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

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DISPATCHED

In the Matter of	)	
	)	CC Docket No. 90-571
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CC Docket No. 98-67
	)	CG Docket No. 03-123

REPORT AND ORDER, ORDER ON RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Powell and Commissioner Abernathy issuing separate statements; Commissioners Copps and Adelstein approving in part, dissenting in part, and issuing separate statements.

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I. INTRODUCTION

1. In this *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking* (*Order*) the Commission addresses cost recovery and other matters relating to the provision of telecommunications relay services (TRS)[1] pursuant to Title IV of the Americans with Disabilities Act

[1] The term *telecommunications relay service* means "telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio." 47 U.S.C. § 225(a)(3). As

(continued....)

of 1990 (ADA).[2] This *Order* contains, first, a *Report and Order* addressing: (1) cost recovery issues arising from the *TRS Cost Recovery MO&O & FNPRM*;[3] (2) cost recovery issues arising from the *IP Relay Declaratory Ruling & FNPRM*;[4] (3) issues arising from the Notice of Proposed Rulemaking contained in the *Second Improved TRS Order & NPRM*;[5] (4) petitions seeking extension of the waivers set forth in the *VRS Waiver Order*[6]; (5) the *711 Petition*;[7] (6) the petition by a provider of VRS for "certification" as a TRS provider eligible to receive compensation from the Interstate TRS Fund[8]; and (7) the petition for limited waiver concerning Video Relay Service and interpreting in state legal proceedings.[9] This *Order* also includes an *Order on Reconsideration* addressing petitions for reconsideration of three TRS matters: (1) the petitions for reconsideration of the June 30, 2003 *Bureau TRS Order*[10] with respect to the per-minute compensation rate for VRS; (2) the *Second Improved TRS Order & NPRM*; and (3) the *Coin Sent-Paid Fifth Report & Order*.[11] Finally, this *Order* contains a *Further Notice of Proposed Rulemaking* (*FNPRM*) seeking comment on various TRS-related matters

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discussed further below, TRS "includes services that enable two-way communication between an individual who uses a [TTY] or other nonvoice terminal device, and an individual who does not use such a device," *id.*, as well as non-English relay services, Speech-to-Speech services (STS), and Video Relay Services (VRS), *see* 47 C.F.R. § 64.601 (9), (12), & (17), respectively. TRS also includes what is called IP Relay, whereby a user may connect to a TRS facility via a computer (or other similar device) through the Internet.

[2] Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding section 225 to the Communications Act of 1934 (Act), as amended, 47 U.S.C. § 225; implementing regulations at 47 C.F.R. § 64.601 *et seq.* In Title IV, Congress announced that "[i]n order to carry out the purposes established under section 1 [of the Communications Act of 1934], to 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).

[3] *Telecommunications Services for Individuals with Hearing and Speech Disabilities – Recommended TRS Cost Recovery Guidelines/Request by Hamilton Telephone Company for Clarification and Temporary Waivers,* Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22948 (Dec. 21, 2001) (*TRS Cost Recovery MO&O & FNPRM*).

[4] *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 02-121, 17 FCC Rcd 7779 (April 22, 2002) (*IP Relay Declaratory Ruling & FNPRM*).

[5] *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) (*Second Improved TRS Order & NPRM*).

[6] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 01-3029, 17 FCC Rcd 157 (Dec. 31, 2001) (*VRS Waiver Order*).

[7] Sprint, Petition for Declaratory Ruling, CC Docket No. 98-67 (filed May 27, 2003) (*711 Petition*) (addressing access to 900 pay-per-call services via 711 dialing).

[8] Hands On Sign Language Services, Inc., Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification During Processing (filed Aug. 30, 2002) (*Hands On Application*).

[9] Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief, CC Docket 98-67 (filed June 12, 2003) (*CSD Petition*).

[10] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd 12823 (June 30, 2003) (*Bureau TRS Order*).

[11] *Telecommunication Relay Services and the Americans with Disabilities Act of 1990*, Fifth Report and Order, CC Docket No. 90-571, FCC 02-269, 17 FCC Rcd 21233 (Oct. 25, 2002) (*Coin Sent-Paid Fifth Report & Order*).

relating to the two Internet-based forms of TRS, IP Relay and VRS. We also seek comment on issues concerning the TRS Advisory Council[12] and the abuse of communications assistants (CAs) handling TRS calls. We have concluded that it is in the interest of administrative efficiency to consolidate the various proceedings into this *Order*.[13]

2. Over the past decade, the Commission has issued dozens of orders addressing the provision of telecommunications relay services.[14] In these orders, the Commission has steadily expanded the scope of TRS and the features and services available to both persons with hearing and speech disabilities, and to other persons who desire to communicate by telephone with persons with hearing or speech disabilities.[15] In this *Order*, we take another step toward fulfilling the goals of Title IV of the ADA by further refining the rules governing the provision of TRS. We also take, in the *FNPRM* below, what may be the first steps in expanding the forms of TRS that are mandatory TRS services. In this regard, this *Order* also reflects the vital role that broadband services can play in consumers' lives, the economy of our nation, and the fulfillment of important social policy objectives.

II. BACKGROUND

3. The purpose of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[16] In adopting Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.[17] As a result, Title IV requires common carriers offering telephone voice transmission services to *also* provide TRS throughout the area in which they offer service so that persons with disabilities will have access to

[12] *See generally* 47 C.F.R. § 64.604(c)(5)(iii)(H).

[13] *Cf. Second Improved TRS Order & NPRM* at ¶1 & n.5 (addressing several proceedings involving related issues in same Report and Order).

[14] *See generally Second Improved TRS Order & NPRM* at ¶ 6 n.26 (listing TRS orders).

[15] In this regard, we emphasize that TRS is intended to benefit not just persons with particular disabilities, but all persons as the availability of TRS eliminates telecommunications barriers that also prevent, for example, hearing individuals from initiating telephone calls to persons with hearing disabilities. *See* H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 135 (1990) (House Report) (noting that TRS benefits all society); S. Rep. No. 116, 101st Cong., 1st Sess. 83 (1989) (Senate Report) (same).

[16] *See* 42 U.S.C. § 12101(b)(1).

[17] *See, e.g.,* House Report at 129; Senate Report at 77-78. The ADA is aimed at eliminating discrimination against persons with disabilities in nearly all facets of society, including access to the telephone system. As an anti-discrimination statute, it is the logical outgrowth of civil rights legislation dating back at least to the landmark Civil Rights Act of 1964 (*see* 42 U.S.C. § 2000a *et seq.*), as well as the federal civil rights protections for individuals with disabilities first established by the Rehabilitation Act of 1973 (*see* 29 U.S.C. §706 *et seq.*). The congressional "Findings and Purposes" section of the ADA confirms as much, stating that "individuals with disabilities continually encounter various forms of *discrimination*, including ... the *discriminatory* effects of architectural, transportation, and *communication* barriers," and therefore that it is the purpose of the ADA to provide a "national mandate for the elimination of *discrimination* against individuals with disabilities." 42 U.S.C. § 12101 (emphasis added). The legislative history of the ADA also reflects both the statute's place in the long line of federal civil rights laws and, more particularly, Title IV's goal of ending discrimination against persons with disabilities that results from communications barriers. The House Report states, for example, that "[t]he [ADA] completes the cycle begun in 1973 [with the Rehabilitation Act] with respect to persons with disabilities by extending to them the same civil rights protections provided to women and minorities beginning in 1964." House Report at 25. With respect to telecommunications, the House Report notes the need for "Federal prohibition of discrimination on the basis of disability in ... telecommunications." *Id.* at 28. The ADA and its legislative history, therefore, squarely present the problem at which Title IV is directed: millions of Americans cannot use the nation's telephone system because it does not accommodate their hearing, speech, or other disability.

telecommunications services, and provides that they will be compensated for their just and reasonable costs of doing so.[18] The intent of Title IV is to further the Communications Act's goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are "functionally equivalent" to those available to individuals without such disabilities.[19]

4. *TRS and the Design of the TRS Regulations.* Section 225 sets forth several overarching principles governing the provision and regulation of TRS. First, section 225 requires the Commission to ensure that TRS is available "to the extent possible and in the most efficient manner" to persons with hearing or speech disabilities in the United States.[20] Second, section 225 requires that TRS provide "functionally equivalent" telephone service for persons with hearing or speech disabilities.[21] Further, the statute requires that the Commission's implementing regulations encourage the use of existing technology and not discourage the development of new technology.[22] Finally, the regulatory scheme distinguishes between *intra*state and *inter*state TRS services, and is reflected, in part, by the arrangement whereby states are responsible for the reimbursement of the costs of intrastate TRS and the Interstate TRS Fund is responsible for the reimbursement of the costs of interstate TRS.[23] With the recognition of VRS and IP Relay as forms of TRS, new issues have arisen, including how to determine whether a particular IP Relay

[18] TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. We have explained the paradigm of a "traditional" (*e.g.,* TTY text-based) TRS call this way: When a person with a hearing or speech disability makes a TRS call, the user dials a telephone number for a TRS facility using a text-telephone (TTY). In this context, the first step for the TRS user, the completion of the outbound call to the TRS facility, is functionally equivalent to receiving a "dial tone." The caller then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the "link" in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 at ¶ 2 (March 6, 2000) (*Improved TRS Order & FNPRM).*

[19] *See, e.g.,* House Report at 129-130 (Section 225 "imposes on all common carriers providing interstate or intrastate telephone service[] an obligation to provide to hearing and speech-disabled individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals."); 47 U.S.C. § 225(a)(3). The statute also provides, however, that common carriers can meet their obligation to provide TRS "individually, through designees, through a competitively selected vendor, or in concert with other carriers." 47 U.S.C. § 225(c). Therefore, every common carrier required to offer TRS need not necessarily do so individually.

[20] 47 U.S.C. § 225(b)(1); *see also* House Report at 129.

[21] 47 U.S.C. § 255(a)(3).

[22] 47 U.S.C. § 255(d)(2).

[23] 47 U.S.C. § 255(d)(3). The costs of TRS are not directly recovered from TRS users. Congress expressly made clear that TRS users cannot be required to pay for the costs of TRS. Section 225(d)(1)(D) provides that our regulations must "require that users of [TRS] pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination." 47 U.S.C. § 225(d)(1)(D). In enacting such a regulation, *see* 47 C.F.R. § 64.604(c)(4), we explained that the functional equivalency mandate required us to ensure that carriers' charges for TRS "not exceed charges of functionally equivalent voice service between the same end points, without regard to how the call is routed." *Telecommunication Services for Hearing-Impaired and Speech-Impaired Individuals,* Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 90-376, 5 FCC Rcd 7187 ¶ 14 (Nov. 16, 1990) (*TRS I NPRM*). The Interstate TRS Fund is addressed further below.

or VRS call should be reimbursed by a state or the Interstate TRS Fund, and the desire of entities that are not offering voice telephone services to become TRS providers. We address these issues in this *Order*.

5. As we have noted, one of the fundamental premises underlying the TRS regulatory scheme is the distinction between *inter*state and *intra*state TRS. At the time section 225 and the implementing regulations were enacted, TRS calls – as a functionally equivalent telephone service – were placed over the Public Switched Telephone Network (PSTN). Therefore, it was possible under prevailing technology to automatically determine for every TRS call whether it was an *inter*state or *intra*state call. As a result, both the oversight of TRS and the mechanism for compensating providers for the costs of TRS, could be based on – and were based on – whether the common carrier was providing *intra*state TRS or *inter*state TRS. That situation ultimately evolved, however, and in the March 2000 *Improved TRS Order & FNPRM,* the Commission recognized Video Relay Service (VRS) as a form of TRS. Since VRS generally involves the use of the Internet for one leg of the call to the CA, it is currently not possible to automatically determine the geographic location of that party to the call, and therefore to determine whether a particular VRS call is *intra*state or *inter*state. Similarly, in April 2002 we recognized that IP Relay was also a form of TRS; such calls present the same issue.[24] Therefore, VRS and IP Relay have presented regulatory challenges not necessarily contemplated by a regulatory scheme largely based on the determination whether a particular call is *inter*state or *intra*state.

6. The interstate/intrastate distinction is first reflected in the oversight of the provision of TRS by common carriers. Congress structured section 225 in such a way that although the Commission has jurisdiction over both *intra*state and *inter*state TRS, the states have the option to exercise primary jurisdiction over the provision of *intra*state TRS, via a mechanism whereby the Commission would review and certify individual state TRS programs.[25] Congress explained that once a state has a TRS program certified by the Commission, the state is responsible for regulating the provision of *intra*state TRS within the parameters of its certified program.[26] The House Report on the ADA states that "[t]he FCC's authority over the provision of intrastate telecommunications relay services ... is expressly limited by certification procedures ...whereby a state retains jurisdiction over the intrastate provision of telecommunications relay services. The Committee finds it necessary to grant the FCC such residual authority ... to ensure universal service to the hearing- and speech-impaired community."[27] In short, as we noted in the *Improved TRS Order & FNPRM*, "[w]hile the statutory obligation to provide relay services falls to common carriers, the law gives states a strong role by considering carriers to be in compliance with this obligation if they operate in a state that has a relay program certified as compliant by

[24] *IP Relay Declaratory Ruling & FNPRM* at ¶ 1 (noting that "there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate").

[25] 47 U.S.C. §§ 225(c) & (f) set forth the state certification framework. *See also* 47 C.F.R. § 64.605. As a general matter, the state must show that its program meets or exceeds all operational, technical, and functional mandatory minimum standards contained in 47 C.F.R. § 64.604. Although states are not required to have a certified state program, currently all 50 states Puerto Rico and the District of Columbia have certified TRS programs. The legislative history of Title IV makes clear that Congress "hope[d] and expect[ed]" that all states would promptly adopt a certified state program. House Report at 130.

[26] House Report at 131.

[27] House Report at 130-131. The House Report further explains that although section 225 grants the Commission authority to reach TRS, "[t]he grant of jurisdiction to the FCC is limited ... by the state certification procedures required to be established [under Title IV]." House Report at 131. The House Report states that it is the Committee's intention that "these procedures operate to preserve initiatives" by states to implement TRS programs, and therefore Title IV "provides that any state may regulate intrastate telecommunications relay services provided by intrastate carriers once the state is granted certification by the FCC." *Id.* The House Report emphasizes that the "certification procedures and review process should afford the least possible intrusion into state jurisdiction." *Id.*

this Commission."[28]

7. The interstate/intrastate distinction is also reflected in the cost recovery scheme; *i.e.*, the compensation of common carriers for their costs of providing TRS. There are two aspects to the cost recovery framework: (1) collecting "contributions' from "[e]very carrier providing interstate telecommunications services" based on "interstate end-user telecommunications revenues" to create a fund from which TRS providers may be compensated; and (2) the payment of money from the fund to eligible TRS providers to compensate them for the costs of providing eligible TRS services.[29] With regard to collecting money to create the fund, section 225 provides that the costs caused by the provision of *inter*state TRS "shall be recovered from all subscribers for every interstate service," and the costs caused by the provision of *intra*state TRS "shall be recovered from the intrastate jurisdiction."[30] With regard to the provision of *intra*state TRS, as a general matter the costs of providing *intra*state TRS are recovered by each state.[31] No specific funding method is required for *intra*state TRS or state TRS programs.[32] States with certified TRS programs generally recover the costs of intrastate TRS either through rate adjustments or surcharges assessed on all intrastate end users, and reimburse TRS providers directly for their intrastate TRS costs.

8. With respect to *inter*state TRS cost recovery, the Commission has established a shared-funding mechanism based on contributions from all carriers that provide interstate telecommunications services. Those contributions are based on the carrier's interstate end-user telecommunications revenues.[33] All contributions are placed in the Interstate TRS Fund, which is administered by the TRS Fund Administrator, currently the National Exchange Carrier Association (NECA).[34] The fund

[28] *Improved TRS Order & FNPRM* at ¶ 3. As we have noted, carriers may choose to offer TRS individually, through designees, through a competitively selected vendor, or in concert with other carriers. 47 U.S.C. § 225(c). This provision allows all of the common carriers providing voice telephone service in a state to meet their section 225 obligation to provide *intra*state TRS through a centralized state program. Generally, the state selects a competitively selected vendor, and by so doing the other common carriers in the state that offer local telephone service are deemed to have met their obligation to provide *intra*state TRS. In this way, the state certification mechanism, in addition to giving states jurisdiction over *intra*state TRS, also advances the statutory mandate that TRS be provided in "the most efficient manner." 47 U.S.C. § 225(b)(1).

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

[30] 47 U.S.C. § 225(d)(3)(B); *see also* 47 C.F.R. § 64.604(c)(5)(ii).

[31] As discussed further below, the costs of providing certain types of *intra*state TRS, including VRS and IP Relay, are currently not recovered from the states, but are recovered pursuant to the rules governing the recovery of the costs of *inter*state TRS. *See Improved TRS Order& FNPRM* at ¶ 15; *IP Relay Declaratory Ruling & FNPRM* at ¶ 20.

[32] In a state with a certified TRS program, the state "shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of [section 225]." 47 U.S.C. § 225(c)(3)(B).

[33] We take this opportunity to reiterate that carriers obligated to contribute to the Interstate TRS Fund (*e.g.*, carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers' bill as one for relay services. *See TRS Second Report & Order* at ¶ 22; *Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990,* Report and Order and Request for Comments, CC Docket No. 90-571, FCC 91-213, 6 FCC Rcd 4657 at ¶ 34 (July 26, 1991) (*TRS I*) ("in order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on the subscribers' lines").

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

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administrator uses these funds to compensate "eligible" TRS providers[35] for the costs of providing the various forms of TRS; presently, interstate traditional TRS, interstate Speech-to-Speech, interstate Spanish Relay service, IP Relay, and VRS. Fund distributions are made on the basis of a payment formula initially computed by NECA in accordance with the Commission's rules, and then approved or modified by the Commission.[36] The reimbursement rate calculations are presently based on the cumulative average cost per interstate minute for each service.[37] There are currently three different compensation rates for different forms of TRS: a rate for traditional TRS and IP Relay,[38] a rate for STS, and a rate for VRS.[39]

9. *Commission Orders and Rulings.* The Commission issued its first order pursuant to Title IV of the ADA implementing TRS on July 26, 1991.[40] TRS became available on a nationwide basis pursuant to Commission regulations in July 1993.[41] Since 1991, the Commission has revisited the

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February 24, 2004, the Consumer & Governmental Affairs Bureau issued an Order increasing the fund size from approximately $115 million to $170 million for the 2003-2004 fund year as a result of the use of IP Relay and VRS beyond the initial projections of the Fund Administrator. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, CC Docket No. 98-67, DA 04-465 (Feb. 24, 2004).

[35] 47 C.F.R. § 64.604(c)(5)(iii)(E) & (F) (setting forth, among other things, the eligibility requirements for TRS providers seeking to receive compensation from the Interstate TRS Fund).

[36] 47 C.F.R. § 64.604(c)(5)(iii). The regulations provide that "TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. ... Such formulas shall be designed to compensate TRS providers for *reasonable* costs of providing interstate TRS, and shall be subject to Commission approval." 47 C.F.R. § 64.604(c)(5)(iii)(E); *see, e.g., Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Order, CC Docket No. 90-571, DA 02-1166, 17 FCCR 8840 (2002); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Order, CC Docket No. 90-571, DA 01-1502, 16 FCCR 12895 (2001); *see generally Bureau TRS Order* at ¶ 13 n.44 (citing all orders adopting compensation rates for traditional TRS); ¶ 15 n.47 (citing all orders adopting compensation rates for STS); and ¶ 18 n.52 (citing all orders adopting compensation rates for VRS).

[37] *See generally Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Order, CC Docket No. 90-571, DA 02-1166, 17 FCC Rcd 8840 at ¶ 2 (May 16, 2002) (order modifying compensation rates of various TRS services).

[38] The Commission determined that the compensation rate for IP Relay would be at the same rate as for traditional TRS because there is little difference in the costs of providing these services. *See IP Relay Declaratory Ruling & FNPRM* at ¶ 22. Likewise, eligible non-English language relay service minutes fall within the traditional TRS rate. *See Improved TRS Order & FNPRM* at ¶¶ 28-31; *TRS Cost Recovery MO&O* at ¶ 13. We raise in the *FNPRM* below whether we should adopt separate compensation rates for traditional TRS and IP Relay.

[39] In order for the TRS administrator to make the necessary calculations to determine the per-minute compensation rates, TRS providers are required to submit to the administrator "true and adequate data necessary to determine TRS fund revenue requirements and payments." 47 C.F.R. § 64.604(c)(5)(iii)(C). Specifically, TRS providers must provide the administrator with "total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment," as well as "other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements." *Id.* Using the projected cost and projected minutes of use information it receives from the TRS providers, the TRS administrator determines the per-minute compensation rate for the various forms of TRS.

[40] *See TRS I.*

[41] 47 U.S.C. § 225(b)(1). Section 225 requires common carriers providing telephone voice transmission services to provide TRS throughout the areas they serve. The statute mandated an implementation date of no later than July 26, 1993. *See* 47 U.S.C. § 225(c). Prior to the enactment of Title IV, some states offered relay services, but the services

(continued....)

regulations governing TRS on numerous occasions, in part, to make available to consumers new forms of TRS, and to amend the mandatory minimum standards[42] to improve the quality of TRS, consistent with the goal of functional equivalency set forth in section 225.[43] In March 2000, the Commission issued the *Improved TRS Order & FNPRM,* which, in part, concluded that VRS was a form of TRS, but tentatively concluded that the provision of VRS should not be mandatory given its technological infancy.[44] The Commission nevertheless encouraged the use and development of VRS,[45] and to this end stated that, on an interim basis, all VRS calls would be eligible for cost recovery from the Interstate TRS Fund.[46] On December 21, 2001, the Commission released the *TRS Cost Recovery MO&O & FNPRM* which, among other things, sought additional comment on the appropriate cost recovery mechanism for VRS.[47] On December 31, 2001, the Wireline Competition Bureau[48] issued the *VRS Waiver Order* waiving, until December 31, 2003, various TRS mandatory minimum standards as applied to VRS.[49] In September 2003, several petitions were filed to extend these waivers beyond December 31, 2003. We address those petitions below.[50]

10. On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & FNPRM,* which further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS. Although the Commission did not require that TRS providers offer IP Relay, the Commission authorized, on an interim basis, recovery of the costs of providing both intrastate and interstate IP Relay from the Interstate TRS Fund.[51] In the *FNPRM,* the Commission requested comment on whether it

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offered differed from state to state, were subject to many limitations, and were generally limited to intrastate calls. *See Second Improved TRS Order & NPRM* at ¶ 6 n.24..

[42] 47 C.F.R. § 64.604. The purpose of the mandatory minimum standards is to ensure that TRS is offered, consistent with the functional equivalency mandate set forth in section 225, *TRS I* at ¶ 1, in an efficient and consistent manner throughout the United States. The Commission, as directed by section 225, established mandatory minimum operational, technical, and functional standards. *See* 47 U.S.C. § 225(d)(1)(B); 47 C.F.R. § 64.604(a)-(c). The House Report explains that "Section (d)(1)(B) [of Title IV] requires the Commission to establish minimum federal standards to be met by all providers of [TRS] including ... standards that will define functional equivalence between telecommunications relay services and voice telephone transmission services." House Report at 133. The Commission has also made clear that the mandatory minimum standards are intended to ensure that TRS is provided in a manner that is functionally equivalent to the ability of persons who do not have hearing or speech disabilities to communicate using voice communication services. *See, e.g., TRS I* at ¶ 1.

[43] *See Second Improved TRS Order & NPRM* at ¶ 6 n.26 (listing many of the Commission's TRS orders).

[44] The Commission also stated that because VRS "will be offered on a voluntary basis, we will not require it to operate every day, 24 hours a day." *Id.* at ¶ 42 (citing 47 C.F.R. § 64.604(b)(4), which states that "[r]elay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day.").

[45] *Improved TRS Order* & FNPRM at ¶¶ 23-27.

[46] *Id.* at ¶ 26.

[47] *TRS Cost Recovery MO&O & FNPRM* at ¶ 35.

[48] Formerly, the Common Carrier Bureau.

[49] *VRS Waiver Order.*

[50] These waivers were extended to June 30, 2004, by an Order dated December 19, 2003. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, CC Docket 98-67, DA 03-4029 (Dec. 19, 2003) (*VRS Waiver Extension Order*).

[51] *See generally IP Relay Declaratory Ruling & FNPRM* at ¶¶ 15-26. Further, on March 14, 2003, the Commission extended or granted waivers of mandatory minimum standards requiring the provision of voice carry over (VCO), hearing carry over (HCO), emergency call handling, and 900-number services over IP Relay until January 01, 2008. *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with*
(continued....)

should devise a method for allocating IP Relay calls as intrastate or interstate. We address that issue below.

11. On October 25, 2002, the Commission released the *Coin Sent-Paid Fifth Report & Order*, which resolved long-standing issues concerning access to TRS by depositing coins in a public payphone. We concluded that a technological solution to processing coin sent-paid calls was not available, and that the coin sent-paid functionality was not necessary to achieve functional equivalence.[52] We therefore eliminated the requirement that TRS carriers and providers be capable of providing coin sent-paid TRS service from payphones.[53] With regard to local (non-toll) calls, we mandated that carriers provide free TRS local calls from payphones.[54] With regard to toll calls, we required carriers to allow the use of calling cards, prepaid cards, and collect or third party billing for TRS calls from payphones.[55] We also declined to adopt a requirement that common carriers may not charge more than the lower of the coin sent-paid rate or the rate for the calling card, collect, or third-party billing, for TRS toll calls from payphones.[56] Finally, we encouraged specific outreach and education programs to inform TRS users of alternatives to the use of coins when placing toll calls from payphones.[57] We address a petition for reconsideration of this order below.

12. On June 17, 2003, the Commission released the *Second Improved TRS Order & NPRM*, which, in part, authorized the availability of signaling system 7 technology to TRS providers, and required TRS facilities to provide various new types of TRS calls, including two-line voice carry-over (VCO) and two-line hearing carry-over (HCO), HCO-to-TTY and HCO-to-HCO, and VCO-to-TTY and VCO-to-VCO.[58] The Commission also granted waivers of certain of the newly adopted requirements for IP Relay and VRS,[59] and changed the requirement that TRS facilities automatically forward emergency calls to the nearest Public Safety Answering Point (PSAP) to a requirement that the TRS facilities forward such calls to the appropriate PSAP.[60] Further, the Commission mandated the offering of several additional TRS features on a functionally equivalent basis with voice telephone features.[61] In the *NPRM*, the Commission asked for comment on such matters as (1) whether TRS facilities should receive a national security/emergency preparedness priority; (2) the security of IP Relay calls; (3) the handling of emergency calls from wireless telephones; and (4) whether and how the Commission should establish a

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Hearing and Speech Disabilities, Order on Reconsideration, CC Docket No. 98-67, FCC 03-46, 18 FCC Rcd 4761 (March 14, 2003) (*IP Relay Order on Reconsideration*).

[52] *Coin Sent-Paid Fifth Report & Order* at ¶¶ 2, 17.

[53] *Id.* at ¶ 17.

[54] *Id.* at ¶¶ 18-21.

[55] *Id.* at ¶ 22.

[56] *Id.* at ¶ 23.

[57] *Id.* at ¶¶ 2, 28-39.

[58] *Second Improved TRS Order & NPRM* at ¶¶ 21, 25, 29, 32, 34.

[59] *Id.* at ¶ 36.

[60] *Id.* at ¶ 40.

[61] *See id.* at ¶¶ 63-76. The Commission required the offering of answering machine message retrieval, automatic call forwarding, call release, speed dialing, and three-way calling for TRS, but waived these requirements for IP Relay and VRS. On February 24, 2004, an Order was issued that waived for one year (*i.e.*, until February 24, 2005) the rule requiring TRS providers to offer three-way calling functionality. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, CC Docket No. 98-67, DA 04-465 (Feb. 24, 2004).

national TRS outreach campaign.[62] The Commission also sought comment on ways to improve the operational and technical aspects of TRS service.[63] Finally, the Commission requested comment on whether and how it should address the provision of TRS in circumstances not covered by the rules, including eligibility of providers for compensation from the Interstate TRS Fund.[64] We address these issues below. We also address the petitions for reconsideration of the *Second Improved TRS Order & FNPRM.*

13. On June 30, 2003, the Consumer & Governmental Affairs Bureau (CGB) released the *Bureau TRS Order* adopting interim compensation rates for the various forms of TRS for the July 2003-June 2004 Interstate TRS Fund year.[65] The Bureau established interim compensation rates of $1.368 per completed call minute for traditional TRS and IP Relay,[66] $2.445 per completed call minute for STS,[67] and $7.751 per completed call minute for VRS.[68] The TRS fund administrator (NECA), had proposed a per-minute VRS compensation rate of $14.023. On July 30, 2003, five parties filed petitions for reconsideration, challenging the interim VRS compensation rate of $7.751 per minute and requesting that the Commission adopt NECA's proposed compensation rate of $14.023. We address these petitions below.

III. EXECUTIVE SUMMARY

14. In this *Report and Order*, we:

- Continue, on an interim basis, the per-minute cost recovery methodology for VRS.
- Adopt the per-minute cost recovery methodology for IP Relay.
- Address the TRS features, requirements, and issues raised in the *Second Improved TRS Order & NPRM.* We decline to adopt a national outreach program or to permit the Interstate TRS Fund to fund such a campaign. We also decline at this time to adopt new rules providing that the Commission can certify providers as eligible for compensation from the Interstate TRS Fund.
- Grant the extension of certain waivers of our TRS mandatory minimum standards as applied to the provision of VRS.
- Grant Sprint's *711 Petition* requesting that the Commission declare that the manner in which it provides 900 pay-per-call services to users who access a relay center by dialing 711 fully satisfies the requirement that such service be offered by TRS providers. At the same time, we acknowledge that there are other ways that TRS providers can achieve this functionality.
- Dismiss, without prejudice, the petition by a provider of VRS for "certification" as a TRS provider eligible for compensation from the Interstate TRS Fund. We note that neither section

[62] *Id.* at ¶¶ 105, 107-109, 114, 130-133.

[63] *Id.* at ¶¶ 115-127.

[64] *Id.* at ¶¶ 136-137.

[65] *Bureau TRS Order. See generally id.* at ¶¶ 5-22, summarizing the cost recovery scheme for providers of TRS and the annual review and adoption of the per-minute TRS compensation rates for services eligible for compensation from the Interstate TRS Fund.

[66] *Id.* at ¶ 26.

[67] *Id.* at ¶ 28.

[68] *Id.* at ¶ 38.

225 nor our TRS regulations provide that the Commission can "certify" any TRS provider as eligible to receive compensation from the Interstate TRS Fund.

- Deny the petition filed by a provider of VRS that requests limited waiver of our rule prohibiting CAs from refusing to handle calls in the context of VRS calls that are part of legal depositions or other state legal proceedings. We explain that when a VRS CA is acting as such pursuant to section 225 he or she is acting as an invisible, confidential conduit relaying the call between the parties to provide functionally equivalent telephone service. The fact that a party to the call may be making a VRS call to accomplish a particular purpose regulated by state law does not affect the role and obligations of the VRS CA under the congressionally mandated TRS scheme.

15. In the *Order on Reconsideration*, we:

- Affirm in part, and modify in part, the Bureau's decision setting interim compensation rates for TRS from the Interstate TRS Fund as set forth in the June 30, 2003 *Bureau TRS Order*. More specifically, we conclude that the Bureau correctly determined the interim TRS compensation rates in the *Bureau TRS Order* for the various forms of TRS, but upon review of amended cost data submitted by the providers we modify the per-minute compensation rate for Video Relay Service, increasing it from $7.751 per minute to $8.854 per minute. Because the modified compensation rate of $8.854 is based on information the Commission received from various providers subsequent to the release of the *Bureau TRS Order*, the new compensation rate shall apply to the provision of eligible VRS service effective September 1, 2003, through the end of the 2003-2004 fund year.

- Deny a joint petition for reconsideration of the October 25, 2002, *Coin Sent-Paid Fifth Report & Order*. We again decline to impose cost parity for toll calls via payphones made by TRS users and made by non-TRS users. We also decline to adopt a national outreach program with respect to this issue, or to impose specific outreach obligations on carriers relating to payphone calls.

- Grant, in part, petitions for reconsideration filed in response to the June 17, 2003, *Second Improved TRS Order & NPRM* with respect to the requirement that TRS facilities route emergency *wireline* TRS calls to an "appropriate" PSAP, and amend our rules accordingly.

16. The Commission is also issuing a *Further Notice of Proposed Rulemaking (FNPRM)* seeking public comment on various matters concerning IP Relay and VRS, including the appropriate cost recovery methodology for VRS, possible mechanisms to determine which IP Relay and VRS calls are intrastate and which are interstate for purposes of reimbursement, whether IP Relay and VRS should become mandatory TRS services, whether IP Relay and VRS should be required to be offered 7 days a week, 24 hours a day, and whether, when, and how we should apply the speed of answer rule to the provision of VRS. We also seek comment on redefining the composition, functions, and responsibilities of the TRS Advisory Council, and on issues relating to the abuse of CAs by persons using TRS.

IV. REPORT AND ORDER

A. VRS COST RECOVERY (CC DOCKET NO. 98-67)

1. Background

17. In the March 2000 *Improved TRS Order & FNPRM*, the Commission concluded that VRS is a form of TRS,[69] but did not make it mandatory because VRS "remains in its technological

[69] The Commission concluded that TRS is not limited to services involving TTYs but that, given the language of section 225, applies to any "telephone transmission service" that allows a person with a hearing or speech disability (continued....)

infancy."[70] At the same time, the Commission adopted a "special funding arrangement[]for [VRS service] by allowing the costs of all calls – both *intrastate* and *interstate* – to be reimbursed from the [I]nterstate TRS Fund"[71] The Commission explained that the special funding arrangement was temporary and intended to speed the development of VRS, and that the Commission would "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."[72] At the same time, the Commission directed the TRS Fund Advisory Council (Advisory Council) and the TRS Fund Administrator to develop cost recovery guidelines for the new types of TRS – including VRS – recognized in the order.[73]

18. In response to that directive, on November 9, 2000, the Advisory Council and the TRS Fund Administrator submitted recommended TRS cost recovery guidelines for traditional TRS, STS, and VRS.[74] The Advisory Council and the TRS Fund Administrator proposed the following four recommendations with respect to VRS cost recovery: (1) that the same methodology for rate development in place today for traditional TRS interstate cost recovery be used to develop the VRS reimbursement rate; (2) that providers should be reimbursed based on completed conversation minutes at a national average reimbursement rate; (3) that the TRS Center Data Request[75] should be expanded to include specific VRS sections to capture VRS costs and demand separately; and (4) that due to its unique characteristics, a separate reimbursement rate based on VRS costs and demand should be calculated.[76]

19. On December 6, 2000, the former Common Carrier Bureau (now the Wireline Competition Bureau) issued a Public Notice seeking comment on the recommended cost recovery guidelines.[77] The Commission noted that the "recommendations propose methodologies for recovering costs associated with the provision of traditional [TRS], [STS], and [VRS]," and that in each case the recommendation is to apply "the traditional TRS cost recovery model to each service, but captur[e] minutes of use and costs separately and establish[] separate reimbursement rates."[78] Sprint Communications Corporation (Sprint), MCI (WorldCom),[79] and Communications Services for the Deaf (CSD) filed comments on the VRS recommendations.[80] Sprint and CSD raised alternative proposals for VRS reimbursement.[81]

20. On December 21, 2001, the Commission issued the *TRS Cost Recovery MO&O &*

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to "communicat[e] by wire or radio" with a person without such a disability. *Improved TRS Order & FNPRM* at ¶ 13.

[70] *Id.* at ¶ 22.

[71] *Id.*

[72] *Id.* at ¶¶ 26-27.

[73] *Id.* at ¶ 33. The Commission required these guidelines to be submitted within six months. *Id.*

[74] *Recommended TRS Cost Recovery Guidelines*, CC Docket No 98-67 (filed Nov. 9, 2000) (*Recommendations*).

[75] The TRS Center Data Request is a spreadsheet form prepared by NECA that the TRS providers use to itemize their submitted cost data.

[76] *Recommendations* at 7-8.

[77] *Interstate TRS Fund Advisory Council and TRS Fund Administrator's Recommended TRS Cost Recovery Guidelines*, Public Notice, CC Docket No. 98-67, DA 00-2739, 15 FCC Rcd 23987 (Dec. 6, 2000).

[78] *Id.*

[79] Throughout this *Order*, we refer to comments by WorldCom, Inc, or MCI as "MCI (WorldCom)."

[80] *See TRS Cost Recovery MO&O & FNPRM* at ¶ 3.

[81] *Id.*

FNPRM addressing the Advisory Council and the TRS Fund Administrator's cost recovery guidelines. With respect to VRS, the Commission adopted two of the recommendations, concluding that given "the unique characteristics of VRS, a separate reimbursement rate for VRS should be calculated" and "the TRS Center Data Request should be expanded to include specific sections to capture separately VRS costs and minutes for this service."[82] The Commission declined to adopt, however, the recommendations that the VRS compensation rate should be based on the same methodology in place for traditional TRS, and that the VRS reimbursement rate should be based on completed conversation minutes of use at a national average reimbursement rate.[83] The Commission stated that it was "not convinced that this methodology will provide adequate incentives to carriers to provide [VRS]."[84] The Commission noted that both Sprint and CSD argued that "compensation on a per-minute basis may not adequately compensate VRS providers for the substantial up-front capital costs required to provide the service."[85] Therefore, the Commission stated that it would seek further comment on these issues. In the interim, the Commission directed the TRS Fund Administrator to adopt a VRS cost recovery rate using the average per minute compensation methodology used for traditional TRS. The Commission stated that the "interim rate shall be in effect until such time that the Commission is able to collect and assess additional data regarding what the permanent VRS compensation methodology should be."[86]

21. As a result, the *TRS Cost Recovery MO&O & FNPRM* sought additional comment on the appropriate cost recovery mechanism for VRS. The Commission noted that both Sprint and CSD suggested in their comments that because of the relatively high initial capital expenditures required for VRS, a per minute compensation rate may not allow them adequate cost recovery.[87] As a result, Sprint and CSD had proposed that, "for the present time, VRS compensation be based on a flat monthly payment for an assumed number of minutes rather than the completed conversation minutes of use at a national average reimbursement rate."[88] The Commission concluded that Sprint and CSD's proposal was not sufficiently detailed, and therefore the Commission sought additional comment on these proposals. The Commission also encouraged parties to propose other compensation plans for the provision of VRS.[89]

22. Only two parties, Sprint and MCI (WorldCom), submitted comments in response to the *TRS Cost Recovery MO&O FNPRM*. MCI (WorldCom) opposed Sprint's and CSD's flat rate proposal, contending that the current per minute compensation methodology is adequate and that their proposal would have the perverse affect of rewarding providers for declining levels of demand.[90] In its February 2002 comments, however, Sprint withdrew its proposed flat monthly compensation plan, stating that it no longer believed it was necessary because the per minute reimbursement rate for providing VRS had increased to a level sufficient to be an incentive for providing VRS.[91] As a result, there are no comments in the record opposing the original proposal of the TRS Advisory Council and TRS Fund Administrator that the VRS compensation rate should be based on the same methodology in place for traditional TRS,

[82] *Id.* at ¶ 22. The Commission adopted all of the recommendations with respect to traditional TRS and STS.

[83] *Id.* at ¶ 23.

[84] *Id.*

[85] *Id.*

[86] *Id.* at ¶ 24.

[87] *Id.* at ¶ 35.

[88] *Id.*

[89] *Id.* at ¶ 36.

[90] MCI (WorldCom) Comments at 2-4.

[91] Sprint Comments at 2. Sprint was referring to NECA's proposal of a compensation rate of $9.614 per minute. In February 2002, there were approximately 13,000 minutes of VRS reimbursed from the Interstate TRS Fund.

and that the VRS reimbursement rate should be based on completed conversation minutes of use at a national average reimbursement rate.

2. Discussion

23. We will continue at this time the interim arrangement adopted in the *TRS Cost Recovery MO&O & FNPRM* that permits VRS to be reimbursed using the same per-minute compensation methodology used for traditional TRS.[92] As discussed in the *FNPRM* below, however, we seek additional comment on the appropriate cost recovery methodology for VRS and, in particular, whether a methodology other than a per-minute based compensation rate should be adopted for VRS. The determination of a "reasonable" per-minute compensation rate for VRS has presented serious challenges, in part due to issues concerning CA staffing, labor costs, and engineering costs particular to VRS.[93] For this reason, we raise below whether an arrangement other than one based on a per-minute compensation rate predicated on predictions of minutes of use and costs would be more appropriate for VRS.

24. We also note that we have made clear that the current arrangement of compensating VRS providers from the Interstate TRS Fund for *all* VRS calls (*i.e.,* both interstate and intrastate) is a temporary one, and one that we would revisit at an appropriate time. Therefore, as also set forth below in the *FNPRM,* we seek comment on what mechanism might be adopted to satisfy the statutory requirement that "costs caused by interstate [TRS] shall be recovered from all subscribers for every interstate service and costs caused by intrastate [TRS] shall be recovered from the intrastate jurisdiction."[94] We also seek comment below on whether the provision of VRS has sufficiently developed such that it should be included as a mandatory form of TRS.

B. IP RELAY COST RECOVERY (CC DOCKET NO. 98-67)

1. Background

25. In the April 2002 *IP Relay Declaratory Ruling & FNPRM,* the Commission concluded that IP Relay falls within the definition of TRS,[95] and that such services were eligible for cost recovery in

[92] Currently, there are seven VRS providers: Sprint (in conjunction with CSD); MCI (WorldCom) (in conjunction with Hands On); AT&T (in conjunction with Hands On); Sorenson; Communication Access Center (CAC); Hamilton Relay, Inc. (Hamilton); and Hands On. As NECA has reported, the minutes of use for VRS has increased from 7,215 in January 2002 to 159,469 in May 2003, to 381,783 in December 2003, to 534,536 in February 2004, and to 709,718 minutes in March 2004..

[93] *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd 12823 (June 30, 2003) (*Bureau TRS Order*).

[94] 47 U.S.C. § 225(d)(3)(B).

[95] The Commission concluded that IP Relay falls within the definition of TRS because Congress broadly defined TRS to be a "telephone transmission service" that is constrained only by the requirement that the service provide a particular functionality, and that IP Relay provides the functionality of permitting a person with a hearing or speech disability to communicate by wire or radio with a person without such disabilities. *IP Relay Declaratory Ruling & FNPRM at* ¶ 10. The Commission also noted that this conclusion was consistent with the statutory admonitions that TRS be made available to the extent possible and in the most efficient manner, and that the Commission encourage the use of existing technology and not discourage the development of new technology. *Id.* Finally, the Commission expressly rejected the notion that TRS is limited to "telecommunication services," noting that TRS was specifically defined. *Id.* at ¶¶ 12-14. The Commission noted that in view of that definition it was "not required to, and consequently [did] not, make a finding whether IP Relay constitutes telecommunications, telecommunications service, or information service." *Id.* at ¶ 14.

accordance with section 225 and our regulations.[96] Because "there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate," the Commission "authorize[d], on an interim basis, recovery of all costs of providing IP Relay from the Interstate TRS Fund."[97] As we explained, with IP Relay the caller contacts the TRS provider via the Internet through an Internet service provider (ISP). Because Internet addresses have no geographic correlates (*i.e.*, because Internet addresses are assigned without identifiers of geographic location), the record does not indicate that TRS providers can automatically determine the location of the caller, and therefore determine whether the call is interstate or intrastate.[98]

26. The Commission nevertheless addressed possible methods by which the costs of IP Relay could be allocated between the states and the Interstate TRS Fund.[99] First, the Commission noted that a method could be adopted that would identify the origination of an IP Relay call, and that "[o]ne possible method of doing so would require IP Relay callers to establish profiles that identify the state from which they are calling."[100] Second, the Commission noted that a cost allocation formula could be developed based on an approximation of the mix of interstate/intrastate calls that were placed over IP Relay. In other words, a fixed allocator would be adopted by which the total costs of providing IP Relay would be apportioned between the Interstate TRS Fund and the states, and among the several states. Finally, the Commission noted that, "[a]lternatively, a determination could be made that cost allocation is not necessary," and that IP Relay costs could be permanently recovered from the Interstate TRS Fund.[101]

27. The Commission concluded that it would not "at this time ... adopt either of the methods ... of allocating costs between states and the Interstate TRS Fund," noting that each method had various shortcomings.[102] Because, however, the Commission found that it was "in the public interest to authorize a compensation methodology for IP Relay quickly ... in order to encourage the development of this service, the Commission authorized, "on an interim basis, ... any current or prospective IP Relay provider to receive compensation for providing IP Relay-based TRS from the Interstate TRS Fund, using the same formula that is used for interstate PSTN-based TRS calls, until such time as a determination is made concerning the development of a permanent IP Relay cost recovery formula."[103] The Commission also directed the Interstate TRS Fund administrator to develop cost recovery guidelines for IP Relay within six months.[104]

28. In the accompanying FNPRM, the Commission requested "comment on whether we should attempt to devise a method for allocating calls as intrastate or interstate, and, if so, suggestions for how we may accomplish that goal."[105] In this regard, the Commission tentatively concluded that the

[96] *IP Relay Declaratory Ruling & FNPRM at* ¶ 1; *see also id.* at ¶¶ 20-22.

[97] *Id. at* ¶ 1.

[98] By contrast, traditional TRS calls are placed via the public switched telephone network (PSTN), which allows the TRS facility or provider to determine the location of the caller from the Automatic Number Identification (ANI) transmitted with the call. This information, along with the called number, allows the TRS facility or provider to determine whether the call is interstate or intrastate, and establishes whether the TRS provider is compensated for the call from the Interstate TRS Fund or from the state.

[99] *IP Relay Declaratory Ruling & FNPRM at* ¶¶ 17-18.

[100] *Id.* at ¶ 17.

[101] *Id.* at ¶ 18.

[102] *Id.* at ¶ 20.

[103] *Id.*

[104] *Id.* at ¶ 23.

[105] *Id.* at ¶ 41.

classification of an IP Relay call should be decided by the locations of the caller and the ultimate recipient, without regard to the location of any intermediate point of switching or exchange, including the IP Relay center.[106] At the same time, the Commission acknowledged that "this methodology of allocation is problematic because ... there is no automatic means of determining the origination of IP Relay calls."[107] The Commission therefore sought comment (1) on whether section 225 requires the Commission to develop a method for allocating IP Relay costs between the Interstate TRS Fund and among the several states, and, if so, (2) on what methods exist or could be developed to determine the location of an IP Relay caller.[108] Specifically, the Commission requested comment on the use of caller profiles to determine the location of the caller, as well as on the use of a fixed allocator.[109] The Commission emphasized that the scope of its inquiry was confined to IP Relay only as a means of functionally equivalent access to the voice telephone network and to the recovery of TRS costs from the Interstate TRS Fund pursuant to section 225 of the Act.[110]

29. On June 17, 2002, the Commission issued a Public Notice, noting that the *IP Relay Declaratory Ruling & FNPRM* sought "comment on whether the Commission should attempt to devise a method for allocating [IP Relay] calls as intrastate or interstate."[111] Nine individuals, corporations, and states filed comments, and two parties filed reply comments.[112] Generally, all parties approved of compensating IP Relay from the Interstate TRS Fund as an interim measure. There were differing views, however, on the question of how to compensate IP Relay providers permanently. Many commenters maintain that the Interstate TRS Fund should continue to fund all IP Relay calls, and that such an arrangement is not precluded by the statute. For example, Telecommunications for the Deaf, Inc. (TDI) notes that section 225 requires only that the Commission's regulations "generally" provide for the allocation of costs, and therefore asserts that promoting IP Relay is sufficient reason for an exemption from allocating costs between the states and Interstate TRS Fund.[113] TDI further notes that insisting on the allocation of costs would be excessively onerous to IP Relay providers and to the states because each IP Relay provider would be required to negotiate contracts with each of 50 states, and it is unlikely that all 50 states would be willing to contract with every IP Relay provider.[114]

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[106] *Id.* at ¶ 42.

[107] *Id.* at ¶ 43.

[108] *Id.*

[109] *Id.*

[110] The Commission stated: "We emphasize that the scope of our inquiry is confined to IP Relay only and to the recovery of TRS costs from the Interstate TRS Fund. This inquiry is not intended to regulate the Internet, nor to establish standards for the separation of Internet traffic in general, but to regulate IP Relay as a means of functionally equivalent access to the voice telephone network, and to specify how TRS providers may recover the costs for IP Relay. This regulation is pursuant to the authority granted to the Commission by Congress in the Americans with Disabilities Act, codified in Section 225 of the Communications Act." *Id.* at ¶ 45.

[111] *Commission Seeks Comment on Classifying Internet Protocol Telecommunications Relay Service Calls as Intrastate or Interstate for Compensation*, Public Notice, CC Docket 98-67, DA 02-1426, 17 FCC Rcd 11255 (June 17, 2002).

[112] Comments on the *IP Relay Declaratory Ruling and FNPRM* were filed by AT&T, the Public Service Commission of the State of Missouri (MO PSC), Sprint, Telecommunications for the Deaf, Inc. (TDI), the Verizon telephone companies (Verizon), MCI (WorldCom), and private individuals. Reply comments were filed by Hamilton and TDI.

[113] *See* TDI Comments at 5-6; *see also* Verizon Comments at 2-3; MO PSC Comments at 2.

[114] *See* TDI Comments at 5-6; *see also* MO PSC Comments at 3; Hamilton Reply Comments at 3; MCI (WorldCom) Comments at 6. TDI asserts, in part, that the plain language of section 225, as well as its overriding policy objectives, provides the Commission with discretion to fund IP Relay from the Interstate TRS Fund on a long-term

(continued....)

30. With respect to the specific proposals for how the Commission might separate IP Relay calls into intrastate and interstate calls for purposes of cost reimbursement, the commenters generally oppose registration. First, several commenters state that many users dislike customer profiles and are unwilling to submit personal information via the Internet.[115] Further, commenters assert that registration may raise in customers the fear of long-distance charges, since long-distance calls via IP Relay are currently free of charge to the consumer. This fear could cause some consumers to supply false information in the registration process.[116] AT&T asserts that a registration requirement would impose an additional burden on IP Relay providers.[117] Only one commenter, Verizon, advocates the use of registration, and does so out of concerns about the use of IP Relay for calls both originating and terminating outside the United States, or for calls between parties where neither party has a hearing or speech disability.[118]

31. With respect to the use of an allocator, AT&T calls the use of an allocator "potentially acceptable" but also states that this method is currently infeasible, without some means for determining the caller's location.[119] Although MO PSC supports continued funding from the Interstate TRS Fund, it asserts that if the Commission decides to allocate the costs of IP Relay it should use the same allocator currently used for toll-free calls, *i.e.*, 60 percent of costs paid by the Interstate TRS Fund and 40 percent paid by the state.[120] MCI (WorldCom) and TDI question the accuracy of any allocator, given the dearth of data yet available on IP Relay calling patterns.[121] Sprint asserts that states whose residents use IP Relay infrequently will realize that they are subsidizing states with higher IP Relay usage, and may refuse to fund IP Relay in their states, which would require minimizing IP Relay availability to citizens in those states by the use of customer profiles.[122]

32. On October 9, 2002, NECA, pursuant to the Commission's direction in the *IP Relay*

(...continued from previous page)
basis. TDI also asserts if an allocation of costs scheme were adopted, IP Relay providers would have to undergo a time-consuming and burdensome competitive bidding process in 50 separate states to provide nationwide IP Relay. MO PSC argues, in part, that the Commission has previously found that Internet traffic is interstate in nature, and that Missouri and other states do not regulate ISPs. Therefore, MO PSC questions the ability of state commissions to determine the eligibility of IP Relay providers for compensation. MCI (WorldCom) states that allocation of costs would require IP Relay providers to establish compensation relationships with every state, and that the administrative burden to both the states and to IP Relay providers will discourage the development of IP Relay. Hamilton's arguments echo those noted above, and emphasize that the Commission has the authority to provide long-term compensation for IP Relay providers from the Interstate TRS Fund, and that requiring an allocation of costs would lead to excessive costs and burdens and create obstacles to providing and using IP Relay.

[115] *See* Sprint Comments at 2; TDI Comments at 11; Hamilton Reply Comments at 4.

[116] *See e.g.*, MCI (WorldCom) Comments at 5, TDI Reply Comments at 4-5.

[117] *See* AT&T Comments at 4.

[118] *See* Verizon Comments at 3-4.

[119] *See* AT&T Comments at 2-3 (linking determination of appropriate allocater with parties' location).

[120] *See* MO PSC Comments at 3. Toll-free calls, like IP Relay calls, cannot be identified as intrastate or interstate; however, in the case of toll-free calls, it is the recipient, rather than the caller, whose location is unknown. For this reason, the Interstate TRS Fund developed a methodology based on statistical studies for all providers to use to determine their interstate toll-free calls. For the July 2003 to June 2004 fund year, NECA used a factor of 51 percent interstate to be applied to total toll-free traditional TRS and STS. NECA applies the same principle to calls placed to 900 numbers. *See* NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CC Docket No. 98-67 (filed May 1, 2003) at 6-7.

[121] *See* MCI (WorldCom) Comments at 7; TDI Comments at 12.

[122] *See* Sprint Comments at 2.

Declaratory Ruling & FNPRM, filed its IP Relay cost recovery guidelines.[123] In the "Findings" section of its filing, NECA stated that there was no automatic means of determining whether an IP Relay call is intrastate or interstate, and that a "resolution of this problem is not in the foreseeable future."[124] NECA also stated that "[r]equiring all IP Relay users to register or create profiles is considered discriminatory, an invasion of privacy, and a deterrent to the use of this service."[125] Further, NECA stated that use of a fixed allocator "could unfairly allocate costs between intrastate and interstate jurisdictions."[126] NECA also stated that it would be "overly burdensome" on the states if some IP Relay costs were required to be recovered as intrastate.[127] NECA's recommended cost recovery guidelines, however, did not directly address the allocation of costs or a means by which it could be determined which calls are interstate and which are intrastate. Rather, NECA simply recommended that because the characteristics of traditional TRS and IP Relay are basically the same except for the method of accessing the TRS facility, "the same national average rate development methodology and cost recovery reimbursement rate as traditional TRS service [should apply to] ... all IP Relay minutes."[128] NECA did note that IP Relay costs could significantly increase "if providers are required to establish and maintain reporting and reimbursement relationships with every state," and that a fixed allocator "is not feasible at this time."[129] NECA added that "[o]nly reimbursement from the Interstate TRS Fund for all IP Relay minutes will assure the growth of this innovative service in its early stages," and that the "Commission should revisit IP Relay cost recovery periodically to determine if changes in technology or other circumstances make a change in the funding mechanism workable."[130]

33. On December 13, 2002, the Commission issued a Public Notice inviting comment on NECA's proposed cost recovery guidelines.[131] Four parties filed comments in response to this Public Notice, and four parties filed reply comments.[132] Commenters generally supported NECA's recommendation for compensation of IP Relay on a per-minute basis at the same rate as traditional TRS.[133] Commenters also agreed that all IP Relay calls should continue to be compensated from the Interstate TRS Fund because it was impossible to automatically determine the location of an IP Relay caller[134] and such an arrangement would promote the growth of IP Relay and competition among IP Relay providers.[135]

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[123] NECA, *Recommended Internet Protocol (IP) Cost Recovery Guidelines*, CC Docket No 98-67 (filed Oct. 9, 2002) (*IP Relay Cost Recovery Recommendations*).

[124] *Id.* at 12.

[125] *Id.*

[126] *Id.* at 13.

[127] *Id.*

[128] *Id.*

[129] *Id.* at 14.

[130] *Id.*

[131] *Interstate Telecommunications Relay Service (TRS) Fund Advisory Council Files Proposed Guidelines for the Recovery of Costs Associated with Internet Protocol Relay Services*, Public Notice, CC Docket No. 98-67, DA 02-3409, 17 FCC Rcd 24812 (Dec. 13, 2002).

[132] Comments were filed by AT&T, NECA, Sprint, and MCI (WorldCom). Reply comments were filed by AT&T, Hamilton, Verizon, and MCI (WorldCom).

[133] *See, e.g.*, Hamilton Reply at 2-3; MCI (WorldCom) Reply Comments at 2; AT&T Reply Comments at 2.

[134] *See, e.g.*, AT&T Comments at 4; MCI (WorldCom) Comments at 2.

[135] *See, e.g.*, AT&T Comments at 3-4; MCI (WorldCom) Comments at 2.

2. Discussion

34. We are presented with two distinct cost recovery issues with respect to IP Relay: first, what cost methodology should we adopt to compensate providers for their costs of providing eligible IP Relay service, and second, by what mechanism can we determine (directly or by proxy) which IP Relay calls are interstate and which are intrastate so that the states, as well as the Interstate TRS Fund, are responsible for the cost of IP Relay. As discussed below, we conclude that the per minute reimbursement methodology, presently in place for all types of TRS, should continue to be used for IP Relay, and we therefore adopt that methodology for IP Relay. We seek further comment, however, in the *FNPRM* below, on what mechanism we might adopt to ensure that, consistent with congressional intent, only the costs of interstate IP Relay calls are compensated from the Interstate TRS Fund. Although, as noted above, this issue was previously raised, we believe that it is important to refresh the record on this issue and that we are able to address, in tandem, possible means of determining which calls are interstate and which calls are intrastate for both of the Internet based TRS services, *i.e.*, IP Relay and VRS.

35. *Cost Recovery Methodology.* We conclude that the per minute reimbursement methodology presently in place for all types of TRS should continue to be used for IP Relay, and therefore we adopt that cost recovery methodology for compensating eligible providers of this service. We agree with NECA that the same national average rate development methodology used for traditional TRS service should apply to the provision of IP Relay. We note that no party has opposed the continued use of this methodology for IP Relay, or is on record as supporting an alternative cost recovery approach.

36. At the same time, we question whether the same per-minute compensation rate should apply to both IP Relay and traditional TRS. We note, for example, that the use of IP Relay has matured to the point where presently the number of IP Relay minutes per month is over double the number of minutes of interstate traditional TRS.[136] In addition, the costs associated with providing each service may be sufficiently different so that under the present arrangement the providers of one service may be significantly over-compensated and the providers of the other service may be significantly under-compensated. Therefore, in the *FNPRM* below we seek comment on whether we should direct the TRS Fund Administrator to calculate and propose for Commission adoption separate per-minute compensation rates for IP Relay and traditional TRS based on the respective costs and projected minutes of use for each of these forms of TRS.

37. *Determining which calls are interstate and which calls are intrastate.* The issue of determining what mechanism might be adopted to determine which IP Relay calls are interstate, and therefore compensable from the Interstate TRS Fund, and which calls are intrastate, requires us to address the tension among: Congress's directive that states compensate providers of *intra*state TRS and the Interstate TRS Fund compensates providers of *inter*state TRS; the fact that the record does not indicate that TRS providers can automatically determine the location of the person using the Internet-based leg of an IP Relay call, and therefore determine whether the particular call is interstate or intrastate[137]; and Congress's directive that we encourage existing technology and not impair the development of new technology. As we recognized as much in the *IP Relay Declaratory Ruling & FNPRM,* the present arrangement of compensating all IP Relay calls from the Interstate TRS Fund was intended to be an

[136] According to NECA, in March 2004 there were approximately 2.2 million minutes of traditional interstate TRS and 5.2 million minutes of IP Relay.

[137] With an IP Relay TRS call, one party to the call is connected to the CA via the Internet and communicates with CA via text; the other party to the call communicates with the CA via the PSTN. Therefore, the CA is simultaneously engaged in a PSTN telephone call with one party, and an Internet-based text conversation with the other party. The nature of a TRS call, however, is not dependent on how the two legs to the call are completed or by the type of transport that is used. Rather, the interstate or intrastate nature of a TRS call is based on the physical location of the parties to the call; in that way, each TRS call can be categorized as either interstate or intrastate.

interim one.[138] Therefore, as noted above, we seek comment in the *FNPRM* below on what mechanism we might adopt to ensure that the Interstate TRS Fund compensates IP Relay providers only for the costs of interstate IP Relay calls, and that the states assume the burden of compensating providers of intrastate service.

C. IMPROVED TRS MEASURES (CG DOCKET NO. 03-123)

38. In the June 2003 *Second Improved TRS Order & NPRM,* the Commission sought comment on additional issues concerning the provision of TRS, including other services and features that could further the statutory mandate of functional equivalency. We address these matters below.

1. Emergency Preparedness for TRS Facilities and Services

39. *Background.* In the *Second Improved TRS Order & NPRM,* we noted that in 1988 the Commission created the Telecommunications Service Priority (TSP) Program as the regulatory framework to guide telecommunications carriers in repairing or providing new telecommunications services in the event of a disaster.[139] The program was established to help reduce the chaos after a disaster when carriers may be overwhelmed with requests for repairs or new services. In accordance with the TSP rules, telecommunications services are prioritized so that the carriers can determine which services to repair first.

40. Under the TSP rules, entities engaged in national security and emergency preparedness (NSEP)[140] activities that rely on telecommunications services to carry out these activities qualify for participation in the program. There are two NSEP categories: "Emergency NSEP" services and "Essential NSEP" services.[141] These categories (and subcategories) set forth particular functions that a telecommunications service must support in order for the service to obtain a TSP designation, and therefore be eligible for priority restoration or provisioning before service is restored to non-TSP entities.[142] A service designated under the TSP program is assured of restoration of existing circuits or provisioning of new circuits before service is restored to non-TSP services. Telecommunications lines serving federal, state, and local government agencies (such as 911 call centers), as well as private firms, can be covered by the program, provided they serve at least one of the enumerated national security or

[138] *IP Relay Declaratory Ruling & FNPRM* at ¶¶ 20-21.

[139] *Second Improved TRS Order & NPRM* at ¶ 104; *see also* 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 5.

[140] National security and emergency preparedness telecommunications services (or NSEP services) are defined to be those "telecommunications services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States." *See* 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 3.f.

[141] Telecommunications services in the Emergency NSEP category are those "new services so critical as to be required to be provisioned at the earliest possible time, without regard to costs of obtaining them." Telecommunications services in the Essential NSEP category are those services "required to be provisioned by the due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs." There are four subcategories to the Essential NSEP: (1) National Security Leadership; (2) National Security Posture and U.S. Population Attack Warning; (3) Public Health, Safety, and Maintenance of Law and Order; or (4) Public Welfare and Maintenance of National Economic Posture. The third subcategory noted above includes, for example, services necessary to support population warnings, weather crisis, hospitals, and distributions of medical supplies. *See* 47 C.F.R. § 64, Appendix A (Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)) at 12.

[142] Priority levels of 1 through 5 may be assigned to services within the categories and subcategories. *See id.* at 3.i.