VRS waivers.[310] Hamilton also seeks waiver of voice initiated calls, including voice carry over (VCO)[311] and Speech-to-Speech (STS),[312] as well as hearing carry over (HCO).[313] In addition, Hamilton requests that, to the extent necessary, we waive the automatic call forwarding requirement in circumstances where the called party is a VRS user.[314] Further, Hamilton seeks clarification that VRS providers need not provide STS or Spanish Relay.[315] Finally, these parties request that we conform the various IP Relay and VRS waiver expiration dates, and combine the required annual reporting requirements for IP Relay and VRS into one annual filing.

107. On October 6, 2003, Hamilton's and Hands On's *Petitions* were placed on Public Notice.[316] On October 8, 2003, AT&T's *Petition* was placed on Public Notice.[317] In response to the Public Notices, three parties filed comments.[318] No reply comments were filed.

108. On December 12, 2003, Hands On filed an amendment to its waiver request, asserting that VRS should be made a mandatory service and that, relatedly, the speed of answer waiver should be for only one year, not five years (as Hands On originally requested).[319] Hands On summarizes that making VRS a mandatory TRS service, and requiring VRS providers to meet the speed of answer rule, are essential steps to making VRS functionally equivalent to voice telephone service.[320] Hands On's amended filing followed CSD's November 25, 2003, amendment to its comments, wherein CSD asserted that VRS should be a mandatory TRS service and that the speed of answer requirement should be waived for only one year.[321]

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[310] Hamilton Relay, Inc., *Petition for Waiver Extension,* filed September 15, 2003; Hands On Video Relay Service, Inc., *Petition for Waiver,* filed September 22, 2003, AT&T Corp., *Petition for Limited Reconsideration and for Waiver,* filed September 23, 2003.

[311] Voice carry over (VCO) is a form of TRS used by persons with hearing disabilities who are able to speak directly to another end user. The communications assistant types the response back to the person with the hearing disability, but does not voice the conversation. *See* 47 C.F.R. § 64.601(9).

[312] Hamilton *Petition* at 10-11.

[313] Hearing carry over (HCO) is a form of TRS used by persons with speech disabilities who are able to listen to the other end user. The communications assistant speaks the text as typed by the person with the speech disability. *See* 47 C.F.R. § 64.601(7).

[314] Hamilton *Petition* at 9-10.

[315] *Id.* at 9. This request for clarification refers to our discussion of this issue in the *TRS Cost Recovery MO&O* at ¶¶ 25-27.

[316] *Hamilton Relay, Inc. and Hands On Video Relay Service, Inc. Petitions for Waiver Extension, Permanent Waiver, and Clarification of Video Relay Service Requirements*, Public Notice, CC Docket No. 98-67, DA 03-3036 (Oct. 6, 2003).

[317] *AT&T Corp. and Verizon File Petitions for Reconsideration of Telecommunications Relay Service Requirements from the Second Improved TRS Order & NPRM, FCC 03-112*, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, DA 03-3109 (Oct. 8, 2003).

[318] *See e.g.* Comments and Request for Clarification, filed by Communication Services for the Deaf, Inc. (CSD), October 20, 2003; Comments of Sorenson Media, Inc., filed by Sorenson Media, Inc., October 20, 2003; Comments of Sprint Corporation, filed by Sprint Corporation, October 20, 2003.

[319] Hands On *Amendment to Waiver Request,* filed December 12, 2003.

[320] *Id.* at 5.

[321] CSD *Ex Parte Amendment to Comments on Petitions for VRS Waivers* at 1, filed November 25, 2003. As we note further below, the question whether VRS should be a mandatory type of TRS has only recently been raised, and therefore it would be premature to address it at this time. We seek comment on that issue in the *FNPRM* below.

2. Discussion

a. Extension of TRS Waivers Granted in the December 31, 2001, *VRS Waiver Order*

109. Our rules set forth operational, technical, and functional mandatory minimum standards applicable to the provision of TRS.[322] These standards apply to all forms of TRS when they are offered, unless they are waived. Therefore, for a provider to be eligible for reimbursement from the Interstate TRS Fund[323] for the provision of TRS, the provider must either meet all applicable mandatory minimum standards or request and receive a waiver of the standards.

110. In analyzing the applicability of our TRS mandatory minimum standards to VRS, we consider established legal standards for waiver of the Commission's rules. As we have noted, the Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."[324] Furthermore, the Commission may only waive a provision of its rules for "good cause shown."[325] The Commission must take a "hard look" at applications for waiver and must consider all relevant factors when determining if good cause exists.[326] The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[an] applicant [for waiver] faces a high hurdle even at the starting gate."[327] In addition, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."[328] Finally, we have also regularly reminded that waiver of one or more portions of the Commission's rules does not excuse an applicant from compliance with the Commission's other requirements.[329]

111. Applying these standards, we find good cause exists to grant Hamilton's, Hands On's, and AT&T's waiver requests, to the extent indicated below, with respect to the five TRS requirements originally waived in the December 31, 2001, *TRS Waiver Order*, and that doing so is in the public interest. As set forth below, these waivers are granted provided that VRS providers submit an annual report to the Commission, in narrative form, detailing: (1) the provider's plan or general approach to meeting the waived standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standard; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waivers should continue in effect. Further, as requested by the parties and for administrative convenience, VRS providers may combine the reporting requirement established in this Order with existing VRS/IP Relay reporting requirements scheduled to be submitted annually on April 16th of each year pursuant to the *IP Relay Order on Reconsideration* and the *Second Improved TRS Order &*

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[322] *See* 47 C.F.R. § 64.604.

[323] *See Improved TRS Order & FNPRM* at ¶ 39.

[324] *FPC v Texaco, Inc.*, 377 U.S. 33, 39 (1964).

[325] 47 C.F.R. § 1.3.

[326] *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

[327] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[328] *Northeast Cellular Telephone Company, L.P. v FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[329] *See* 47 C.F.R. § 1.3; *Part 68 Waiver Request of Alameda Engineering, Inc.*, Order, 10 FCC Rcd 12135, 12139 (Sept. 28, 1995).

NPRM.[330] Further, for administrative convenience, and also consistent with the *IP Relay Order On Reconsideration* and the *Second Improved TRS Order & NPRM*, all waivers granted herein, with the exception of emergency call handling and speed of answer, will expire on January 1, 2008. Because the speed of answer issue is raised below in the *FNPRM*, the waiver for VRS of the speed of answer requirement will end on January 1, 2006, or at the time the Commission adopts a speed of answer rule for VRS, whichever is earlier. The waiver for emergency call handling will expire on January 1, 2006.

112. As set forth below, we extend the waivers of the following mandatory minimum standards for providers of VRS: (1) types of calls that must be handled; (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; and (5) pay-per-call services.

113. *Types of Calls.* Commission rules require TRS providers to handle any type of call normally handled by common carriers.[331] In the *VRS Waiver Order*, the Commission granted VRS providers a two-year waiver of the requirement to offer operator assisted calls and to bill certain types of long distance calls to the end user.[332] The Commission conditioned this waiver on VRS providers allowing "VRS calls to be place[d] using calling cards and/or provid[ing] free long distance calls during the waiver period."[333]

114. Petitioners contend that extension of this waiver is necessary because it continues to be technologically infeasible for VRS providers to determine if a VRS call is local or long distance.[334] Petitioners and commenters also agree that VRS providers do not have the billing mechanism to handle operator assisted calls or to bill long distance calls.[335]

115. We agree with the parties that it remains technologically infeasible for VRS providers to offer operator assisted calls and to bill for certain types of long distance calls because one leg of the VRS call is transmitted over the Internet.[336] We therefore grant VRS providers a waiver of this TRS requirement until January 1, 2008, conditioned on the filing of an annual report with the Commission as indicated above. We will also continue to require VRS providers to allow calls to be placed using calling cards and/or to provide free long distance calls during the waiver period.

116. *Emergency Call Handling.* Our rules require TRS providers to automatically and immediately transfer emergency calls to an appropriate public safety answering point (PSAP).[337] The *VRS Waiver Order* granted VRS providers a two-year waiver of this requirement, but also required VRS providers to clearly explain on their website and in any VRS promotional materials "the shortcomings and potential dangers of using VRS to place an emergency call using 911."[338]

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[330] *See Second Improved TRS Order & NPRM* at ¶ 76 & n.249; *IP Relay Order on Reconsideration* at ¶ 28 (annual reports required for waivers set forth in the *IP Relay Order on Reconsideration* and the *Second Improved TRS Order & NPRM* are due twelve months after date the *IP Relay Order on Reconsideration* was published in the Federal Register, which was April 16, 2003).

[331] *See* 47 C.F.R. § 64.604(a)(3).

[332] *VRS Waiver Order* at ¶ 10.

[333] *Id.*

[334] Hamilton *Petition* at 8; Hands On *Petition* at 5-6.

[335] Hamilton *Petition* at 8; Hands On *Petition* at 5-6; Sorenson Comments at 5; CSD Comments at 2.

[336] Hands On *Petition* at 2; Hamilton *Petition* at 8; CSD Comments at 2.

[337] *See* 47 C.F.R. § 64.604(a)(4); *see also Second Improved TRS Order & NPRM* at ¶¶ 37-42.

[338] *VRS Waiver Order* at ¶ 14.

117. Petitioners contend that extension of this waiver is appropriate because VRS users gain access to VRS via a computer and Internet address, rather than via a telephone, and therefore VRS providers do not receive the automatic number identification (ANI) of the calling party. As a result, the VRS providers cannot identify the caller's location to automatically pass that information on to the PSAP. Commenters agree that, for this reason, this requirement should be waived for VRS providers.[339]

118. The record reflects that VRS providers currently do not have the technology to automatically transfer emergency calls, with the caller's location information, to the appropriate emergency service provider.[340] We also note that no party, including those in the disability community, filed comments opposing an extension of the emergency call handling waiver for VRS providers. Therefore, because it is currently technologically infeasible for VRS providers to automatically and immediately transfer emergency calls to the appropriate PSAP, we waive this TRS mandatory minimum standard. Because of the importance of emergency call handling, however, this waiver will expire on January 1, 2006, and is conditioned on the filing of an annual report with the Commission as indicated above. In addition, we will continue to require VRS providers to inform VRS users in their promotional materials and on their website of the potential dangers of using VRS for emergency calls.

119. *Speed of Answer.* Our rules mandate that 85 percent of relay calls must be answered within 10 seconds "by any method which results in the caller's call immediately being placed, not put in a queue or on hold."[341] Because this rule is based on projected call volumes and such projections are difficult to make for a new service, the *VRS Waiver Order* waived this TRS mandatory minimum standard for VRS providers.[342] The Commission's aim was to encourage more entrants into the VRS market and help provide more time for technology to develop.[343] The Commission also reasoned that because demand for VRS was undetermined, the 85/10 rule might keep potential VRS providers out of the market, thereby hindering the development and growth of VRS.[344]

120. As a general matter, petitioners assert that this waiver should be extended because VRS is still in its infancy, it is not a mandatory TRS service, and VRS providers do not have sufficient data with which to determine staffing needs to comply with this rule.[345] Petitioners and commenters contend that VRS is still in a "start-up" period, and that during this period staffing requirements may not be clear, and therefore available staffing may not be sufficient to promptly handle all of the incoming VRS calls during times of high demand.[346] CSD and Hands On, however, although initially supporting a five-year waiver of this requirement,[347] assert that this waiver should be granted only for one year.[348] CSD rests its

[339] CSD Comments at 3; Sorenson Comments at 3.

[340] CSD Comments at 3.

[341] *See* 47 C.F.R. § 64.604(b)(2). This rule is often referred to as the 85/10 rule.

[342] *VRS Waiver Order* at ¶ 16.

[343] *Id.*

[344] *Id.*

[345] Hamilton *Petition* at 6; Hands On *Petition* at 5.

[346] Hands On *Petition* at 5; Hamilton *Petition* at 6; Sorenson Comments at 3.

[347] In its initial comments, CSD asserted that prior to the reduction of the VRS compensation rate in the *Bureau TRS Order,* it had success in complying with this rule for VRS, but that as a result of the lower rate it has not been able to staff adequate positions to meet the rule during peak periods of demand. CSD therefore supported extension of the waiver "at this time" because "uncertainty in the rate prevents CSD from being able to commit to any service level requirements without significant financial risk." CSD Comments at 4-5. In its *Petition for Waiver*, Hands On asserted that the original basis for the waiver of this requirement continues, and that with increased call volume staffing may not be sufficient to handle all demand during busy hours. Hands On *Petition* at 4-5.

assertion on its view that the interim reduction in the VRS compensation rate has resulted in a "less than functionally equivalent" Video Relay Service because, in part, the lower compensation rate has made it difficult for them to meet the speed of answer rule.[349] In other words, CSD suggests that the compensation rate is necessarily tied to the standard of service that is provided, and therefore that by eliminating the waiver for speed of answer the "functionally equivalent bar" will be raised for all VRS providers, and the VRS compensation rate will ultimately reflect a higher standard of service, not a lower standard of service.[350] CSD nevertheless asks for a one-year waiver so that providers can prepare to meet the 85/10 standard under a final (*i.e.*, non-interim) compensation rate.[351] Hands On, in its amendment to its waiver request, agrees with CSD, asserting that the only reason it cannot meet the speed of answer rule is cost.[352] Hands On therefore requests that the waiver of the speed of answer rule be for only one year. Hands On further suggests that after one year the standard for VRS should be that 85 percent of all calls must be answered within 20 seconds, instead of the 10 seconds set forth in the rule.[353]

121. We find that VRS will continue to benefit from an extension of the waiver of our speed of answer rule, and therefore we waive our speed of answer requirement as set forth herein. We condition this waiver on VRS providers submitting to the Commission an annual report as indicated above detailing, and which also summarizes the provider's speed of answer data for the prior twelve-month period. Although we are extending this waiver, we again urge providers to work diligently to meet the needs of callers. We note that the record reflects that VRS is a highly competitive service, and that providers who do not provide prompt and efficient service will run the risk that customers will go elsewhere.[354] We believe that this competition should provide incentive for VRS providers to answer VRS calls as promptly as possible until such time as we terminate this waiver. We also note that because VRS remains a voluntary service, it is appropriate to provide flexibility that might not be warranted for a mandatory service.

122. With regard to CSD's and Hands On's concerns, we believe that it is premature to require VRS providers to meet the speed of answer requirement (or to adopt a different speed of answer requirement for VRS), and note that the record as a whole does not reflect that the sole, or even principal, reason that this requirement cannot be met is because of the current VRS compensation rate.[355]

(...continued from previous page)

[348] *See* CSD *Ex Parte Amendment to Comments on Petitions for VRS Waivers* at 1; Hands On *Amendment to Waiver Request*.

[349] CSD *Ex Parte Amendment to Comments on Petitions for VRS Waivers* at 6.

[350] *Id.*

[351] *Id.* at 6-7. As we have noted above, CSD also requests in its Ex Parte filing that we consider making VRS a mandatory service that must be provided 24 hours a day, seven days a week. CSD suggests that "[o]nly if this service is mandated and provided twenty-four hours a day/seven days a week will it truly provide the functionally equivalent service contemplated in the ADA." *Id.* at 7. Because comment has not been sought on this issue, it would be inappropriate to address it at this time. We raise that issue in the *FNPRM* below.

[352] Hands On's *Amendment to Waiver Request* at 2.

[353] *Id.* at 4. Hands On, like CSD, also addresses the question whether VRS should be a mandatory service that is required to be offered twenty-hours a day, seven days a week . Hands On asserts that after July 1, 2004, VRS should be a mandatory service that must be offered 24/7. *Ibid.* Again, because we have not previously sought comment on whether VRS should be a mandatory service, we cannot address that issue at this time, but we raise it in the *FNPRM* below. We note, however, that our regulations provide that non-mandatory services (like VRS) need not be offered 24/7; therefore, this is not a requirement that has been "waived" for a given period of time and is subject to extension. 47 C.F.R. § 64.604(b)(4).

[354] Hands On *Petition* at 5.

[355] *See* Hamilton *Petition* at 6-7.

Nevertheless, we understand CSD's and Hands On's concerns about the quality of service, and the apparent "Catch-22" that so long as a mandatory minimum standard is waived providers cannot be compensated for the costs of meeting the requirement, but that without additional compensation they cannot cover the costs of meeting the requirement to therefore justify the end of the waiver. We will rely on the annual reports to inform us on when the termination of this waiver may be appropriate, as well as on what additional costs may be necessary. In this regard, we intend to closely monitor all of the TRS waivers to ensure that they do not have the unintended effect of "lowering the bar" for quality of service where it is not necessary to do so because of technological or other similarly compelling reasons.

123. Further, because of the importance of this issue to the notion of functional equivalency, we raise below in the *FNPRM*, in connection with other issues concerning VRS, issues concerning speed of answer and the provision of VRS. The comments we receive in response to this *FNPRM* will supplement the information we receive in the annual reports. Because we have expressly raised this issue in the *FNPRM*, the speed of answer waiver for VRS will terminate on January 1, 2006, or at such time as the Commission adopts a rule addressing speed of answer for VRS, whichever is earlier.

124. *Equal Access to Interexchange Carriers.* Our rules require that TRS users have access to their chosen interexchange carrier through TRS to the same extent that such access is provided to voice users.[356] In the *VRS Waiver Order*, the Commission granted VRS providers a two-year waiver of this TRS mandatory minimum standard, recognizing that the systems necessary to hand off a video teleconferencing call to a carrier preferred by the end user do not yet exist.[357]

125. Petitioners contend that a technical solution to this problem has not been developed, and that therefore an extension of this waiver is appropriate.[358] Commenters support extension of this waiver, noting that because VRS providers do not receive a caller's ANI via the Internet, they do not have the ability to identify long distance calls, much less to automatically route the call to the calling party's carrier of choice.[359] Petitioners and commenters assert that a viable alternative to this TRS requirement is for the Commission to continue to require VRS providers to offer free long distance calling.[360]

126. Hamilton goes one step further, and argues that this requirement should be permanently waived for VRS providers, as it was for IP Relay providers.[361] Hamilton argues that in the *IP Relay Declaratory Order & FNPRM* the Commission recognized the inherent difficulty in determining whether an IP Relay call is long distance or local, and that because IP Relay providers provide long distance services free of charge there was no need for a carrier of choice requirement.[362] CSD notes, however, that even though technology that allows providers to approximate the location of an IP user does not exist today, it may become available in the future.[363]

127. Based on the record, we grant VRS providers a waiver of the equal access to interexchange carrier requirement until January 1, 2008. We do not grant a permanent waiver because we agree with CSD that it is likely that technology that will allow VRS providers to approximate the location

[356] *See* 47 C.F.R. § 64.604(b)(3); *see also Second Improved TRS Order & NPRM* at ¶¶ 54-61.

[357] *VRS Waiver Order* at ¶¶ 17-18.

[358] Hamilton *Petition* at 8; Hands On *Petition* at 5-6.

[359] CSD Comments at 2; Sorenson Comments at 6.

[360] Hamilton *Petition* at 8; CSD Comments at 2; Sorenson Comments at 6.

[361] Hamilton *Petition* at 8; *see IP Relay Declaratory Ruling* & FNPRM at ¶ 31.

[362] *Id.*

[363] CSD Comments at 2-3.

of VRS users will become available in the future. Until such time, however, we will require VRS providers to provide free long distance service to their VRS customers.[364] We also condition this waiver on VRS providers submitting an annual report to the Commission as indicated above.

128. Relatedly, Hands On seeks clarification that it may require credit card billing to complete international calls.[365] Hands On contends that requiring credit card billing for international calls will reduce the potential for abuse or gaming of the system (*i.e.*, a caller located outside of the United States using United States VRS to complete a call to another party located outside of the United States).[366] CSD supports Hands On's request, but notes that billing for VRS international calls would have to be measured from the VRS provider's location to the international destination, and not from the location of the VRS user initiating the call, because VRS providers are unable to determine the location of the VRS party making the call.[367]

129. We believe the parties are confusing our rules governing the provider's compensation for eligible TRS services from the Interstate TRS Fund, with our rules concerning the provider's ability to charge the TRS user for the long distance (including international) charges that apply to such calls. The Interstate TRS Fund does not currently reimburse providers for the costs of providing international calls via IP Relay.[368] No such restriction currently applies, however, to international VRS calls.[369] At the same time, for IP Relay we have waived the interexchange carrier of choice requirement so long as the provider does not charge for the long distance call.[370] Therefore, IP Relay providers *may* charge for long distance calls if they offer carrier of choice; they may even do so for international IP Relay calls, although, as noted above, they will not be compensated from the Interstate TRS Fund for the TRS minutes involved in such a call.[371] With respect to VRS, we have similarly conditioned our waiver of the carrier of choice requirement on the VRS providers offering free long distance calls to the VRS customer. At the same time, as with IP Relay, we clarify that the VRS provider may charge for the long distance call provided it offers carrier of choice; this rule also applies to international VRS calls.

130. *Pay-Per-Call Services – 900 number calls.* Our rules require TRS providers to be capable of handling pay-per-call calls (*i.e.*, 900 number calls).[372] The *VRS Waiver Order* granted VRS providers a two-year waiver of this TRS requirement, noting that demand for pay-per-call VRS was

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[364] In other words, as with IP Relay, VRS providers cannot bill the user for any long distance charges if they do not offer carrier of choice; conversely, VRS providers that offer carrier of choice may charge for the call (*e.g.*, via a calling card).

[365] Hands On *Petition* at 6.

[366] *Id.*

[367] CSD Comments at 9. We note that such an arrangement would be contrary to our rules concerning carrier of choice and traditional TRS calls; *i.e.*, in those circumstances, a long distance TRS call is billed from the location of the calling party to the location of the called party, without regard to the location of the TRS facility and CA. *See generally* 47 U.S.C. § 225(d)(1)(D); *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990,* Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 90-376, 5 FCC Rcd 7187 at ¶ 14 (Nov. 16, 1990)

[368] *See Bureau TRS Order* at ¶ 26 n.73.

[369] The Interstate TRS Fund administrator has informally indicated that at this time very few international VRS calls are made.

[370] *IP Relay Declaratory Ruling & FNPRM* at ¶ 31.

[371] We recognize, and expect, that as a practical matter a provider's inability to receive compensation from the Interstate TRS Fund for international IP Relay call minutes will operate as a strong disincentive to handle such calls.

[372] *See* 47 C.F.R. § 64.604(c)(6).

expected to be low and the cost of compliance was high.[373]

131. Petitioners now seek extension of this waiver, asserting that VRS providers do not have access to the calling party's ANI, and therefore have no way to bill the calling party for the 900 call.[374] Petitioners note that, for this reason, we recently extended the waiver of this requirement for IP Relay.[375] Petitioners further assert that simply absorbing the costs of 900 number calls would unnecessarily increase the cost of VRS and unfairly subsidize users of this particular service.[376] Commenters support extension of this waiver, stating that there continues to be minimal demand for these services among VRS customers, and that the technological obstacles to handling these types of calls have not been removed.[377]

132. We agree with the parties that VRS providers do not have the technology to complete pay-per-call (900 number) calls, and therefore we waive this TRS requirement until January 1, 2008. We believe that technology will be developed to allow VRS providers to handle these types of calls, and will require VRS providers to submit a report annually to the Commission as indicated above and detailing advancements that may enable VRS providers to comply with this requirement.

b. New Waiver Requests

133. In addition to requesting extension of the waivers of the TRS mandatory minimum standards set forth in the *VRS Waiver Order*, Hamilton seeks waiver of various other TRS requirements for VRS providers. Specifically, Hamilton seeks waiver of two kinds of voice initiated calls, voice carry over (VCO) and Speech-to-Speech (STS), as well as hearing carry over (HCO).[378] Hamilton also seeks waiver of the automatic call forwarding requirement in circumstances where the *called* party is a VRS user.[379] Further, Hamilton seeks clarification that VRS providers need not provide STS or Spanish Relay.[380] We address these issues, in turn, below.

134. *Voice Initiated Calls and HCO.* Hamilton seeks waiver for VRS providers of the TRS mandatory minimum standards requiring the provision of voice initiated calls, *i.e.,* VCO and STS, as well as HCO.[381] Hamilton notes that in the *IP Relay Order on Reconsideration* the Commission waived these requirements for IP Relay providers because technological limitations prevent IP Relay providers from providing such calls.[382] Hamilton contends that the same technological limitations that prevent IP Relay providers from providing voice initiated calls – *i.e.,* that the Internet is used for one leg of the call and the quality of a voice call of the Internet is often poor and depends on the user's CPE – also limits the ability of VRS providers to provide such calls. For this reason, Hamilton seeks waiver of the requirement that VRS providers must offer VCO and HCO until January 1, 2008. CSD supports Hamilton's request for

[373] *VRS Waiver Order* at ¶¶ 19-20.

[374] Hamilton *Petition* at 7; Hands On *Petition* at 6-7.

[375] *See IP Relay Order on Reconsideration* at ¶¶ 19-22.

[376] Hands On Comments at 7.

[377] CSD Comments at 3-4; Sorenson Comments at 6-7.

[378] Hamilton *Petition* at 9-10.

[379] *Id.* at 9-10.

[380] *Id.* at 9.

[381] Hamilton *Petition* at 10. We note that Hamilton's request that we waive STS for 5 years (as we did for IP Relay providers) conflicts with its request that we clarify that we have previously determined that VRS providers need not provide STS and Spanish Relay. *See id.* at 9-10. We address the application of STS to VRS below.

[382] *Id.* at 10-11; *see IP Relay Order on Reconsideration* at ¶¶ 13-18.

waiver of this requirement.[383]

135. We agree that because the Internet has to be used for the voice leg of a VCO or HCO VRS call, the quality of such voice calls is uncertain with current technology. For this reason, and because we have waived this requirement for providers of IP Relay, we waive the requirement that VRS providers must provide VCO and HCO until January 1, 2008.[384] This waiver is conditioned on the annual submission of a report to the Commission as detailed above.

136. *Automatic Call Forwarding.* In the *Second Improved TRS Order & NPRM,* we did not require automatic call forwarding[385] as a TRS mandatory minimum standard because we concluded that this feature is one that the called party subscribes to through his or her local telephone company. As we noted, when a called party has subscribed to call forwarding, any calls to that number – whether from a CA relaying a TRS call or from a person making a conventional voice call – will be automatically forwarded to the alternate number designated by the called party.[386] Hamilton agrees with the Commission's conclusion when it is the VRS user placing a call to a voice user.[387] Hamilton points out, however, that when the role of the callers is reversed – *i.e.,* where a voice caller initiates a VRS call, and therefore the VRS CA must make an out-bound VRS call to a VRS user – automatic call forwarding will not work because the called party's number is really an IP address, and "IP addresses and log-ins (*i.e.,* the method by which VRS users receive calls) do not contain the ANI information necessary to permit call forwarding using the traditional telephone network."[388] Therefore, Hamilton, requests that "to the extent that a waiver of this requirement is necessary," the Commission should waive this requirement in this context until January 1, 2008, consistent with the other waivers granted to VRS providers.[389] CSD supports Hamilton's request for waiver of this feature in this context.[390]

137. Hamilton seeks waiver of a requirement that does not exist. We have not required that TRS providers offer automatic call forwarding in any context; therefore, automatic call forwarding need not be provided when a VRS call is initiated by a voice telephone user. Because we have not imposed an automatic call forwarding requirement, no waiver is necessary.

138. *Speech-to-Speech and Spanish Relay.* Hamilton correctly notes that Section 64.603 of our regulations requires TRS providers to offer STS relay service and Spanish Relay.[391] Hamilton also correctly notes that in the *TRS Cost Recovery MO&O* we stated that VRS providers are not required to

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[383] CSD Comments at 7.

[384] We note that we have also waived the requirement that IP Relay and VRS providers must provide VCO-to-TTY, HCO-to-TTY, VCO-to-VCO, and HCO-to-HCO. *See Second Improved TRS Order & NPRM* at ¶¶ 35-36. Contrary to Hamilton's assertion, however, *see* Hamilton *Petition* at 11 n.30, we have not waived the requirement that VRS providers must provide two-line VCO and two-line HCO. Those types of TRS calls do not present the same problem of using voice over the Internet because the voice call is made on a separate telephone line. *See generally Second Improved TRS Order & NPRM* at ¶¶ 28-30.

[385] Automatic call forwarding "permits calls placed by a TTY or other TRS user to another party's telephone number through a CA to be automatically forwarded to that other party's forwarded telephone number as previously designated by that other user." *Second Improved TRS Order & NPRM* at ¶ 66.

[386] *Id.* at ¶ 67.

[387] Hamilton *Petition* at 9-10.

[388] *Id.* at 10.

[389] *Id.*

[390] CSD Comments at 7.

[391] Hamilton *Petition* at 9; *see* 47 C.F.R. § 64.603.

provide STS or Spanish Relay.[392] Hamilton now seeks clarification that VRS providers need not provide STS and Spanish Relay, and that a request for a waiver, or a request for an extension of a waiver, for these forms of TRS is not necessary.[393]

139. We clarify that, as we stated in the *TRS Cost Recovery MO&O,* providers of VRS need not provide STS or Spanish Relay. As we noted, STS is a speech-based service, whereas VRS is a visual service using interpreters to interpret sign language over a video connection.[394] Further, we noted that it would be unduly burdensome to require VRS to be provided in languages other than American Sign Language.[395] Therefore, until such time as the Commission directs otherwise, the requirement that VRS providers – as TRS providers – also provide STS and Spanish Relay is waived.

3. Summary of VRS and IP Relay waivers, expiration dates, and annual report filing requirements

140. Several parties suggest that, for administrative convenience and clarity, we conform the various IP Relay and VRS waiver expiration dates to the extent possible, and combine the annual reporting requirements for IP Relay and VRS providers into one annual filing. We recognize that we have now granted waivers of TRS mandatory minimum standards for IP Relay and VRS providers in several orders, and have imposed annual reporting requirements that must address some, but not all, of these waivers. Therefore, we will require IP Relay and VRS providers to file one annual report with the Commission on April 16th of each year addressing the feasibility of meeting any of the TRS requirements waived in our various orders. As we have noted, these reports shall detail the provider's plans to meet the waived standards, the incremental costs that may be incurred in meeting the standards, any relevant technological changes affecting the waived requirements, and the progress made and steps taken to resolve the technological problems that prevent IP Relay and VRS providers from meeting these waived standards. Additionally, to conform the expiration date for all of the waivers for IP Relay and VRS, all waivers granted herein, with the exception of the emergency call handling and speed of answer waivers for VRS, shall expire on the January 1, 2008, expiration date we have mandated for VRS and IP Relay waivers in previous orders.[396] Finally, to the extent set forth above, the waivers granted in this *Order* shall apply to all current and potential VRS providers beginning on the release date of this *Order*. We have summarized the present waivers of TRS mandatory minimum standards for IP Relay and VRS providers, the expiration dates of these waivers, and the annual reporting requirements applicable to these waivers in Appendix E to the *Order*.

E. 711 ACCESS TO PAY-PER-CALL (900) SERVICES (CG DOCKET NO. 98-67)

1. Background

141. In May 2003, Sprint filed a Petition for Declaratory Ruling (*711 Petition*) requesting that the Commission declare that the manner in which it provides "900 pay-per-call services to end users who access Sprint's TRS facilities by dialing 711 fully satisfies the requirement that such services be offered

[392] *See TRS Cost Recovery MO&O* at ¶¶ 25-27.

[393] CSD states that it "understands STS to be indefinitely waived for VRS providers, and [therefore] does not see the need to seek extension of this waiver at this time." CSD *Petition* at 7 n.11.

[394] *TRS Cost Recovery MO&O* at ¶ 26.

[395] *Id.* at ¶ 27.

[396] As we have indicated above, because this issue is expressly raised in the *FNPRM* below, the waiver of the speed of answer requirement for VRS will terminate on January 1, 2006, or at the time the Commission issues an order adopting a speed of answer rule for VRS, whichever is earlier. The VRS waiver for emergency call handling will expire on January 1, 2006.

by relay providers."[397] As Sprint notes, our rules require TRS providers to offer pay-per-call services – *i.e.*, services that are accessible through use of a 900 number – as "another component of functional equivalency."[398] Our rules also require that TRS providers offer "access via the 711 dialing code to all relay services as a toll free call."[399] Further, our rules require that subscribers be given the ability to block access to pay-per-call services from their lines.[400] Sprint asserts that it has adopted its particular approach for handling 900 calls "in order to comply with the Commission's regulatory paradigm governing access to pay-per-call services"; namely, to enable Sprint "to deny access to pay-per-call services through a toll-free number – the 711 access code call is delivered to the TRS center via a toll-free number – and to ensure that there is no pay-per-call block on the line being used by the TRS caller."[401] Sprint requests that we remove any uncertainty regarding whether this approach complies with the pay-per-call requirement.[402]

142. More specifically, Sprint explains "that when a person dials the access code 711, the number is converted to the toll-free number assigned to the TRS center of the state from which the end user is calling"; for example, "the 711 voice call by an end user in North Carolina would be converted to 1-800-[...] and would then be routed by the local carrier to Sprint's TRS center handling North Carolina's calls."[403] Sprint further explains that because the Commission has recognized that pay-per-call services cannot be accessed using a toll-free dialing sequence such as a 1-800 number, a person cannot use 711 to place a 900 call.[404] Sprint, therefore, has adopted an alternate approach whereby "Sprint CAs instruct callers wishing to avail themselves of pay-per-call services to dial a special 900 number (which is provided without charge) in order to use TRS to place the 900 call."[405] In this way, Sprint asserts, Sprint "is able to ensure that there is no pay-per-call block on the line being used by such user."[406] Sprint believes that this approach satisfies our rules and, "[i]ndeed, ... may be the only way to harmonize the availability of pay-per-call services through TRS with the Commission requirement that subscribers be given the ability to block access to pay-per-call services from their lines."[407]

143. Three parties filed comments in response to the *711 Petition*: AT&T, TDI, and MCI (WorldCom). Two parties filed reply comments: Sprint and TDI. No party filing comments opposed Sprint's petition. AT&T asserts, however, that "insofar as the [*711 Petition*] may be read to imply that access by TRS customers to 900 pay-per-call services via the 711 dialing code is generally technically infeasible or unavailable, that impression is erroneous."[408] AT&T states that its TRS facilities "already offer this capability to customers who use the 711 dialing code" by using "a database that enables the [CA] to correlate the customer-provided 900 number to the appropriate center offering 900 transport for the call," and then "rout[ing] the outbound call to the identified 900 carrier."[409] AT&T also asserts that

[397] Sprint, *Petition for Declaratory Ruling*, CC Docket No. 98-67 (filed May 27, 2003) (*711 Petition*).

[398] *Improved TRS Order & FNPRM* at ¶ 98; *see also* 47 C.F.R. § 64.604 (b)(6).

[399] 47 C.F.R. § 64.603.

[400] *See* 47 C.F.R. § 64.1508 "(Blocking access to 900 service").

[401] Sprint Reply Comments at 1-2.

[402] *711 Petition* at 1-2.

[403] *Id.*

[404] *711 Petition* at 2 (citing *Improved TRS Order & FNPRM* at ¶ 98 n.200).

[405] *Id.*

[406] *Id.*

[407] *Id.*

[408] AT&T Comments at 2.

[409] *Id.* at 2-3.

"other methods are ... available to harmonize the ability to access a TRS center via the 711 code with the customer's right to block 900 calling originated from his/her telephone."[410] AT&T further explains that it provides 900 blocking capability through its "TRS Relay Choice Profile ("RCP") database."[411] AT&T therefore suggests that the Commission not conclude that Sprint's method for providing TRS users access to 900 calling is the *only* acceptable method of providing that service.[412]

144. TDI acknowledges AT&T's approach to harmonizing the Commission's rules concerning 900 calls via TRS and the separate 900-calling blocking rules by the use of customer profile databases.[413] TDI asserts, however, that many TRS users do not have profiles established with their various TRS providers, and are unaware of how to set one up.[414] TDI, therefore, believes that Sprint and MCI's (WorldCom) procedures are more "failsafe" than AT&T's.[415] Accordingly, TDI supports the *711 Petition* that Sprint's provision of 900 pay-per-call services to TRS end users who access Sprint's TRS facilities by dialing 711 fully satisfies our rules requiring that feature be offered to TRS users.[416] MCI (WorldCom) also supports Sprint's petition, and notes that its CAs also redirect the caller to a special 900 number in these circumstances so that its TRS facilities would not be conduits for the circumvention of the pay-per-call blocking rules.[417] MCI (WorldCom) states that it has "not discovered any reliable method of ensuring call blocking for callers who have requested call blocking unless it redirects a relay call made via 711 to its special 900 number."[418] In its reply comments, Sprint notes that AT&T's and MCI (WorldCom)'s approach may be valid, despite suggesting some pitfalls, and states that it is not asking the Commission to adopt its approach to the exclusion of others. Rather, Sprint simply seeks assurance that its approach does not run afoul of the Commission's rules.[419]

2. Discussion

145. We grant Sprint's *711 Petition*. Sprint's approach is a reasonable method of providing TRS users functional equivalency in making 900 pay-per-call telephone calls through TRS. We conclude that as described in the *711 Petition*, there is no benefit to Sprint expending an uncertain amount of money to develop an alternate method of complying with the TRS mandatory minimum standards that require 900 calls be available to TRS users. We do not require that pay-per-calling be available through TRS in any particular manner or via a particular technology. We find that Sprint's solution provides pay-per-call functionality to TRS users, and at the same time agree with AT&T and MCI (WorldCom) that there can be multiple ways to provide this particular functionality.

146. Relatedly, we amend the definition of "711" contained in our rules. Presently, 711 is defined as "[t]he abbreviated dialing code for accessing *all types of* relay services anywhere in the United States."[420] With the advent of Internet based TRS – *i.e.*, IP Relay and VRS – we recognize that it is not

[410] *Id.* at 3.

[411] *Id.*

[412] *Id.* at 2-3.

[413] TDI Reply Comments at 2.

[414] *Id.*

[415] *Id.*

[416] *Id.*

[417] MCI (WorldCom) Comments at 1-2.

[418] *Id.* at 2.

[419] Sprint Reply Comments at 4.

[420] 47 C.F.R. § 64.601(1) (emphasis added).

correct to suggest that these forms of TRS can be accessed by calling 711. Therefore, we amend the definition of 711 to delete the words "all types of" and therefore to read: "The abbreviated dialing code for accessing relay services anywhere in the United States."

F. HANDS ON'S APPLICATION FOR CERTIFICATION AS A VRS PROVIDER ELIGIBLE FOR COMPENSATION FROM THE INTERSTATE TRS FUND

1. Background

147. On August, 30, 2002, Hands On filed an application for "certification"[421] as a Video Relay Service provider eligible for compensation from the Interstate TRS Fund. As we have noted, VRS is a form of TRS that, rather than using TTYs, uses computers and videoconferencing software to connect the TRS user to a communications assistant who communicates with the TRS user in American Sign Language. The application indicates that Hands On seeks to provide only VRS, and not the traditional TTY-based TRS, Speech-to-Speech (STS) relay service, or Spanish Relay Services that are forms of TRS currently mandated by the Commission's rules.[422] Moreover, Hands On seeks to provide VRS neither as part of a certified state program nor as a service operated in contract with a common carrier providing interstate TRS.[423] Hands On suggests that it is eligible to receive compensation from the Interstate TRS Fund under the third prong of the eligibility standards; *i.e.*, as an "Interstate common carrier offering TRS pursuant to 64.604."[424] Hands On also acknowledges that the regulations do not specify any requirement for "certification" of TRS providers as eligible for compensation from the Interstate TRS Fund.[425]

2. Discussion

148. We dismiss the *Hands On Application* without prejudice. Neither the statute nor the regulations governing the provision of TRS provides that the Commission can "certify" any TRS provider as eligible to receive compensation from the Interstate TRS Fund.[426] The only certification process in the Commission's rules applies to state TRS programs.[427] Although, as discussed above, in the *Notice of Proposed Rulemaking* of the *Second Improved TRS Order & NPRM* we specifically sought comment on whether the Commission should establish a process whereby the Commission certifies those providers eligible for compensation from the Interstate TRS Fund,[428] in this *Order* we have declined to adopt such a procedure at this time.

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[421] Hands On's filing is captioned: "Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification Pending Processing."

[422] 47 U.S.C. § 225(c) requires that "telecommunications relay services" be provided in compliance with regulations developed by the Commission as mandated by 47 U.S.C. § 225(b). As we have noted, to date the Commission has required traditional TTY-based TRS, STS, and interstate Spanish Relay Services as mandatory TRS Services. *See, e.g., Improved TRS Order & FNPRM* at ¶¶ 13-20 (requiring STS) & ¶¶ 28-30 (requiring interstate Spanish Relay Services).

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

[424] *Hands On Application* at 5.

[425] *Id.*

[426] We note that Hands On is presently eligible for compensation from the Interstate TRS Fund both because it operates under contract with a common carrier offering interstate TRS, and because it operates as part of a certified state TRS program. *See* 47 C.F.R. § 64.604(c)(5)(iii)(F).

[427] *See* 47 C.F.R. § 64.605.

[428] *Second Improved TRS Order & NPRM* at ¶¶ 137-140.

G. PETITION FOR LIMITED WAIVER CONCERNING VIDEO RELAY SERVICE AND INTERPRETING IN STATE LEGAL PROCEEDINGS

1. Background

149. On June 12, 2003, CSD filed a Petition for Limited Waiver and Request for Expedited Relief (*CSD Petition*) requesting a "limited" waiver of our rule prohibiting CAs from refusing to handle calls in the context of TRS calls that are part of legal depositions and other legal proceedings.[429] CSD states that over the past year its VRS facilities have received an increasing number of requests to provide VRS in these circumstances.[430] CSD notes that there are usually specific qualifications, credentialing, and licensing requirements under state law that apply to interpreters in a legal setting.[431] CSD asserts that these state law requirements for legal interpreters create a conflict with the TRS mandatory minimum standards in three ways.

150. First, CSD asserts that whereas section 225 and the TRS regulations require TRS CAs to handle all calls, some state laws prohibit the use of interpreters who do not have certain credentials to interpret legal proceedings. Second, CSD asserts that under some state law interpreters are generally required to review the case and discuss the proceeding with the parties before they begin interpreting, but the TRS regulations require that call set-up be as expeditious as possible. Third, CSD notes that some states require that interpreters in a legal setting be able to testify as to the accuracy of their interpreted conversations, but that the TRS mandatory minimum standards prohibit TRS CAs from disclosing the contents of relayed conversations.[432] CSD therefore asserts that when a VRS CA receives a call that is part of a legal proceeding, the VRS provider cannot ensure that the VRS CA complies with state law and, as a result, the VRS CA is potentially exposed to civil and criminal liability under state law governing the qualifications of legal interpreters.[433] CSD also asserts that to the extent the VRS CA does not meet state requirements for legal interpreters, the legal protection that these state statutes were intended to create for

[429] Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief, CC Docket No. 98-67 (filed June 12, 2003) (*CSD Petition*).

[430] *CSD Petition* at 1. CSD notes that when it has knowledge that all parties to such proceedings are located in the same room, CSD declines to provide relay service because such calls are video relay interpreting (VRI), and not VRS calls.

[431] *Id.* at 3. As CSD notes, a summary of state interpreting laws has been prepared by the National Association for the Deaf and can be found at http://www.nad.org/infocenter/infotogo/asl/InterpStateLaws.html. *See also* Hands On Comments at 2-5; TDI Comments at 1-2; Texas Commission for the Deaf and Hard of Hearing (TCDHH) Comments at 1-2, 5; Registry of Interpreters for the Deaf (RID) Comments at 2; Chicago Hearing Society Comments at 1. RID's Standard Practice Paper on Interpreting in Legal Settings states that "[a]n interpreter's first responsibility is to weigh the information regarding the circumstances judiciously to determine whether or not she/he is qualified for the particular situation. Some reasons for declining the assignment could be related to the communication mode of the deaf people involved or personal knowledge or bias in the case. Once the interpreter has accepted an assignment, he or she has the responsibility to facilitate communication accurately and impartially between the parties." *See* www.rid.org/125.pdf. Because RID maintains that interpreting in a legal setting is such a specialized and complex field, they have developed a specialty certification for this topic with very strict eligibility requirements. *See* RID Comments at 2-5.

[432] *CSD Petition* at 3-10.

[433] CSD also notes that state legal interpreting requirements vary from state to state, and that interpreters qualified to provide legal interpreting in one state are not automatically qualified to interpret in legal proceedings in another state. Because VRS is provided in centralized locations around the United States, and is provided via the Internet, it is not possible to determine the origination of the VRS calls. CSD asserts that even if its CAs are qualified to provide legal interpreting in the state in which the VRS facility is located, the CAs may not be qualified to provide such services in either the state in which the call originates or terminates. As a result, CAs could potentially be in violation of state interpreting laws in two states. *CSD Petition* at 2-4.

deaf consumers are jeopardized.[434] CSD's suggested solution to this apparent conflict is to have the Commission waive the requirement that VRS CAs handle any type of call when the call involves a deposition or other legal proceeding so that the VRS CA can refuse such calls.

151. On August 13, 2003, the *Petition* was placed on public notice.[435] In response to the Public Notice, two parties filed comments, one party (CSD) filed reply comments, and three parties filed *ex parte* comments.[436] All commenters support CSD's *Petition* and agree that VRS is inappropriate for depositions or other legal interpreting that will be on the record in a court proceeding. At the same time, some commenters note that there are some calls concerning legal matters that are appropriate for VRS.[437] In its reply comments, CSD clarifies that it is not seeking to exclude calls that involve routine legal matters such as those between an attorney and a client or witness.[438] Rather, CSD explains that it is seeking a waiver that would excuse its VRS CAs from relaying calls involving depositions and other legal proceedings that are typically covered by state interpreter statutes governing civil and criminal proceedings, such as pre-trial and status conferences with judges, hearings, police interrogations, and other on-the-record proceedings that become part of a civil or criminal proceeding.[439]

2. Discussion

152. The Commission has frequently reiterated the applicable waiver standard: the Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."[440] Furthermore, the Commission may only waive a provision of its rules for "good cause shown."[441] The Commission must take a "hard look" at applications for waiver[442] and must consider all relevant factors when determining if good cause exists.[443] The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[an] applicant [for waiver] faces a high hurdle even at the starting gate."[444] In addition, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."[445] Under these standards we do not find that a waiver is appropriate in this situation, and therefore we deny the request.

153. The gist of CSD's *Petition* appears to be this: if a VRS call coming into a VRS facility happens to be in the context of a legal proceeding, our rules that do not permit a VRS CA to refuse the

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

[435] *Communication Services for the Deaf (CSD) Petition for Limited Waiver and Request for Expedited Relief Regarding the Provision of Video Relay Services (VRS) for Depositions and Other Legal Proceedings*, Public Notice, CC Docket 98-67, DA 03-2644 (August 13, 2003) (*CSD Petition Public Notice*).

[436] *See e.g.*, TDI Comments; Hands On Comments; CSD Reply Comments; RID Comments; Chicago Hearing Society Comments; TCDHH Comments.

[437] *See, e.g.*, TDI Comments at 2; Hands On Comments at 1.

[438] CSD Reply Comments at 1.

[439] *Id.*

[440] *FPC v. Texaco, Inc.*, 377 U.S. 33, 39 (1964).

[441] 47 C.F.R. § 1.3.

[442] *Id.*

[443] *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

[444] *WAIT Radio v. FCC*, 418 F 2d 1153, 1157 (D.C. Cir. 1969).

[445] *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F 2d 1164, 1166 (D.C. Cir. 1990).

call[446] may result in the VRS CA handling a call for which the CA is not qualified under state law governing the qualifications of interpreters in legal settings. As a result, compliance with our TRS rules may put the individual VRS CA at risk of civil or criminal liability under state law for "interpreting" in a legal proceeding without the proper credentials. Further, given the nature of TRS, the VRS CA would not be able to adequately prepare for the call, and therefore would not be able to accurately facilitate communication between the parties to the legal proceeding. Finally, the VRS CA would be precluded by our rules from testifying in court about the relayed call, or about the accuracy of his or her interpretation. CSD's proposed solution is that we waive the requirement that the VRS CA must handle these types of calls. We conclude that this request misunderstands the role of a VRS CA (or any TRS CA) under section 225 and our regulations.[447]

154. In enacting Title IV of the ADA, and creating the federally regulated TRS scheme, Congress intended that persons with hearing and speech disabilities be provided with a means of communicating with hearing individuals through a third party – the CA – who relays the conversation between the parties. To this end, as we have frequently explained, the TRS scheme is intended to ensure that persons with hearing and speech disabilities have *functionally equivalent access* to the telephone system.[448] This guidepost for the provision of TRS – that the relay service should be "functionally equivalent" to voice telephone service – means, as we have stated, that the CA "serves as a *transparent conduit* between two people communicating through disparate modes."[449] In other words, the CA's role is simply to convert typed (or signed) messages into voice messages, and vice versa, so that the parties to the call can communicate back and forth, as any parties to a telephone call would do. It is because of this limited, transparent role of the CA that we have frequently stated that completion of the initial call to the TRS facility, and connecting to a CA, is equivalent to receiving a dial tone.[450]

155. Because the intended role of a TRS CA is to be a transparent conduit that serves as a link in a telephone conversation, the TRS mandatory minimum standards include the requirement that CAs shall be prohibited from refusing calls and must handle any type of call.[451] It would simply not be consistent with the purpose of TRS, and the statutory prohibition against "relay operators ... failing to fulfill the obligations of common carriers,"[452] to permit TRS CAs to handle only certain types of calls, and therefore to refuse to handle some calls. A hearing person has the ability to use the telephone to call anyone he or she chooses without a third party determining whether the call is one that should not be permitted to be completed. The TRS scheme is intended to give consumers who use relay services this same fundamental opportunity.

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[446] As noted above, we have granted a waiver of this requirement in two circumstances – operator assisted calls and long distance calls billed to the end user. *See VRS Waiver Order* at ¶ 10.

[447] We note that CSD also asserts that the misuse of VRS for legal interpreting in state legal proceedings may result in violating the legal rights of deaf individuals. Although this may present a legitimate concern, we believe it is one that falls outside the Commission's purview. That concern is more appropriately addressed to the states.

[448] *See* House Report at 129 (1990); *Notice of Inquiry*, CC Docket No. 90-571, FCC 97-7, 12 FCC Rcd 1152 ¶2 (Jan. 14, 1997) ("TRS provides access to the voice telephone network for over 30 million Americans with hearing and speech disabilities").

[449] *TRS I* at ¶ 13 (emphasis added); *see also Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Declaratory Ruling, CC Docket No. 98-67, FCC 03-190, 18 FCC Rcd 16121 at ¶¶ 4, 33, 42 (August 1, 2003); House Report at 133 ("[TRS] services are to be governed by standards that ensure that telephone service for hearing- and speech-impaired individuals is functionally equivalent to voice services offered to hearing individuals.").

[450] *See, e.g., Improved TRS Order & FNPRM* at ¶ 2.

[451] 47 U.S.C. § 225(d)(1)(E).

[452] *Id.*

156. Therefore, the role of VRS CAs facilitating relay calls (under section 225 and the implementing TRS regulations) is different from that of interpreters in legal settings under state laws. Unlike interpreters in legal settings, VRS CAs are only responsible for relaying the information transmitted to them. They bear no responsibility for whether the information they relay is received, or received accurately.[453] Interpreters in legal settings, by contrast, may intercede on behalf of the court, counsel, or client to help ensure that full and accurate comprehension of the proceeding is taking place. They may also be asked to attest to their ability to accurately interpret the legal proceeding in question. Interpreters in legal settings are also obliged to evaluate the assignment (*i.e.*, the proceedings at hand) to determine if they are appropriately qualified, and are expected to recuse themselves or refuse the assignment if they feel they are not the appropriate interpreter. Such expectations are not – and cannot be – placed on VRS (or TRS) CAs. VRS consumers – and VRS (and TRS) providers – should clearly understand that VRS CAs do not assume such responsibilities when relaying a call.

157. The fundamental differences between the roles of a VRS CA and an interpreter in a legal setting should not be confused simply because both circumstances involve interpreting. When a call comes into a VRS facility, and is handled by a VRS CA, that CA must follow the regulatory scheme set forth in section 225 and the implementing regulations. Indeed, there is no reason that the CA should even know that the call is part of a legal proceeding that requires interpreters to meet certain qualifications; again, the CA's role is simply to relay to the hearing person by voice what was said to the CA either via text or sign language (for VRS), and to relay to the person with a hearing disability via text or sign language what the hearing person said to the CA. It follows that there is no basis to waive the requirement that VRS (or TRS) CAs may not refuse any type of call and therefore permit CAs to refuse to handle certain calls involving legal proceedings. Such a conclusion would plainly be at odds with the functional equivalency mandate and the notion that TRS facilities (and hence TRS CAs) must handle any type of call normally provided by common carriers.

158. We also note that granting the requested waiver would likely place the TRS provider and CA in a difficult situation. First, the CA would have to determine whether any particular TRS call involves a proceeding that *might* implicate laws concerning interpreting in a legal setting in the state where the call originates or terminates. If the CA determined that the call in fact was part of a legal proceeding, and that the CA was expected to act as an interpreter under state law, and not merely as a CA (a determination that may often be difficult to make), the CA would have to be permitted to refuse to complete the call. As discussed above, such a scheme would plainly run afoul of the purpose of TRS and the role of the TRS CA, and would greatly reduce the functional equivalency of TRS and violate the Congressional mandate set forth in section 225. Moreover, the reasoning underlying CSD's *Petition* could similarly apply in numerous other contexts. States could pass laws requiring that interpreters facilitating discussions involving, *e.g.*, engineering, architectural, or medical issues, have state certifications indicating that they are "qualified" to interpret conversations on such subjects in specified circumstances. Under CSD's reasoning, TRS CAs would have to be excused from handling relay calls in those circumstances as well.

159. For these reasons, if a caller attempts to use a VRS CA in a legal proceeding conducted over the telephone, the caller is simply making a TRS facilitated telephone call. Such a caller should not expect to receive "interpreting services" typical of interpreters providing services in legal settings. Rather, if a party wants or needs an interpreter for a legal proceeding, it is more appropriately the responsibility of the parties to the legal proceeding to secure the services of such a legally qualified interpreter if they believe such an interpreter is necessary under applicable state law.

160. Similar reasoning applies to the concern that state law that might be applied to require a

[453] We note that a VRS CA must be a qualified interpreter, "who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary" 47 C.F.R § 64.601(10).

TRS CA to testify at a state court hearing concerning a relayed call. When a VRS CA is acting as such and relaying a TRS call, state laws governing legal interpreting in state proceedings have no bearing on the duties and obligations of the CA. Further, section 225 and our implementing rules prohibit the CA from disclosing the content of the relayed conversation, and from keeping records of the content of any conversation beyond the duration of the call. Section 225(d)(1)(F) requires the Commission to prescribe rules that "prohibit relay operators from disclosing the content of any such relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call."[454] To comply with this mandate, the Commission adopted rules that prohibit relay operators from "disclosing the content of any relay conversation regardless of the content ... even if to do so would be inconsistent with state or local law."[455] In adopting this rule, the Commission noted that issues of confidentiality and liability were raised by states and common carriers in cases where common carriers were required by state or federal law to report obscenity, harassment, child abuse, or criminal conversations. The Commission further noted that relay services are unique in that, "in the present technological environment, they utilize human CAs who see and hear private conversations while acting as transparent conduits relaying conversations without censorship or monitoring functions."[456] The Commission added that the ADA does not expressly address the relationship between its prohibition of disclosure and other statutes that permit or require disclosure.[457] The Commission ultimately concluded that "confidentiality is essential to [relay] service, and that users of TRS can have confidence in the basic privacy of their conversations,"[458] and therefore except for the very limited law enforcement exceptions contained in section 705 of the Act,[459] CAs are "prohibited from divulging the content or existence of any relay conversations."[460]

161. Finally, with regard to CSD's and commenters' concern that a VRS CA may be exposed to civil or criminal liability under state laws regulating legal interpreting, we again note that when a VRS CA is relaying a TRS call the CA is not acting as a "legal interpreter" under state law, regardless of the substance of the call. In any event, to the extent the VRS (or TRS) CA may be accused of being a witting or unwitting party to any unlawful scheme to circumvent state requirements for interpreters in legal settings, we note that the Commission has previously found that "Congress, in adopting section 225(d)(1)(E), intended relay operators to have the same service obligations as common carriers generally."[461] In this regard, the Commission noted that although courts have determined that a common carrier's obligation to provide service upon request as set forth in section 201(a) of the Act is not absolute and does not necessarily apply to service for illegal purposes,[462] as a practical matter common carriers

[454] *See TRS I* at ¶ 13.

[455] 47 C.F.R. § 64.604(a)(2).

[456] *TRS I* at ¶ 13.

[457] *Id.*

[458] *Id.*

[459] 47 U.S.C. § 705.

[460] *TRS I* at ¶ 14. We note that apart from the practical matter that a VRS CA does not act as a legal interpreter when relaying a TRS call, CSD's concerns raise a serious issue concerning preemption, *i.e.*, whether enactment of Title IV preempts conflicting state law, at least with respect to the role of the CA in relaying TRS calls. Given our discussion above, we need not address that issue.

[461] *Id.* at ¶ 15. In adopting the final version of section 225(d)(1)(E), the Conference Committee indicated that the provision "specifies that a relay operator is subject to the same standards of conduct that operators are subject to under the Communications Act of 1934." House Report at 78. As indicated in the Conference Report, the Senate acceded to the House amendment. That amendment added the words "failing to fulfill the obligations of common carriers by" to the Senate version of section 225 (d)(1)(E).

[462] *Id.* at ¶ 15 & n.16 (citing cases).

generally will not be criminally liable "absent knowing involvement in unlawful transmissions."[463] The Commission further explained that "there must be a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions before any liability is likely to attach."[464] The Commission concluded that "CAs, in the normal performance of their duties, would generally not be deemed to have a 'high degree of involvement or actual notice of illegal use' or be 'knowingly' involved in such illegal use."[465] This same reasoning can be applied in this instance. Therefore, absent proof that the CA knowingly participated in an illegal scheme while relaying a TRS call, the CA could not be civilly or criminally liable for relaying a TRS call that happened to involve parties in a legal proceeding.

162. In sum, we agree with CSD and various commenters that VRS is not appropriate in circumstances where state law governing legal proceedings requires the services of interpreters qualified under state law. We also appreciate CSD's concern that relaying calls that involve on-the-record legal proceedings via TRS facilities places CAs in jeopardy of violating state interpreting laws.[466] We do not believe, however, that it is necessary or appropriate to waive our rule requiring CAs to handle all types of calls normally handled by common carriers to resolve this matter. VRS (and TRS) CAs, acting as such, are acting pursuant to a congressionally mandated scheme requiring certain entities to offer relay services in compliance with federal standards, and the fact that other parties may seek to use them for other purposes cannot alter this fact. Therefore, such CAs are not acting as "legal interpreters" under any state law. For this reason, as well as those discussed above, we deny CSD's *Petition*.

V. ORDER ON RECONSIDERATION

A. THE JUNE 30, 2003, *BUREAU TRS ORDER*

1. Background

163. On June 30, 2003, the Commission's Consumer & Governmental Affairs Bureau released the *Bureau TRS Order* adopting, on an interim basis, TRS compensation rates for traditional TRS, IP Relay, STS, and VRS, as well as a carrier contribution factor and Interstate TRS Fund size.[467] As discussed in that order, our rules require the TRS fund administrator to file "with the Commission on May 1 of each year, to be effective for a one-year period beginning the following July 1," its "TRS payment formulas and revenue requirements."[468] The *Bureau TRS Order* adopted, on an interim basis, the proposed TRS compensation rates for traditional TRS and IP Relay, as well as for STS. The *Bureau TRS Order* modified, however, the proposed $14.023 per-minute compensation rate for VRS, establishing instead an interim compensation rate of $7.751 per-minute. As a result of modifying the VRS compensation rate, the Bureau also modified the proposed carrier contribution factor and the proposed

[463] *Id.* at ¶ 15.

[464] *Id.*

[465] *Id.*

[466] *Id.* We are further concerned about reports that VRS is being used as a substitute for sign language interpreting services. *See CSD Petition* at 1; TDI Comments at 1; Hands On Comments at 3. We have received anecdotal information that some entities (both public and private) have used VRS instead of VRI, or instead of hiring an interpreter as a reasonable accommodation, as a means of passing the costs to the Interstate TRS Fund. We remind that VRS, like all forms of TRS, is intended to be a means of giving access to the telephone system. Therefore, in any given situation, if the party using VRS would be making a telephone call but for person's hearing or speech disability, then the use of VRS would be appropriate. In other circumstances, the party should hire an "in-person" sign language interpreter or use VRI. We will closely monitor alleged instances of the wrongful use of VRS in this regard, and take whatever enforcement action is necessary and appropriate against such misuse.

[467] See *Bureau TRS Order.*

[468] 47 C.F.R. § 64.604(c)(5)(iii)(H).