

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Telecommunications Relay Services and	)	
Speech-to-Speech Services for	)	CG Docket No. 03-123
Individuals with Hearing and Speech Disabilities	)	
	)	
Structure and Practices of the Video Relay	)	
Service Program	)	CG Docket No. 10-51
	)	
Petition for a Notice of Proposed Rulemaking	)	
To Revise the Interstate TRS Fund	)	RM - _____
Contribution Methodology	)	

**INITIAL COMMENTS OF IDT TELECOM, INC.**

IDT Telecom, Inc.  
520 Broad Street  
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June 4, 2015

## INTRODUCTION

By these Initial Comments, IDT Telecom, Inc. ("IDT") opposes the approval of the budget and corresponding contribution factor for the 2015-2016 Interstate TRS Fund Contribution Year proposed by Rolka Loubé Associates, LLC, ("TRS Fund Administrator"), in its filings on April 24, 2015 and May 1, 2015.<sup>1</sup>

IDT opposes the proposed budget of \$363,743,242 for IP CTS and the corresponding \$1.8895 per minute compensation rate. IDT recommends that the Commission adopt the alternative reimbursement per minute rate of \$1.6246 and an interim IP CTS budget of \$310,405,381.

More significantly, IDT opposes approval of the proposed budget and contribution factor because both are, in part, based on the funding of intrastate IP Captioned Telephone ("IP CTS"), IP Relay Service ("IP Relay") and Video Relay Service ("VRS"), (collectively "Internet-based relay services") from the interstate and international jurisdictions and not from the intrastate jurisdiction. Additionally, IDT opposes approval of the proposed budget and contribution factor because both are, in part, based on the funding of domestic relay services<sup>2</sup> from the international jurisdiction.

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<sup>1</sup> "Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate," *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 (April 24, 2015) ("Fund Administrator Proposed Budget for the 2015-2016 Funding Year"); "Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate Supplemental Filing," *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 (May 1, 2015).

<sup>2</sup> E.g., intra- and interstate Internet-based relay services and interstate Traditional TRS, Speech-to-Speech and Captioned Telephone.

The Commission's failure to: (1) segregate intrastate Internet-based relay services and secure funding from the intrastate jurisdiction; and (2) segregate domestic relay services from international relay services and secure funding from the corresponding domestic jurisdictions violates the jurisdictional separations mandate of 47 U.S.C. § 225, as implemented under 47 CFR §64.604(c)(5)(ii), and has caused and will continue to cause irreparable harm to IDT and countless other service providers whose revenue is primarily interstate and/or international and whose contributions would be reduced greatly if the Commission secured compensation for intrastate Internet-based relay services from the intrastate jurisdiction and compensation for interstate relay services from the interstate jurisdiction.

The Commission is compelled to remedy these long-standing violations now and in this proceeding and cannot extend the violations another year by approving a final budget and contribution factor for the 2015-2016 Interstate TRS Fund Contribution Year. The Commission should issue, concurrent with its Order approving an *interim* 2015-2016 Interstate TRS Fund budget and contribution factor, a Notice of Proposed Rulemaking ("NPRM") which addresses the appropriate contribution methodology under which the jurisdictional separations requirement of Section 225 can be implemented for Internet-based relay services and international services. Upon the issuance of a Declaratory Ruling and/or Report and Order in response to the NPRM, a final budget and contribution factor can be established and the Commission can true up contributions made pursuant to the interim rates established in this proceeding.

**I. IDT OPPOSES THE PROPOSED BUDGET AND CONTRIBUTION FACTOR FOR THE 2015-2016 INTERSTATE TRS FUND CONTRIBUTION YEAR**

**A. THE COMMISSION MUST REDUCE THE AMOUNT PROPOSED TO COMPENSATE IP CTS PROVIDERS**

In the Public Notice<sup>3</sup> requesting comment in this proceeding, the Commission notes that the Fund Administrator has calculated the IP CTS rate using two separate methodologies – the MARS methodology and one based on historical and projected cost data, using the same cost categories reported by service providers for IP Relay Service. The Commission seeks comment on whether Rolka has correctly calculated the weighted average projected costs for IP CTS.

IDT believes the Fund Administrator has correctly calculated the weighted average projected costs for IP CTS and recommends that the Commission adopt the rate based on the weighted average. The Fund Administrator has concluded that, pursuant to the weighted average, the appropriate IP CTS per minute rate is \$1.6246, in comparison to the proposed rate, calculated pursuant to the MARS methodology, of \$1.8895.<sup>4</sup> The alternative reimbursement calculation represents a difference of \$0.2632 per minute. Multiplied by the projected IP CTS minutes – 202,651,451<sup>5</sup> – compensating IP CTS providers pursuant to the alternative reimbursement calculation would result in a reduction to the Fund budget of \$53,337,861. Given the massive contribution factor increase from 2014-2015 Funding Year to the 2015-2016 Funding Year – from 1.219% to 1.635% - and funding requirement increase – from \$793,241,342 to \$976,013,294 – as well as the *decreasing* contribution base – from

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<sup>3</sup> “Rolka Loube Associates LLC Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2015-2016 Fund Year,” *Public Notice*, CG Docket no. 03-123, CG Docket No. 10-51 at 2.

<sup>4</sup> Fund Administrator Proposed Budget for the 2015-2016 Funding Year at 17.

<sup>5</sup> *Id.* at Exhibit 1-4.

\$65,234,609,106 to \$64,112,423,529<sup>6</sup> - the Commission is compelled to use the lower, more accurate rate in order to reduce the harm (*i.e.*, paying an additional \$53,337,861) that would otherwise be caused to contributors to Fund.

The Commission should not decline to implement the alternative reimbursement calculation based on the concern that the lower rate will harm IP CTS providers. The rate derived at through the alternative reimbursement calculation *is* the fair rate, irrespective of any rates and/or contribution methodologies from prior years and/or the expectations that may flow from such rates and/or methodologies. And, as the Commission has noted, the methodology should be designed to fairly compensate providers for their reasonable costs, however, the reliance on MARS methodology raises countless questions about the MARS-determined rate's reasonableness – questions that are eliminated when the alternative reimbursement calculation is used.<sup>7</sup> Moreover, according to Exhibit 1-4 of the Fund Administrator's Proposed Budget for the 2015-2016 Funding Year filing, IP CTS providers' per minute cost for the 2014-2015 Funding Year was \$1.6573, which is \$0.1632 per minute below the 2014-2015 Funding Year's reimbursement rate of \$1.8205. Based on the projected amount of IP CTS minutes for the 2014-2015 Funding Year (180,281,640),<sup>8</sup> this represents an overpayment of \$29,421,963. It is IDT's position that any concern for IP CTS providers receiving

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<sup>6</sup> "Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate – Supplemental Filing," *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123 and *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51 (May 1, 2015) at 4 ("Supplemental Fund Administrator Proposed Budget for the 2015-2016 Funding Year").

<sup>7</sup> *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Further Notice of Proposed Rulemaking (August 26, 2013) at ¶¶ 117-120.

<sup>8</sup> Fund Administrator Proposed Budget for the 2015-2016 Funding Year at 27.

a reduced rate for the 2015-2016 Funding Year should be tempered by the realization that in the 2014-2015 Fund Contribution Year, IP CTS providers were reimbursed \$29,421,963 above the amount they would have received, had their rate been established based on historical and projected cost data.

**B. THE INCLUSION OF COSTS WITHIN THE PROPOSED BUDGET FOR INTRASTATE IP RELAY AND IP CTS VIOLATES THE JURISDICTIONAL SEPARATIONS REQUIREMENT OF 47 U.S.C. § 225 – SUCH COSTS MUST BE RECOVERED FROM THE INTRASTATE JURISDICITON**

IDT opposes the approval of the proposed budget and contribution factor because both are calculated, in part, based on funding intrastate IP Relay and IP CTS from interstate and international revenue and not from intrastate revenue. 47 U.S.C. § 225(d)(3)(B) unambiguously states, regarding regulations for cost recovery of relay services “Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.” This mandate was equally and unambiguously implemented by the Commission in its rules (“Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service ... costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction.”)<sup>9</sup> Thus, any final budget (and corresponding contribution factor) whose calculation is based solely on revenue from the interstate and international jurisdictions and which compensates costs incurred from the provision of intrastate IP CTS and IP Relay is, on its face, in violation of 47 U.S.C. § 225(d)(3)(B) as implemented under 47 CFR §64.604(c)(5)(ii) because the costs caused

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<sup>9</sup> 47 CFR §64.604(c)(5)(ii).

by intrastate Internet-based relay services are recovered from the interstate and international jurisdictions.

**C. THE INCLUSION OF COSTS WITHIN THE PROPOSED BUDGET FOR INTRASTATE VRS VIOLATES THE JURISDICTIONAL SEPARATIONS REQUIREMENT OF 47 U.S.C. § 225 – SUCH COSTS MUST BE RECOVERED FROM THE INTRASTATE JURISDICITON**

As with IP Relay and IP CTS, IDT opposes the approval of the proposed budget and contribution factor because both are calculated, in part, based on funding intrastate VRS from the interstate and international jurisdictions and not from the intrastate jurisdiction. However, it is necessary to address one additional point regarding VRS that is inapplicable to IP Relay and IP CTS. 47 CFR §64.604(c)(5)(ii) states that “Costs caused by the provision of interstate and intrastate VRS shall be recovered from all subscribers for every interstate service.” However, the Commission cannot hide behind the rule and continue to recover intrastate VRS from the interstate and international jurisdictions and be insulated from a violation of 47 U.S.C. § 225 for VRS because 47 CFR §64.604(c)(5)(ii) itself violates 47 U.S.C. § 225(d)(3)(B). The Commission’s authority to implement rules is constrained in that it cannot replace the clear, unambiguous intent of Congress with rules that directly contradict Congressional intent.<sup>10</sup> And there can be no doubt that 47 U.S.C. § 225(d)(3)(B) (“costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction”) directly contradicts 47 CFR §64.604(c)(5)(ii) (“Costs caused by the provision of ... intrastate VRS shall be recovered from all

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<sup>10</sup>See, e.g., *In re Old Fashioned Enterprises, Inc.*, 236 F.3d 422, 425(8<sup>th</sup> Cir. 2001)(“Although substantial deference is due an agency’s interpretation of its regulations, no deference is due if the interpretation is contrary to the regulation’s plain meaning.”); *Delaware Division of Health and Social Services v. United States Department of Health and Human Services*, 664 F.Supp. 1104 (D. Del. 1987)(Where “the regulations unreasonably supersede” the plain meaning of the statute, the “attempted revision of the statutory language is not only unreasonable; it is arbitrary and capricious” and “must be overturned.”)

subscribers for every interstate service”) because the intent (and result) of the statute is that intrastate relay service costs are recovered from the intrastate jurisdiction whereas the intent (and result) of the Commission’s rule is that intrastate VRS costs are recovered from the interstate and international jurisdictions.

**D. THE COMMISSION HAS CONCEDED THAT ITS AUTHORITY TO AUTHORIZE THE RECOVERY OF INTRASTATE SERVICE FROM THE INTERSTATE JURISDICTION IS LIMITED AND ITS ACTIONS EXCEED ITS LIMITED AUTHORITY**

1. The Commission cannot recover intrastate VRS from the interstate and international jurisdiction

The Commission has conceded that its authority to authorize the recovery of intrastate services from the Fund is limited in scope and time. Yet the Commission has knowingly and willfully exceeded this very limited exception it established for itself.

In 2000, the Commission issued an Order approving the compensation of all (including intrastate) VRS calls from the Interstate TRS Fund.<sup>11</sup> In doing so, the Commission noted:

*During the development of this new relay service, we will permit recovery of costs associated with both intrastate and interstate calls from the interstate TRS Fund.”<sup>12</sup>*

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The statute permits this action. Section 225(d)(3) states that the Commission’s regulations “shall *generally provide* that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction (emphasis added).” We believe the word “generally” gives to the Commission *some* discretion to fund intrastate service from the interstate jurisdiction. We believe that our action, *intended as an interim arrangement*, is an appropriate exercise of this discretion.

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<sup>11</sup> *Telecommunications Relay 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, ¶¶ 21-27 (Mar. 6, 2000) (“VRS Order”).

<sup>12</sup> *Id.* at ¶ 24 (Italics added.)

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This funding scheme is a *temporary arrangement*. When VR[S] develops to the point where it can be required, as we expect it will, *we intend to revert to the traditional cost recovery mechanism*. We will not establish a particular date for that transition. Instead, we will continue to assess the availability of the service and its technological development and determine at some point in the future when it best can be funded in the traditional manner.<sup>13</sup>

Fifteen years later, VRS is not a “new” service and maintaining the existing contribution methodology cannot be justified to support the need to “speed the development of VRS.”<sup>14</sup> With over 112 million minutes projected for the 2015-2016 Funding Year<sup>15</sup> and compensation for VRS representing over 59% of the Fund’s usage budget, it is fair to say that VRS development does not need to be sped up.<sup>16</sup> Casting aside IDT’s disagreement that that the inclusion of the word “generally”<sup>17</sup> authorized the Commission’s decision to allow for interim recovery in the first place, the FCC acknowledged that the license granted by the inclusion of “generally” extended only to allow for an “interim arrangement.” And while, from a “History of the Universe”<sup>18</sup> perspective, fifteen years may seem interim, IDT asserts that any arrangement that exists long enough to celebrate its *quinceanera* is no longer “interim.” Thus, the FCC’s continued, fifteen-year inclusion of costs for intrastate VRS calls violates its own dubious interpretation of the jurisdictional separations requirement of 47 U.S.C. § 225(d)(3)(B).

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<sup>13</sup> Id at ¶¶ 26-27 (internal footnotes omitted)(Italics added except where so noted.)

<sup>14</sup> *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 (June 17, 2003) at ¶¶26-27 (“*Second Improved TRS Order & NPRM*”).

<sup>15</sup> Supplemental Fund Administrator Proposed Budget for the 2015-2016 Funding Year at Exhibit 2.

<sup>16</sup> *Id.*

<sup>17</sup> It is worth noting that the Commission’s own rules do not include the word “generally,” *See generally*, 47 CFR §64.604(c)(5)(ii).

<sup>18</sup> *A Brief History of Time*, Directed by Errol Morris 1992 (Film).

<https://www.youtube.com/watch?v=ySUYAKWzoVQ> (last viewed May 21, 2015).

Additionally, any claim that the jurisdiction of VRS calls cannot be established, thus compelling that all calls be compensated from the intrastate jurisdiction, must fail. The Commission has previously stated “Because the leg of the call between the person with a hearing disability and the CA uses the Internet, and not the PSTN, VRS providers cannot automatically determine the geographic location of that party to the call.”<sup>19</sup> IDT disagrees that any alleged inability to automatically determine the geographic location of the parties using the relay service allows the Commission to establish a methodology contrary to explicit direction from Congress. Arguably, if the relay service provider cannot demonstrate that a call is interstate or international, the call should *not* be compensated from the Fund. Regardless, the issue of automatically-determined geographic location should be moot, as the information required by service providers in order to receive compensation per 47 CFR 64.604(c)(ii)(D)(2)(i)-(x) provides sufficient information to allow the relay service provider and Fund Administrator to determine the jurisdiction of VRS calls.<sup>20</sup> And even if the data obtained pursuant to 47 CFR 64.604(c)(ii)(D)(2)(i)-(x) is somehow insufficient to determine the jurisdiction of VRS calls, the Commission has failed to implement reporting requirements or proxies or *any* sort of mechanism that would prevent the recovery of intrastate VRS from the intrastate jurisdiction.<sup>21</sup>

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<sup>19</sup> *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, FCC 06-182 (January 11, 2007) at ¶ 5 (“TRS Declaratory Ruling”).

<sup>20</sup> For example, 47 CFR 64.604(c)(ii)(D)(2)(v)-(vi) require the incoming telephone and IP address (if call originates with an IP-based device) and the outbound telephone and IP address (if call originates with an IP-based device). This information alone should be sufficient to determine the jurisdiction of a call. To the degree the Commission believes that the physical location of the calling or called party can vary from the location associated with the phone number or IP address, the Commission can address this issue. However, since there is no benefit to the calling or called party (or the service provider) to manipulate the jurisdiction of the call, IDT does not believe that any uncertainty (which exists in all aspects of the telecommunications business) presents cause for meaningful concern.

<sup>21</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking,

This “head in the sand” approach cannot survive – not when IDT and other carriers are forced to pay tens – if not hundreds of millions of dollars – as a result of the FCC’s willful blindness.

2. The Commission cannot recover intrastate IP Relay from the interstate and international jurisdictions

The arguments in support of IDT’s position regarding VRS are equally applicable to IP Relay. In 2002, the Commission issued a Declaratory Ruling approving the compensation of all (including intrastate) IP Relay calls from the TRS Fund.”<sup>22</sup> In doing so, the Commission noted that “Because there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate, we authorize, on an *interim* basis, recovery of all costs of providing IP Relay from the Interstate TRS Fund.”<sup>23</sup> Again, the Commission’s requirement that an automatic means for determining jurisdiction is a condition precedent to lawful jurisdictional recovery is unsupported by the statute and/or rule. Additionally, it has been thirteen years since the Commission conceded that its authorization was on an “interim” basis. Thus, to the degree the FCC has relied on the inclusion of the word “generally” to allow for interim recovery, that reliance, after 13 years, can no longer be justified. The Commission must complete the work it initiated in 2004: it must determine whether a technological mechanism exists that can provide for the jurisdictional identification of the IP Relay caller or it must look to other

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CC Docket No. 90-571; CC Docket No. 98-67; CG Docket No. 03-123, FCC 04-137 (June 30, 2004) at ¶ 242 (“TRS Order, Order on Reconsideration and FNPRM”).

<sup>22</sup> *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CG Docket No. 98-67, FCC 02-121 (April 22, 2002) at ¶ 20 (“IP Relay Order”).

<sup>23</sup> *Id.* at ¶ 1 (Italics added.)

methods by which the Commission might determine which IP Relay calls are intrastate and which calls are interstate.<sup>24</sup>

3. The Commission cannot recover intrastate IP CTS from the interstate and international jurisdictions

At only eight years, the Commission's violation of Congressional intent (as well as its own rules) for IP CTS remains the baby of the family. Yet the fact that the contribution methodology for IP CTS is only in its early adolescence of violating jurisdictional separations does not temper the egregiousness of the violation, particularly given the exploding usage of IP CTS in recent years. In 2007, the Commission issued a Declaratory Ruling approving the compensation of all (including intrastate) IP CTS calls from the interstate TRS Fund *"until such time as the Commission adopts jurisdictional separation of costs for this service."*<sup>25</sup> Once again, the Commission established a condition precedent (one that was solely within its control) to implement jurisdictional separations for IP CTS but it failed to take the steps to address the condition. Considering that the Commission arguably had no authority to override the jurisdictional separations mandated by Congress and implemented in its own rules to allow recovery for the intrastate jurisdiction in the first place, the Commission's subsequent failure to address the condition is all the more offensive and demonstrative of the reason why the Commission cannot be allowed to extend its policies further.

Ultimately, the Commission's failure to segregate intrastate Internet-based relay services and secure funding from the intrastate jurisdiction violates the jurisdictional separations mandate of 47 U.S.C. § 225, as implemented under 47 CFR §64.604(c)(5)(ii), and

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<sup>24</sup> TRS Order, Order on Reconsideration and FNPRM at ¶ 222.

<sup>25</sup> TRS Declaratory Ruling at ¶ 1 (Italics added.)

has caused considerable, irreparable harm to IDT and countless other service providers whose revenue is primarily interstate and international. The Commission is compelled to remedy the violation within the 2015-2016 Funding Year.

**E. IDT OPPOSES THE PROPOSED BUDGET AND CONTRIBUTION FACTOR BECAUSE IT VIOLATES THE JURISDICTIONAL SEPARATIONS REQUIREMENT OF 47 U.S.C. § 225 BY COMPELLING INTERNATIONAL PROVIDERS TO FUND DOMESTIC RELAY SERVICES**

1. 47 U.S.C. § 225, as implemented under 47 CFR §64.604(c)(5)(ii), compels that relay service costs be recovered from the corresponding jurisdiction

47 U.S.C. § 225 refers to “intrastate” and “interstate” relay services and does not mention international relay services. When initially establishing the Fund, the Commission concluded that the term “interstate” is meant to extend to include “international” – a finding that, upon a strict reading of the statute, appears unsupported<sup>26</sup> and remains subject to challenge before the Commission.<sup>27</sup> Despite this uncertainty, IDT does not oppose the finding that the costs of international relay services should be recoverable from the Fund, as we believe the intent of the Americans with Disabilities Act (“ADA”)<sup>28</sup> compels the availability of/compensation for international relay services because international calls can be made by consumers not using relay services, meaning that denying relay service users the ability to make (or denying providers the ability to be compensated) international calls runs contrary to the spirit and intent of the ADA. What IDT *does* oppose and challenge is the existing contribution

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<sup>26</sup> C.F.R. §64.604(c)(5)(iii)(A).

<sup>27</sup> “Telco Group Application for Review,” *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* CG 03-123, at pp 5-7 (June 4, 2009) (“Telco Group Application for Review”).

<sup>28</sup> “[T]o make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” 47 U.S.C. § 225(b)(1)

methodology, which secures the funding of domestic relay services (in part) from the international jurisdiction in violation of 47 U.S.C. § 225(d)(3)(B) as implemented under 47 CFR §64.604(c)(5)(ii).

Just as Section 225 can and should be read to require international relay services, so too it can and should be read to extend the jurisdictional separations requirement to international revenue, thus requiring the recovery of costs incurred from the provision of international relay services from the international jurisdiction while prohibiting the international jurisdiction from being tapped to recover costs from the domestic jurisdictions. As the Commission has cited, “[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in a reasonable fashion.”<sup>29</sup> So, to the degree the failure to explicitly reference international relay services within Section 225 is ambiguous, the ambiguity can be resolved reasonably, *i.e.*, by concluding that Congress intended to allow for relay service users to make calls of all jurisdictions, just as non-relay service users do. But if the Commission is going to reasonably include the availability of international relay services within the universe of services available for compensation from the Fund, that reasonableness must extend to the jurisdictional separations mandate as well. Otherwise the resolution of the ambiguity is unreasonable, as it leads to inconsistent, contrary outcomes within the same statute.

As noted repeatedly in this filing and long-acknowledged by the Commission, the intent of Congress was unambiguous on the issue of jurisdictional separations: relay service costs are to be recovered from the corresponding jurisdiction. Thus, the only question can be whether

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<sup>29</sup> Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 980 (2005).

Congress intended to impose a different recovery mechanism for the international jurisdiction.

The answer is, quite simply, that there is no evidence to indicate this to be the case.

Additionally, it is unreasonable to conclude that international relay services are jurisdictionally the same as interstate relay services and are meant to be recovered from a joint interstate/international revenue base, which is presently the case. International calls are not a subset of interstate calls: international calls are, beyond question, jurisdictionally different from intrastate or interstate: international calls originate in a state, territory or possession of the United States (the "US") and terminate outside the US (or vice versa) whereas interstate calls originate in one state, territory or possession and terminate within another. The Commission has acknowledged that international calls are separate and apart from interstate calls ("[W]e agree ... that by definition ... international telecommunications are not 'interstate' because they are not carried between states, territories or possessions of the United States"<sup>30</sup> and "international services are supported by the Interstate TRS Fund.")<sup>31</sup> Moreover, the revenue generated from international calls is reported separately from intrastate and interstate revenue on the Form 499-A<sup>32</sup> and is treated differently as well.<sup>33</sup> The Commission has even explicitly addressed the provision of and recovery for certain international relay services.<sup>34</sup> In

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<sup>30</sup> *In re: Federal-State Joint Board Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 22493 at ¶779 (May 8, 1997).

<sup>31</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* CG 03-123, Declaratory Ruling and Reconsideration, DA 06-1100 at ¶ 10 (May 25, 2006) ("Telco Group Declaratory Ruling").

<sup>32</sup> "Columns (b), (c), (d), and (e) are provided to identify the part of gross revenues that arise from interstate and international services for each entry on Lines 303 through 314 and Lines 403 through 417," 2015 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 26, located at <http://www.usac.org/res/documents/cont/pdf/forms/2015/2015-FCC-Form-499A-Form-Instructions.pdf> last viewed June 3, 2015.

<sup>33</sup> See, 2015 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at Appendix A.

<sup>34</sup> 47 C.F.R. § 64.604(a)(7).

sum, international relay service calls are a specific jurisdiction – neither intrastate nor interstate - and any attempt to treat the international jurisdiction as anything less than its own separate jurisdiction for the purpose of complying with the jurisdictional separations requirement must fail.

2. The ongoing violation of the jurisdictional separations mandate of 47 U.S.C. § 225, as implemented under 47 CFR §64.604(c)(5)(ii) has caused and will continue to cause considerable, irreparable harm to IDT and countless other service providers whose revenue is primarily and/or exclusively international

The need to separate relay service calls (and compensation for such calls) into the international jurisdiction is compelling. On information and belief, approximately 99% of lawful, compensable relay services are domestic. Telco Group, in a filing in this docket<sup>35</sup>, has indicated that international relay service usage/compensation represents less than one percent of the annual Fund budget.<sup>36</sup> Also on information and belief, contributions based on international revenue represent approximately 10% of the Interstate Fund's budget.<sup>37</sup> Should these numbers be accurate (or even remotely close to accurate), what they would indicate is that the Fund secures compensation from the international jurisdiction in order to support not only international relay services, but also intrastate and interstate relay services. Such a finding, which IDT believes is virtually certain since IDT alone (based on its own international revenue and corresponding Fund contributions), may very well support all compensated

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<sup>35</sup> "Application for Review," *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123 (June 4, 2009) at pp 9-12 ("Telco Group Application for Review").

<sup>36</sup> While this data is several years old, the Commission has access to data that could confirm or refute the claim using more recent data.

<sup>37</sup> See, Table 1.6 (Revenues from Telecommunications and Interconnected VoIP Service Provided to End Users: 2009), "Universal Service Monitoring Report, 2011, CC Docket No. 98-202," CC Docket No. 96-45. Again, while this data is several years old, the Commission has access to data that could confirm or refute the claim using more recent data.

international relay services would demonstrate that the current compensation methodology violates 47 U.S.C. § 225, as implemented under 47 CFR §64.604(c)(5)(ii), because the methodology does not limit the imposition of a contribution factor upon international revenue to recover only international relay service costs. In fact, given the *de minimis* use of international relay services (and the *de minimis* portion of the overall Fund budget), many carriers whose applicable revenue is primarily international would see their contributions reduced to a fraction of current costs if the Commission secured compensation for intrastate, interstate and international relay services from the corresponding jurisdiction.

Ultimately, the Commission's failure to segregate domestic relay services and secure funding from the domestic jurisdictions violates the jurisdictional separations mandate of 47 U.S.C. § 225, as implemented under 47 CFR §64.604(c)(5)(ii), and has caused considerable, irreparable harm to IDT and countless other service providers whose revenue is primarily interstate and international. The Commission is compelled to remedy the violation within the 2015-2016 Funding Year.

**II. THE COMMISSION MUST ISSUE A NPRM TO BEGIN THE PROCESS WHEREBY THE TRS FUND CONTRIBUTION METHODOLOGY CONFORMS WITH THE JURISDICTIONAL SEPARATIONS REQUIREMENT OF 47 U.S.C. § 225**

The Commission must issue, concurrent with its Order approving the 2015-2016 TRS Fund budget and contribution factor, a NPRM which addresses the appropriate contribution methodology under which the jurisdictional separations requirement of Section 225 can be implemented. The goals of the proceeding must be, broadly, to establish relay service provider reporting and compensation processes as well as a carrier contribution methodology consistent with jurisdictional separations, *i.e.*, methodologies where under the jurisdiction of relay service calls can be determined by the relay service provider and reported to the Fund administrator and relay service calls can be compensated by the Fund administrator from a Fund that is supported by contributions remitted by providers relative to their revenue for each jurisdiction – intrastate, interstate and international. In addition to the obvious and compelling need to bring reporting, compensation and contribution methodologies into conformance with the jurisdictional requirements of Section 225 (“With respect to contributions, the only limiting language of Section 225 is jurisdictional in nature”)<sup>38</sup>, the outcome of a NPRM would ensure that: (1) intrastate Internet-based relay services remain available to users; (2) providers of intrastate Internet-based relay services are properly and lawfully compensated for their services; and (3) contributors to the Fund have the opportunity to contribute their fair share – but no more than that – for the current and future funding year.

In order to ensure that the provision of all relay services presently compensable under the Fund remain available (as well as compensation for such services), an *interim* budget and

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<sup>38</sup> Telco Group Declaratory Ruling at FN 27.

contribution factor should be approved in this proceeding. But the contributions made by carriers for the 2015-2016 Fund Contribution Year must eventually be trued up: the Commission cannot address the issues raised by IDT in a future contribution year. The Commission has failed to implement compliant policies for as long as a decade and a half and it cannot claim that maintaining the current methodology one more year supersedes the need to implement a lawful methodology: reliance on past violations cannot countenance continuing violations. Ultimately, because the proposed budget and contribution factor for the 2015-2016 Fund Contribution Year are based on violations of the jurisdictional separations requirement, they cannot be approved in final form. Upon the issuance of a Declaratory Ruling and/or Report and Order, a final rate can be established and the Commission can true up carriers' contributions remitted pursuant to the interim contribution factor.

**A. THIS IS THE APPROPRIATE PROCEEDING IN WHICH TO ISSUE A NPRM**

In this same docket last year, the Ad Hoc Coalition of International Telecommunications Companies ("Ad Hoc Coalition") requested that the Commission suspend the imposition of the TRS Fund contribution factor to international revenues and initiate a rulemaking to address alleged inequities in the application of the contribution factor to international revenue.<sup>39</sup> The FCC stated that the Ad Hoc Coalition did not meet its burden of showing good cause for the suspension and stated (without otherwise explaining) that a NPRM is "beyond the scope of the

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<sup>39</sup> See generally, "Opposition of the Ad Hoc Coalition of International Telecommunications Companies to the Imposition of the Proposed TRS Fund Contribution Factor on International Telecommunications Services," *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, (May 23, 2014).

instant proceeding” but that the request for the rulemaking would remain “pending.”<sup>40</sup> The Ad Hoc Coalition’s “Application for Review”<sup>41</sup> remains pending as well.

The FCC has also failed to act on a Petition for a Notice of Proposed Rulemaking filed by IDT on October 27, 2014.<sup>42</sup> The NPRM requested that the Commission:

- (1) review and revise existing policies that allow for the recovery of intrastate Internet-based relay services from the TRS Fund;
- (2) Implement a cost recovery (and contribution) methodology consistent with 47 U.S.C. § 225: such methodology must ensure that costs caused by intrastate Internet-based TRS are recovered from the intrastate jurisdiction; and
- (3) Remove the exception for VRS set forth in 47 CFR §64.604(c)(5)(ii) as being inconsistent with 47 U.S.C. § 225.<sup>43</sup>

The Commission has also failed to resolve a related issue regarding the application of the TRS Fund contribution factor to international revenue filed by Telco Group – a matter which was initially filed in 2004.

Even more significant than the Commission’s failure to address questions posed by the industry, the Commission has failed to address the critical questions regarding determining the jurisdiction of calls and securing compensation for those calls from the corresponding jurisdiction – many of which it raised itself when approving funding for VRS, IP Relay and IP CTS

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<sup>40</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, (footnote continued on the following page) *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order at FN 70 (June 30, 2014). The request remains “pending,” although, to the best of IDT’s knowledge, the Commission has not undertaken any efforts to initiate a rulemaking.

<sup>41</sup> “Application for Review,” *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, (July 30, 2014)

<sup>42</sup> See generally, “Petition for a Notice of Proposed Rulemaking,” *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Petition for a Notice of Proposed Rulemaking To Revise the Interstate TRS Fund Contribution Methodology*, RM - \_\_\_\_\_ (October 27, 2014) (“IDT Petition”).

<sup>43</sup> See, IDT Petition at pp 1-2.

in 2000, 2002, and 2007, respectively. It has become painfully clear that the FCC is either unwilling or unable to resolve the many issues raised by itself, IDT and others regarding the overwhelmingly compelling need for TRS Fund reform.

The need for the FCC to review and reform the Fund is unquestionable. IDT has listed above and in its previous filing questions the Commission needs to review and resolve. The policy of compensating intrastate Internet-based services from the interstate and international jurisdictions is contrary to the jurisdictional separations requirement of 47 U.S.C. Section 225 as is the policy of compensating domestic relay services from the international jurisdiction. The Commission has never addressed the question of how to permanently compensate relay service providers for these calls from the Fund or another source. The Commission's "interim" measures to compensate the intrastate Internet-based services, which have been in place for 8, 13 and 15 years, respectively, should be revised in accordance with the mandate of Section 225. The Commission's positions that it can allow intrastate Internet-based relay services to be compensated from the Interstate Fund until the "point where it can be required [to be compensated by the states];"<sup>44</sup> "[b]ecause there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate";<sup>45</sup> and/or "until such time as the Commission adopts jurisdictional separation of costs for this service"<sup>46</sup> are erroneous because Section 225 explicitly and unambiguously mandates jurisdictional separations and these positions explicitly and unambiguously violate jurisdictional separations.

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<sup>44</sup> VRS Order at ¶¶ 21-27

<sup>45</sup> IP Relay Order at ¶ 20.

<sup>46</sup> TRS Declaratory Ruling at ¶ 5.

In order to consider whether the Commission's existing methodology needs to be revised, the Commission should ask:

Do IP CTS, IP Relay and VRS allow communication between two parties located within the same state (i.e., do the Internet-based services allow for "intrastate calls")?

Are calls between one party located within the United States and one party located outside the United States interstate or international?

Are providers of interstate and international services unjustly and unreasonably being harmed by being required to contribute to the funding of intrastate IP-related relay services?

Are providers of intrastate services unfairly benefitting by having the cost of intrastate Internet-based related services funded through interstate and international revenues?

Should the Commission make intrastate IP Relay, IP CTS and VRS mandatory services, with the each service managed and compensated by the state fund?

What, if any, freedom does the inclusion of the word "generally" in 47 U.S.C. § 225(d)(3)(B) allow the Commission to deviate from the jurisdictional separations language contained within the same section?

Does the Commission's failure to include the word "generally" in its rules diminish the authority, if any, granted to the Commission by the word's inclusion in the statute?

In 2004, the Commission wrote "we believe that Title IV and its legislative history make plain that Congress intended that the states be responsible for cost recovery for intrastate relay services provided under their jurisdiction."<sup>47</sup> Does the Commission believe that if it manages a relay service providing intrastate service that the jurisdictional separations requirement does not apply? If so, what is the basis of that position?

Should the Commission remove the exception for VRS set forth in 47 CFR §64.604(c)(5)(ii) as being inconsistent with 47 U.S.C. § 225?

If the Commission is authorized to temporarily extend the TRS Fund contribution base to include intrastate revenue, upon what timeline may the Commission act to implement a permanent methodology? Has the Commission exceeded this timeline for one or more of the Internet-based relay services presently compensated from the Fund?

Would a revision in the contribution methodology to include intrastate revenue and/or to establish separate contribution factors for each jurisdiction of relay service make

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<sup>47</sup> TRS Order, Order on Reconsideration and FNPRM at ¶ 221.

moot the request to extend the LIRE (or a comparable policy) that reduces/eliminates contributions based on international revenue to the TRS Fund?<sup>48</sup>

If an intrastate relay service (Internet-based or otherwise) is not “required” to be administered and funded by the states, may the service(s) be managed by the FCC and may the relay service providers be reimbursed for intrastate minutes from the Interstate TRS Fund?

If an intrastate Internet-based relay service does not have an “automatic means” of determining jurisdiction, may providers of such services be reimbursed from the Interstate TRS Fund indefinitely for calls that originate and terminate within the same state?

**B. THE COMMISSION MUST ENSURE THAT RELAY SERVICE PROVIDERS ARE CAPABLE OF DETERMINING THE JURISDICTION OF RELAY SERVICE CALLS**

As noted above, 47 CFR 64.604(c)(ii)(D)(2)(i)-(x) establishes the call data required to be submitted from all relay service providers to the Fund Administrator for each relay service call for which compensation is sought. Based on this data, it would appear that sufficient data to determine jurisdiction is mandatory to secure compensation for relay services on a jurisdictional basis. But, in the event the requirements of 47 CFR 64.604(c)(ii)(D)(2)(i)-(x) (or the compliance with the section) are insufficient, the NPRM should address what requested information (or compliance) is required. Some questions the Commission should ask in the NPRM include:

Does 47 CFR Section 64.604(c)(ii)(D)(2)(i)-(x) establish sufficient information to identify the jurisdiction of calls and, by extension, allow for the Fund Administrator to compensate relay service calls from a budget based upon the corresponding jurisdiction’s revenue?

If 47 CFR Section 64.604(c)(ii)(D)(2)(i)-(x) does not provide sufficient information to determine the jurisdiction of a call, why? Is it a matter of service provider compliance? Does the Section need to be revised in order to ensure that sufficient information is submitted by relay service providers to support compensating them in a manner consistent with jurisdictional separations?

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<sup>48</sup> See generally, Telco Group Application for Review.

Have relay service providers been compensated even if the data required under 47 CFR Section 64.604(c)(ii)(D)(2)(i)-(x) has not been provided? If so, under what legal basis has compensation been provided?

Does the provision of IP addresses required under 47 CFR Section 64.604(c)(ii)(D)(2)(i)-(x) allow for jurisdiction to be determined for Internet-based services? If not, is software available to determine the geographic location (i.e., the state) of the calling and/or called party?

To the degree a relay service user may, at the time of using a relay service, be located outside the state associated with his phone number or IP address, should the Commission establish rules/policies to more accurately determine location? Has the Commission addressed the issue (i.e., where the physical location of a called party is contrary to the location associated with a phone number) in other contexts (e.g., wireless and/or number portability) that can be applied to the present case?

What approaches (other than examining the geographical origination and termination point of the calling and called parties) could be implemented to determine the jurisdiction including, but not limited to, alternatives (e.g., undertaking traffic studies, implementing default percentages and/or other means)?

Would determining jurisdiction by proxies create any unfair benefits or harm relay service providers and/or Fund contributors?

While the costs of the Interstate TRS Fund are not explicitly recovered in a line item on end users bills, what is the cost to customers of interstate and international to support intrastate Internet-based relay service?

Considering that intrastate relay service costs may (subject to state law) be recovered via a line item on an end user's invoice, if the Commission incorporates intrastate revenue within the Fund contribution base, should the Commission allow for the recovery of intrastate and/or all jurisdictional costs for the Fund via a line item?

Does the imposition of jurisdiction-specific contribution factors address/resolve the concern that the imposition of a single contribution factor on a company whose revenue is exclusively or near-exclusively international is unjust and unreasonable?

Does the Commission retain some rational flexibility to implement a cost recovery methodology pursuant to which jurisdictional separations can be estimated or established by proxy, rather an exact cost?

**C. THE COMMISSION SHOULD EXTEND THE TRS FUND CONTRIBUTION BASE TO INCLUDE INTRASTATE REVENUE**

Unless the Commission intends to make intrastate Internet-based relay services mandatory and require the states to manage (and provide compensation for) the intrastate services – which IDT does not believe is a reasonable, feasible option (although perhaps one the Commission needs to consider), the Commission should determine if it is authorized to permanently manage the Internet-based relay services and secure compensation for intrastate Internet-based relay services from intrastate revenue reported on the FCC Form 499-A. In order to reach such a determination, IDT suggests the Commission ask in a NPRM:

Does Section 225's allowing the Commission to regulate the provision and compensation of intrastate relay services allow the Commission to regulate cost recovery for intrastate Internet-based relay services?

Does Section 225 compel the states (or the Commission) to establish state programs to administer intrastate relay services and, if a state does not establish a state program or administer a fund to reimburse one or more services, is the Commission compelled and/or authorized to establish a program and administer the services?

Does Section 225 prevent *some* relay services from being administered via a state program while *other* intrastate services are administered by the FCC?

Does the Commission have the authority under Section 225 to expand the Interstate TRS Fund contribution base to include intrastate revenue in order to secure funding for intrastate Internet-based relay services from the intrastate jurisdiction?

Can the FCC choose to administer one or more intrastate services in order to ensure efficient administration or, more broadly, to support the mandate of Section 225, namely that "interstate and intrastate telecommunications services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States"?<sup>49</sup>

If the FCC chooses to administer one or more services that allow for intrastate calls, what obligations does the FCC have under Section 225 to "generally provide that costs

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<sup>49</sup> 47 U.S.C. § 225(b)(1).

caused by ... intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction”<sup>50</sup>?

If the Commission has the authority to extend the contribution base to include intrastate revenue, is doing so beneficial to relay service users, providers and/or TRS Fund contributors?

Would extending the contribution methodology to include intrastate revenue ensure that the FCC has implemented a contribution methodology consistent with the ADA?

Perhaps the greatest benefit of extending the Fund contribution base to include intrastate revenue is that it would increase the current base by multiples, thereby providing considerable stability to the base, which has diminished steadily over the last decade. In order to help determine whether it would be beneficial to extend the Fund contribution base to include intrastate revenue (to recover intrastate Internet-based relay services), IDT suggests the Commission ask in a NPRM:

Would extending the contribution methodology to include intrastate revenue provide a degree of stability to the Fund, which has seen its contribution base reduce every year since the Funding Year 2008, with a reduction of nearly 22% since the 2004 Funding Year?<sup>51</sup>

Would the Commission’s formal acknowledgement of its authority and intent to manage the interstate Internet-based services ensure that existing (and future) Internet-based relay service providers will be assured that they will be compensated at one rate, consistent throughout the country rather than possibly be subject to different rates per state?

Would the Commission’s formal acknowledgement of its authority and intent to manage the intrastate Internet-based relay services ensure that relay service users will have no disruption of service and no change in service providers?

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<sup>50</sup> 47 U.S.C. § 225(d)(3)(B).

<sup>51</sup> Supplemental Fund Administrator Proposed Budget for the 2015-2016 Funding Year at 4.

**D. THE COMMISSION MUST ESTABLISH A CONTRIBUTION FACTOR FOR EACH JURISDICTION AND APPLY THAT FACTOR TO EACH CONTRIBUTOR'S CORRESPONDING JURISDICTIONAL REVENUE**

In order to act in accordance with the jurisdictional separations of 47 U.S.C. § 225, as implemented under 47 CFR §64.604(c)(5)(ii), IDT believes the most efficient approach is to: (1) determine the need for funding all relay services on a jurisdictional basis; (2) determine the reported revenue for each jurisdiction; and (3) based on those two pieces of data, determine a contribution factor for each jurisdiction. Accordingly, the NPRM should ask:

If the Commission were to establish jurisdictional separations, would it be compelled to establish one contribution factor for each jurisdiction of services and to apply that factor to the corresponding jurisdiction's reported revenue?

If the Commission is not *compelled* to establish one contribution factor for each jurisdiction of services and to apply that factor to the corresponding jurisdiction's reported revenue do so, is it *permissible* to do so?

Is separating the Fund into three jurisdictional sub-components (each with its own contribution factor) consistent with 225's requirement of jurisdictional separations?

Would it be beneficial to relay service stakeholders if the Commission established one contribution factor for each jurisdiction of services and applied that factor to the corresponding jurisdictions reported revenue?

What information would the Fund Administrator need to determine projections for each service, by jurisdiction (presently, the Fund Administrator's projected use does not account for the jurisdictional apportionment IDT argues is compelled by the jurisdictional separations)?

What process (if any) would the Fund Administrator need to implement to undertake a true up for each service, per jurisdiction?

If the Commission is going to establish a contribution factor for each jurisdiction, it may need to revise the data contained in in Block 5 of the 499-A. Accordingly, in the NPRM, the Commission should ask:

How would the 499-A need to be revised in order to secure the data necessary to allow the Fund Administrator to determine the Fund revenue base from the intrastate, interstate and international jurisdiction?

Approximately 33 million dollars within the Fund budget<sup>52</sup> is not for jurisdiction-specific costs and services (e.g., audits, administration, meetings, etc.). A NPRM would need to consider what is the appropriate methodology to recover these costs. Accordingly, the Commission should consider asking:

What methodology should be used to apportion the non-jurisdictional costs of the budget? Is it appropriate to apportion these costs proportionately, according to the budget for each jurisdiction's proposed budget?

Should the payment reserve be jurisdictionally apportioned based on the projected costs for the funding year? Is there another methodology that would ensure that the projected costs are apportioned in a manner consistent with jurisdictional separations?

**E. THE COMMISSION MUST ESTABLISH APPROPRIATE, SEPARATE JURISDICTIONAL CONTRIBUTION FACTORS FOR THE 2015-2016 FUND CONTRIBUTION YEAR**

IDT asserts that the Commission must establish jurisdictional contribution factors for the 2015-2016 Fund Contribution Year and true up the interim contribution factor established in this proceeding. In order to accomplish this, the Commission should ask in the NPRM:

Under what authority can the Commission retroactively impose any revisions to its contribution methodology for the 2015-2016 Funding Year?

If the Commission has the authority, how should the Commission retroactively impose any revisions to its contribution methodology for the 2015-2016 Fund Contribution Year? Could the Commission impose a true up process for the 2015-2016 Fund Contribution Year? Could the Commission apply true up costs for the 2015-2016 Fund Contribution Year in the 2016-2017 Fund Contribution Year?

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<sup>52</sup> See, Supplemental Fund Administrator Proposed Budget for the 2015-2016 Funding Year at Exhibit 2.

Does the Fund Administrator already have sufficient information (from previously-reported and compensated minutes) to establish projected minutes (and corresponding costs) for each service based on jurisdiction for the 2015-2016 Fund Contribution Year?

If the Commission fails to impose a true up process for the 2015-2016 Fund Contribution Year, will contributors be harmed?

## CONCLUSION

For several reasons, IDT opposes the approval of a final budget and contribution factor for the 2015-2016 TRS Fund Contribution Year. As an initial matter, the Commission must reduce the amount proposed to compensate IP CTS providers. More significantly, IDT opposes the proposed budget because it includes costs for intrastate IP Relay, IP CTS and VRS whereas the Fund is supported only by interstate and international revenue: the inclusion of intrastate costs violate the jurisdictional separations requirement of 47 U.S.C. § 225 and must be recovered from the intrastate jurisdiction. The Commission has conceded that its authority to authorize the recovery of intrastate service from the interstate jurisdiction is limited and its actions exceed its limited authority. The Commission cannot recover intrastate IP Relay, IP CTS and VRS from the interstate and international jurisdiction.

IDT also opposes the proposed budget and contribution factor because it violates the jurisdictional separations requirement of 47 U.S.C. § 225 by compelling international providers to fund domestic relay services. 47 U.S.C. § 225, as implemented under 47 C.F.R. §64.604(c)(5)(ii), compels that relay service costs be recovered from the corresponding jurisdiction. The ongoing violation of the jurisdictional separations mandate of 47 U.S.C. § 225, as implemented under 47 C.F.R. §64.604(c)(5)(ii) has caused and will continue to cause considerable, irreparable harm to IDT and countless other service providers whose revenue is primarily and/or exclusively international.

The Commission must issue a NPRM to begin the process whereby the Fund contribution methodology conforms with the jurisdictional separations requirement of 47

U.S.C. § 225. This is the appropriate proceeding in which to issue a NPRM. If the Commission is going to continue to support intrastate relay services from the Fund, the Commission should extend the Fund contribution base to include intrastate revenue. The Commission must ensure that relay service providers are capable of determining the jurisdiction of relay service calls and reporting them, per jurisdiction, to the Fund Administrator. The Commission must also establish rules and provide sufficient information to allow the Fund Administrator to develop a contribution factor for each jurisdiction and apply that factor to the corresponding jurisdiction's reported revenue. The Commission should establish separate jurisdictional contribution factors for the 2015-2016 Fund Contribution Year, thereby allowing for a true up of an interim contribution factor determined in this proceeding.

Respectfully submitted,

IDT Telecom, Inc.

**/s/ Carl Wolf Billek**

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