IX. APPENDIX A

LIST OF PARTIES

List of Commenters to the *TRS Cost Recovery MO&O & FNPRM*[703]:

MCI (WorldCom)
Sprint Corporation

List of Commenters to the *IP Relay Declaratory Ruling & FNPRM*[704]:

AT&T
Hamilton Relay, Inc.
Public Service Commission of the State of Missouri
Sprint Corporation
Telecommunications for the Deaf, Inc. (with National Association for the Deaf and Association of Late Deafened Adults)
Verizon
MCI (WorldCom)

List of Commenters to the *Second Improved TRS Order & FNPRM*[705]:

AT&T
AT&T Wireless
California Public Utility Commission
Communication Services for the Deaf
Florida Telecommunications Relay, Inc.
Hamilton Relay, Inc.
Hands On Video Relay Service, Inc.
Iowa Utilities Board (IA UB)
Public Service Commission of the State of Missouri
National Exchange Carrier Association
Relay Nevada Administrator
SBC
Sorenson
Sprint Corporation
Telecommunications for the Deaf, Inc.
Verizon

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[703] *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).*

[704] *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*).

[705] *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*).

Verizon Wireless
MCI (WorldCom)

Reply Comments filed by:

Hands On Video Relay Service, Inc.
Telecommunications Access of Maryland
Maryland Department of Budget and Management
National Exchange Carrier Association
OneWorld Communication
Oregon Public Utility Commission
SBC
Telecommunications for the Deaf, Inc.
T-Mobile
Verizon
Wireless RERC
MCI (WorldCom)

List of Commenters to the petitions for extension of the VRS Waivers[706]:

Communication Services for the Deaf, Inc.
Sorenson Media, Inc.
Sprint Corporation

List of Commenters to *711 Petition*[707]:

AT&T
Telecommunications for the Deaf, Inc.
MCI (WorldCom)

Reply Comments were filed by:

Sprint
Telecommunications for the Deaf, Inc.

List of Commenters to the *CSD Petition*[708]:

Telecommunications for the Deaf, Inc.
Hands On Video Relay Service, Inc.

Reply Comments filed by:

[706] 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.

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

[708] 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).*

Communication Services for the Deaf
Registry of Interpreters for the Deaf
Chicago Hearing Society
Texas Commission for the Deaf and Hard of Hearing (TCDHH)

List of Commenters to petition for reconsideration of the *Bureau TRS Order*[709]:

Hamilton Relay, Inc.
Telecommunications for the Deaf, Inc.
National Alliance of Black Sign Language Interpreters
Hands On Video Relay Services, Inc.
NorCal Center on Deafness
Registry of Interpreters for the Deaf

Avila, Fern
Babbitt, John
Baccus, Lori
Baker, Virgina
Barr, William V.
Borkowski, John A.
Bousseloub, Lyes
Byrnes, David R.
Clark, Margaret
Clark, Richard
Crouse, Daryl
Cudmore, Brenda
Dahan, Suzanne
Darden, Vicki L.
Dominy, Aurora
Duncan, Theodora
Dunn, Robert
Foreman, Angela Lee
Foshee, Eleanor R.
Freeman, John
Gerlis, Sean
Goff, James R.
Gonzalez, Randy
Gunderson, Jason
Gutsch, Ellizabeth
Hafer, Sarah
Hall, Shari
Hughes, Patricia
Jacob, Philip
Jordan, I. King
Kelly, Ed
Kishpaugh, Brian
Klinefelter, Alvena

[709] *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*).

Klinefelter, Larry
Koch, Robert
Kostrubala, Christine
Koukoutakis, Pete
Kovacs, Ty
Kucharski, Andrew
LeBeau, G. Phillip
Lindgren, Victor
Lukacs, Saul
Lukowicz, Rick
Lytle, John T.
Mace, Mark
Malzkuhn, Brian
Manning, Steven
Michalik, Dana
Mikasa, Karl K.
Moccia, Kim
Moers, Betty Lou
Morrison, David Alan
Murray, Patrick M.
Myers, Mark and Alyssa
O'Toole, Diana
Oshman, Betty
Otani, Angela
Pellerin, Rene G.
Porter, Adeline
Posner, Erick H.
Quillen, Steven
Rabb, Thelma
Radonich, Charles
Radonich, Judy
Roth, Ellen
Roush, Dina Marie
Roush, Gary
Rudolf, Richard H.
Scheir, Eric
Schulz, Regina
Slater, Sandra
Stecker, Etta
Stecker, Rusty
Urness, Tiffany
White, Barry
Woodward, William

List of Commenters to petition for reconsideration of the *Coin Sent-Paid Fifth Report & Order*[710]:

Coin Sent-Paid Industry Team (AT&T, BellSouth Telecommunications, Inc., Qwest, SBC, Verizon, and Hamilton)

[710] *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*).

List of Commenters to petitions for reconsideration of *Second Improved TRS Order & FNPRM*[711]:

The Frontier and Citizens Telephone Companies
Hamilton
MCI (WorldCom)
New York State Telecommunications Association, Inc.
SBC
Sprint
TDI Coalition
Ultratec
Verizon

[711] *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*).

X. APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS (CG DOCKET NO. 03-123)

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking (NPRM) to which this *Report and Order* responds.[2] The Commission sought written public comment on the proposals in the NPRM section of the *Second Improved TRS Order & NPRM,* including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

Need for, and Objective of, this *Report and Order*

2. This proceeding was generally initiated to establish technological advancements that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. This proceeding would ensure compliance with the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS.

3. The Commission issued the NPRM in the *Second Improved TRS Order & NPRM* to seek public comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of TRS users. In doing so, the Commission sought to enhance the quality of TRS and broaden the potential universe of TRS users, consistent with Congress's direction under 47 U.S.C. § 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology. The Commission sought comment on: (1) whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements were necessary for ensuring the security of IP Relay transmissions; (3) how TRS facilities might determine the appropriate PSAP to call when receiving an emergency 711 call via a wireless device; (4) whether wireless carriers should be required to transmit Phase I or Phase II E-911 information to TRS facilities; (5) whether certain additional features, services, or requirements should be required, namely non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, LEC offerings, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (6) issues concerning increasing public access to information and outreach; and (7) procedures for determining eligibility payments from the Interstate TRS Fund. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs

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

[2] *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*).

[3] *See* 5 U.S.C. § 604. We also expect that we could certify the *Report and Order* under 5 U.S.C. § 605 because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action.

and our ability to compel compliance with the federal mandatory minimum standards for TRS.

4. In this *Report and Order*, the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225. First, the Commission adopts the per minute reimbursement methodology for IP Relay.[4] Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC.[5] Third, the Commission grants VRS waiver requests[6] of the following TRS mandatory minimum requirements: (1) types of calls that must be handled; (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; (5) pay-per-call services; (6) voice initiated calls –VCO and HCO; (7) provision of STS and Spanish Relay.[7] Fourth, the Commission amends the definition of "711" by deleting the words "all types of" from the definition, in order to clarify its meaning.[8] Fifth, in the *Order on Reconsideration*, the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay and STS that were established in the *Bureau TRS Order*.[9] The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order*. Sixth, the Commission has amended the definition for an "appropriate" PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.[10] These amended and new rules will improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.[11]

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

5. No comments were filed directly in response to the IRFA in this proceeding. Furthermore, no small business issues were raised in the comments . The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on at least one small entity that is a TRS provider. Accordingly, in consideration of this small entity and other small entities that may be similarly situated, we issue this final regulatory flexibility analysis rather than issue a final regulatory flexibility certification.

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[4] *See supra* section IV(B)(2).

[5] *See supra* section IV(C)(3)(b)(iii).

[6] *See* Appendix E, below.

[7] *See supra* section IV(D)(2).

[8] *See supra* section IV(E)(2).

[9] *See Bureau TRS Order*.

[10] *See supra* section V(C)(2).

[11] [11] No changes were made to the following items proposed in the *NPRM*: (1) whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements are necessary for ensuring the security of IP Relay transmissions; (3) whether wireless carriers should be required to transmit Phase I or Phase II E-911 information to TRS facilities; (4) whether certain additional features, services or requirements should be required for non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (5) issues concerning increasing public access to information and outreach; and (6) procedures for determining eligibility payments form the Interstate TRS Fund.

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

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[12] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[13] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[14] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[15] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[16]

7. Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules.[17] For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service* Report.[18]

8. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.[19] This provides that such a carrier is small entity if it employs no more than 1,500 employees.[20] Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately 1,032 having 1,500 or fewer employees.[21] The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's. Therefore, the majority of entities in these categories are small entities.

9. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications

[12] 5 U.S.C. § 604(a)(3).

[13] 5 U.S.C. § 601(6).

[14] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[15] 15 U.S.C. § 632.

[16] 5 U.S.C. § 601(4).

[17] *But see* note 3, *supra.*

[18] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

[19] 13 C.F.R. § 121.201, NAICS Code 517110.

[20] *Id.*

[21] *Trends in Telephone Service* at Table 5.3.

business having 1,500 or fewer employees), and "is not dominant in its field of operation."[22] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[23] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.[24] This provides that such a carrier is small entity if it employs no more than 1,500 employees.[25] Commission data from 2001 indicate that there are 261 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees.[26] The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 223 interexchange carriers that are small businesses possibly affected by our action.

11. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.[27] Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The Commission estimates that at least one TRS provider is a small entity under the applicable size standard. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities.[28] Consequently, the FCC estimates that at least one TRS provider is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. *Reporting and Recordkeeping.* This *Report and Order* may involve new mandatory reporting requirements. First, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC.[29] However, the Commission does not adopt specific

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[22] 15 U.S.C. § 632.

[23] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[24] 13 C.F.R. § 121.201, NAICS Code 517110.

[25] *Id.*

[26] *Trends in Telephone Service* at Table 5.3.

[27] 13 C.F.R. § 121.201, NAICS Code 517110.

[28] MCI (WorldCom), for example, provides TRS in only a few states but is not a small business.

[29] *See supra* section IV(C)(3)(b)(iii).

requirements for the functionality of these features. We anticipate that TRS providers will offer these features to the extent, and in a manner, that is best suited to their facilities. Second, the Commission granted waiver requests of the Commission's mandatory minimum standards for VRS, providing that VRS providers submit annual reports to the Commission.[30] The report must be in narrative form detailing; (1) the provider's plan or general approach to meeting the waiver 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. The report may be combined with the existing VRS/IP Relay reporting requirements scheduled to be submitted annually to the Commission on April 16th of each year. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

13. *Other Compliance Requirements*. The rules adopted in this *Report and Order* require that TRS facilities route emergency TRS calls to either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner to the designated PSAP to which a direct voice call from a non-TRS number would be delivered.[31] Furthermore, the rules require that TRS facilities provide certain technological features including: anonymous call rejection, call screening, and preferred call-forwarding.[32] These rules will affect TRS providers. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

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

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[33]

15. One of the main purposes of this *Report and Order* and *Order on Reconsideration* is to clarify many of the current requirements for TRS providers. The *Report and Order* and *Order on Reconsideration* impose new and/or modified reporting requirements for TRS providers. In addition, they impose new service requirements. Because these new service requirements are similar to services currently being offered, the Commission expects a minimal impact on small business. First, the Commission permanently adopts the per minute reimbursement methodology for IP Relay. The per minute reimbursement methodology simplifies the compliance and reporting requirements for small entities by permanently adopting the interim methodology. Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and to the extent that the TRS facility will possess the necessary technology to pass through the subscriber's Caller ID information to the LEC. This new requirement does not adversely impact small business entities because these features are only required where it is technologically feasible to do so; the Commission does not require providers to purchase new

[30] *See supra* section IV(D)(2).

[31] *See supra* section V(B)(2).

[32] *See supra* section IV(C)(3)(b)(iii).

[33] *See* 5 U.S.C. § 603(c)(1)-(c)(4).

equipment or upgrade their equipment to accommodate these new requirements. Third, the Commission grants waiver requests of several TRS mandatory minimum requirements for VRS service. These standards were waived because the Commission determined that they were either technologically infeasible, extremely difficult to comply with given the infancy of the service, or they were more closely related to verbal communication, as opposed to a visual service. Furthermore, these waivers consolidate the reporting requirements for providers, and ensure that VRS facilities are only responsible for those rules that are technologically feasible. Therefore, these waivers have no adverse impact on small businesses. Fourth, the Commission amends the definition of "711" by deleting the words "all types of" from the definition, in order to clarify its meaning. This rule clarifies the definition of 711, thereby simplifying the application of the rule for TRS providers. This clarification has no adverse impact on small entities but, on the contrary, will benefit all entities equally. Fifth, in the *Order on Reconsideration*, the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay, and STS for the 2003-2004 fund year that were established in the *Bureau TRS Order*, and are effective from June 30, 2003, through the June 30, 2004, end of fund year. The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order;* the new rate is effective from September 1, 2003, through June 30, 2004. The new VRS compensation rate was established after review of supplemental expense and service data filed with the TRS administrator. The per minute reimbursement methodology takes into account the projected cost and demand data of all TRS providers for a given service. Therefore, it does not unduly burden small businesses. Sixth, the Commission has amended the definition for an "appropriate" PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner. The revision of this rule simplifies the ability of TRS providers to comply with the Commission's emergency call handling requirement for TRS. The revision has no adverse impact on small entities.

16. Currently, most TRS providers are not small entities, and are either interexchange carriers or incumbent local exchange carriers, with very few exceptions.[34] The Commission refrained from requiring features such as interrupt functionality and talking return call because commenters expressed concern that such features might be cost prohibitive, and might be unduly burdensome to the TRS provider and the TRS user.[35] This *Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation. Because such cost-prohibitive and unduly burdensome measures were rejected by the Commission, no arbitrary and unfair burdens are thereby imposed on smaller entities.

Report to Congress

17. The Commission will send a copy of the *Report and Order* and *Order on Reconsideration*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[36] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order, Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the *Federal Register*.[37]

[34] *See* ¶ 11, *supra.*

[35] *See supra* section IV(C)(3)(b)(iv).

[36] *See* 5 U.S.C. § 801(a)(1)(A).

[37] *See* 5 U.S.C. § 604(b).

XI. APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS (CG DOCKET NO. 03-123)

1. As required by the Regulatory Flexibility Act (RFA),[749] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM*.[750] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.

Need for, and Objectives of, the *FNPRM*

2. The Commission is issuing this *FNPRM* to seek public comment on the cost recovery methodology for VRS, what type of mechanism the Commission might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate, whether IP Relay and VRS should become mandatory forms of TRS and offered 24/7; the appropriate composition and role of the TRS Advisory Council; certification and oversight of IP Relay and VRS providers; and the issue of abuse and harassment of TRS CAs. In doing so, the Commission hopes to enhance the quality of TRS, and broaden the potential universe of TRS users in a manner that will be consistent with Congress' mandate under 47 U.S.C. § 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology.

3. Specifically, the *FNPRM* seeks comment on several IP Relay related issues[751], including: (1) what type of mechanism the Commission may adopt to determine whether IP Relay calls are intrastate or interstate (so that states would be required to pay for intrastate IP Relay calls and the Interstate TRS Fund would continue to reimburse interstate IP Relay calls); (2) whether IP Relay should be a mandatory service and be offered 24/7; and (3) whether there should be separate compensation rates for traditional TRS and IP Relay. The Commission also seeks comment on several VRS related issues[752] including: (1) the appropriate cost recovery methodology for VRS; (2) what type of mechanism the Commission might adopt to determine which VRS calls are interstate and which are intrastate, (3) whether VRS should be a mandatory form of TRS and be offered 24/7; (4) whether a speed of answer rule specific to VRS should be adopted, and (5) whether the data reporting period for VRS should be different from the present one-year period. Additionally, the FNPRM seeks comment on certification and oversight of IP Relay and VRS providers.[753] The Commission also seeks comment on whether the composition of the TRS Advisory Council should be changed or expanded to include parties that represent the Interstate TRS Fund or any relevant interests not currently represented by the Council.[754] Finally, the FNPRM seeks comment on whether the Commission should adopt TRS rules to curb abusive calls directed at the CA or

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

[750] *See* 5 U.S.C. § 603. We also expect that we could certify this action under 5 U.S.C. § 605 because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore there are not a substantial number of small entities that may be affected by our action.

[751] *See supra* section VI(A).

[752] *See supra* section VI(B).

[753] *See supra* section VI(C).

[754] *See supra* section VI(D).

the called party.[755]

Legal Basis

4. The authority for actions proposed in this *FNPRM* may be found in sections 1, 4(i) and (j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201-205, 218 and 225.

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[756] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[757] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[758] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[759] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[760]

6. Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules.[761] For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service* Report.[762]

7. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.[763] This provides that such a carrier is small entity if it employs no more than 1,500 employees.[764] Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately

[755] *See supra* section VI(E).

[756] 5 U.S.C. § 604(a)(3).

[757] 5 U.S.C. § 601(6).

[758] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601 (3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[759] 15 U.S.C. § 632.

[760] 5 U.S.C. § 601(4).

[761] *But see* note 2, *supra*.

[762] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

[763] 13 C.F.R. § 121.201, NAICS Code 517110.

[764] *Id.*

1,032 having 1,500 or fewer employees.[765] The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,032 ILECS that are small businesses possibly affected by our action.

8. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[766] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[767] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.[768] This provides that such a carrier is small entity if it employs no more than 1,500 employees.[769] Commission data from 2001 indicate that there are 223 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees.[770] The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 181 interexchange carriers that are small businesses possibly affected by our action.

10. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.[771] Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses.[772] The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS

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[765] *Trends in Telephone Service* at table 5.3.

[766] 15 U.S.C. § 632.

[767] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[768] 13 C.F.R. § 121.201, NAICS Code 517110.

[769] *Id.*

[770] *Trends in Telephone Service* at Table 5.3.

[771] 13 C.F.R. § 121.201, NAICS Code 517110.

[772] *See* National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

service in a small area but they nevertheless are not small business entities.[773] The FCC estimates that there is at least one TRS provider that is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. This *FNPRM* seeks comment on the adoption of a cost recovery methodology for VRS, and the possible means for determining which IP Relay and VRS calls are interstate and which are intrastate. The adoption of a cost recovery methodology for VRS other than the current per minute compensation methodology may require VRS providers to maintain different records, although there would be no new reporting requirements. The adoption of a mechanism to determine which IP Relay and VRS calls are interstate and which are intrastate would require providers to keep records of interstate and intrastate calls; it may also change the type of reports and recordkeeping that IP Relay and VRS providers maintain, depending upon how IP Relay and VRS providers are currently maintaining their records. Presently, IP Relay and VRS providers report their costs for all calls and their record of minutes provided to the Interstate TRS Fund Administrator.[774] If a mechanism were adopted to determine which IP Relay and VRS calls were interstate and which were intrastate, IP Relay and VRS providers would need a database to keep a record of calls and minutes of use that differentiate between interstate and intrastate calls.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take (among others) into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[775]

13. The proposals in the *FNPRM*, and the comments the Commission seeks regarding them, result from the Commission's role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities.[776] The guiding principles shaping these proposals come from Congress's requirement that TRS keep pace with advancing technology and that the Commission's rules should not discourage the implementation of technological advances or improvements, as well as the mandate that TRS services be functionally equivalent to voice telephone services.

14. The majority of TRS service is provided by large interexchange carriers and large incumbent local exchange carriers. Because we believe that few small business entities would be impacted by these proposals, and that the impact, if any, would be minor, it is premature to propose specific alternatives that would minimize significant economic impact on small businesses. Further, since we believe the essence of the rules we may adopt pursuant to this proceeding will confer the benefits of a more streamlined approach to administering TRS on all entities, including small entities, we are further persuaded that it would be premature to consider alternatives to the conferral of such benefits. However, we invite comment on specific alternatives that may minimize the economic impact of the proposed rules on small businesses.

[773] MCI (WorldCom), for example, provides TRS in approximately only a few states but is not a small business.

[774] *See supra* section VI(A) and (B).

[775] 5 U.S.C. § 603.

[776] *See, e.g.*, 47 U.S.C. § 225.

Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules

15. None.

XII. APPENDIX D

FINAL RULES

For the reasons discussed above, the Commission amends 47 C.F.R., Part 64, Subpart F as follows:

1. In Part 64, Subpart F, remove the words "Wireline Competition Bureau" and add, in their place, "Consumer & Governmental Affairs Bureau."

2. Section 64.601(1) is amended to delete the words "all types of" from the definition of *711.*

3. Section 64.604(a)(4) is amended to delete the second sentence and in its place to insert: "An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner."

XIII. APPENDIX E

SUMMARY OF IP RELAY AND VRS WAIVERS

	IP Relay Providers	Expiration Date	Address in Annual Rep.	VRS Providers	Expiration Date	Address in Annual Rep.
1. STS	Waived [3]	1/1/08	Yes, due 4/16	Waived [17]	Indefinite	No
2. Spanish Relay				Waived [18]	Indefinite	No
3. Types of Calls				Waived [19]	1/1/08	Yes, due 4/16
4. Emergency Call Handling	Waived [4]	1/1/08	Yes, due 4/16	Waived [20]	1/1/06	Yes, due 4/16
5. Speed of Answer				Waived [21]	earlier of 1/1/06 or when new rule adopted	Yes, due 4/16
6. Equal Access to Interexchange Carrier	Waived [5]	Indefinite	No	Waived [22]	1/1/08	Yes, due 4/16
7. Pay-per-call (900) Service	Waived [6]	1/1/08	Yes, due 4/16	Waived [23]	1/1/08	Yes, due 4/16
8. Voice Carry Over (VCO) (one-line) [1]	Waived [7]	1/1/08	Yes, due 4/16	Waived [24]	1/1/08	Yes, due 4/16
9. Hearing Carry Over (HCO) (one-line) [2]	Waived [8]	1/1/08	Yes, due 4/16	Waived [25]	1/1/08	Yes, due 4/16
10. VCO –to-TTY	Waived [9]	1/1/08	Yes, due 4/16	Waived [26]	1/1/08	Yes, due 4/16
11. HCO-to-TTY	Waived [10]	1/1/08	Yes, due 4/16	Waived [27]	1/1/08	Yes, due 4/16
12. VCO-to-VCO	Waived [11]	1/1/08	Yes, due 4/16	Waived [28]	1/1/08	Yes, due 4/16
13. HCO-to-HCO	Waived [12]	1/1/08	Yes, due 4/16	Waived [29]	1/1/08	Yes, due 4/16

14. Call Release	Waived [13]	1/1/08	Yes, due 4/16	Waived [30]	1/1/08	Yes, due 4/16
15. 3-way Calling	Waived [14]	1/1/08	Yes, due 4/16	Waived [31]	1/1/08	Yes, due 4/16
16. Speed Dialing	Waived [15]	1/1/08	Yes, due 4/16	Waived [32]	1/1/08	Yes, due 4/16
17. Providing Service 24/7	Not required [16]		No	Not required [33]		No

(1) We note that we have not waived the requirement to provide two-line VCO for either IP Relay or VRS. *See Second Improved TRS Order & NPRM* at ¶¶ 35-36.

(2) We note that we have not waived the requirement to provide two-line HCO for either IP Relay or VRS. *See id.*

(3) *IP Relay Order On Reconsideration* at ¶¶ 1, 13-14, 28.

(4) *Id.* at ¶¶ 7-12

(5) *IP Relay Declaratory Ruling & FNPRM* at ¶31.

(6) *IP Relay Order On Reconsideration* at ¶¶ 19-22.

(7) *Id.* at ¶¶ 1, 13-14, 28.

(8) *Id.* at ¶¶ 15-18.

(9) *Second Improved TRS Order & NPRM* at ¶¶ 35-36.

(10) *Id.* at ¶¶ 35-36.

(11) *Id.*

(12) *Id.*

(13) *Id.* at ¶ 76.

(14) *Id.*

(15) *Id.*

(16) *See* 47 C.F.R. § 64.604(b)(4) ("Relay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day."). IP Relay is not a mandatory TRS service.

(17) *See TRS Cost Recovery MO&O* at ¶¶ 25-27; clarified *supra* at ¶¶ 138-139.

(18) *Id.*; clarified *supra* at ¶¶ 138-139.

(19) *VRS Waiver Order* at ¶¶ 9-10; extended *supra* at ¶¶ 113-115.

(20) *Id.* at ¶¶ 11-13; extended *supra* at ¶¶ 116-118.

(21) *Id.* at ¶¶ 15-16; extended *supra* at ¶¶ 119-123. The waiver of the speed of answer requirement for VRS will terminate at the time the Commission adopts a new speed of answer rule for this form of VRS, or January 1, 2006, whichever is sooner.

(22) *Id.* at ¶¶ 17-18; extended *supra* at ¶¶ 124-129.

(23) *Id.* at ¶¶ 19-20; extended *supra* at ¶¶ 130-132.

(24) *See supra* at ¶¶ 134-135.

(25) *Id.*

(26) *Second Improved TRS Order & NPRM* at ¶¶ 35-36.

(27) *Id.*

(28) *Id.*

(29) *Id.*

(30) *Id.* at ¶ 76.

(31) *Id.*

(32) *Id.*

(33) *See* 47 C.F.R. § 64.604(b)(4) ("Relay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day."). VRS is not a mandatory TRS service.

STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket 90-571, CC Docket 98-67) Order on Reconsideration; (CG Docket 03-123) Report and Order and Further Notice of Proposed Rulemaking.

Section 225 of the Act seeks to ensure access to communications facilities for all Americans. Today's Order empowers people with disabilities to participate in the information economy and reap its benefits equally with their neighbors.

Today's item takes another step toward fulfilling the goals of Title IV of the Americans with Disabilities Act by further refining the rules governing the provision of Telecommunications Relay Service (TRS). In so doing, we take a first step toward expanding the forms of TRS that will become mandatory TRS services. In addition, this Order gives relay providers the freedom to adapt their offerings to the needs of their customers. Features that they might offer such as automatic call-back, higher transmission speeds, and tighter security for IP Relay calls should represent value added benefits to consumers. At the same time, this Commission must exercise its oversight responsibilities to ensure that our TRS reimbursement mechanism does not become an unbounded source of funding for features that go well-beyond the TRS connectivity that so many people with disabilities depend upon.

Moreover, Video Relay Service (VRS) is an application spurring demand for broadband facilities. I am encouraged by this industry's ability to innovate and provide solutions for customers. The availability of these services reflects the vital role that broadband technology plays in improving consumers' lives, satisfying important social policy objectives, and driving our nation's economy. The possible expansion of TRS funding to include VRS will present difficult questions of federal authority as well as unique reimbursement questions. I look forward to hearing from the disability community as well as other stakeholders, as we tackle these issues together. Our Consumer and Governmental Affairs Bureau will continue to open their doors to interested parties who are legitimately concerned about issues that are vital to the daily lives of people with disabilities.

We are proud of the decade of expanded opportunity and enhanced communications that TRS has fostered. Support for Americans with disabilities is central to the FCC's agenda. Our efforts, however, are in no way complete. I look forward to the continued growth of TRS as well as policies that increase access to the information economy.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (CG Docket No. 03-123), Order on Reconsideration (CC Docket No. 98-67, CC Docket Nos. 90-571).

Telecommunications relay services have long played a vital role in enabling consumers with hearing or speech disabilities to communicate by telephone. In addition, Internet-Protocol technologies have led to vast service improvements for these consumers in recent years. In particular, video relay services enable deaf consumers to enjoy the sort of seamless conversations that hearing consumers take for granted. So I am pleased to support this Order, which addresses a number of outstanding questions regarding TRS providers' regulatory obligations, cost-recovery, and related matters.

I am especially pleased that the Order directs the Consumer and Governmental Affairs Bureau to step up its outreach efforts associated with TRS services. The Commission can play a critical role in informing both the deaf community and the public at large about the availability of TRS services and how these services function. I understand that people sometimes confuse relay calls with telemarketing calls and hang up based on a lack of awareness. We can and should address such problems by developing fact sheets and web-based resources, participating in conferences, and taking a variety of other steps. As the Order notes, the Commission does not have the authority or resources to fund a national television campaign, but we can nevertheless make great strides in improving public awareness.

All of us at the Commission fully support the TRS program and want to ensure that it provides the best possible experience for consumers. At the same time, we have a statutory obligation to ensure that providers recover their "costs" — and this entails not only an assurance of compensation but also a limitation on the amount of recovery from the government. Specifically, while providers are entitled to recover all of their direct costs plus a reasonable return on investment, the statute does not appear to permit mark-ups on ordinary expenses. I recognize that some TRS providers have continuing concerns regarding the cost-recovery methodology adopted by the Bureau and the fund administrator, and I hope that the Further Notice of Proposed Rulemaking we adopt today will help generate more clarity on this issue.

Finally, I am encouraged that we are seeking comment on whether VRS should become a mandatory service. Introducing the service on a voluntary basis made perfect sense given the state of the technology, but VRS usage may surpass traditional TRS in the not-too-distant future. Parties have raised significant questions as to whether there is a sufficient number of qualified interpreters to support a mandatory 24-hour service and whether relay providers will be able to comply with reasonable speed-of-answer requirements and other mandates. I look forward to addressing these and other issues in the further rulemaking.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket Nos. 90-57 & 98-67, CG Docket No. 03-123)*

Fourteen years ago, when Congress passed the Americans with Disabilities Act, it directed the Commission to do everything we could to ensure that those with disabilities have access to functionally equivalent services. That concept—functional equivalency—may sound inelegant, but it translates into equal opportunity, equal rights and a fuller participation in our society. It translates into 54 million Americans having more of the tools they need to be fully productive citizens.

In most ways, today's Order and Notice embraces this mandate of functional equivalency. It updates our rules, resolves open questions and clarifies the obligations of TRS providers. We also seek comment on how to address thorny jurisdictional questions that accompany new Internet services. And we ask if the time is right for VRS to become a mandatory service. These are good and positive steps. But in a few ways, today's Order falls short of the spirit and purpose of the Americans with Disabilities Act. For this reason, I support this Order, but not in two key respects.

I am disappointed with the position the Order takes affirming the Bureau's abrupt decision last year to slash in half the VRS compensation rate with less than twenty-four hours notice. As a general principle, people intuitively endorse lower rates, but here the providers of VRS were left wondering what costs were allowed and what costs were disallowed by a methodology that was employed with too little in the way of rules, standards or prior guidance from the Commission. More importantly, VRS consumers were stuck with the consequences. Service hours were cut without warning and long waits for communications assistants became common. As a result, the service missed the functional equivalency mark by a too wide margin. There are also issues of authority and notice that we do not straighten out and settle in this item. This is unfortunate. It leaves in legal limbo the "know-it-when-I-see-it" VRS cost standard used one year ago. I am pleased we ask questions about adopting guidelines and standards for reasonable costs in the Notice. This is the right thing to do. It will enhance our oversight and ensure the program functions with the integrity it must have. Nonetheless, I believe that what was done last year was without precedent and not right. On this issue, I respectfully dissent.

I also find troubling the conclusion that some forms of non-shared language TRS are not eligible for reimbursement. Latinos are now the largest minority group in the United States. There are thousands of deaf children from Spanish-speaking homes in this country. In fact, they are the fastest growing minority group in the deaf school age population in the United States. For this population to communicate in a functionally equivalent manner with their Spanish-speaking parents, we should be authorizing non-shared language VRS reimbursement. On this issue, I also dissent.

Finally, though I will support the position this decision takes on outreach, I remain concerned that we really need to do more to explain this service. Callers using relay service experience an unacceptably large number of hang-ups because people receiving TRS calls are not familiar with the service. Employment opportunities are not extended to individuals with hearing disabilities because some employers are uncomfortable using TRS for business transactions. This is unacceptable. In this Order, we expressly task the Consumer and Governmental Affairs Bureau to take concrete steps to improve public awareness. I believe that the Bureau is working to do a good job of outreach based on the resources available to it. Nevertheless, we task the Bureau very specifically here and I look to Chief Snowden and his team to do a banner job reaching out to familiarize the population at large with TRS. If

these efforts fail to produce the kind of wide-spread understanding we must have to ensure true functional equivalency, I will push hard for us to revisit this issue.

Thank you to the Consumer and Governmental Affairs Bureau for your hard work on this item. I look forward to working with the staff of the Disabilities Rights Office on the TRS issues we have teed-up in this Notice and other outstanding issues concerning handset hearing aid compatibility, digital captioning and IP services.

SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123.

Congress directed this Commission in section 225 of the Act to ensure that telecommunications services are available to hearing-impaired and speech-impaired Americans. To implement this directive, the FCC established the Telecommunications Relay Service (TRS) program, which requires telephone companies to provide relay services throughout the area in which they offer service so that persons with disabilities will have access to telecommunications services. Without federal and state TRS services, millions of Americans would be left out of the communications revolution that is reshaping our economy and society.

This Order makes two promises of future action that are particularly notable. First, the Order commits our Consumer and Governmental Affairs Bureau to launch a "comprehensive outreach plan" to make the availability of TRS services more widely known, not only to Americans with disabilities but to the public-at-large. Outside parties have repeatedly told us, and our own Consumer Advisory Council has concurred, that we must improve our efforts to inform and educate the public about the availability of TRS. Our commitment to take on this challenge is an important promise that we must live up to.

In this Order, we also commit to sponsor the applications of TRS service providers that seek priority status for restoration in emergency situations. Obtaining that status would be an important step towards ensuring that Americans with disabilities have access to communications services in times of crisis.

I cannot support this Order, however, to the extent that it declares all non-shared language TRS services to be "value-added" and ineligible for funding, particularly in the case of Video Relay Services (VRS). Our country is growing increasingly multi-ethnic and multi-cultural. A study by the Pew Hispanic Center reports that 40% of the 40 million Latinos in this country – or 15.5 million people – speak and understand "just a little" or "no" English. I believe the FCC and communications policy has got to keep up with this change and be more responsive to these communities.

I also must dissent in part with respect to our treatment of cost recovery issues for VRS. VRS is an increasingly important tool for those portions of the deaf community who rely on American Sign Language (ASL). This includes individuals who cannot type on a TTY phone easily, such as children and senior citizens, and those who do not speak English. VRS allows ASL and hearing individuals to have real time conversations that more closely mirror the speed and natural flow of voice-to-voice conversations.

In June 2003, the Consumer and Governmental Affairs Bureau reduced our TRS Administrator's proposed VRS compensation rate by almost fifty-percent. That action left many VRS providers with no choice but to cut service or employees, elicited an outcry from many members of the deaf and heard of hearing community, and raised legitimate questions of substance and process. This Order falls short in addressing these concerns and issues.

It is absolutely critical that the Commission provide oversight to ensure that our VRS compensation rate is limited to "reasonable costs," the standard articulated in our rules. We also have an obligation, however, to ensure that providers have adequate notice of how we will apply this standard, so that they can plan their operations accordingly.

I am pleased that the Further Notice attached to this Order seeks comment on how we can improve our rules and process for setting the VRS compensation rate. That is movement in the right direction. More broadly, the Further Notice also opens an important dialogue about whether VRS and Internet Protocol (IP) Relay Services should now qualify as mandatory services. The rapid increase in usage of VRS demonstrates the value of this service and hastens the day when this Commission will need to address technical issues about emergency call handling and the speed of answer for VRS calls.

I look forward to working with my colleagues, members of the TRS Advisory Committee, and the many members of the disabilities community on these issues as we move forward.