions in ZP's recent *ex partes*—e.g., that "any rate card should give ZP and Convo a share of the new revenues at least equal to its market share." Letter from Scott Delacourt, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 3 (filed Sept. 20, 2023). Due to the changes that

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discussed in detail in Part III.D.1 below, the relative per-minute costs of VRS providers are now very different than they were seven years ago. Further, as explained in Appendix D, ZP's argument that the tiered rate structure and rates of 2017 reflect immutable truths about economies of scale at different volumes of minutes is based on a flawed study.

55. Sorenson, on the other hand, suggests that we modify past practice by using historical 2022 cost, rather than an average of historical and projected cost, as a baseline for estimating future VRS cost, and apply uniform factors to adjust each provider's 2022 costs for inflation and to make the targeted, above-inflation adjustments needed in certain areas.[184] We believe this approach has merit. Historical costs are more reliably accurate,[185] and each provider's historical cost can be adjusted by a uniform factor to address inflation or other likely cost changes affecting all providers, so as not to unduly distort, or give any provider an undue advantage in, the resulting rates. We also note that, while ZP has raised concerns about some aspects of Sorenson's reported 2022 costs,[186] Sorenson has provided reasonable explanations for its 2022 cost increases.[187]

56. To address this unusual confluence of rate-setting issues,[188] we therefore adjust the costs reported in 2022 to: (1) take account of cost changes due to inflation during the 18-month time lag between calendar year 2022 (the cost reporting period) and Fund Year 2023-24 (the first year of the new compensation period); (2) add amounts sufficient to cover necessary increases in technology spending and CA wages and benefits; (3) include estimates of provider expenditures in newly allowable cost categories; and (4) address new costs incurred by Sorenson to provide video-text service. Finally, we add an appropriate operating margin.

2. Adjusting Historical Cost for Inflation

57. To ensure that compensation is sufficient to cover likely inflation-related cost increases between calendar year 2022 and Fund Year 2023-24, we increase our estimate of each provider's expenses in most categories by 7.23%, which is the change from fourth quarter 2021 to second quarter 2023 in the Bureau of Labor Statistics (BLS) index of seasonally adjusted "total compensation for private industry workers in professional, scientific, and technical services."[189]

3. Adjustments for Increased CA Wages and Technology Spending

58. We also find that providers will need to spend additional amounts in certain cost categories, beyond what they spent in 2022 (even as adjusted for inflation).

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have taken place since 2017, "old" provider revenues resulting from the current rates are disproportionately allocated in relation to provider cost. Therefore, there is no logical necessity for "new" revenues to be proportionate to providers' market shares. As Sorenson states: "There is no conceivable basis in Section 225 or economics for such a proposal, divorced from costs and operating margins." Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (filed Sept. 21, 2023).

[184] *See* Sorenson Corrected August 18 *Ex Parte* at 3-5.

[185] *See 2017 VRS Compensation Order*, 32 FCC Rcd 5927-28, para. 69.

[186] ZP August 10 *Ex Parte* at 2-3.

[187] *See* Sorenson Corrected August 18 *Ex Parte* at 6-7 (confidential).

[188] We do not anticipate that the modifications made below to address these issues will need to be repeated in subsequent compensation proceedings. The current confluence of pandemic-related effects, a sudden change in the inflation rate, shortage of skilled labor, and provider uncertainty regarding future costs is unlikely to recur, or if it does, is unlikely to coincide with the end of a compensation period.

[189] Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS2015400000000I. This adjustment uses the same index (described in more detail in Part III.G.2 below) that will be used to adjust compensation levels in subsequent years of the compensation period.

59. *Estimating CA Cost*. Several commenters report that VRS labor costs are likely to continue increasing by substantially more than the 18-month inflation adjustment described above, due to a continuing shortage of CAs.[190] All providers increased CA wages in 2022, and Sorenson and ZP both projected further wage increases, leading to higher CA cost in 2023 and 2024.[191] While we agree that a further increase in CA wages is needed, providers' projections in that regard vary widely. *See* Table 1 below. As discussed above, these disparate projections appear to be based on different assumptions about future inflation and future compensation levels.[192] To address the need for CA wages to increase substantially more than inflation, while avoiding the distorting effects caused by disparate provider projections, we estimate costs in this category by assuming that all providers' CA wages and benefits will increase by a constant percentage over historical levels.

Table 1: CA Costs Reported By Providers for 2020-24[193]

	2020	2021	2022	2023	2024	% Change 2020-21 to 2024
Convo	{[xxxx	xxxx	xxxx	xxxx	xxxx	xxxx]}
ZP	{[xxxx	xxxx	xxxx	xxxx	xxxx	xxxx]}
Sorenson	{[xxxx	xxxx	xxxx	xxxx	xxxx	xxxx]}

60. For this category only, we use Fund Year 2020-21 as the baseline for estimating increased CA cost. This is because, as shown in Table 1, CA wages were relatively stable through the end of 2021, and the wage increases provided in 2022 differed substantially among the providers. Given the wide disparity among the providers' projections of future wage increases, the Commission must resort to rough estimates. We believe Sorenson's projection, which is at the high end, is closer to being accurate than those of ZP and Convo. However, we are not convinced that CA wages will or should increase to the full extent of Sorenson's estimate.

61. Sorenson's projection is largely based on its claims that community interpreters' compensation averages $80-$100 per hour, and that CA wages must be raised closer to that level to ensure that qualified interpreters are willing to work as VRS CAs.[194] However, we question the extent to which Sorenson's estimate of $80-$100 per hour for community interpreter compensation is applicable nationwide.[195] Further, while we recognize the inherent difficulty of VRS work, working as a CA also has

[190] Sorenson June 22 *Ex Parte* at 3 (arguing that compensation should be set "to capture the full magnitude of cost increases—such as interpreter wages—experienced during Fund Year 2023[-24], which starts with July 2023"); ZP June 5 *Ex Parte* at 2 (asserting that the per-minute cost of communications assistants has also been increasing year over year, with a 13% increase in 2022 and expected increases of 24% in 2023 and 14% in 2024); Convo May 25 *Ex Partes*; Letter from Amanda Montgomery, Convo, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed Feb. 11, 2022) (Convo February 2022 *Ex Parte*); ZP December 2021 *Ex Parte* at 4; Sorenson November 2021 *Ex Parte* at 7-8; Convo Comments at 19-23; GlobalVRS Comments, Appx. 2 at 8-9.

[191] *See* 2023 VRS Cost and Demand Data (confidential).

[192] Six months after submitting its projected costs, ZP's counsel submitted an alternative set of projections. ZP August 10 *Ex Parte* at 2-4 (confidential); ZP August 22 *Ex Parte* at 1-2 (confidential). However, these projections are explicitly premised on an asserted need to match Sorenson's projected wage increases. ZP August 10 *Ex Parte* at 2-4; ZP August 22 *Ex Parte* at 1-2. Thus, they have no independent significance.

[193] Source: 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data (confidential).

[194] Sorenson August 28 *Ex Parte* at 2-5, Attach. A, Attach. D. Sorenson contends that, compared to community engagements, VRS work is exceptionally demanding, as CAs must be prepared to handle any kind of call, including emergencies and other emotionally taxing conversations, with no advance preparation and little pause between calls, cannot choose whom to serve, and may be subject to abusive calls. *Id*. at 4.

[195] Information from other sources appears inconsistent with Sorenson's claim. *See, e.g.*, https://www.ziprecruiter.com/Salaries/ASL-Interpreter-Salary-in-Washington,DC#Hourly (last visited Sept. 21, 2023) (citing a $59.91 hourly wage for a Video Relay Interpreter in Washington, DC, compared to an average hourly salary of $32 for ASL

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certain advantages that may make it attractive to interpreters despite lower hourly compensation. First, in general, community interpreting work is only available when a meeting has been scheduled that requires an interpreter. VRS, by contrast, is operating 24/7, and there must always be interpreters ready to handle any call that happens to be made. Thus, it is often possible for interpreters to arrange for VRS work during periods when community interpreting work is unavailable. Second, community interpreting necessitates travel, while many VRS CAs handle calls from their homes. As a result, VRS work not only is more convenient for interpreters, but also can be performed by interpreters who live in areas where community interpreting work is relatively scarce or whose personal circumstances make it difficult to work away from home.

62. Finally, as noted above, VRS providers have frequently over-projected the amount by which costs are likely to increase.[196] Taking all these factors into account, we find it reasonable to assume that the CA costs of VRS providers will rise by a percentage that equals {[xxx]} of the percentage increase projected by Sorenson. Under this approach, each provider's CA cost is estimated to be 65% higher than its CA cost in 2020-21. We note that this estimate gives substantial weight to Sorenson's projection, as 65% is substantially more than a simple average of the CA cost increases projected by the three providers.

63. We recognize that this estimate is necessarily a matter of judgment. While we are setting compensation for a five-year period, the Commission reserves the right to make adjustments in the formulas, based on a strong showing that such adjustments are needed. Thus, if CA wages are increased consistently with the above estimate, and VRS providers then conclude that further increases are needed, they may present relevant evidence for the Commission's consideration. On the other hand, to the extent that CA wages are *not* increased consistently with the above estimate, the Commission may also consider and make appropriate adjustments in light of such evidence.[197]

64. *Estimating Engineering and R&D Cost*. We find that engineering and R&D expenses[198] are likely to increase by a percentage higher than inflation, as all providers work to address the unusually demanding technology upgrades needed to meet service challenges in the next compensation period.[199]

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interpreters in Washington, DC, and nationwide); https://www.indeed.com/career/sign-language-interpreter/salaries/VA (last visited Sept. 21, 2023) (citing an average hourly salary of $30.90 for sign-language interpreters in Virginia). We also note that many of the rates cited in Sorenson's August 28 *Ex Parte* do not include travel time. If an interpreter can handle VRS calls at home, as many increasingly do, two hours of VRS work at $50 per hour would earn the interpreter $100, while a one-hour community interpreting engagement, paying $90 per hour of interpreting and requiring an additional hour of travel to and from the interpreter's home, would earn the interpreter only $90. Where travel time is compensated, hourly compensation may be substantially lower. For example, Sorenson cites that the Commonwealth of Kentucky's terms pays $50 to $60 per hour with a two-hour minimum and compensated travel time. Sorenson August 28 *Ex Parte* at 2-3 & Attach. C. At those rates, an hour of community interpreting with an hour of travel would earn the interpreter $100 to $120, the same as two hours of at-home VRS work by a CA earning $50 to $60 per hour.

[196] *See supra* para. 51.

[197] *See infra* Part III.E.

[198] Engineering and R&D are closely related aspects of technology spending: successful research and development leads to service innovations, the deployment of which increases engineering costs, and increased engineering staff and resources can also be used to expand research and development. *See* Sorenson June 28 *Ex Parte*; Sorenson June 15 *Ex Parte* (discussing the VRS cost drivers of research and development and engineering jointly).

[199] *See* Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed July 28, 2023) (Sorenson July 28 *Ex Parte*); Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 7-8 (filed Sept. 26, 2022) (raising that providers must invest in engineering resources to develop and maintain solutions for functional equivalency); ZP Comments at 11 (noting that "consumer advocates and VRS users have long called for incentivizing VRS providers to research and invest in next-generation technologies so that Americans with hearing or speech disabilities have access to the same

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Important changes in how people communicate—such as the rapid growth of video conferencing—are posing new technology challenges for VRS providers. For example, pursuant to this year's *Video Conferencing Order* and *Video Conferencing Notice*, VRS providers must dedicate additional research, development, and engineering resources to collaboration with video platform providers, so that VRS CAs can have an integrated, audio-visual presence in video conferences.[200] In addition, with the Commission taking steps to modernize the E911 system,[201] we anticipate the deployment of new technology to automatically provide the dispatchable location of any mobile VRS user calling 911.[202] VRS providers may expend additional resources to help find and implement a one-number solution that ends the "siloing" of VRS, seamlessly merging the use of relay with mainstream voice, video, and texting services.

65. The Commission must ensure that the TRS Fund supports sufficient spending on technology to address the challenges described above, so that VRS users have functionally equivalent access to video conferencing and emergency communication. As directed by the Act, we must implement TRS in a way that both encourages the use of existing technology and does not deter the development of improved technology.[203] Further, support for emergency communications is a fundamental part of our TRS mandate.[204] The amounts that VRS providers will need to spend to address these specific challenges are not easy to quantify. Perhaps because providers have more leeway to defer spending on new technology,[205] current projections for technology spending are subject to wide variation among the providers.[206] Sorenson projects substantially increased spending on R&D and engineering in 2023 and 2024, while ZP and Convo project declines.[207] For the reasons stated above, we believe all VRS providers will need to increase spending substantially in these areas to ensure that they remain competitive in the evolving communications landscape.[208] Given the uncertainties inherent in predicting future spending on

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innovations as hearing individuals"); ZP Reply Comments at 11 ("In order to prevent people who are deaf and hard of hearing from falling behind in their use of modern communication technologies, providers need adequate financial support to undertake research and engineering costs for the development of innovative services and features that can keep pace with advancements in voice communications services."); Convo Comments at 11-12 (discussing plans to update its service platform to provide for interoperability with modern technologies and meet the needs of underserved deaf communities, if afforded sufficient compensation).

[200] *See, e.g.*, Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (Jan. 27, 2022) *January 2022 Ex Parte* (asserting that integrating VRS with commonly used video conferencing platforms "will require significant, ongoing investment by VRS providers to keep pace with the technological changes in communications").

[201] *See, e.g., Location-Based Routing Notice*, FCC 22-96 (location-based routing proposals); *NG911 Notice*, FCC 23-47 (Next Generation 911 proposals).

[202] *See* 47 CFR § 9.14(d)(4)(ii) (requiring providers of non-fixed VRS and IP Relay providers to provide automated dispatchable location if technically feasible); *Id*. § 9.14(d)(2)(iv) (911 call-routing requirement for VRS and IP Relay providers).

[203] 47 U.S.C. § 225(d)(2).

[204] *See id*. § 225(b)(1) (referring to the purposes established in 47 U.S.C. § 151, which prominently include "promoting safety of life and property through the use of wire and radio communications").

[205] *See* Convo May 25 *Ex Partes* (discussing the impact of increasing costs to its engineering budget); Sorenson November 2021 *Ex Parte* at 2 (reported research and development costs do not account for projects that were considered but abandoned).

[206] 2023 VRS Cost and Demand Data (confidential).

[207] *Id*. (projecting that in 2024, Sorenson's allowable R&D and engineering expenses will be {[xxxxx]} higher than in 2022).

[208] Despite their projections of a decline in spending on engineering and R&D, ZP and Convo agree that such increases are needed. *See* ZP Comments at 11; ZP Reply Comments at 11; Convo May 25 *Ex Partes* (discussing the impact of increasing costs to its engineering budget).

technology, we recognize that any estimate we make may be subject to error. However, we prefer to err on the side of over-predicting the amount of spending that will be necessary to ensure that VRS technology provides functionally equivalent service to consumers. While Sorenson projects a {[xxxx]} increase in technology spending, that projection was made before the Commission issued its *Video Conferencing Order* and *Video Conferencing Notice*, which pose additional technology challenges to VRS providers. We estimate that, in the first year of the new compensation period, each provider will need to increase spending on engineering and R&D by approximately 75% over the levels reported for 2022. Therefore, we further adjust each provider's estimated costs in these areas by adding 75% of the provider's reported 2022 level. The resulting adjustments to each provider's allowable costs are shown in Appendix B. As with CA costs, we note that the Commission reserves the right to make adjustments in the compensation formulas, either upward based on a strong showing that additional technology expenditures are necessary, or downward, based on evidence that the increased technology expenditures described above have not been made.[209]

4. Estimated Expenses in Newly Allowable Cost Categories

66. We also adjust estimated VRS cost to include certain expenses that were previously non-allowable and are now allowable, as discussed in Part III.B above.[210] Previously non-allowable expenses for *numbering* activities in 2022 are identified by each VRS provider in its annual cost report and are included in our cost estimates.[211] In the other categories of previously non-allowable costs discussed in Part III.B above, {[xxx xxxxxxx]} reported non-allowable expenses for 2022.[212] For the reasons stated in Part III.B.4 above, costs for customer support provided by field staff remain non-allowable to the extent that they are attributable to installation, maintenance, or customer assistance with provider-distributed devices or software for proprietary devices.[213]

67. *Outreach*. Although no significant *outreach* expenditures have been reported by VRS providers since 2020,[214] some commenters urge the Commission to adjust provider compensation to include estimates of outreach expenses that *would be* incurred if such costs are allowed—and if compensation rates are high enough to permit such discretionary spending.[215] Some commenters assert

[209] *See infra* Part III.E.

[210] Newly allowable R&D costs are included in the estimates discussed in the previous section. However, R&D costs for user devices and proprietary user software remain non-allowable. *See supra* Part III.B.1, 4.

[211] *See* 2023 Non-Allowable VRS Cost Data (confidential); *see also* ZP Comments at 15 (confidential); ZP Reply at 9-10 (confidential); Convo May 9 *Ex Parte* at 6 (confidential). The estimates in the comments and ex partes are consistent with the cost reports.

[212] *See* 2023 Non-Allowable VRS Cost Data (confidential). In the TRS Fund administrator's instructions for the annual reports filed in 2023, VRS providers were directed to report their non-allowable (as well as allowable) expenses for the specific categories of expenses for which providers had urged the Commission to expand the allowability criteria. *See* 2023 TRS Fund Annual Report, Appx. B (Annual Provider Data Request Filing Instructions) at 16-19.

[213] *See supra* Parts III.B.4, 5. Our review of the record indicates that Sorenson currently attributes service-related field staff costs to the Operations Support cost category. Sorenson Field Staff Petition at 3, n.9 (citing Sorenson Field Staff Petition, Attach. at 11). Thus, service-related field staff costs are already included in reported allowable costs.

[214] *See* 2023 Non-Allowable VRS Cost Data (confidential).

[215] ZP Comments at 15, 17 (confidential) (estimating costs for an effective outreach campaign); ZP Supplemental Comment at 2 & n.4 (confidential); Convo May 9 *Ex Parte*. For small providers, Convo suggests that for newly allowable categories there should be at least a $0.50 increase in compensation. *See* Convo June 26 *Ex Parte* at 2; Convo May 25 *Ex Partes* at 2.

that there remain a significant number of eligible TRS users who are fluent in ASL but not currently subscribed to VRS, e.g., because they currently lack access to broadband service.[216]

68. We agree that, during the next compensation period, VRS provider expenditures on outreach may increase somewhat, building on the Commission's and other federal initiatives to expand broadband access, and the expected increase in VRS availability to incarcerated persons.[217] However, we find that such expenditures are unlikely to average $0.09 per minute, as ZP estimates.[218] As a general matter, we believe VRS providers are less likely to spend substantial sums on "unbranded" outreach than "branded" marketing, as unbranded communications are less likely to result in the registration of users generating additional compensation for that provider. ZP's estimate is based on cost data for 2019 and 2020, filed by {[x xxxxx xxxxx xx xxxxxxx]},[219] and such reporting may have been due to a misclassification of the underlying activities.[220] As noted above, no significant amount of outreach expenses have been reported by providers after 2020.[221] Given the virtual absence of provider outreach at present and the relatively weak economic incentives for providers to engage in unbranded outreach rather than branded marketing, we estimate that providers' outreach spending is unlikely to exceed one-quarter of their marketing expenses, on average.

69. Further, we find no justification for the view that providers will spend on outreach at a uniform per-minute rate, as ZP suggests.[222] It seems more likely that outreach spending will represent a relatively uniform percentage of each provider's total expenses. Industry-wide, VRS providers' marketing costs (adjusted for recent inflation, as described in Part III.C.2 above) average $0.13 per minute, or 3.1% of total expenses. If outreach expenses average one-quarter of the industry-wide average marketing cost, then each provider will devote approximately 0.8% of its total expenses to outreach.[223] We therefore adjust each provider's estimated VRS cost by an amount equal to 0.8% of its total expenses.

5. Estimated Costs of Video-Text Service

70. With GlobalVRS's decision to terminate its involvement with VRS, another VRS provider, Sorenson, has undertaken efforts to prepare to offer Video-Text Service for ASL users who are deafblind. In a recent *ex parte* submission, Sorenson anticipates that it will incur a substantial amount of relatively fixed costs, which are unlikely to vary substantially with the number of minutes of service provided. Sorenson estimates these costs to include an initial capital expenditure and annually recurring

[216] *See* Convo May 9 *Ex Parte* at 6; Letter from Amanda Montgomery, Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (Nov. 18, 2021); ZP Supplemental Comments at 3; ZP Comments at 16; *see also* Joint VRS Providers October 2021 *Ex Parte*; ZP May 23 *Ex Parte* at 4.

[217] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (Sept. 30, 2022).

[218] *See* ZP May 23 *Ex Parte* at 4.

[219] *See* ZP Supplemental Comments at 2 & n.4 (confidential); 2021 VRS Cost and Demand Data (confidential).

[220] The difference between the 2021 and 2023 estimates appears to be due to {[xxxxxxx xxxxx xxxxxxx xxxx xxxxxx xxxxxxxxxxxx xxxxxx xxxxxxx xxxxxxx xxx xxxxxx xxxxxxxx xxxxxxxx xxxxxx xxx xxx xxxxxx xxxx x xxxxxx xxxxx xxxxxx xxxxxx xxxxx xxxxxxxx xxxxxx xxxx xx xx xxx xxx xxxxx xxxxxx]}.

[221] ZP contends that such costs would not vary significantly based on a provider's minutes of service. ZP May 23 *Ex Parte* at 4.

[222] *Id*. at 4.

[223] Because each provider's total VRS cost per minute is different, each provider's per-minute outreach expenses will be higher or lower than the average given above.

costs for field support, maintenance, testing, software development, etc.[224] We find that this cost estimate is reasonable, and we therefore increase Sorenson's adjusted annual expenses by this amount.[225]

6. Operating Margin

71. We find no reason to modify the range of reasonable VRS operating margins, currently defined as between 7.6% and 12.35%.[226] The record does not support Sorenson's argument that the allowed operating margin is insufficient to encourage capital investment in VRS.[227]

72. We decline to adjust the operating margin to 22% to reflect average operating margins for competitive telecommunications firms[228] or to 17.8% to reflect average operating margin for companies in the communications and information technologies sectors.[229] The current range of reasonable operating margins for VRS is based on an average of the margins earned in analogous industries, including government contracting and the professional service sector that includes translation and interpretation services, as well as the information technology sector.[230]

73. Sorenson does not provide a convincing explanation of its view that average margins for the competitive telecommunications firms, or for a mix of firms in the communications and information technologies sector would provide a more appropriate benchmark. As a preliminary matter, we note that Sorenson's initial filing was based on a study that included telecommunications carriers.[231] As explained in the *2017 VRS Compensation Order*, the operating margin approach was adopted because the Commission recognized that VRS providers are *unlike* the telecommunications industry, in that VRS is not a capital intensive business.[232] Any proposed benchmark that includes the operating margins of telecommunications carriers is clearly inappropriate.

74. While the most recent analysis submitted by Sorenson does purport to filter out capital-intensive companies from the sample of information and communications technology firms,[233] the use of a

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[224] Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, Attach. at 3-4 (filed July 17, 2023) (Sorenson July 17 *Ex Parte*) (confidential).

[225] *See infra* Appendix B (confidential). We note that other VRS providers are not precluded from offering this type of service. However, in response to GlobalVRS's impending exit, only Sorenson has represented that it is actively preparing to provide this service. Therefore, we adjust Sorenson's costs to reflect these estimated expenditures. Sorenson's estimated variable cost of providing this service, Sorenson July 17 *Ex Parte*, Attach. at 3-4 (confidential), is not included in this adjustment. As discussed in Part III.D.3 below, we adopt a separate compensation formula to allow recovery of such costs through an additive payment for each minute of Video-Text Service.

[226] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, paras. 26.

[227] *See* Sorenson Comments at 29-30. In making this argument, Sorenson relies in part on the unsupported claim that the tiered rate structure itself is a deterrent to capital investment. *See id*. at 32-39. Sorenson's additional argument—that the allowed operating margin is insufficient because some VRS-related costs are excluded from allowable provider expenses (*see id*. at 32)—is directly and more appropriately addressed (to the extent it has merit) by our modifications, described above, to the Commission's criteria for allowable VRS expenses. *See supra* Part III.B.

[228] *See* Sorenson January 2022 *Ex Parte* at 4-5.

[229] *See* Sorenson May 12 *Ex Parte* (attaching Declaration of Gregory M. Attiyeh, Brian F. Pitkin, and Steven E. Turner, FTI Consulting (Apr. 3, 2023)).

[230] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, paras. 25-26.

[231] *See* Sorenson January 2022 *Ex Parte* at 4-5.

[232] *2017 VRS Compensation Order*, 32 FCC Rcd at 5903, para. 23.

[233] *See* Sorenson May 12 *Ex Parte* at 1-2, Attach. at A-8–A-9, paras.17-21 (detailing the selection of benchmark companies).

benchmark based on the high technology sector remains flawed, for several reasons. First, as the Commission explained in 2017:

> While VRS certainly makes use of advanced technology, the bulk of VRS costs are labor costs, primarily salaries and benefits for interpreters, who need not be highly skilled in technology.[234]

75. This continues to be true today—and will remain so despite the technology challenges that require VRS companies to increase spending on research and development and engineering.[235] The economic profile of a VRS provider is quite different from the high technology companies analyzed by FTI.

76. Second, the FTI analysis looks at a sample of companies with net profit of up to 100%. We are not persuaded that these high-profit companies are comparable to TRS providers. Third, there are a number of important differences between the risks typically faced by IT companies and the risks involved in VRS. For example, while IT companies may be subject to unexpected, dramatic changes in demand for their products, demand for VRS has been remarkably stable over time.[236] Further, while the prices that IT companies can expect to receive for their products are subject to variation based on, e.g., changing demand and the pricing decisions of competitors, VRS providers can rely on government-established prices that are predetermined for a period of several years.

77. In short, neither Sorenson nor FTI persuasively explain why their operating margin analysis, relying on surveys of industry sectors that are markedly dissimilar to the VRS industry, should be deemed preferable to the Commission's 2017 determination of reasonable operating margins, based on data from a diverse set of industries analogous to VRS.[237]

78. In addition, according to recent census figures, typical margins for companies in a number of professional service sectors, including the interpretation services sector, are substantially lower than the numbers cited by Sorenson and are relatively similar to or below the levels of operating margin relied upon in setting the range of reasonableness.[238] The Census Bureau's survey of public companies' financial data for this sector, defined as "Professional, Scientific, and Technical Services," but excluding legal, shows that average quarterly pre-tax operating margins between 2019 and 2022 ranged from -3.06% (in 1Q2020) to 3.58% (in 3Q2020), averaging 0.09% in the 2019-22 period as a whole and -1.78% in 2022 (the most recent year).[239] The subsector that includes translation and interpretation services (but

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[234] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904, para. 25.

[235] According to the Fund administrator's 2023 report, 54.6% of VRS providers' allowable expenses for 2022-23 were CA-related. 2023 TRS Fund Report, Exh. 1-4 ($1.7679/3.2378=0.546). After adjusting for inflation, average CA-related expenses ($1.86) are 51.1% of average expenses ($3.64, after adjustments for inflation and additional cost allowances such as those for research and development and engineering).

[236] *See* 2023 TRS Fund Report, Exh. 1-4.a.

[237] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, paras. 25-26.

[238] *See id.* at 5904, para. 25 ("[T]he Census Bureau's survey of public companies' financial data for NAICS 541, defined as "Professional, Scientific, and Technical Services," but excluding legal, shows that average quarterly pre-tax operating margins for this industry sector between 2013 and 2016 ranged from 1.8% (in 1Q2016) to 7.9% (in 2Q2013), averaging 4.6% in the 2013-16 period as a whole and 3.2% in 2016. For NAICS 5419, a subsector that includes translation and interpretation services but excludes various less analogous industry segments such as accounting, architectural and engineering, and computer systems design services, the average operating margin for the public firms included in the Census Bureau's survey ranged from 3.9% to 12.2% for the 2013-16 period and averaged 7.4% in the 2013-16 period as a whole and 7.6% in 2016.").

[239] *See* U.S. Census Bureau, Quarterly Financial Report, https://www.census.gov/econ/qfr/historic.html (last visited July 27, 2023) (U.S. Census QFRs). Data for a particular quarter can be retrieved on this web page by selecting an appropriate quarterly release at "Historical QFR Publication Financial Tables" under the heading "Historical QFR

(continued….)

excludes various less analogous industry segments such as accounting, architectural and engineering, and computer systems design services,) saw an average operating margin for the public firms included in the Census Bureau's survey ranging from 0.62% (in 1Q2020) to 11.56% (in 2Q2019) for the 2019-22 period and averaging 6.67% in the 2019-22 period as a whole and 6.11% in 2022.[240] Sorenson's analysis does not address the relevant census data.

79. While the operating margins for public companies defined as "Professional, Scientific, and Technical Services," but excluding legal, have fluctuated over time (and currently are lower than when the FCC adopted the reasonableness range of 7.6% - 12.35%), we do not believe it would be beneficial to revise the reasonable range of operating margin that has guided our TRS compensation methodology over the past decade. It is also beneficial to retain consistency in the reasonable operating margin range that participants in the TRS program should expect, absent a clearer indication that operating margins for companies providing comparable services have significantly changed. The record does not establish such a significant change to operating margins when considering the complete scope of industries comparable to VRS. Therefore, we retain the current reasonableness range for the VRS operating margin.[241]

80. To maximize the likelihood that VRS operating margins for individual firms and the industry as a whole will fall within this reasonable range, we set compensation rates so that projected demand levels will result in an operating margin {[xx xx xxxxx xxxxxx xxx xx xx xxxxxxxxx xxxxxx]} for each VRS provider.

D. Compensation Structure and Formulas

81. We adopt the tentative conclusion of the *Notice* that the purposes of section 225 are best served by structuring VRS compensation to support multi-provider competition based on quality of service.[242] The record supports the Commission's prior findings that, by offering VRS users a choice

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Publication Tables." For example, data for all four quarters of 2022, as well as the first quarter of 2023, are available from the release for 2023, Quarter 1, at: https://www2.census.gov/econ/qfr/xls/qfr23q1f.xlsx. Because quarterly results can be revised over time, in compiling this information we used, for each quarter, the most recent available release that included information on that quarter. Within each release, quarterly operating margins for NAICS 541 were obtained from Table 89.0, "Income Statement for Corporations in NAICS Professional and Technical Services Sector (except Legal Services), and Professional and Technical Services Industry Group 5415, Total Assets $50 Million and Over." Operating margins were derived for each quarter by dividing line 11, "Net income (loss) from operations, by the difference between line 11 and line 7, "Net sales, receipts, and operating revenues."

[240] *See* U.S. Census QFRs. Within each release, quarterly operating margins for NAICS 5419 were obtained from Table 91.0, "Income Statement for Corporations in All Other NAICS Professional and Technical Services Industry Groups (except Legal Services), Total Assets $50 Million and Over."

[241] Sorenson's argument that the operating margin should be reassessed to take account of a previously proposed increase in federal corporate income tax applicable to the top tax bracket, from 21% to 28%, Sorenson Comments at 19, appears to be moot, as the proposed tax rate increase was not adopted. We also note that the current range of reasonable operating margins was established in 2017, based on estimates of average pre-tax operating margins for companies comparable to VRS providers. *2017 VRS Compensation Order*, 32 FCC Rcd at 5903-05, paras. 24-26. During the 2013-16 period from which the sample was drawn, corporate income tax for the top bracket was 35%—substantially higher than the current 21% and even higher than the 28% rate projected by Sorenson. *See* 47 U.S.C. § 11(b) (2017) (effective until Dec. 21, 2017); *see also* Tax Foundation, Historical U.S. Federal Corporate Income Tax Rate and Brackets, 1909-2020, https://taxfoundation.org/historical-corporate-tax-rates-brackets/ (last visited Aug. 8, 2023). Therefore, the corporate income tax burden that Sorenson claims is unfairly depressing its returns has actually decreased, not increased, since the reasonable range of margins was established by the Commission.

[242] *See* 47 U.S.C. § 225(a)(3), (b)(1); *2000 TRS Order*, 15 FCC Rcd at 5152-54, paras. 22-26 (authorizing TRS Fund-supported VRS under a regime of nationwide, multi-provider competition); *2010 TRS Compensation Order*, 25 FCC Rcd at 8697-98, para. 17; *2013 VRS Reform Order*, 28 FCC Rcd at 8622-23, para. 5 ("[I]mplementation of
(continued….)

among multiple providers, the Commission can efficiently and effectively ensure that functionally equivalent VRS is available to all eligible users.[243] As a number of commenters agree, the availability of multiple service offerings encourages VRS providers to compete for customers by exceeding minimum service quality standards. In addition, a multi-provider environment encourages diverse service offerings, including specialized services and features needed by sub-groups within the sign language-using population.[244]

82. Therefore, the Commission has consistently sought to structure VRS compensation so as to maintain competitive choices for consumers while minimizing waste of TRS Fund resources. There is no simple recipe for achieving these objectives. However, the Commission has flexibility to adjust its approach as necessary to address changed circumstances.[245]

1. Compensation for Large Providers

83. *Summary*. The record of this proceeding shows that circumstances have changed materially since 2017. Specifically, the cost structures of the largest VRS providers have come closer to parity. As a result, modifications are needed to avoid overcompensating one or both of these providers. To equitably allocate TRS Fund resources and ensure the availability of functionally equivalent VRS in the most efficient manner,[246] we modify the current tier structure by eliminating the third tier.[247]

84. *Rationale for Tiering*. The essential purpose of rate tiering is "to compensate VRS providers in a manner that best reflects the financial situation" of providers with disparate cost structures.[248] In 2007, the Commission found that "one [VRS] provider has a dominant market share, and thus this individual provider's projected minutes and costs largely determine the rate."[249] Therefore, the Commission changed from a single average-cost formula to a three-tiered formula "to ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger and more

(Continued from previous page)
section 225 of the Act has relied heavily on competition in order to allow VRS users to choose among providers who compete on factors such as quality of service, customer service, and technological development"); *2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31 (explaining that the Commission "has consistently sought to encourage and preserve the availability of a competitive choice for VRS users").

[243] *See* Convo Comments at 5-8; ZP Comments at 9-10; *see also 2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31 (explaining that the availability of a competitive choice "provides a competitive incentive to improve VRS offerings"); *Sorenson 2018*, 897 F.3d at 229 (noting that, by permitting less efficient VRS competitors to recover their higher costs, a tiered compensation structure can promote long-run efficiency "by preventing subpar service from a monopolist who has no fear of losing customers").

[244] *See* Convo Comments at 10-12; GlobalVRS Comments at 9; Sorenson Comments at 64-70 (supporting action to incentivize the provision of specialized services); *see also 2017 VRS Compensation Order*, 32 FCC Rcd at 5908-09, para. 34 ("The presence of multiple competitors, even if less efficient than the lowest-cost provider, may enhance functional equivalence by ensuring that VRS users have a choice among diverse service offerings."); *id*. at 5910, para. 36 ("[T]here are benefits in supporting less efficient providers that meet the needs of niche populations, including people who are deaf-blind or speak Spanish, enabling the entrance of new companies that can introduce technological innovations into the VRS program, and ensuring that consumers with hearing and speech disabilities can select among multiple VRS providers—just as voice telephone users do.").

[245] *See Sw. Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999) (*citing MCI Telecommunications Corp. v. FCC*, 675 F.2d 408, 413 (D.C. Cir. 1982)) ("The FCC is accorded broad discretion in 'selecting methods . . . to make and oversee rates.'").

[246] *See* 47 U.S.C. § 225(a)(3), (b)(1).

[247] *See Notice*, 36 FCC Rcd at 8809, para.15.

[248] *2007 TRS Compensation Order*, 22 FCC Rcd at 20162, para. 52.

[249] *Id*.

established providers are not overcompensated due to economies of scale."[250] As the Commission then explained:

> By adopting a tiered approach, providers that handle a relatively small amount of minutes and therefore have relatively higher per-minute costs will receive compensation on a monthly basis that likely more accurately correlates to their actual costs. Conversely, providers that handle a larger number of minutes, and therefore have lower per-minute costs, will also receive compensation on a monthly basis that likely more accurately correlates to their actual costs.[251]

85. Subsequent Commission decisions to retain the tier structure for VRS (rather than returning to a single rate) were premised on findings that VRS providers continued to have disparate cost structures, with one dominant provider incurring substantially lower per-minute costs than its rivals.[252] Given the persistence of such disparities, the Commission in 2017 found that if tiered rates were replaced with a single rate based on average industry-wide costs, the likely result would be to "eliminate all VRS competition."[253] Although this result could be avoided by setting a single rate at a higher level (e.g., at the cost level of the next lowest-cost provider), doing so would trade one problem for another—the lowest-cost provider would then be compensated at a rate far in excess of its actual per-minute costs.[254] The Commission reasoned that "[s]uch inefficient use of TRS Fund resources is not permitted by section 225 if there is a more efficient method of ensuring the availability of functionally equivalent service."[255] By contrast, the Commission explained:

> Under a tiered rate structure the Commission can ensure greater efficiency without sacrificing competition, by tailoring compensation rates more closely to the costs of those competitors falling within each tier.[256]

To ensure that "functionally equivalent VRS remains available and is provided in the most efficient manner with respect to TRS Fund resources,"[257] the Commission expanded the boundaries of the lower tiers and increased the differential between the highest and lowest tiered rates, from $0.57 to $2.19.[258]

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[250] *Id*. at 20163, para. 53.

[251] *Id*. at 20163, para. 54.

[252] *2013 VRS Reform Order*, 28 FCC Rcd at 8699, 8700-02, paras. 200, 204-06; *2017 VRS Compensation Order*, 32 FCC Rcd at 5905-07, paras. 27-31.

[253] *2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31.

[254] *Id*. at 5907-08, para. 32.

[255] *Id*.

[256] *Id*. at 5910, para. 37 (footnotes omitted).

[257] *Id*. at 5908, para. 33.

[258] At the end of Fund Year 2016-17, the tiered formulas for VRS providers with more than 500,000 monthly minutes were:
- Tier I (first 500,000 monthly minutes), $4.06;
- Tier II (second 500,000 monthly minutes), $4.06;
- Tier III (monthly minutes exceeding 1 million), $3.49.

Beginning with Fund Year 2019-20, the tiered formulas were:
- Tier I (1st million monthly minutes), $4.82;
- Tier II (next 1.5 million monthly minutes), $3.97;
- Tier III (monthly minutes exceeding 2.5 million), $2.63.

86. *Changes in Provider Costs*. In the *Notice*, the Commission proposed to maintain a tiered structure but sought comment on various possible modifications of that structure.[259] The record now confirms that such modifications are needed. Since the adoption of the *2017 VRS Compensation Order*, the cost gap between the two largest VRS providers, while still substantial, has progressively diminished.

87. From 2017 to 2022, the average per-minute cost of VRS, as reported by providers, increased by approximately 21.3%. In the same period, {[xxx xxx xxxxxx xxxx xxxxx xx xxx xxxxxxxx xxx xxxxxxxxx xx xxxx]}.[260] For 2022, ZP, which now handles {[xxxx xxx x xxxxx]} minutes per month, reported allowable costs of {[xxxxxxxx xxxxxx]}, only {[xxxx]} higher than Sorenson's reported allowable costs of {[xxxxxx xxx xxxx]} for the same period.[261] As modified above to take account of inflation, newly allowable costs, and the Commission's expectation of increased CA wages, engineering and R&D, and certain other costs, the similarity in the estimated costs of the two providers persists.[262]

88. *Effects on Tiering Rationale*. These cost changes raise significant concerns about the continuing validity of the justification for tiering that the Commission relied on in 2017. While one provider continues to handle the majority of VRS minutes, its share of minutes has dwindled, and it appears to have lost its unique cost advantage. Since 2017, the second largest provider has increased its minutes by {[xxxx]} and its market share by {[xxxx]}, and its per-minute costs are now somewhat closer to those of the largest provider.[263] Thus, the two largest providers now have somewhat similar per-minute *costs*, and yet there continues to be a substantial disparity in their shares of VRS *minutes*.

89. These changed circumstances warrant a reconsideration of the compensation structure. One alternative suggested in the record would involve compensating the two largest providers at a single rate.[264] A single-rate plan (e.g., based on the weighted average of the providers' costs) would be simple to administer. Arguably, a single-rate plan could distribute resources efficiently and equitably, ensuring that both providers earn reasonable operating margins above allowable expenses. And it would avoid the

[259] *Notice*, 36 FCC Rcd at 8808, para. 14.

[260] *See* 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data (confidential). {[xxxx xx xxxxxxxxxxxxxx xxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxx xxxxxx xx xxx xxxxx xxxx xxx xx x xxxxxx xxx xxx xxxxx xxxxxx xxxxx xxxxxx xxxxx xxxxx xxxxxxxxxxxx]}. 2023 VRS Cost and Demand Data (confidential); 2023 VRS Cost and Demand Data (confidential). The reasons for the substantial decline in ZP's per-minute costs may not be easy to pinpoint, but they are likely a combination of ZP (1) having successfully grown its call volume, allowing it to operate on a much larger scale, and (2) having apparently completed the consolidation of the 2017 merger of its predecessor entities, enabling ZP to more fully realize the expected scale economies from that merger.

[261] *See* 2023 VRS Cost and Demand Data (confidential).

[262] With the adjustments made in Part III.C above, ZP's estimated per-minute cost is {[xxxx]}, {[xxxx]} higher than Sorenson's. *See* Appendix B (confidential). The full extent of the convergence in the per-minute costs of the two largest providers was not apparent at the time the Commission issued the *Notice*. As of 2021, when the *Notice* was issued, historical costs had been reported only through 2020. In 2019, according to the annual provider cost reports, ZP's per-minute costs were still {[xxxxx xxxxx xxx]} Sorenson's. *See* 2021 VRS Cost and Demand Data (confidential). Cost data for 2020 indicated that the percentage cost difference had narrowed to {[xxxxx]}, *see* 2021 VRS Cost and Demand Data (confidential), but the Commission (and the providers themselves) believed the 2020 data to be clouded by the effects of the pandemic, and questioned whether pandemic-influenced da were reliable enough to serve as a reasonable basis for setting future rates. *Notice*, 36 FCC Rcd at 8810-11, paras. 18-22.

[263] *See* 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data (confidential); *2020 IP CTS Compensation Order*, 35 FCC Rcd 10889-90, paras. 43-47 (discussing the IP CTS competitive environment conditions favoring a single rate approach).

[264] *See* Sorenson Comments at 45-47; Sorenson Reply at 20-24; Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 4 (Sept. 22, 2021); Sorenson January 2022 *Ex Parte* at 5.

growth-incentive issues that can arise under a tiered structure, due to the reduction in compensation for additional minutes of service when a provider's minutes increase beyond a tier's upper boundary.[265]

90. However, at this time we conclude it would be premature to adopt a single-rate compensation plan. First, we note that the record continues to be highly contested—and inconclusive—regarding the conditions under which tiering is or is not necessary. For example, the record contains widely varying estimates regarding the volume of minutes that a provider must achieve for economies of scale to be exhausted. Citing studies presented in previous proceedings, Sorenson continues to argue that relevant economies of scale are essentially exhausted at the level of 250,000 monthly minutes.[266] The Commission has previously found Sorenson's evidence unconvincing,[267] and Sorenson provides no new information that warrants revisiting this view. At the other extreme, ZP argues that relevant economies of scale "continue to be significant until at least 5 million monthly minutes."[268] That argument too is less than persuasive, given the limitations of the model used by ZP's expert. As explained in Appendix D, an assessment of ZP's model by FCC staff shows that a reliable estimate of industry cost functions through regression analysis is not possible on the basis of the data points provided by ZP's expert.

91. Second, setting TRS Fund compensation, like ratemaking in general, is "far from an exact science."[269] While the historical gap between the per-minute costs of the two largest providers has lessened over the last few years, it is only in the last year that their reported costs are actually similar. We cannot rule out the possibility that the similarity is unique to this historical moment and may not be repeated in future years. If the apparent narrowing of the cost differential were to be reversed during the compensation period, applying a single rate to both providers could endanger the availability of competitive choices for VRS users.

92. For these reasons, we choose to preserve a tiered compensation structure for the next period, while modifying it to reduce unnecessary inefficiency or inequity in the allocation of TRS Fund resources.[270] Specifically, we merge the current Tier II (applicable to monthly minutes between 1,000,001

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[265] Sorenson Comments at 44-45, 55-56 (discussing the impact of tier boundary and investment opportunities for providers in the lowest-rate tier).

[266] *Id*. at 40-42.

[267] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8699-700, para. 202; *2017 VRS Compensation Order*, 32 FCC Rcd at 5918, para. 52.

[268] ZP Supplemental Reply at 15 (redacted). The arguments of ZP and its predecessor entities regarding economies of scale seem to have evolved roughly in parallel with growth in the share of VRS minutes served by these providers. One of ZP's predecessor entities, Purple Communications, argued in 2012-13 that economies of scale are substantial even at the level of 2 million monthly minutes. *2013 VRS Reform Order*, 28 FCC Rcd at 8699-700, para. 202. In 2017, a group of small and medium-sized providers, including ZP's predecessor entities, contended that relevant economies of scale are not achieved until approximately 2.5 million monthly minutes. *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5918, para. 52 (citing Non-Dominant Providers Comments at 5).

[269] *Sorenson 2018*, 897 F.3d at 223 ("Because 'agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise, courts are particularly deferential when reviewing ratemaking orders.'") (*citing Sw. Bell Tel. Co.*, 168 F.3d at 1352); *cf.* Sorenson Comments at 55 ("Ratemaking is never perfect.").

[270] In analogous situations in prior proceedings, the Commission has adopted a similarly conservative approach when weighing the imponderables involved in VRS compensation methodology. *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5919, para. 53 ("[I]f we were to allow VRS competition to be extinguished, for the sake of increasing the efficiency of VRS, we would risk depriving users of functionally equivalent VRS. . . . [W]e believe that, in the current circumstances, the benefits of such a rate reduction, through increased efficiency, are not worth the risks to functional equivalence associated with eliminating competitive choice."); *2013 VRS Reform Order*, 28 FCC Rcd at 8700-01, paras. 204-05 (lacking definitive evidence of the point where substantial economies of scale can be achieved, the Commission chooses to set tier boundaries so that any error is made on the side of preserving competition).

and 2,500,000) and Tier III (applicable to monthly minutes in excess of 2,500,000). As a result, the new plan for VRS providers with more than 1 million monthly minutes will have two tiers:

- Tier I – applicable to a provider's 1st 1 million monthly minutes; and
- Tier II – applicable to a provider's monthly minutes in excess of 1 million.

Merging the current Tiers II and III allows us to set a rate for the merged tier that is low enough to ensure that, in conjunction with the Tier I rate, providers are not over-compensated, i.e., do not earn an operating margin above the reasonable range, but still provides an incentive to continue providing additional minutes of service.[271]

93. *Compensation Rates*. Within this structure, as the Commission did in 2017, we "seek to set the rates for these tiers to limit the likelihood that any provider's total compensation will be insufficient to provide a reasonable margin over its allowable expenses."[272] We also seek to avoid overcompensating any provider, i.e., by allowing a provider to earn an operating margin above its total expenses (as determined in Part III.C) that is outside the reasonable range.[273] We achieve this by setting per-minute compensation amounts of $6.27 for Tier I minutes and $3.92 for Tier II minutes.[274] Together, these rates will enable providers subject to the tiered formula to recover their allowable expenses and earn an operating margin within the zone of reasonableness.[275] In addition, because the Tier II rate is not substantially lower than the average per-minute expenses of any provider subject to that rate, setting the rate at this level is unlikely to deter a provider from increasing its VRS minutes.[276]

94. ZP suggests that it is not necessary or advisable to set compensation formulas so as to prevent a VRS provider from earning an operating margin above the reasonable range,[277] and that to do so risks depriving VRS users of competitive choices and depriving VRS providers of the incentive to

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[271] *Cf. 2017 VRS Compensation Order*, 32 FCC Rcd at 5920-21, para. 54.

[272] *Id*. at 5922, para. 59.

[273] *Cf. id*. (stating an intent "to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin").

[274] *See infra* Appendix C.

[275] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5922-23, para. 60 ("A Tier I rate at this level will allow all providers subject to it to recover their allowable expenses and earn an operating margin within the zone of reasonableness."); *id*. at 5923, para. 61 ("[A]pplying [the Tier II] rate for all four years of the rate period, in conjunction with other applicable rates, will allow all providers subject to this rate to recover their allowable expenses and earn an operating margin within the zone of reasonableness we have adopted."); *id*. at 5923-24, para. 62 ("[I]n conjunction with other rates, [the Tier III rate] will allow providers that fall into this tier to earn an operating margin over allowable expenses that is within the zone of reasonableness.").

[276] *Cf. Id*. at 5923, para. 61 (the Tier II rate is set "above the allowable expenses per minute of any provider subject to the Tier II rate, thus minimizing the risk of deterring such a provider from increasing its VRS minutes"). Given the providers' current volumes of minutes, the Tier II rate is likely to apply to each additional minute of {[xxxxxxxx xxx xx xxxxxxx xxxxxx xxxxx xxx xxx xxxxx xxx x xxx xxxxx xxxx xxxxxxx xxxxxxxx xxxx xxxxx xxxx xxxxx xx xxx xxxxxx xxxxx xxxxxx xxx xxxxxxxxxxxxxxx xxxxxxxxx xxxxxxxxxxx x xxxxxxxxxxxx xxxxxx xxxxxxx xxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxx xxxxxxx xxxxxx xxxxxx x xxxxxxxx xxxxx xxxxxxxxx xxx xxxxx xxxxxxx xxxxx xxx xx xxxxxxxxxxxx xx xxxxxxxxxxx xxxxxxx xxxxxxxxxxx xxxxxxx xx xxxx xx xxx xxxx xx xxx xxxx xxxxx xxx xxxxxxxxx xxxxxxxx xxxxx xxx xxxx xxxxxxx xxxxxx xxxxxx xxx xxxxxx xxxxxxxxx xxx xxxxxxxxxxxxxxxx xxxxxxxx xxxxx xxxxxxxxxxxx xxxxxxxxxxxxx xxxxxx xxxxxxxx xxxxxx xxxxxxxx xxxx xxxxx xxxxxxxxxxx xxxxx xxxxx xxxxxx xxxxxx xxxxx xxxx xxxxx xx xxxxxxxx xxxxx xx xxx xxx xx xx xxxx xxxxx xxxn xxxxxxxxx xx xx xxxxxx xx xxx]}. We also note that the Tier II rate is above the rate proposed by ZP for the tier {[xxxx xxxx xxx xxx xxx]} under ZP's "Community Investment" proposal. *See* ZP June 9 *Ex Parte* at 2.

[277] ZP June 5 *Ex Parte* at 3.

improve service.[278] Further, according to ZP, the Commission in 2017 did not attempt to impose such limits.[279]

95. We do not agree with ZP's contention that the Commission should not seek to limit the operating margins of VRS providers. VRS is entirely funded by contributions from telecommunications and VoIP service providers, which are generally passed on to communications rate payers. The Commission has a statutory obligation to ensure that these funds are used efficiently.[280] As with the Universal Service Fund, moreover, the Commission is the steward of the TRS Fund and is obligated to protect it from waste, fraud, and abuse.[281] To the extent that a VRS provider's operating margin exceeds the reasonable range, the additional revenues paid from the TRS Fund (and the additional contributions exacted from telecommunications providers to cover them) are wasted.[282]

96. Further, the limits we set to prevent overcompensation do not conflict with the Commission's policy in the *2017 VRS Compensation Order*. In that rulemaking, as in every recent TRS compensation proceeding, the Commission made clear that avoiding overcompensation of VRS providers is a necessary objective to ensure that TRS is provided in the most "efficient manner."[283] For example, a key benefit of the tier structure, cited in that decision, is that it allows the Commission to "set rates that permit each provider an opportunity to recover its reasonable costs of providing VRS, without overcompensating those providers who have lower actual costs because, for example, they have reached a more efficient scale of operations."[284] Further, the Commission stressed that the range of reasonable operating margins set in that decision was a range of "allowable" operating margins,[285] cautioning that "we do not thereby authorize providers to recover additional 'markup' or profit that goes beyond such reasonable allowance."[286] Indeed, there would have been little point in setting an upper limit on the reasonable range of operating margins, had the Commission intended to permit providers free rein to earn profits above that limit.

97. In 2017, while the Commission sought to reduce overcompensation, it "stopped short of reducing compensation all the way down to cost."[287] In that decision, the Commission sought to address a

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[278] *Id*. at 4.

[279] *Id*. at 3 (arguing it "is not the case" that in 2017 "the goal was to set a rate framework such that each provider recovered 10% more than its allowable costs and nothing more").

[280] *See* 47 U.S.C. § 225(b)(1).

[281] *See*, *e.g.*, *Sandwich Isles Comm'ns, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 577 para. 1 (2019) ("[A]s the steward of federal universal service funds collected from American consumers and businesses, the Commission must ensure that those funds are being used efficiently and for their intended purposes, and must prevent waste, fraud, and abuse.").

[282] Further, as Sorenson observes, to the extent that ZP's per-minute cost exceeds Sorenson's, "manipulating rates to provide a higher [operating] margin for a higher-cost provider" would be inconsistent with economic principles, as in competitive markets, "less-efficient providers are not rewarded for having higher costs." Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 at 2 (filed Sept. 1, 2023) (Sorenson September 1 *Ex Parte*).

[283] *2017 VRS Compensation Order*, 32 FCC Rcd at 5897-98, para. 13 ("[I]n this proceeding, as in the ones that preceded it, it has been the Commission's overarching goal to bring rates closer to allowable provider costs."); *id*. ("[T]oday, as in 2010 and 2013, while making progress in reducing excessive Fund expenditures, the Commission has stopped short of reducing compensation all the way down to cost.").

[284] *Id*. at 5910, para. 36.

[285] *Id*. at 5924-25, para. 26.

[286] *Id*. at 5923, para. 22.

[287] *Id*. at 5897-98, para. 13.

specific concern raised regarding tier structures: that they could limit providers' incentives to grow and increase their efficiency, especially if a provider's monthly minutes were about to cross the numerical threshold for the next tier.[288] This theoretical risk often can be addressed by "ensuring that tier boundaries are wide enough to cover a provider's likely growth during the life of the rate plan."[289] However, it appears that the Commission was uncertain whether the tier boundaries it set actually would be wide enough to completely erase this risk. Therefore, it also sought to set the rate for the next tier high enough to ensure that, if a provider did grow large enough that it came close to a tier boundary,[290] it would not be deterred from crossing that boundary.[291] Under today's circumstances, by contrast, we can set the tier boundaries wide enough to avoid this risk. By merging the existing Tiers II and III into a single tier, we completely remove any tier boundary that could affect the growth incentives of the two largest providers.[292] And by increasing the highest tier rate from \$2.63 to \$3.92, we eliminate any realistic possibility of deterring any provider subject to that tier from serving additional minutes.[293]

98. *Alternative Tiering Proposals*. Several alternative tier structures have been advocated by commenters in this proceeding, including the following:

- ZP's July 2021 proposal to increase the upper boundary of Tier II to 5 million monthly minutes, while maintaining the existing per-minute amounts for each tier.[294]
- Sorenson's January 2022 proposal to increase the upper boundary of Tier II to 3.5 million monthly minutes and adjusting the Tier III rate to \$3.17 per minute and adjusting the Tier II rate to reflect "all of ZP's numbering, research and development, and customer service costs and the same margin."[295]
- ZP's June 2023 proposal to maintain the current tier structure while increasing all tiered rates.[296]
- Sorenson's June 2023 proposal to maintain the current tier structure while increasing all tiered rates.[297]
- Sorenson's September 2023 proposal for a two-tiered structure.[298]

99. We decline to adopt the alternatives proposed by ZP and Sorenson. As shown in Appendix C, none of them would ensure that all providers subject to tiered rates earn operating margins within the reasonable range. The initial ZP and Sorenson proposals—to expand Tier II without changing the current per-minute amounts for any tier—were made before the filing of the 2023 cost reports

[288] *Id*. at 5911, para. 38. If monthly minutes increase beyond a tier boundary, the provider faces a sudden drop in the compensation earned for each additional minute handled.

[289] *Id*. at 5911, para. 38.

[290] Under the structure set up in 2017, that would happen if a provider with less than 1 million monthly minutes grew large enough to handle more than 1 million monthly minutes, or if a provider with less than 2.5 million monthly minutes grew large enough to handle more than 2.5 million monthly minutes.

[291] *Id*. at 5911, para. 38 n.113 ("[W]e cannot determine the magnitude by which marginal costs fall below average costs. As such, we continue to take a conservative approach and map rates onto average costs. Even though doing so is likely to be somewhat over-compensatory, we believe that cost of taking this approach is preferable to the cost of setting a rate too low and deterring a provider from competing for additional minutes of use.").

[292] Both these providers have monthly minutes well above the 1 million minutes threshold between Tiers I and II.

[293] *See supra* para. 93.

[294] ZP Comments at 10-11.

[295] *See* Sorenson January 2022 *Ex Parte* at 5.

[296] ZP June 9 *Ex Parte*.

[297] Sorenson June 15 *Ex Parte*.

[298] Sorenson September 1 *Ex Parte*.

showing a substantial increase, as well as convergence, in these providers' costs. The proponents of these proposals no longer advocate their adoption.

100. As for the June 2023 proposals of ZP and Sorenson, they would do nothing to address the problems with the current tier structure, discussed above. In addition, as shown in Appendix C, both these proposals would result in excessive operating margins for one or both providers—even with providers' reported costs adjusted upward, as discussed in Part III.C above. Sorenson's September 2023 proposal also would result in excessive operating margins for both Sorenson and ZP.

2. Compensation for Small Providers

101. For VRS providers—including new entrants—that handle 1 million monthly minutes or less, we maintain a separate compensation formula. When the Commission established such a separate formula (the "emergent provider" formula, then applicable to VRS providers with up to 500,000 monthly minutes) in 2017, it was intended as a temporary measure, to allow the small providers operating at that time a reasonable window of opportunity to grow.[299] The two providers compensated under that formula during this most recent compensation period did not experience a substantial growth in traffic volume, and they incurred per-minute costs substantially higher than those of the two larger providers.[300] Nevertheless, as the Commission recognized in 2017, the availability of additional, reliable service options from smaller VRS providers can effectively reinforce service quality incentives.[301] Further, maintaining a separate compensation formula for smaller providers encourages new entry into the VRS program by potentially innovative firms.[302] Some small providers may advance the availability of TRS by focusing on specialized offerings to niche populations not served by larger providers.[303] Rather than applying a single compensation formula to all providers, regardless of size and cost structure—with the likely result of driving out the remaining small provider,[304] deterring new entry, and leaving only two VRS providers from which VRS users could choose—we preserve a separate VRS formula for the next period. We conclude that this approach is the most efficient way to maintain the availability of functionally equivalent VRS, including specialized services that may be needed by niche populations.

102. To avoid reducing any small provider's incentive to grow their business, we also raise the upper limit for application of the small-provider formula from 500,000 to 1 million monthly minutes. We are concerned that if we maintained the 500,000-minutes limit, a small provider growing its minutes above that limit may not have an opportunity to recover its allowable costs and earn a reasonable operating margin.[305] We note that, based on the record (which indicates that the current small provider has not grown substantially since 2017), it seems unlikely that any small provider or new entrant will approach the expanded limit of 1 million monthly minutes during the next compensation period. However, to address that possibility, we provide that, during the next compensation period, if a provider handled 1 million or fewer monthly minutes in June 2023 (or in the first year of operation for a new

[299] *2017 VRS Compensation Order*, 32 FCC Rcd at 5917, para. 49 (describing the emergent-provider formula as "a reasonable, temporary measure to extend the window of opportunity for new entrants, as well as for existing providers whose allowable costs currently exceed the Tier I compensation rate").

[300] *See* 2023 Cost and Demand Data (confidential); 2021 Cost and Demand Data (confidential).

[301] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31 (explaining that the availability of multiple service options for VRS users "provides a competitive incentive to improve VRS offerings").

[302] *Id*. at 5916-17, para. 49; *see also* GlobalVRS Comments at 9-10.

[303] *2017 VRS Compensation Order*, 32 FCC Rcd at 5916-17, para. 49; *see also* GlobalVRS Comments at 9-10.

[304] As noted earlier, one of the two small providers compensated under the "emergent provider" rate is winding down its VRS operations. *See supra* para. 25.

[305] We note that the Commission has previously deemed it likely that economies of scale in the provision of VRS are not exhausted when a VRS provider reaches 1 million minutes. *2017 VRS Compensation Order*, 32 FCC Rcd 5918, para. 52.

entrant), and if such provider subsequently exceeds 1 million monthly minutes, the small-provider formula shall continue to apply to the provider's first 1 million monthly minutes, and the large-provider formula shall apply to all monthly minutes after the first million.[306]

103. *Compensation amount*. As in previous compensation proceedings, when we set compensation formulas for small VRS providers, "there is no single 'right answer' to the question; rather, the matter is inherently a question of administrative line-drawing."[307] For VRS providers providing 1 million monthly minutes or fewer, we adopt a compensation formula of $7.77 per minute, applicable to all minutes of such providers. This formula is based on the adjusted per-minute expenses of the remaining VRS provider handling 1 million monthly minutes or fewer, and is designed to allow VRS providers with 1 million monthly minutes or fewer a reasonable opportunity to earn an operating margin within the range of reasonableness.[308] In setting this per-minute formula, we seek to ensure that VRS providers that have demonstrated some ability to grow have an opportunity to recover their expenses and earn a reasonable operating margin. This formula also provides an opportunity for very small providers and new entrants to recover their reasonable fixed or start-up expenses. However, the Commission does not guarantee cost recovery for every such provider, regardless of their per-minute costs.

3. Additional Compensation for Video-Text Service.

104. In the *Notice*, we sought comment on whether to introduce additional compensation for VRS providers who provide certain specialized forms of VRS.[309] Comments received in response to that proposal were consistently supportive of providing such additional compensation for a specialized form of VRS to ASL users who are deafblind.[310] We now prescribe additional per-minute compensation for the provision of this service, applicable to any VRS provider that chooses to offer it. Such additional compensation would be paid, in addition to the otherwise applicable per-minute amount, for each compensable minute of this specialized form of VRS.

105. We refer to this specialized form of VRS as Video-Text Service. In a typical VRS call, a deaf or hard of hearing person communicates in ASL to a CA, who then voices the message to the hearing party. The CA then signs the hearing party's voice response to the ASL user. Some ASL users who are deafblind, however, are able to sign to a CA but unable to see the signs from the CA well enough to

[306] This is comparable to the plan adopted by the Commission in 2017 to address analogous circumstances under the emergent-provider formula. *See id*. at 5916-17, para. 49 (stating that "to maintain incentives for growth and avoid subjecting emergent providers to a sudden drop in the rate applicable to all their minutes . . . providers who are initially subject to the emergent rate and who then generate monthly minutes exceeding 500,000 shall continue to be compensated at the otherwise applicable emergent rate (rather than the Tier I rate) for their first 500,000 monthly minutes").

[307] *2013 VRS Reform Order*, 28 FCC Rcd at 8700-01, para. 204; *see also AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) (the Commission "has wide discretion to determine where to draw administrative lines," and can be reversed only for abuse of discretion); *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998) (to demonstrate abuse of discretion, a petitioner must show that "lines drawn . . . are patently unreasonable, having no relationship to the underlying regulatory problem.") (internal quotations omitted); *Hercules Inc. v. EPA*, 598 F.2d 91, 107-108 (D.C. Cir. 1978) (in evaluating agency line drawing, the court .asks "whether the agency's numbers are within a 'zone of reasonableness,' not whether its numbers are precisely right"); *Sorenson 2011*, 659 F.3d at 1046 (court is "particularly deferential when reviewing ratemaking orders because 'agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise'" (quoting *Qwest Corp. v. FCC*, 258 F.3d 1191, 1206 (10th Cir. 2001) and *Sw. Bell Tel. Co.*, 168 F.3d at 1352).

[308] *See infra* Appendix C.

[309] *Notice*, 36 FCC Rcd at 8814, para. 30.

[310] *See, e.g.*, Sorenson Comments at 30 ("[T]o the extent that [VRS providers] provide more costly specialized services such as service for DeafBlind individuals, all providers should be compensated at a higher rate for providing specialized services.").

understand them. For such users, there is a special variant of VRS, in which a CA converts the other party's side of the conversation to text (instead of ASL video), which the deafblind party can read using a refreshable braille display.[311] A CA assigned to a Video-Text Service call must not only be fluent in ASL, but must also be a swift, accurate, and reliable typist.

106. Up to the present, only GlobalVRS has offered this specialized form of VRS. With GlobalVRS's announced exit from the VRS industry, Sorenson states it intends to provide Video-Text Service to users.[312] Sorenson's cost estimates indicate that, while most of the costs involved in offering this service do not vary significantly with the number of minutes served, there are some variable costs due to the higher salaries Sorenson expects to pay for those CAs equipped with the additional skills described above.[313]

107. Given our statutory responsibility to ensure the availability of TRS to persons who are deafblind[314] and the additional costs involved in providing this Video-Text Service, we conclude that additional per-minute compensation should be authorized for the provision of this service by any VRS provider choosing to offer it. As an interim measure, pending the availability of more precise cost data, we estimate the variable cost of this service based on the estimate submitted by Sorenson.[315] Sorenson anticipates that to provide Video-Text Service it will incur additional variable costs of {[xxxx]} per minute.[316] To that cost we add a {[xxxxxx]} operating margin to incentivize the provision of this specialized service, resulting in an additive of $0.19 per minute.[317] Sorenson's non-variable costs for this service will be recovered through the base compensation rate, as they are relatively unaffected by the number of minutes of Video-Text Service provided. This amount shall be paid to a VRS provider for each compensable conversation minute of Video-Text Service, in addition to the per-minute amount otherwise payable to the provider under the applicable compensation formula for an ordinary VRS call.

108. *Alternative Compensation Proposal*. In its comments, GlobalVRS proposes a "Specialized Access Small Business" (SASB) designation as an alternative compensation approach.[318] To qualify for this compensation, providers would have to (1) serve 5% or less of total program minutes and (2) provide specialized language and modality.[319] Each SASB-designated provider would be subject to an

[311] GlobalVRS Comments, Appx. 2 at 9-10, para. 25; *see also* Sorenson Comments at 69.

[312] Sorenson July 17 *Ex Parte*; Sorenson Waiver Petition. GlobalVRS initially announced an intention to terminate its provision of VRS effective June 30, but it subsequently decided to maintain a bare-bones VRS operation to service its Video-Text customers, pending Sorenson's completion of preparations to provide an equivalent service. Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, CG Docket Nos. 03-123 and 10-51 (filed Aug. 3, 2023).

[313] Sorenson July 17 *Ex Parte*.

[314] *See* 47 U.S.C. §§ 225(a)(3); *see also id*. § 620.

[315] Sorenson July 17 *Ex Parte*, Attach. at 2-4 (confidential).

[316] *Id*., Attach. at 3-4 (confidential).

[317] *Id*. (Sorenson estimates {[xx xxxx xxxx xxx xxx xxx xxxxx xxx xxx xxxx xxxxx xxx xxxxxx xxxx xxxx xxxx xx xxxxxxxxxxx xxxxx xxxx xxxxx]} Sorenson also estimates that demand for Video-Text Service will be approximately {[xxxxx]} minutes per month.

[318] GlobalVRS Comments at 10-13. GlobalVRS explains that the SASB formula, which would replace the current emergent-provider rate, *id.* at 10, would "reimburse small providers of specialized services for the exceptional costs of engaging highly skilled trilingual interpreters, developing and providing multi-lingual training materials and training for underserved/lack of programs for specialized language/modality interpreters, deploying specific platform enhancements, and in outreach that are not currently being considered under the Commission's reimbursement structure." *Id*. at 12.

[319] *Id.*

individualized payment formula, reset annually to compensate for that provider's reported allowable costs.[320]

109. We reject this proposal for several reasons. First, it excludes larger VRS providers from receiving additional compensation for the provision of specialized services. The Commission has stated that offering VRS users a choice among multiple providers can most effectively carry out the Commission's statutory mandate to ensure that functionally equivalent VRS is available to all eligible individuals to the extent possible and in the most efficient manner.[321] By adopting a formula that encourages only small providers to offer a specialized service, we may prevent the service from being offered by a provider with greater access to the necessary resources and inputs, which may enable it to provide the service more effectively and at lower cost. Second, the method by which a provider would be compensated under GlobalVRS's proposal is more administratively burdensome (as it requires annual recalculation of the formula based on annual review of the provider's individual costs), and unlike the multi-year compensation plans generally preferred by the Commission provides no incentive for cost savings.

110. *Registration Process*. A VRS provider may provide Video-Text Service to any registered VRS user who states that they need to use the service. Registered VRS users need not have their identities re-verified by the Database administrator before using Video-Text Service. To enable the TRS User Registration Database administrator to review and pay compensation requests for this service, we direct the administrator to design and execute a field in the User Registration Database to allow a VRS provider to register a new or existing user as a registered user of Video-Text Service. Once the field is implemented, VRS providers shall update User Registration Database registrations to identify existing users of this service and additional users when they begin using this service. We direct the Consumer and Governmental Affairs Bureau to release a public notice announcing when the Database is ready to accept such updates and setting a 60-day deadline for such updates of existing VRS users. Once a user is registered in the Database, the TRS Fund administrator may presume that call detail records associated with that user are for Video-Text Service, but the administrator may review and verify payment claims in accordance with our rules.[322]

111. At this time, we do not establish additional identification requirements for Video-Text Service users. We note that the conversation process in Video-Text Service is slower than an ordinary VRS conversation—and a less satisfactory process for those VRS users who can see and understand video-transmitted signs. Therefore, we believe VRS users that do not need to receive a return communication in text will be unlikely to use this service. Further, we believe the additive rate for Video-Text Service is not so high as to significantly increase incentives for fraud and abuse, especially as the number of minutes of use of this service is very small.

112. Pending the implementation of this update, to allow Video-Text Service calls to be identified in call detail records submitted for payment, we direct the TRS Fund administrator to accept from any VRS provider offering Video-Text Service a list of telephone numbers and IP addresses assigned to users who have requested Video-Text Service. VRS providers seeking compensation for Video-Text Service shall submit such lists in accordance with instructions provided by the TRS Fund administrator. VRS providers shall provide additional information regarding such users and their Video-Text Service calls to the TRS Fund administrator, upon request, as necessary for the administrator to perform its data collection, auditing, payment claim verification, and TRS Fund payment distribution functions.[323]

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[320] *Id.* at 10-11.

[321] *Notice*, 36 FCC Rcd at 8808, para. 13.

[322] *See* 47 CFR § 64.604(c)(5)(iii)(D)(6), (E)(4).

[323] *See id*. § 64.604(c)(5)(iii)(D)-(E).

4. Other Specialized Services

113. The comments filed in response to the *Notice* generally support the provision of additional compensation for other specialized services.[324] Except in the case of Video-Text Service, however, the record is insufficient for us to make a determination as to whether, and under what circumstances, a specialized service should be supported by additional compensation. We seek additional comment on these matters in the accompanying Further Notice of Proposed Rulemaking.

5. Compensation Formulas

114. The old and new compensation formulas are set forth in Tables 2 and 3. As discussed further below, these formulas are subject to an annual adjustment factor to take account of likely cost changes. The industry weighted average compensation per minute under the new compensation formulas provides an aggregate operating margin of approximately {[xxxx]}, within the reasonable range.[325]

Table 2: Current Compensation Formulas

Tiers	Rates
Emergent: <500,000 Monthly Min.	$5.29
I: 0-1,000,000 Monthly Min.	$4.82
II: 1,000,000-2,500,000 Monthly Min.	$3.97
III: 2,500,001+ Monthly Min.	$2.63

Table 3: New Compensation Formulas

Tiers	Rates
Small Providers <1,000,000 Monthly minutes	$7.77
Tier I (1st 1,000,000 Monthly Min.)	$6.27
Tier II (all additional minutes)	$3.92
Additive for Video-Text service	$0.19

115. Looking to just the effect on the TRS Fund, in the first year of the new period the compensation plan adopted herein would result in an estimated $143 million increase in costs compared to maintaining the current compensation formulas.[326] Based on available data, it will result in an industry average operating margin within the range of reasonableness and provide an opportunity for providers to recover their costs plus earn a reasonable operating margin.

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[324] Sorenson Comments at 64-70; Sorenson urges the Commission to recognize that specialized services are key to promoting functionally equivalent communications, and to provide incremental per-minute compensation from the TRS Fund for providers that offer these services in order to compensate them efficiently and fairly for their additional costs and incentivize them to offer these essential services. Sorenson Reply at 34; GlobalVRS Reply at 2-4; Letter from Andrew O. Isar, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 10-51 and 03-123 at 1-2 (filed Sept. 30, 2021) (discussing "provision of service to underserved users that have not been reimbursed, including compensation for tri-lingual interpreters, the cost of incorporating advancements in technology to the Company's platform to meet specialized needs for Deaf Blind, specialized training, scheduling requirements for trilingual interpreters to avoid overburdening interpreters, internal Spanish sign language accreditation, development of materials for users and customer care employees, and the added time necessary to connect calls before interpreting for certain special needs users, among others.").

[325] *See* Appendix C, Tabl. 7 (confidential).

[326] *Infra* Appendix C at 62, Tabl. 6.

6. Compensation Period and Adjustments

116. We conclude that the compensation period should be five years, ending June 30, 2028. This period is long enough to give providers certainty regarding the applicable compensation formulas, provide incentives for providers to become more efficient without incurring a penalty, and mitigate any risk of creating the "rolling average" problem previously identified by the Commission regarding TRS.[327] On the other hand, the period is short enough to allow timely reassessment of the compensation formulas in response to substantial cost changes and other significant developments.[328]

117. While Sorenson, ZP, and Convo propose a longer compensation period of 6-8 years,[329] we find such an extended compensation period incompatible with the need to periodically reassess compensation formulas in response to changes in provider cost structures, possible technological innovations, or other developments. Historically, the Commission has not set TRS Fund compensation periods longer than four years.[330] Further, the VRS providers neither detail nor support their claims that increasing the compensation period to 6-8 years will affect providers' stability, opportunities to obtain loans or attract long-term investment. We are unpersuaded that any potential benefits of a longer period outweigh the benefits from reassessing compensation formulas on a five-year schedule.

118. *Adjustments for exogenous costs*. Under the current methodology, an upward adjustment for well-documented exogenous costs is available for costs that (1) belong to a category of costs that the Commission has deemed allowable, (2) result from new TRS requirements or other causes beyond the provider's control, (3) are new costs that were not factored into the applicable compensation formula, and (4) if unrecovered, would cause a provider's current costs (allowable expenses plus operating margin) to exceed its revenues.[331] We maintain this approach to exogenous cost recovery and codify these criteria in our rules. Any exogenous cost claims should be submitted to the TRS Fund administrator with the provider's annual cost report, so that the administrator can review such claims and make appropriate recommendations.[332] We delegate authority to the Consumer and Governmental Affairs Bureau to make determinations regarding timely submitted exogenous cost claims.

119. *Adjustments for future cost changes*. In the *Notice*, we sought comment on whether per-minute compensation amounts should be adjusted during the compensation period to reflect inflation and productivity.[333] We agree with Sorenson, ZP, and Convo that there should be annual adjustments for cost

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[327] *See Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, CC Docket No.* 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, para. 25 (1993) (noting that setting compensation levels based on averaged provider costs, if recalculated every year, could leave some providers without adequate compensation, even if they are reasonably efficient).

[328] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5921-22, para. 58; *see also 2020 IP CTS Compensation Order*, 35 FCC Rcd at 10833-34, para. 33.

[329] Joint VRS Providers October 2021 *Ex Parte* at 1. Convo has more recently advocated for a four-year compensation period. *See* Letter from Amanda Montgomery, Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed May 25, 2023); Convo May 9 *Ex Parte* at 4.

[330] *See 2007 TRS Compensation Order*, 22 FCC Rcd at 20164, para. 56 (adopting a three-year compensation period); *2013 VRS Reform Order*, 28 FCC Rcd at 8704, para. 212 (adopting a four-year compensation period); *2017 VRS Compensation Order*, 32 FCC Rcd at 5921, para. 58 (adopting a four-year compensation period).

[331] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5925, para. 66.

[332] The TRS Fund administrator typically requires submission of annual cost reports in the latter part of February, to ensure that it has an opportunity to analyze provider costs before submitting its annual report, due May 1. *See* 47 CFR § 64.604(c)(5)(iii)(H).

[333] *Notice*, 36 FCC Rcd at 8817, para. 39.

changes.[334] In the past, the trend of VRS costs has been generally downward. However, in light of recent developments, including increases in general inflation indices and reports of increased wages for VRS CAs,[335] we find it reasonable to adopt an adjustment factor to ensure that the rates continue to fairly compensate providers if relevant costs continue to increase.

120. As a reference point for determining such annual adjustments, the Employment Cost Index appears best suited for tracking relevant cost changes. Specifically, we find that the seasonally adjusted index of "Total compensation for Private industry workers in Professional, scientific, and technical services,"[336] which covers translation and interpreting services (including sign language services), can serve as a reasonable proxy for the annual change in VRS costs. As interpreters, CAs fall squarely in this labor cost category, and labor and related costs for CAs, non-CA professionals, and administrative personnel make up the bulk of VRS costs.

121. We conclude that this index is better suited than the Producer Price Index or the Gross Domestic Product Chain-type Price Index (GDP-CPI), recommended by Sorenson and ZP, respectively.[337] Both these indices reflect changes in the national economy as a whole, based on a broad array of data from various product and service sectors. While these indices may be useful inflation measures for the economy as a whole, reflecting the ups and downs of so many disparate industries may not ensure that annual adjustments are reasonable. We conclude that a more reliable approach is one that tracks changes in a related industry sector.[338] Commenters agree that labor is the primary expense incurred by VRS providers and the most likely to increase over time,[339] and we find that labor costs are likely to be a key determinant of the quality of VRS as currently provided.[340] While there is no index that focuses solely on

[334] Joint VRS Providers October 2021 *Ex Parte* at 1; Sorenson Comments at 58, 63; Sorenson Reply at 33-34; ZP Comments at 13-14; ZP Reply at 8-9; *see also* GlobalVRS October 2021 *Ex Parte* at 1-2 (generally supporting the recommendations in the Joint VRS Providers October 2021 *Ex Parte*).

[335] News Release, U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Indexes – December 2021 (Jan. 13, 2022), https://www.bls.gov/news.release/archives/ppi_01132022.htm ("On an unadjusted basis, final demand prices moved up 9.7 percent in 2021, the largest calendar-year increase since data were first calculated in 2021."); News Release, U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes – December 2021 (Jan. 12, 2022), https://www.bls.gov/news.release/archives/cpi_01122022.htm ("Over the last 12 months, the all items index increased 7.0 percent before seasonal adjustment."); News Release, U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index – September 2021 (Oct. 29, 2021), https://www.bls.gov/news.release/archives/eci_10292021.htm (discussing increases in compensation costs, wages and salaries, and benefits); Convo Comments at 19 (asserting video interpreter workforce costs are escalating); Sorenson Comments at 19 (competition for highly skilled employees, such as interpreters, is expected to increase significantly); ZP December 2021 *Ex Parte* at 4 (discussing CA compensation); Sorenson November 2021 *Ex Parte* at 7-11 (discussing VRS CA wages).

[336] Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS2015400000000I.

[337] *See* Sorenson Comments at 58; ZP Comments at 14. Sorenson argues that the PPI is superior to the GDP-CPI because it measures price changes from the perspective of suppliers rather than consumers. Sorenson Comments at 58. ZP suggests that the GDP-CPI is appropriate because it is used in other Commission programs. ZP Comments at 14. More recently, ZP states that it recognizes "that there are multiple differing means of calculating inflation and that it would support a Commission decision to replace the CPI index with another neutral measure such as the GDP deflator." ZP August 22 *Ex Parte* at 3.

[338] While the PPI may be divided into industry specific indexes, neither our review nor the record finds an industry index that reflects the VRS industry as well as the industry specific Employment Cost Index adopted herein.

[339] Convo Comments at 19 (labor is the single greatest cost in providing VRS); Sorenson Comments at 6 (VRS costs are predominantly labor); ZP Comments at 13 (providing changes in labor costs as an example for indexing VRS compensation for inflation); *see also supra* note 235 (showing that more than 50% of VRS costs are CA-related).

[340] For example, the number of full-time-equivalent CAs, relative to the number of VRS calls, evidently determines how soon VRS calls are "answered" and thus how quickly the service is provided when needed, and the skill levels

(continued….)

the cost of VRS, the index we adopt here measures employment cost for a sector that includes translation and interpreting services, and thus includes employee costs for VRS as well as other highly comparable services.[341] Adopting such an index is more likely to provide a stable inflation adjustment that reflects cost changes providers are likely to incur, while excluding changes that are specific to unrelated sectors of the national economy.

122. As for productivity gains, the record provides no clear indication of the extent to which, if at all, recent VRS cost increases have been offset by productivity gains. Absent more specific data, we find it reasonable to presume no change to productivity over the rate period.

123. We delegate authority to the Consumer and Governmental Affairs Bureau to approve annual inflation adjustments of each compensation formula, beginning with Fund Year 2024-25. We direct the TRS Fund administrator to specify in its annual TRS Fund report, beginning with the report due May 1, 2024, the index values for each quarter of the previous calendar year and the last quarter of the year before that.[342] We also direct the TRS Fund administrator to propose adjustments for each per-minute amount by a percentage equal to the percentage change in the index between the first and fifth quarters specified in the report. Those adjusted compensation levels also should be used to calculate the recommended funding requirement for VRS and the relevant contribution factor.

E. Accountability Concerns

124. In adopting VRS compensation formulas for the next five years, we rely on estimates of future provider costs that, in total, exceed the most recent historical level by approximately $121.5 million, or 27%. In 2023-24, as a result, VRS compensation will be $142.5 million, or 29.5%, higher than it would be under the current formulas. This increase in compensation—which will require higher TRS Fund contributions from telecommunications and VoIP service providers—is premised on our belief that maintaining and improving VRS service quality requires a major increase in CA wages and technology spending by VRS providers. As stewards of the TRS Fund, the Commission needs to be able to assess the extent to which the increased TRS Fund support we authorize is achieving the intended results.

125. This requires the collection, review, and auditing of relevant cost data by the TRS Fund administrator.[343] Therefore, we delegate authority to the Consumer and Governmental Affairs Bureau, in coordination with the Office of the Managing Director, to work with the TRS Fund administrator to update the Interstate TRS Fund Annual Provider Data Request to align with the actions taken in this proceeding. We direct these entities to focus special effort on ensuring the collection of accurate data quantifying (1) CA wages and benefits, based on uniform definitions and methods of calculating key

(Continued from previous page)
and stress levels of the CAs employed by a VRS provider may largely determine the quality of the interpretation service a consumer receives. Sorenson November 2021 *Ex Parte* at 7-11 (discussing the need to offer competitive wages to qualified CAs to maintain service quality); Convo Comments at 19-20 (discussing the reduced CA workforce and its effect on costs).

[341] In a number of other instances where the Commission has used GDP-CPI to track cost changes in universal service programs, it has been noted that no index was available that specifically examined the costs of the funded services. *See, e.g.*, *Promoting Telehealth in Rural America*, Report and Order, WC Docket No. 17-310, 33 FCC Rcd 6574, 6583, para. 22 (2018), cited in ZP Comments at 14; *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18782, para. 36 (2010).

[342] For example, in the annual report due May 1, 2024, the administrator will specify the index values for the 4th quarter of 2022 and the 1st through 4th quarters of 2023.

[343] 47 CFR § 64.604(c)(5)(iii)(D) ("TRS providers seeking compensation from the TRS Fund must provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments."); *see also id*. § 64.604(c)(5)(iii)(D)(6).

elements such as hourly CA compensation; and (2) expenditures on improved technology. We expect that annual provider cost reports shall include detailed descriptions of ongoing, planned, recently completed, and canceled engineering and R&D projects, the purpose and intended outcome of each project, and the current or projected timeline for each project.

126. By annually collecting such specific information, the administrator will enable the Commission to review whether the increased compensation authorized herein is having the intended results of enabling service improvements that enhance functional equivalence, and to make appropriate changes in compensation at the end of—or if necessary, during—the five-year compensation period.[344] In addition, such information will help the Commission ensure that R&D supported by the TRS Fund is being used for TRS improvements, rather than projects of little or no benefit to TRS users.[345] The inclusion of this additional information and data will also ensure the Commission may address the timing of cost changes and concerns of attempted regulatory arbitrage.[346]

F. Extension of Current Formulas and True-Up

127. *Extension of Current Formulas*. In a series of Commission and Bureau orders, the current VRS compensation formulas, which originally were scheduled to expire on June 30, 2021, have been extended through September 30, 2023.[347] We grant, on our own motion, a temporary waiver to further extend the expiration date of the current formulas until the effective date of this Report and Order.

128. A Commission rule may be waived for good cause shown.[348] In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.[349] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[350] Waiver of a rule is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest and will not undermine the policy underlying the rule.[351]

129. We find good cause to grant this further waiver of the expiration date. If we were to let the current compensation plans expire, the cessation of payments to VRS providers could cause an interruption of the delivery of these services to consumers with disabilities who rely on them for functionally equivalent communication. Under these circumstances, it is administratively efficient and consistent with prior practice to extend the current compensation formulas.[352]

130. Therefore, we direct the TRS Fund administrator to continue compensating providers of VRS under the current compensation formulas until the effective date of this Report and Order. Under these extended formulas, VRS providers with more than 500,000 monthly minutes as of July 1, 2017,

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[344] *Cf.* Sorenson Corrected August 18 *Ex Parte* at 4-5.

[345] *See supra* Part III.B.1.

[346] *See, e.g.,* ZP August 10 *Ex Parte* at 2-3 (raising concerns about regulatory arbitrage when a provider's reported costs increase at the end of a rate cycle).

[347] *2021 VRS Compensation Extension Order*, 36 FCC Rcd at 8817-19, paras. 40-45; *November 2021 Compensation Extension Order*, DA 21-1417; *2022 TRS Funding Order*, DA 22-699, at 5, paras. 13-14; *2023 TRS Funding Order*, DA 23-577, at 7, para. 17; *2023 TRS Extension Order*, DA 23-801.

[348] 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

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

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

[351] *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-128 (D.C. Cir. 2008).

[352] *See 2021 VRS Compensation Extension Order*, 36 FCC Rcd at 8818, para. 43.

shall be paid $4.82 per minute for a provider's first 1,000,000 monthly minutes (Tier I); $3.97 per minute for monthly minutes between 1,000,001 and 2,500,000 (Tier II); and $2.63 per minute for monthly minutes exceeding 2,500,000 (Tier III).[353] VRS providers with 500,000 or fewer monthly minutes as of July 1, 2017, shall be paid $5.29 per minute (Emergent Tier) for the provider's first 500,000 minutes, and according to the otherwise applicable tiered formula, stated above, for monthly minutes exceeding 500,000.[354] After the effective date, any compensation paid for service provided on or after July 1, 2023, shall be paid in accordance with the formulas adopted in this Report and Order.[355]

131. *True-Up of Compensation*. We also direct the TRS Fund administrator to perform a true-up, after the effective date of this Report and Order, of the VRS compensation payments made pursuant to the waiver granted above.[356] The revised compensation formulas adopted in this Report and Order are based on estimates of the costs VRS providers will incur in the 2023-24 Fund Year. Overall, these revised formulas substantially increase provider compensation to reflect recent increases in reported costs, as well as our expectation of further increases in certain areas.[357] To allow providers a reasonable opportunity to recover such increased costs, we conclude that they should be compensated under the revised formulas for all services provided during the 2023-2024 TRS Fund Year. We find that the benefits of ensuring full compensation for this Fund Year outweigh the minor administrative burden involved in such a true-up process. Accordingly, after the Report and Order becomes effective, we direct the TRS Fund administrator to make a supplemental payment to each VRS provider for all compensable minutes of service provided after June 30, 2023, for which compensation was paid under the current extended formulas, pursuant to the waivers granted above and previously. Such supplemental payment shall consist of the difference between the compensation that is applicable under this Report and Order and the compensation actually paid to the provider pursuant to the waivers granted above and previously.[358]

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Additional Compensation for Specialized Services

132. In the *Notice*, we sought comment on whether it would serve the objectives of section 225 for a VRS provider to receive additional per-minute compensation from the TRS Fund for the provision of certain specialized services.[359] In the Report and Order, we establish an additive formula for

[353] *2017 VRS Compensation Order*, 32 FCC Rcd at 5934, Appx A.

[354] *Id.* at 5916-17, paras. 49-50.

[355] *See id.* at 5926-27 para. 68 (in the compensation order adopted July 6, where Commission waived the normal effective date, the Commission directed payment of compensation at increased rates for all service provided on or after July 1, stating that a true-up was unnecessary "[g]iven that minutes of use for the month of July have yet to be submitted for compensation").

[356] In extending the expiration date of the current compensation formulas from June 30 to August 31, 2023, the Bureau stated that its action did not preclude a true-up of compensation, should the Commission deem that necessary after determining the applicable compensation formulas. *2023 TRS Funding Order* at 7, para. 17.

[357] *See supra* Part III.A, C.

[358] This includes minutes incurred for the provision of Video-Text Service at the applicable per-minute compensation rate with the additive, provided the VRS provider submits the required Video-Text Service user information to the TRS Fund administrator for the appropriate identification of such calls. *See supra* paras. 110-112. A supplemental payment shall be paid to GlobalVRS only if, and to the extent that, the post-June 30 compensation that is applicable under this Report and Order exceeds the total post-June 30 compensation received by GlobalVRS pursuant to *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, DA 23-718 (rel. Aug. 17, 2023).

[359] *Notice*, 36 FCC Rcd at 8814, para. 30.

compensating providers of Video-Text Service to ASL users who are deafblind.[360] Here, we seek further comment on whether, and under what circumstances, we should provide additional compensation for specific types of specialized service identified by commenters, and how such compensation should be structured.

133. *Deaf Interpreters*. We seek comment on whether VRS providers should receive additional compensation for responding to a consumer's justified request that a Deaf Interpreter be added to a call.[361] According to the Registry for Interpreters for the Deaf, Inc. (RID), a "Certified Deaf Interpreter" is a holder of a certification that the individual is deaf or hard of hearing, possesses native or near native fluency in ASL, has demonstrated knowledge and understanding of interpreting, deafness, the deaf community, and deaf culture, and has specialized training or experience in the use of tools to enhance communication.[362] RID adds that Certified Deaf Interpreters are recommended for assignments where an interpreter who is deaf or hard of hearing would be beneficial, such as when the communication mode of an individual who is deaf is so unique that it cannot be adequately accessed by interpreters who are hearing.[363] The record indicates that such interpreters are sometimes needed on VRS calls to enable functionally equivalent communication in ASL. For example, Sorenson states that Deaf Interpreters "provide necessary support to consumers with limited English or ASL proficiency, or cognitive or motor disabilities."[364] It is also apparent that providing a Deaf Interpreter adds significantly to the cost of handling a VRS call where such interpreters are required. We therefore believe that providing additional compensation for such calls will advance the objective of section 225 to make functionally equivalent TRS available. We also believe such additional compensation can be implemented relatively efficiently, without adding administrative burdens disproportionate to the resulting benefits. We seek comment on our proposal and these underlying assumptions.

134. As a threshold matter, we seek comment on the extent to which Deaf Interpreters (whether "Certified" or not) are currently being used in VRS. What percentage of a VRS provider's calls and minutes involve the provision of such additional assistance? How often are Certified Deaf Interpreters requested, and how often are such requests granted? Is there evidence that VRS providers are failing to provide a Certified Deaf Interpreter when such assistance is warranted? If so, what concerns lead VRS providers to withhold such assistance—given that our allowable cost criteria do not exclude the costs of such assistance from allowable costs that may be subject to TRS Fund support?

135. If additional compensation is provided for the use of Certified Deaf Interpreters, what criteria should be applied to determine when such additional compensation is paid? Should we adopt RID's description as a definition for a Certified Deaf Interpreter? Should that definition be modified or supplemented with other pertinent information? Should we require that persons providing such assistance be certified, and if so, what bodies should be deemed qualified to issue such certifications? How should we define the occasions when a Certified Deaf Interpreter is needed for a VRS call? For example, should we adopt Sorenson's suggested criterion, authorizing additional compensation when a Certified Deaf Interpreter is needed to "provide necessary support to consumers with limited English or ASL proficiency, or cognitive or motor disabilities,"[365] or should different or more specific criteria be applicable? We also seek comment on the costs of providing this additional service, and how additional

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[360] *See supra* para. 107.

[361] *Notice*, 36 FCC Rcd at 8814, para. 30.

[362] *See* Registry of Interpreters for the Deaf, Inc., *Certified Deaf Interpreters*, https://rid.org/certification/available-certifications/ (last visited Sept. 21, 2023).

[363] Registry of Interpreters for the Deaf, Inc., Standard Practice Paper, Use of a Certified Deaf Interpreter at 1 (1997), https://rid.org/about/resources/#fortheconsumer.

[364] Sorenson Comments at 64-65; *see also* Sorenson Reply at 35-36.

[365] Sorenson Comments at 64-65; *see also* Sorenson Reply at 35-36.

compensation should be determined. What additional amount, if any, would be necessary to incentivize providers to make this service available when needed? Alternatively, should the provision of Certified Deaf Interpreters when needed be mandatory for all VRS providers? We also seek comment on any changes to the call detail reporting requirements that may be needed to facilitate reporting calls that include Deaf Interpreters and to allow the TRS Fund administrator to validate those calls for compensation.

136. *Interpreting Other Than ASL*. We also seek comment on whether other methods of communication with eligible TRS users, such as cued language, should be authorized for compensation as a specialized form of VRS.[366] How many people currently use cued language? To what extent could such a service be effectively offered by VRS providers, and what are the relevant additional costs that would be incurred to provide such a service? If authorized, how should the additional reasonable costs of such a service be determined for the purpose of setting an appropriate amount of additional compensation?

137. *Skills-based Interpreting*. We further seek comment on whether VRS providers should receive additional compensation for responding to a VRS user's request to have a call routed to a CA with particular skill sets—such as particular spoken-language abilities, interpreting, transliteration, and signing styles and skills, or knowledge of specific subject matters, such as medicine, law, or technology.[367] To what extent would the provision of skills-based interpreting enable functionally equivalent communications? To what extent could such a service be effectively offered by VRS providers, and what are the relevant additional costs that would be incurred to provide such a service? Would costs vary depending on the type of skill set? How should the costs for differing skill sets be determined for setting an appropriate amount of additional compensation? How could the additional costs be verified?

138. If additional compensation is provided, what criteria should be applied to determine when such compensation is paid? What criteria should be met to determine that a CA has a particular skill set, and how should we verify that such CAs provided such skills during a call? How should we verify that the skills-based interpreting improved the call quality beyond what the user would have received from an interpreter without the identified skill set? We also seek comment on any changes to the call detail reporting requirements that may be needed to facilitate reporting calls that include skills-based interpreters and to allow the TRS Fund administrator to validate those calls for compensation.

B. Compensable Calls for VRS Users Who Are Deafblind

139. *Calls to VRS users*. We seek comment on whether the TRS Fund should support calls between a VRS user who is deafblind and another VRS user. Do such calls require the participation of a CA for functionally equivalent communication? We believe that during such a call, the VRS user who is deafblind would be signing to the other VRS user on the call and would receive a typed communication from the CA of the signed communication from the other VRS user. What are the costs and benefits of allowing such calls to be compensable from the TRS Fund? What changes, if any, would need to be implemented to a VRS provider's platform, to the TRS Numbering database, and to call details records to allow such calls to be compensated when a CA is needed? Should the Compensation Additive for calls from individuals who are deafblind apply to such calls? Or should an alternative compensation rate be

[366] *See generally* GlobalVRS Comments, Appx. 2 at 12, para. 30 (explaining the different skill sets and training needed for those in the Spanish or Creole communities); Comments of Convo Communications, LLC at 12 (describing how the current provision of interpretation service can "disenfranchise" certain portions of the deaf community, such as those with limited English proficiency or who converse in a dialect); Letter from Esther Rimer, National Cued Speech Association, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Nov. 1, 2021).

[367] *See Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, 30 FCC Rcd 12973, 12990, para. 43 (2015).

considered for such calls? What rules, if any, would need to be revised or adopted to permit such calls to be compensable?

140. *Voice Carry Over Calls*. We also seek comment on whether voice carry over (VCO) calls between a TRS user who is deafblind and a hearing user should be compensable from the TRS Fund. In such a call, where the individual who is deafblind is using their voice, rather than ASL, the role of the CA is limited to typing the voiced communications of the other party to the call. We seek comment on how to classify such calls within the TRS program. On its face, such a call does not seem to be classifiable as VRS because no party is using ASL or other form of sign language. Should such a call be classified as an IP CTS call or a VCO IP Relay call? What are the costs and benefits to finding such calls to be compensable? Would permitting such calls allow individuals who are deafblind that use ASL, their own voice, and braille to complete all of their calls to hearing individuals on one TRS platform? Would it be an inefficient use of available VRS CAs, if no ASL is used on the call? Are there technological alternatives available on VRS platforms, such as voice-to-RTT or captioning using automatic speech recognition that would allow the other party to the call to have their voice transcribed and converted to braille without the presence of a VRS CA? If so, should such calls be considered point-to-point video calls on a VRS platform or should it be considered a compensable relay call, and if so, what compensation rate should apply to such calls?

C. Digital Equity and Inclusion

141. Finally, the Commission, as part of its continuing effort to advance digital equity for all,[368] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[369] and benefits (if any) that may be associated with the proposals and issues discussed in this Notice. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

V. PROCEDURAL MATTERS

142. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[370] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[371] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix F.

[368] Section 1 of the Act provides that the Commission "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

[369] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

[370] *See* 5 U.S.C. § 604. The RFA, 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) (FRFA).

[371] 5 U.S.C. § 605(b).

143. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes in the *Further Notice*. The IRFA is set forth in Appendix G. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

144. *Paperwork Reduction Act – Final*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[372] In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.[373]

145. *Paperwork Reduction Act – Notice*. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995.[374] In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.[375]

146. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "major" under the Congressional Review Act.[376] The Commission will send a copy of this Report and Order, Further Notice of Proposed Rulemaking, and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).[377]

147. *Comments*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments 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).[378]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
    - Filings can be sent 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.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.

[372] Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[373] Pub. L. No. 107-98 (codified at 44 U.S.C. 3506(c)(4)).

[374] Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[375] Pub. L. No. 107-98 (codified at 44 U.S.C. 3506(c)(4)).

[376] 5 U.S.C. § 804(2).

[377] *Id*. § 801(a)(1)(A).

[378] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[379]
- *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 & Governmental Affairs Bureau at 202-418-0530 (voice).

148. *Ex parte rules*. The proceeding this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[380] 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 presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). 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.

VI. ORDERING CLAUSES

149. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, the foregoing Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED and the Commission's rules are hereby AMENDED as set forth in Appendix E.

150. IT IS FURTHER ORDERED that the grant of a waiver of the expiration of the previously adopted compensation plan, as described in paragraphs 127 through 130 hereof SHALL BE EFFECTIVE upon release.

151. IT IS FURTHER ORDERED that, except as provided in paragraph 150 hereof, the Report and Order and the amendments to the Commission's rules SHALL BE EFFECTIVE [**INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

152. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance and Program Management, SHALL SEND a copy of Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

153. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking

[379] See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[380] 47 C.F.R. §§ 1.1200 *et seq.*

including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

List of Commenting Parties

Comments

ASL Services Holding, LLC dba GlobalVRS (GlobalVRS)

Convo Communications, LLC (Convo)

National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Association of Late-Deafened Adults (ALDA), Deaf Seniors of America (DSA), American Deafness and Rehabilitation Association (ADARA), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cerebral Palsy and Deaf Organization (CPADO), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Hearing Loss Association of America (HLAA), National Black Deaf Advocates (NBDA), Gallaudet University Alumni Association (GUAA), Registry of Interpreters for the Deaf, Inc. (RID) (collectively, Communications Equality Advocates)

NCTA – The Internet & Television Association (NCTA)

Sorenson Communications, LLC (Sorenson)

ZP Better Together, LLC (ZP)

Reply Comments

Convo

GlobalVRS

Sorenson

ZP

Appendix B

Calculation of Provider Costs

1. *Adjustments for Inflation-Related Cost Changes*. As discussed in Part III.C.2 of the Report and Order, providers' reported expenses in all currently allowable cost categories *except* CA Wages and Benefits, Engineering, and Research and Development are estimated by applying a 7.23% adjustment factor[1] to historical 2022 expenses,[2] to account for likely inflation-related cost increases in the 18 months between the cost reporting period (CY 2022) and the first year of the new compensation period (FY 2023-24).

		Convo	ZP	Sorenson	Industry Total/ Average
(a)(1) Historical 2022 expenses in previously allowable categories other than CA, engineering, and R&D	Total expenses	{[xxxxxxxxxx]}	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	$183,656,927
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.22
(a)(2) Estimated expenses in previously allowable categories other than CA, engineering, and R&D (7.23% above 2022 cost)[3]	Total expenses	{[xxxxxxxxx]}	{[xxxxxxxxx]}	{[xxxxxxxxxxx]}	$195,337,275
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.39
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

[1] To calculate the inflation factor the Commission used the change from fourth quarter 2021 to second quarter 2023 in the Bureau of Labor Statistics (BLS) index of seasonally adjusted "total compensation for private industry workers in professional, scientific, and technical services." Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS2015400000000I (last visited Sept. 26, 2023).

[2] Per-minute expenses for 2022 are calculated based on 2022 minutes.

[3] These categories include: expenses related to offices, relay centers and other buildings; relay center expenses other than CA wages and benefits; administrative expenses; depreciation of capital investment; and marketing and advertising expenses. For most of these categories, adjusted per-minute expenses are calculated by (1) increasing a provider's 2022 expenses in those categories by 7.23%, and then (2) dividing the result by the provider's projected 2023-24 minutes. Because VRS minutes are projected to decline somewhat from 2022 levels, the adjusted per-minute amounts are more than 7.23% higher than per-minute 2022 costs in these categories. By contrast, for relay center expenses (salary and benefits for management and staff, telecommunications expenses, etc.), adjusted per-minute expenses are determined by (1) dividing a provider's total 2022 expenses for these categories by the provider's 2022 minutes, and then (2) increasing that per-minute amount by 7.23%. This is done because expenses in the B.2-5 categories are more strongly affected by a provider's volume of minutes.

2. *Higher-Than-Inflation Cost Increases*. As discussed in Part III.C.3 of the Report and Order, expenses for CA Wages and Benefits (Relay Service Data Request (RSDR) Line B.1), Engineering (RSDR Line C.3), and Research and Development (RSDR Line C.4) are estimated by applying adjustment factors higher than inflation to historical expenses.

		Convo	ZP	Sorenson	Industry Total/ Average
(b)(1) 2020-21 CA wages and benefits	Total expenses	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	{[xxxxxxxxxxx]}	$217,833,838
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.34
(b)(2) Estimated CA wages and benefits (65% above 2020-21 cost)[4]	Total expenses	{[xxxxxxxxxx]}	{[xxxxxxxxxx]}	{[xxxxxxxxxxx]}	$311,883,940
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$2.22
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

		Convo	ZP	Sorenson	Industry Total/ Average
(c)(1) 2022 engineering and R&D expenses	Total expenses	{[xxxxxxxx]}	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	$29,827,236
	Expenses per minute	{[xxxxx]}	{[xxxxx]}	{[xxxx]}	$0.20
(c)(2) Estimated engineering and R&D expenses (75% above 2022 cost)[5]	Total expenses	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	{[xxxxxxxxxx]}	$52,197,664
	Expenses per minute	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}	$0.37
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

[4] Per-minute CA wages and benefits (RSDR Line B.1) are estimated by (1) dividing a provider's average 2020-21 expenses for the category by the provider's average 2020-21 minutes, and then (2) increasing that per-minute amount by 65%. This is done because expenses in this category are more strongly affected by a provider's volume of minutes.

[5] Per-minute expenses for engineering and R&D (RSDR Lines C.3-4) are estimated by (1) increasing a provider's total 2022 expenses for these categories by 75%, and then (2) dividing the result by the provider's projected 2023-24 minutes. Because VRS minutes are projected to decline somewhat from 2022 levels, the adjusted per-minute amounts are more than 75% higher than per-minute 2022 expenses in these categories.

3. *Newly Allowable and Other Additional Costs*. As discussed in Part III.C.4 of the Report and Order, the Commission estimates that providers will incur additional expenses in certain newly allowable categories and that Sorenson will incur expenses to provide Video-Text Service to consumers who are deafblind.

		Convo	ZP	Sorenson	Industry Total/ Average
(d) Numbering expenses	Total expenses	{[xxxxxxx]}	{[xxxxxxxx]}	{[xxxxxxxxx]}	$4,740,136
	Expenses per minute	{[xxxxx]}	{[xxxxx]}	{[xxxx]}	$0.03
(e) Outreach expenses	Total expenses	{[xxxxxxx]}	{[xxxxxxxx]}	{[xxxxxxxxx]}	$4,555,243
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.03
(f) Video-Text Service: relatively fixed expenses	Total expenses	-	-	{[xxxxxxx]}	{[xxxxxxx]}
	Expenses per minute	-	-	{[xxxxx]}	{[xxxxx]}
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

4. *Total Estimated Expenses*. Estimated total expenses for each provider are determined by summing lines (a)(2), (b)(2), (c)(2), (d), (e), and (f) above.

	Convo	ZP	Sorenson	Industry Average
(a) Estimated expenses in previously allowable categories other than CA, engineering, and R&D (7.23% above 2022 cost)	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.39
b) Estimated CA wages and benefits (65% above 2020-21 cost)	{[xxxx]}	{[xxxx]}	{[xxxx]}	$2.22
c) Estimated engineering and R&D expenses (75% above 2022 cost)	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.37
d) Numbering expenses	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.03
e) Outreach expenses	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.03
f) Video-Text Service: relatively fixed expenses	-	-	{[xxxx]}	{[xxx]}
Totals	**{[xxxx]}**	**{[xxxx]}**	**{[xxxx]}**	{[xxxx]}

Compensation formulas are set to enable each provider to earn an operating margin within the reasonable range (7.75% to 12.35%), by targeting applicable compensation rates to yield an operating margin for each provider of 10% above estimated costs, if compensable minutes for each VRS provider approximate the volumes of minutes projected by the provider for FY 2023-24.

5. *Video-Text Service Additional Compensation*. As discussed in Part III.D.3 of the Report and Order, the Commission estimates that Sorenson will incur additional variable to provide Video-Text Service to users who are deafblind for which it adopts an additional compensation amount.

<table>
<tr><th></th><th></th><th>Convo</th><th>ZP</th><th>Sorenson</th><th>Industry Total/ Average</th></tr>
<tr><td rowspan="2">Video-Text Service: variable expenses</td><td>Total expenses</td><td>-</td><td>-</td><td>{[xxxxx]}</td><td>{[xxxxx]}</td></tr>
<tr><td>Expenses per minute</td><td>-</td><td>-</td><td>{[xxxxx]}</td><td>{[xxxxxx}</td></tr>
<tr><td colspan="6">Note: The estimated total expense is based on Sorenson's projected monthly demand of {[xxxx]} minutes for Video-Text Service.</td></tr>
</table>

Appendix C

Economic Assessment of FCC Compensation Plan and Provider Proposals

1. In this appendix, we show that the Commission's revised VRS compensation formulas will allow Convo, ZP, and Sorenson overall operating margins of at least {[xxxx]} based on actual and forecasted output levels and costs.[1] In contrast, none of the alternative proposals leads to operating margins within the zone of reasonableness for all providers.

A. Analysis of The Commission's Revised Compensation Formulas

Table 1: Per-Minute Compensation Formulas

Small Provider (<1,000,000 minutes per month)	$7.77
Large Provider (>1,000,000 minutes) Tier I (0-1,000,000 monthly min.)	$6.27
Large Provider (>1,000,000 minutes) Tier II (all minutes after 1,000,000 monthly min.)	$3.92
Additive for Video-Text Service	$0.19

2. *Compensation for Large Providers.* The Report and Order sets a tiered compensation formula for providers handling more than 1,000,000 minutes per month: $6.27 per minute for a provider's first 1,000,000 monthly minutes and $3.92 for all additional monthly minutes. A change in the compensation formula is necessary because of changes in the VRS industry since 2017. In that time the second largest provider, ZP, has expanded its market share, and its reported costs are now similar to the reported costs of the largest provider, Sorenson.[2] Therefore, the previous three-tiered compensation formula, which was designed with a middle tier to support the continued growth of a provider, while recognizing that growing providers would begin to achieve economies of scale, no longer achieves that goal. The 2023 VRS provider cost data show that continuing with a three-tiered compensation formula for the two largest providers would cause operating margins well in excess of the zone of reasonableness for the second largest provider. Providers are also eligible for a compensative additive for the provision of Video-Text Service. These minutes will receive an additional $0.19 per minute in compensation.

3. Table 2 below shows the estimated compensation revenue for each large provider in the first year. Table 3 below shows that under the new compensation formula the largest providers would earn operating margins of approximately {[xxxx xxxxxxxxxxx xxxxx xxxxxx xxxxxx xxxxxxx xxx xxxxxx xxx xxxxxx xxxxxxx xxxxxx xxxxxxxxxxxxxxxxxx xxxxxxxxxxx xxxxxxx xx xxxxxxx xxxx.]}

Table 2: Estimated Compensation (based on 2023-24 demand[3])

Provider	Estimated Revenue
ZP	{[xxxxxxxxxxx]}
Sorenson	{[xxxxxxxxxxx]}

[1] Overall operating margins are the percentage by which total estimated compensation exceeds the Commission's estimate of total allowable costs, as defined in the Report and Order.

[2] *See supra* para. 87.

[3] Demand is calculated based on VRS providers projected monthly demand estimates for July 2023 through June 2024.

Table 3: Operating Margins for Large Providers under Current and Revised Formulas

Provider	Operating Margin	
	Current Formulas	Revised Formulas
ZP	{[xxxxx]}	{[xxxx]}
Sorenson	{[xxxxxx]}	{[xxxx]}

Note: Operating margins were calculated based on the weighted average of each provider's reported allowable costs for 2022, as adjusted in the Report and Order.

4. *Compensation for Small Providers.* Under the revised compensation formula, small providers (providers with fewer than 1,000,000 monthly minutes) receive $7.77 per minute for all minutes. Small providers are also eligible for the $0.19 compensative additive for the provision of Video-Text Service. Table 4 shows the estimated revenue for Convo. Table 5 shows that under the new compensation formula Convo would earn an operating margin of {[xxxxx]}.

Table 4: Estimated Compensation (based on 2022-23 demand)

Provider	Estimated Revenue
Convo	{[xxxxxxxxxxx]}

Table 5: Operating Margins for Small Providers under Current and Revised Formulas

Provider	Operating Margin	
	Current Formulas	Revised Formulas
Convo	{[xxxxxx]}	{[xxxxx]}

Notes: Operating margins were calculated based on the weighted average of a provider's reported allowable costs for 2022, as adjusted in the Report and Order.

B. Analysis of Alternative Tiered Compensation Formulas

5. Both Sorenson and ZP have proposed tiered compensation formulas.[4] In 2022, Sorenson proposed that the boundary between Tier II and Tier III be reset at 3.5 million monthly minutes and that the compensation rate of Tier III be adjusted (Sorenson 2022 Proposal).[5] In 2023, Sorenson suggested that the tier boundaries remain the same and that each tiered rate be adjusted (Sorenson June 2023 Proposal).[6] In September 2023, Sorenson suggested an alternative tiered proposal based on an alternative calculation of provider costs. (Sorenson September 2023 Proposal).[7] In 2021, ZP proposed that the boundary between Tier II and Tier III be reset at 5 million monthly minutes, without changing the tiered rates (ZP 2021 Proposal).[8]

6. In June 2023, ZP proposed that the tier boundaries should remain the same and that each

[4] In 2021, Sorenson proposed a single rate for non-emergent providers of $3.50 per minute. Because the single rate compensation proposal was based on costs reported in 2021 and the more recent advocacy has focused on retaining tiered compensation, we do not discuss it within this section.

[5] *See* Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 5 (filed Jan. 27, 2022); Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed Jan. 28, 2022).

[6] *See* Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, (filed June 12, 2023); Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, (filed June 15, 2023) (updating its tiered proposal to align with ZP's proposal in its June 9, 2023 *Ex Parte*).

[7] Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 at 3 (filed September 1, 2023).

[8] *See* ZP Comments at 10-11; Letter from Gregory Hlibok, ZP to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2 (filed Aug. 27, 2021).

tiered rate should be adjusted.[9] ZP's subsequently updated the rates adjustment in its proposal (ZP June 2023 Proposal).[10] Table 6 compares the estimated impact on the TRS Fund of the current VRS compensation formulas, the revised formulas adopted in this Report and Order, and the various alternative proposals described above.

Table 6: Approximate Impact on the TRS Fund in Year 1 (based on 2023-24 demand levels)

	Fund Expenditures	Change	Percentage Change
Current Formula	$483 million		
Adopted Formula	$626 million	$143 million	29.5%
ZP June 2023 Proposal	$618 million	$135 million	28.0%
Sorenson June 2023 Proposal	$708 million	$225 million	46.7%
Sorenson September 2023 Proposal	$657 million	$174 million	36.0%
ZP 2021 Proposal	$534 million	$51 million	10.5%
Sorenson 2022 Proposal	$540 million	$56 million	11.7%
Note: The ZP 2021 Proposal and Sorenson 2022 Proposal have not been updated by the providers to take account of updated cost and demand data reported in 2023. We include them here as they remain part of the record in this proceeding and are discussed in the Report and Order. Total may not equal sum of costs due to rounding.			

7. We also compare the operating margins for each provider and for the industry as a whole under each plan. We note that none of the alternative proposals leads to operating margins within the zone of reasonableness for all providers.

Table 7: Operating Margins (based on estimated expenses (per Appendix B) and 2023-24 demand)

	Convo	ZP	Sorenson	Industry Average
Current Formula	{[xxxxx]}	{[xxxxx]}	{[xxxxxx]}	{[xxxxxx]}
Adopted Formula	{[xxxx%]}	{[xxxx]}	{[xxxx]}	{[xxxx]}
ZP June 2023 Proposal	{[xxxxx]}	{[xxxxx]}	{[xxxx]}	{[xxxx]}
Sorenson June 2023 Proposal	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}
Sorenson September 2023 Proposal	{[xxxx]}	{[xxxxx]}	{[xxxx]}	{[xxxxx]}
ZP 2021 Proposal	{[xxxxxx]}	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}
Sorenson 2022 Proposal	{[-xxxxx]}	{[xxxx%]}	{[xxxxx]}	{[xxxxx]}
Note: The 2021 Proposals from ZP and Sorenson submitted to the Commission in 2021 have not been updated following the providers submitting new cost and demand data in 2023. We include them here as they remain part of the record in this proceeding and are discussed in the Report and Order. Sorenson does not take a position on the emergent rate in its Sorenson June 2023 Proposal, and for consistency of analysis we assume its proposal would treat the emergent rate in the same way as ZP's proposal.				

[9] *See* Letter from Sherri Turpin, ZP to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 23, 2023).

[10] *See* Letter from Sherri Turpin, ZP to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 9, 2023).

Appendix D

Staff Analysis of the ZP Regression

1. We review some limitations of the model that ZP submitted of VRS provider per minute costs (total costs divided by total minutes) and conclude that these limitations preclude reliable estimation of costs through regression analysis.[1] ZP submitted a regression model of VRS costs and requested that it be used to determine tier boundaries and rates.[2] However, we find that the model cannot be relied on due to its econometric deficiencies. We therefore take a different approach, as discussed in the Report and Order.[3]

2. The submitted model is a classic linear regression that assumes per minute costs equal the linear sum of a constant, the volume multiplied by another constant, and an error term.[4] The submitted model uses 20 observations, one observation per year for five years, from 2018 to 2022, for each of the four VRS providers. It regresses each provider's annual cost divided by its annual volume, hereafter per minute cost, on the log (base-10) of annual minutes divided by twelve, hereafter volume. The regression results indicate that volume explains most of the variation in per minute costs.[5]

3. Staff believes that the regression model is not reliable for several reasons. First, the model omits relevant explanatory variables that are likely correlated with volume. If a relevant variable is omitted, the estimated relationship between costs and volumes is incorrect.[6] For example, if a provider focuses on serving a smaller sub-population of users with more costly needs, the model will generate incorrect estimates if it does not account for this. Another example is quality of service. Consumers may gravitate to providers with higher quality service. If so, providers that spend more on quality would have higher call volumes. Leaving out variables for those qualities over which providers compete would generate incorrect results. This concern is particularly relevant in VRS where providers do not compete on price because end users do not pay for VRS service, but instead compete on quality. Omission of these or other factors that impact both costs and provider demand make the model's estimates unreliable.[7]

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[1] Reticulated Strategies LLC Supplement to Reply Comments, CG Docket Nos. 03-123 and 10-51, (rec. August 12, 2021) (filed on behalf of ZP) (ZP Supplemental Reply); *see also* Letter from Preston James Wise, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Jan. 21, 2022) ZP January 2022 *Ex Parte*.

[2] ZP Supplemental Reply*; see also* ZP January 2022 *Ex Parte*.

[3] *See supra* Report and Order, Part III.D & Appendix C.

[4] The error term is the portion of the true relationship between volume and per-minute cost that is not explained by the linear relationship with volume. Jeffery M. Wooldridge, Introductory Econometrics: A Modern Approach 71 (5th ed. 2012) (Wooldridge).

[5] ZP Supplemental Reply at n.3.

[6] "Omitted Variable Bias: The bias that arises in the OLS estimators when a relevant variable is omitted from the regression." Wooldridge, *supra* note 4, at 853.

[7] Standard practice to remedy this problem is to add the missing variables to the model. For example, a variable for quality might be average call-response time. But given the limited number of observations, adding missing explanatory variables to the model is not viable. After accounting for provider grouping, the model only has three degrees of freedom. Each control variable added to the model eliminates one degree of freedom. With more omitted variables than degrees of freedom the model is not viable. Degrees of freedom are "the number of 'free' or linearly independent observations used in the calculation of the statistic." Peter Kennedy, A Guide to Econometrics 66 (3rd ed. 1992); for a heuristic explanation, *see* Minitab, *What are degrees of freedom?* (April 8, 2016), https://blog.minitab.com/en/statistics-and-quality-data-analysis/what-are-degrees-of-freedom-in-statistics.

4. Second, observations from the same provider are not independent from each other.[8] From year-to-year, provider costs and demand are likely related to internal business practices and other industry pressures and are thus almost certainly related to each other. Figure 1 illustrates this problem, depicting data points tightly grouped together by provider with large volume ranges between providers.[9] This implies that the statistical inference tests are incorrect.[10]

{[xxxxxxxxxxxxx xxxxxxxx xxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxxxx xxxxxxxxxxx x**)**

xxxxxxxxxxxxxxx.]}

5. Third, the model treats CSDVRS and Purple as one provider, ZP. The process of consolidating these firms' operations pursuant to their 2017 merger appears to have taken three years to complete, with CSDVRS and Purple filing their costs separately until 2020. During this period, there was likely some duplication of services or facilities, resulting in higher costs than would be the case for a fully consolidated provider. Counting the costs of these two providers as one throughout the merger likely inflates the predicted costs per minute. On the other hand, disaggregating ZP, for purposes of analyzing pre-2020 costs, into two providers would not resolve the problem because the providers presumably were benefiting from some economies of scale during the transitional period.[11]

[8] Random sampling requires that an "[observation] is independent of all other [observations]." Wooldridge at 856. Random sampling also means that the error terms are independent from each other. Wooldridge at 116, 353. That is, past values cannot affect future observations. Wooldridge at 374.

[9] Random sampling would imply that the portion of {[xxxxxxx]} per minute costs in 2019 that is not explained by volume is not related to the portion of per minute costs in 2020 that is not explained by volume. But the error terms have a trend over time as revealed by a test for serial correlation conducted on the three largest providers. This indicates that error terms for the same provider are related, which violates random sampling. David M. Drukker, *Testing for serial correlation in linear panel-data models*, 3 The Stata Journal 2: 168–177 (2003), https://journals.sagepub.com/doi/pdf/10.1177/1536867X0300300206.

[10] Wooldridge, *supra* note 4, at 483. For approaches to the problem *see* A. Colin Cameron & Douglas L. Miller, *A Practitioner's Guide to Cluster-Robust Inference*, 50 The Journal of Human Resources, No. 2, 317-372 (2015), http://cameron.econ.ucdavis.edu/research/Cameron_Miller_JHR_2015_February.pdf.

[11] If the model were viable, sensitivity testing would indicate how vulnerable the model's results are to different assumptions about the merged providers.

6. Thus, although the model results in small p-values for its estimates of the impact of volumes on per minute costs,[12] and a high R-squared value of 98%,[13] we cannot rely on its results due to the econometric deficiencies previously discussed.

[12] ZP Supplemental Reply at 1. P-values indicate the probability that the estimates are the result of random chance if there were no relationship between volumes and per minute costs. Thus, a low p-value suggests the likelihood of a relationship between volumes and per-minute costs.

[13] *Id*. at 1. The R-squared of a regression is the "ratio of the explained variation compared to the total variation; thus, it is interpreted as the fraction of the sample variation in [per minute costs] that is explained by [volume]." Wooldridge, *supra* note 4, at 38.

Appendix E

Final Rules

The Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

3. Amend § 64.601 by:

a. Redesignating paragraphs (a)(52) through (a)(56) as paragraphs (a)(53) through (a)(57); and

b. Adding new paragraph (a)(52).

The revisions and additions read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(52) ***Video-Text Service***. A specialized form of video relay service that allows people who are deafblind who use sign language and text to communicate through a video link. The video link allows the communications assistant to view and interpret a party's sign language communication and the text functionality allows the communications assistant to send text to peripheral devices employed in connection with equipment, including software, to translate, enhance, or otherwise transform advanced communications services into a form accessible to people who are deafblind. The communications assistant relays the conversation using sign language, voice, and text between the participants of the call.

* * * * *

4. Add § 64.643 to subpart F to read as follows:

§ 64.643 Compensation for Video Relay Service.

For the period from July 1, 2023, through June 30, 2028, TRS Fund compensation for the provision of Video Relay Service (VRS) shall be as described in this section.

(a) First Year. For Fund Year 2023-24, TRS Fund compensation shall be paid in accordance with the following formulas.

(1) The Compensation Amount for VRS providers handling one million conversation minutes or less in a month shall be $7.77 per minute.

(2) The Compensation Amount for VRS providers handling more than one million conversation minutes in a month shall be:

(i) $6.27 per minute for the first 1,000,000 conversation minutes each month;

(ii) $3.92 per minute for monthly conversation minutes in excess of 1,000,000.

(3) For Video-Text Service, as defined in this subpart, in addition to the applicable Compensation Amount under paragraph (a)(1) or (2) of this section, an additional Compensation Amount of $0.19 per minute shall be paid for each conversation minute.

(b) *Succeeding Years*. For each succeeding Fund Year through June 30, 2028, each per-minute Compensation Amount described in paragraph (a) of this section shall be redetermined in accordance with the following equation:

$A_{FY} = A_{FY-1} * (1+IF_{FY})$

where A_{FY} is the Compensation Amount for the new Fund Year, A_{FY-1} is the Compensation Amount for the previous Fund Year, IF_{FY} is the Inflation Adjustment Factor for the new Fund Year.

(c) *Inflation Adjustment Factor*. The Inflation Adjustment Factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(1) Final Value - The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(2) Initial Value - The fourth quarter of the preceding Calendar Year.

(d) Exogenous Cost Adjustments. In addition to L_{FY}, a video relay service provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June 30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected minutes for the Fund Year. An exogenous cost adjustment shall be paid if a video relay service provider incurs well-documented costs that:

(1) belong to a category of costs that the Commission has deemed allowable;

(2) result from new TRS requirements or other causes beyond the provider's control;

(3) are new costs that were not factored into the applicable compensation formula; and

(4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues.

Appendix F

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*) released in May 2021.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need For, and Objectives of, the Report and Order

2. Under section 225 of the Communications Act, as amended, the Commission is tasked with ensuring Telecommunications Relay Services (TRS) are available to the extent possible and in the most efficient manner to individuals with disabilities.[4] The Commission provides compensation for the provision of TRS through the TRS Fund.[5] To determine the appropriate compensation, the Commission has adopted and periodically reviews a compensation plan for the provision of each form of TRS. Each compensation plan includes a compensation structure and formulas for determining the appropriate compensation, with various inputs, including a "reasonable cost" criteria and historical and expected demand for the provision of TRS.

3. To achieve these requirements, in the *Report and Order*, the Commission adopted a multi-year compensation plan for Video Relay Service (VRS), a form of TRS that enables persons who are deaf, hard of hearing, deafblind, or have speech disabilities who use sign language to communicate with other persons through video equipment 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 communication services.[6] To provide the appropriate compensation for the provision of, and continued availability of VRS, the Commission adopted a compensation plan that addressed increasing costs due to inflation and the effect of the COVID-19 pandemic. It also updated the inputs for reasonable cost criteria to improve the ability of VRS providers to provide and receive compensation for VRS that is functionally equivalent. In the *Report and Order*, the Commission also recognized and adopted a compensation formula for the provision of VRS to individuals who are deafblind, as a specialized service to help ensure the continued availability of this service to the extent possible for the individuals who use this service. Finally, to address changes in the cost structures of various VRS providers, the Commission transitioned from a three-tiered rate structure to a two-tiered rate structure for larger VRS providers providing more than one million monthly minutes, while maintaining a separate compensation rate for providers providing one million or fewer monthly minutes.

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

[2] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021) (*Notice*).

[3] 5 U.S.C. § 604.

[4] 47 U.S.C. § 225(b)(1). TRS are "telephone 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 communication services by wire or radio." *Id*. § 225(a)(3).

[5] 47 CFR § 64.604(c)(5)(iii).

[6] *See id*. § 64.601(a)(51); 47 U.S.C. § 225(a)(3).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[7]

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

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 rules adopted herein.[8] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[9] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[10] A "small business concern" is one that: (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.[11]

8. The policies adopted in the *Report and Order* will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications. There are currently four VRS providers: ASL Services Holdings, LLC d/b/a GlobalVRS, Convo Communications, LLC, Sorenson Communications, LLC, and ZP Better Together, LLC.

9. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[12] 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.[13] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[14] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million

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[7] 5 U.S.C. § 604(a)(3).

[8] *Id*. § 604(a)(4).

[9] *Id*. § 601(6).

[10] *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."

[11] 15 U.S.C. § 632.

[12] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[13] *Id*.

[14] *Id*.

or less as small.[15] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[16] Of those firms, 1,039 had revenue of less than $25 million.[17] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The provider compensation plan adopted in the *Report and Order* will not create significant reporting, recordkeeping, or other compliance requirements for small entities, as the adopted rules maintain a separate compensation structure for such VRS providers. The Commission will retain the status quo of continuing to require VRS providers, including small providers, to file annual cost and demand data reports with the TRS Fund administrator.[18] The Commission clarifies the data related to engineering, research and development, and communications assistant costs that shall be collected in the providers' annual cost and demand data filing. However, there are no new or additional burdens on VRS providers to file these reports, or any additional costs to VRS providers, nor are there any requirements for small entities to hire professionals to comply with the adopted rules. While the Commission allows VRS providers to recover reasonable costs for outreach, numbering, certain software, and certain research and development costs, these allowances do not change the cost categories reported by providers.

11. Further, in the *Report and Order*, the Commission establishes an add-on rate of $0.19 per minute to encourage small and large providers to bring functionally equivalent service to deafblind VRS users. VRS providers that seek compensation for the provisioning of VRS to deafblind individuals must identify any deafblind individuals in the TRS User Registration Database. This minor database modification will be implemented through a new field in the TRS User Registration Database which will allow small and other VRS providers to register a new or existing user as an individual who is deafblind. The Commission anticipates this modification to be of minimal impact to small and other VRS providers, as it is the addition of a single new field to a database VRS users are already using and will allow them to be fully compensated for providing VRS to deafblind users. As an interim step, VRS providers must also create and submit to the TRS Fund administrator a list of VRS users who are deafblind along with their ten-digit telephone numbers and Internet Protocol (IP) addresses, as well as any additional information as requested by the TRS Fund administrator. Providing this information will allow the TRS Fund administrator to identify calls placed to or received by VRS users who are deafblind in provider-submitted call detail records and pay those providers under the payment formula that includes the add-on for service to individuals who are deafblind. While we cannot quantify the cost of compliance for small entities, the additional obligations will be outweighed by the additional compensation afforded providers serving deafblind VRS users and the benefits provided to those dependent on the services VRS provides.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the

[15] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[16] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[17] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[18] *See* 47 CFR § 64.604(c)(5)(iii)(D)(1); *2018 Further Notice*, 33 FCC Rcd at 5822-23, paras. 36-37.

other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[19]

13. The adopted compensation structure and levels will apply only to entities who are, or may become, certified by the Commission to offer VRS in accordance with its rules.[20] The Commission adopted these multi-year compensation levels to compensate providers for their reasonable cost of providing service, to reduce the burden on TRS Fund contributors and their subscribers, and to ensure that TRS is made available to the greatest extent possible and in the most efficient manner.[21] In the Report and Order, the Commission also adopted separate compensation structures for large and small providers to allow small entities the opportunity to recover their costs in providing VRS, which the record suggests are higher than for large providers who have achieved some level of economies of scale. This action by the Commission should minimize the economic impact for small entities who provide VRS.

14. Through comments provided during the rulemaking proceeding, the Commission considered various proposals from small and other entities, and the adopted rules reflect its best efforts to minimize significant economic impact on small entities. Additionally, the Commission considered alternative proposals and weighed their benefits against their potential costs to small and other entities. More specifically, the Commission considered multiple methodologies for compensating VRS providers for the provisioning of VRS including an auction, a unitary compensation rate, the current tiered compensation structure, and alternative tiered-rate structures. Further, in considering a compensation structure, the Commission evaluated specific proposals for the structure and for setting compensation levels, including only adjusting the current compensation levels to address inflation and the additional cost categories.

15. In the *Report and Order*, the Commission adjusted the allowable cost categories that it considers in determining the appropriate compensation levels for the provisioning of VRS to allow small and other providers to recover costs for outreach, research and development to enhance functional equivalency, access software, and numbering and E911, resulting in a comparatively higher compensation level for providers than if it were not to adjust these categories. These adjustments will help ensure that the provisioning of VRS is functionally equivalent. The Commission also adopted a compensation add-on for the provisioning of specialized services to VRS users who are deafblind. This add-on will help compensate providers for the reasonable cost of providing VRS specialized services to the individuals who need it for functionally equivalent communications. Small and other entities will benefit economically from the increased compensation they will receive from this change, which will enable them to grow their businesses and provide higher quality VRS products to those who rely on them.

16. These various policy changes, which are adopted in response to comments in the record, help maintain a choice of service offerings for consumers from multiple providers of various sizes. The expansion of allowable cost categories reduces the burden on small and other VRS providers to either incur these costs or reduce the quality of their service. Continuing to require that the allowable costs incurred must be reasonable provides the Commission with sufficient flexibility to ensure that the TRS Fund is not improperly burdened with unnecessary costs that could otherwise have an unintended impact on contributors to the TRS Fund. Additionally, the Commission made adjustments to its determination of the relevant costs to account for the effect of the COVID-19 pandemic on the provision of VRS and to allow for an inflation adjustment to reflect current economic realities that could otherwise impose an economic burden on VRS providers.

G. Report to Congress

17. The Commission will send a copy of the Report and Order, including this FRFA, in a

[19] 5 U.S.C. § 604(a)(6).

[20] *See* 47 CFR § 64.606(a)(2)-(3), (b)(2).

[21] *See* 47 U.S.C. § 225(b)(1).

report to Congress pursuant to the Congressional Review Act.[22] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.[23]

[22] *See* 5 U.S.C. § 801(a)(1)(A).

[23] *Id*. U.S.C. § 604(b).

Appendix G

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (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 this Further Notice of Proposed Rulemaking (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. Under section 225 of the Communications Act, as amended, the Commission is tasked with ensuring that telecommunications relay services (TRS) are available to the extent possible and in the most efficient manner to individuals with disabilities.[4] In the *Further Notice*, the Commission seeks comment on additional compensation for video relay service (VRS) specialized services, including the use of Certified Deaf Interpreters, other methods of communications, such as cued speech, and skills-based interpreting. The Commission proposes adding an incentive per minute compensation amount to the compensation levels to provide these services and seeks comment on alternative approaches for providing additional compensation. The incentive would be added to the per-minute compensation rate that the provider is eligible to receive for the provisioning of VRS. In considering these proposals, the Commission seeks to ensure the availability of functionally equivalent VRS, provided in the most efficient manner, and ensure that the Commission's regulations encourage the use of existing technology and do not discourage or impair the development of improved technology.[5] Providing compensation for VRS specialized services with added per-minute rates, the Commission expects to encourage the provisioning of these services to help ensure that individuals who need services beyond traditional VRS have access to the communications network in a manner that is functionally equivalent. The compensation proposal would allow providers to offer and improve the availability of these specialized services over time. The proposed limitations on the amount of compensation and the conditions for receiving the compensation would ensure that VRS with specialized services is offered in the most efficient manner.

3. The *Further Notice* also seeks comment on the need for rule changes to allow communications assistants (CA) to be present on calls between VRS users who are deafblind and another VRS user, as well as the compensability of voice carry over calls for VRS users who are deafblind. Addressing these contours of compensability and eligibility will help ensure that the provision of services to individuals who are deafblind are functionally equivalent and offered in the most efficient manner.

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

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] 47 U.S.C. § 225(b)(1). TRS are "telephone 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 communication services by wire or radio." *Id*. § 225(a)(3).

[5] *Id*. § 225(a)(3), (b)(1), (d)(2).

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152 and 225.

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

5. 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.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] 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.[9]

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

7. *Telecommunications Relay Service (TRS) Providers*. Telecommunications relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services.[10] Internet-based TRS connects an individual with a hearing or a speech disability to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network.[11] Video Relay Service (VRS), one form of Internet-based TRS, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device.[12] Internet Protocol Captioned Telephone Service (IP CTS) another form of Internet-based TRS, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.[13] Providers must be certified by the Commission to provide VRS and IP CTS[14] and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.[15]

[6] 5 U.S.C. § 603(b)(3).

[7] *Id.* § 601(6).

[8] *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."

[9] 15 U.S.C. § 632.

[10] 47 U.S.C. § 225(a)(3).

[11] 47 CFR § 64.601(a)(22). Except as authorized or required by the Commission, Internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected Voice over Internet Protocol service.

[12] *Id.* § 64.601(a)(51).

[13] *Id.* § 64.601(a)(23).

[14] *Id.* § 64.606(a)(2).

[15] *Id.* § 64.604(c)(5)(iii)(F).

8. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard.[16] Internet Service Providers (ISPs) and Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry.[17] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[18] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[19] Of those firms, 1,039 had revenue of less than $25 million.[20] Based on Commission data there are ten certified Internet-based TRS providers.[21] The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

9. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[22] 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.[23] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[24] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[25] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[26] Of those firms, 1,039 had revenue of less than $25 million.[27] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

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[16] *See* U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[17] *Id*.

[18] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[19] See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[20] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[21] *See* Internet-Based TRS Providers | Federal Communications Commission (fcc.gov), https://www.fcc.gov/general/internet-based-trs-providers (last visited February 15, 2023).

[22] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[23] *Id*.

[24] *Id*.

[25] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[26] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[27] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

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

10. In assessing the cost of compliance for small entities, at this time the Commission is unable to quantify the cost of compliance with any of the potential rule changes that may be adopted. Additionally, the Commission is currently not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *Further Notice* will require small entities to hire professionals to comply. However, as the proposed rules are essentially an expansion of an existing framework used by VRS providers, we do not anticipate that small entities will be required to hire professionals to comply with any rule modifications the Commission ultimately adopts. The Commission expects the information received in comments, including any requested cost information, will help the Commission identify and evaluate relevant compliance issues, including costs, that may impact small entities.

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

11. The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such 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 such small entities."[28]

12. In the *Further Notice*, the Commission is taking steps to minimize the economic impact on small entities and is considering significant alternatives by proposing and seeking alternative proposals for providing compensation for VRS specialized services. The Commission will consider these proposals to maintain and improve choice among suppliers for VRS users using specialized services; help maintain functionally equivalent service; and maintain an efficient VRS market over the long term in accordance with the Commission's statutory obligations. For example, in considering the proposal to allow additional compensation for specialized services, the Commission's intent is to help ensure that VRS is provided in a manner that would allow all individuals with disabilities to have the ability to engage in functionally equivalent communications while recognizing the additional costs small and other providers will encounter to provision these services. Further, allowing such compensation is an alternative to adopting and imposing a specific requirement for VRS providers to provide such services and would help ensure specialized services are voluntarily offered and minimize the cost to providers by allowing providers the opportunity to recover costs incurred in the provision of such services beyond the cost of providing traditional VRS. In the alternative, the Commission could adopt a specific mandate for the provision of these VRS specialized services or decline to allow additional compensation, but continue to allow providers to offer specialized services at the prevailing VRS compensation level. We seek comment in the *Further Notice* on the effect these proposals will have on VRS providers that provision these specialized services.

13. The *Further Notice* seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *Further Notice*. The Commission expects to more fully consider the economic impact on small entities, based on any comments received in response to the *Further Notice*, prior to reaching its final conclusions and adopting final rules in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.

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[28] 5 U.S.C. § 603(c)(1)–(4).