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

In the Matter of	)	
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Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Misuse of Internet Protocol (IP) Relay Service And Video Relay Service	)	
	)	

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 03, 2006 **Released: May 08, 2006**

Comment Date: (30 days after publication in the Federal Register)
Reply Comment Date: (45 days after publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. In this *Further Notice of Proposed Rulemaking (Notice)* we address the misuse of the two Internet-based forms of telecommunications relay service (TRS),[1] Internet Protocol (IP) Relay Service and Video Relay Service (VRS), and seek comment on possible changes to the TRS regulations to curtail their misuse.

II. BACKGROUND

2. IP Relay is a form of text-based TRS that uses the Internet, rather than the Public Switched Telephone Network (PSTN).[2] VRS is a form of TRS that allows communication via American Sign Language (ASL) using video equipment.[3] Currently, if IP Relay and VRS are offered in compliance

[1] TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability. *See* 47 U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. § 64.601(14); *see generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Dockets 90-571 and 98-67 and CG Docket 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12479-12480, para. 3 n.18 (June 30, 2004) (*2004 TRS Report and Order & FNPRM*) (discussing how TRS works).

[2] *Provision of Improved TRS and Speech to Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (April 22, 2002) (*IP Relay Declaratory Ruling*) (recognizing IP Relay as a form of TRS).

with the TRS mandatory minimum standards,[4] the costs of providing the services are reimbursed from the Interstate TRS Fund (Fund), which is overseen by the Commission.[5]

A. Telecommunications Relay Service

3. Title IV of the Americans with Disabilities Act of 1990 (ADA),[6] which added Section 225 to the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to persons with hearing or speech disabilities in the United States.[7] The statute requires that TRS offers persons with hearing and speech disabilities access to the telephone system that is "functionally equivalent" to voice telephone services.[8] Congress recognized that persons with hearing and speech disabilities have long experienced barriers in their ability to access, utilize, and benefit from telecommunications services.[9] Congress found TRS necessary to "bridge the gap between the communications-impaired telephone user and the community at large," and emphasized that to "participate actively in society, one must have the ability to call friends, family, business[es] and employers."[10] Since the implementation of a uniform nationwide system of TRS in 1993, the Commission has addressed issues relating to its provision, regulation, and compensation.[11]

4. When Section 225 was enacted, and TRS was implemented, TRS calls were placed using a text telephone device (TTY) connected to the PSTN. In March 2000, however, the Commission recognized VRS as a form of TRS, providing an additional means for persons with hearing disabilities who use ASL to have access to the telephone system.[12] VRS requires the use of a broadband Internet connection between the VRS user and the communications assistant (CA), which allows communication

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[3] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-5154, paras. 21-27 (March 6, 2000) (*Improved TRS Order & FNPRM*) (recognizing VRS as a form of TRS); 47 C.F.R. § 64.601(17) (defining VRS).

[4] *See* 47 C.F.R. § 64.604; *2004 TRS Report and Order & FNPRM,* 19 FCC Rcd at 12547, para. 189.

[5] *Improved TRS Order & FNPRM,* 15 FCC Rcd at 5152-5154, paras. 23-27. Generally, the Interstate TRS Fund compensates providers for providing interstate TRS services, and the states compensate providers for providing intrastate TRS services. *Id.,* 15 FCC Rcd at 5154, para. 26. Presently, however, all VRS and IP Relay calls are compensated from the Interstate TRS Fund. The question of whether the Commission should adopt a mechanism for the jurisdictional separation of costs for these services is pending. *2004 TRS Report and Order & FNPRM,* 19 FCC Rcd at 12561-12564, paras. 221-230 (IP Relay), at 12567, paras. 241-242 (VRS).

[6] Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990).

[7] 47 U.S.C. § 225(b)(1).

[8] 47 U.S.C. § 225(a)(3).

[9] *See generally 2004 TRS Report and Order & FNPRM,* 19 FCC Rcd at 12479-12480, para. 3 (discussing legislative history of Title IV of the ADA).

[10] *See* H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129 (1990) (House Report).

[11] *See generally 2004 TRS Report and Order & FNPRM,* 19 FCC Rcd at 12479-12486, paras. 2-13 (overview of past TRS orders).

[12] *Improved TRS Order & FNPRM,* 15 FCC Rcd at 5152-5154, paras. 21-27.

in ASL via a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the person with a hearing disability and by voice with the hearing person. As a result, the conversation between the two end users flows in near real time and in a faster manner than with a TTY or text-based TRS call. VRS therefore provides a degree of "functional equivalency" that is not attainable with text-based TRS, by allowing those persons whose primary language is ASL to communicate in sign language, just as a hearing person communicates in, *e.g.*, spoken English. Although the Commission has not made VRS a mandatory service,[13] it has encouraged its development.[14] In the past few years, use of VRS has grown tremendously.[15]

5. In April 2002, the Commission recognized IP Relay.[16] IP Relay calls are text-based calls. Rather than using a TTY and the PSTN, the user connects to the TRS facility via the Internet using a computer, web phone, personal digital assistant (PDA), or any other IP-capable device. When the IP Relay user is connected to the IP Relay service provider, the user is immediately routed to a CA, who then makes the outbound call to the hearing person and relays the call between the parties in the same way that TTY-based calls are handled.[17] IP Relay, like VRS, has become very popular because the user can make a relay call with any computer (or similar device) connected to the Internet, rather than only with a dedicated TTY.

B. Misuse of IP Relay

6. The Commission continues to receive complaints and anecdotal evidence that IP Relay is being misused by persons without a hearing or speech disability to defraud merchants by making purchases over the telephone using stolen, fake, or otherwise invalid credit cards, and to make harassing calls.[18] Although such conduct may be illegal, because IP Relay calls reach the relay center via the Internet, and the calling party and the CA communicate only by text, the CA presently receives no identifying information. Consequently, IP Relay affords users a degree of anonymity that is generally not

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[13] That issue is pending before the Commission. *See 2004 TRS Report and Order & FNPRM,* 19 FCC Rcd at 12567-12568, paras. 243-245.

[14] *Improved TRS Order & FNPRM,* 15 FCC Rcd at 5152, para. 22. On July 19, 2005, the Commission released two orders further addressing the provision of VRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, CG Docket No. 98-67, Report and Order, 20 FCC Rcd 13165 (July 19, 2005) (*2005 VRS Order*) (addressing VRS speed of answer, VRS hours of service, and VRS Mail); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, CG Docket No. 03-123, Order on Reconsideration, 20 FCC Rcd 13140 (July 19, 2005) (*2005 ASL-to-Spanish VRS Order*) (recognizing ASL-to-Spanish VRS).

[15] The popularity of VRS is reflected in how rapidly it has grown. In January 2002, the first month VRS was generally offered, there were 7,215 minutes of use; in January 2003, there were 128,114 minutes of use; in January 2004, there were 477,538 minutes of use; and in January 2005, there were 1,634,316 minutes of use; and in January 2006 there were over 3.2 million minutes of use of VRS.

[16] *See IP Relay Declaratory Ruling, supra.*

[17] *See generally Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services For Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order on Reconsideration, 18 FCC Rcd 4761, 4762, para. 3 n.11 (March 14, 2003).

[18] *See generally FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert*, Public Notice, 19 FCC Rcd 10740 (June 18, 2004) (*IP Relay Fraud Public Notice).*

possible with PSTN-based relay calls.[19] As a result, some persons have discovered that they may misuse IP Relay. In a typical scenario involving fraudulent credit card purchases, a person places an IP Relay call, usually from outside the United States, to a business located within the United States, places an order for goods (most often commodity items that can be quickly resold), pays with a stolen or fraudulent credit card, and arranges for the goods to be shipped to a location outside the United States.[20]

7. Such misuse is harmful both to the merchants who are victimized and legitimate IP Relay users who may no longer be able to convince merchants to accept their orders for merchandise.[21] In addition, we are concerned about the impact that such misuse may have on the Fund.[22] For example, interstate telecommunications carriers that pay into the Fund (and generally pass those costs on to their customers) should not be paying more because of the misuse of funded services.

8. The Commission has previously alerted the public and the business community to take precautionary steps to ensure that the credit card information received through IP Relay is legitimate.[23] The Commission noted that IP Relay providers are developing methods to determine which calls are attempts to make fraudulent purchases, and have successfully prevented some fraudulent purchase calls that can be identified as originating overseas from reaching their intended victims.[24] The Commission also recommended that merchants report any suspected fraudulent purchase calls to the Federal Trade Commission, Federal Bureau of Investigation, or their state authorities. Although the Commission has worked with the providers on ways to eliminate or minimize these fraudulent purchase calls, it does not appear that the frequency of such calls has significantly diminished.[25]

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[19] Because TTY based TRS calls are made over the PSTN, the call to the relay center includes identifying information, such as the calling party's number. That information is used to determine if the call is interstate or intrastate for compensation purposes under Section 225, but also has the effect of deterring the misuse of TRS because the relay provider knows where the inbound call is coming from.

[20] *See, e.g., Will You Accept This Call? Camera Retailers Should Beware of Relay Phone Scams*, Photo Marketing, Photo Marketing Assoc. International, May 1, 2004, 2004 WLNR 5835698.

[21] We note that merchants that accept telephone orders from voice telephone users may violate Title III of the ADA if they refuse to accept relay calls from persons with hearing and speech disabilities. *See, e.g., IP Relay Fraud Public Notice,* 19 FCC Rcd at 10741.

[22] Since IP Relay calls began being compensated in 2002, the size of the Fund has risen from approximately $70 million to its present size of over $440 million. In addition to IP Relay, much of that growth is attributable to the compensation of VRS. *See generally* http://www.neca.org/media/0605RELAYRATESHISTORY.xls (chart of history of Interstate TRS Fund size).

[23] *See IP Relay Fraud Public Notice, supra.*

[24] *IP Relay Fraud Public Notice*, 19 FCC Rcd at 10741.

[25] The Commission is aware of several recent media publications about the misuse of IP Relay to make fraudulent credit card purchases. *See, e.g.,* Communications Daily, Oct. 6, 2005, 2005 WLNR 16160696; *Avoid Becoming a Victim of Telecommunications Fraud*, Sheboygan Press, Nov. 8, 2004, 2004 WLNR 15062327; *Virginia Beach, Va. Jewelry Seller Foils TTY-aided Credit Card Scam*, The Virginian-Pilot, Sept. 30, 2004, 2004 WLNR 18104297; *Will You Accept This Call? Camera Retailers Should Beware of Relay Phone Scams*, Photo Marketing, Photo Marketing Assoc. International, May 1, 2004, 2004 WLNR 5835698. *See also,* Internet Fraud Complaint Center, http://www.ifccfbi.gov/strategy/wn040209.asp (visited August 30, 2005).

9. The Commission also noted the present difficulty in preventing fraudulent purchase calls because of the nature and purpose of TRS.[26] Due to the transparent nature of the CA's role in handling a TRS call, the CA may not interfere with the conversation.[27] The Commission also noted that the TRS statutory and regulatory regime does not contemplate that CAs should have a law enforcement role by monitoring the conversations they are relaying.[28] The current TRS regulations, for example, prohibit CAs from refusing calls,[29] and generally prevent CAs from disclosing or keeping records of the contents of any call.[30] In addition, the regulations prohibit the CAs from intentionally altering a relayed conversation,[31] and require them to relay all calls verbatim.[32] The Commission adopted these regulations as part of the functional equivalency principle to ensure that relay users, like voice telephone users, may access the telephone system and have any conversation they want, confidentially, despite the fact that the call involves a third person (the CA).[33] The Commission has also sought comment on the related issue of the abuse of CAs during IP Relay and VRS calls.[34]

C. Misuse of VRS as Substitute for an In-Person Interpreter or a Video Remote Interpreting Service

10. We continue to receive anecdotal evidence that VRS is being used in circumstances that should not involve access to the telephone system, and therefore are not appropriate for a relay service. VRS is not to be used as a substitute for in-person interpreting services or for Video Remote Interpreting (VRI).[35] Generally, in-person interpreters are contracted and paid on a fee-for-service basis. Similarly, VRI is a commercial service that is used when an interpreter cannot be physically present to interpret for two or more persons who are together at the same location. This service uses a video connection to provide access to an interpreter who is at a remote location. As with in-person interpreters, VRI services

[26] *IP Relay Fraud Public Notice*, 19 FCC Rcd at 10740-10741.

[27] *Id.*; *see also 2004 TRS Report and Order & FNPRM,* 19 FCC Rcd at12572, para. 256 (the CA is a "transparent entity who relays calls between the TRS users to provide functionally equivalent telephone service").

[28] *IP Relay Fraud Public Notice*, 19 FCC Rcd at 10740-10741.

[29] 47 C.F.R. § 64.604(a)(3)(i).

[30] 47 C.F.R. § 64.604(a)(2)(i).

[31] 47 C.F.R. § 64.604(a)(2)(ii).

[32] *Id.*

[33] *See generally Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4659-4661, paras. 13-19 (July 26, 1991).

[34] *2004 TRS Report and Order & FNPRM,* 19 FCC Rcd at 12571-12573, paras. 255-258.

[35] *See, e.g., Reminder that Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot be Used as a Substitute for "In-Person" Interpreting Services or Video Remote Interpreting (VRI)*, Public Notice, DA 05-2417 (Sept. 7, 2005) *(VRS-VRI Public Notice*) (noting that the Commission continues to receive reports that this is occurring, and reminding, in part, that VRS "is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system"); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, Order on Reconsideration, 16 FCC Rcd 4054, at 4058, para. 10 (June 5, 2000); *2005 ASL-to-Spanish VRS Order*, 20 FCC Rcd at 13154, para. 32 n.109.

are generally contracted and paid on a fee-for-service basis. The Commission recently noted that although "VRS providers generally have procedures in place to terminate calls where VRS is being used as a way to obtain free interpreting services, . . . persons misusing VRS may be doing so in ways to avoid detection, and are also publicizing these methods via consumer bulletin boards and other means."[36]

III. DISCUSSION

A. Misuse of IP Relay

11. We seek comment on whether we should waive or modify certain TRS rules to permit IP Relay providers and their CAs to screen out and, where appropriate, terminate calls they determine are not legitimate TRS calls. These include, for example, calls made by hearing persons to merchants to purchase goods with stolen or fraudulent credit cards.[37] At the same time, we recognize that permitting CAs to step out of their role as invisible conduits in a call may create tension with the functional equivalency principle. We invite comment on steps the Commission might take, consistent with Section 225, to permit providers to prevent or terminate such calls, even if that means waiving, amending or modifying for IP Relay some of the Commission's TRS mandatory minimum standards.

12. More particularly, we seek comment on whether the IP Relay provider or CA should be given the discretion to determine that a call is not a legitimate TRS call on a case-by-case basis, and to block, terminate, or refuse to handle the call, alert the merchant who receives the call that the call may be fraudulent, or take some other steps to prevent the misuse of IP Relay. We also seek comment on whether we should adopt rules to guide the exercise of that discretion.

13. Moreover, we seek comment on whether an IP Relay provider and its CAs can generally determine whether a call to a merchant is for the purpose of fraudulently purchasing goods, and therefore is likely not by a person with a hearing or speech disability seeking access to the telephone system. For example, we understand that there are many readily identifiable indicia of IP Relay calls to merchants by persons seeking to make fraudulent credit card purchases, including that the caller will only pay via credit card; offers more than one credit card number for payment; will not identify him or herself or provide a company name; uses names in reverse (last name as first, first as last); does not negotiate price; will not agree to pay in advance via a check, bank wire, or bank draft; has few questions about the product and lacks knowledge about the product; refuses to call back using the state's relay service; and changes the payment or delivery arrangements after an order has been approved.[38] We seek comment on whether there other ways in which a provider may determine if a particular call is not a legitimate relay call.

14. We also seek comment on whether additional steps, such as user registration, might be adopted to curtail the misuse of IP Relay. If the Commission adopted registration as a means of curbing illegitimate IP Relay calls, how might registration be implemented and what information should be

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[36] *VRS-VRI Public Notice* at 2.

[37] We note that in other contexts, *e.g.*, Speech-to-Speech (STS), the Commission has permitted the CA to step out of the role of strictly being a transparent conduit that relays the call. *See Improved TRS Order & FNPRM,* 15 FCC Rcd 5140, at 5162-5165 paras. 49-58 (modifying certain rules for STS calls, including the requirement that the CA relay the call verbatim); *see also 2004 TRS Report and Order,* 19 FCC Rcd at 12571-12573, paras. 249, 255-258 (June 30, 2004) (*FNPRM* raises the issues whether VRS CAs should be able to ask questions to the VRS user during call set-up, and whether the TRS provider or CA should be given the discretion to decline to handle or terminate abusive calls directed at the CA or called party).

[38] *See, e.g., Will You Accept This Call? Camera Retailers Should Beware of Relay Phone Scams*, Photo Marketing, Photo Marketing Assoc. International, May 1, 2004, 2004 WLNR 5835698.

required of the user? Are there steps that could be taken, or technology implemented, to prevent the wrongful use of registration information?

15. We further seek comment on whether there is any statutory bar to the Commission adopting rules that would give the TRS providers a role in curtailing the misuse of IP Relay. In addition, we seek comment on any procedures should be employed to safeguard legitimate calls and ensure consumers' confidence in the integrity and confidentiality of IP Relay service. Assuming an IP Relay provider or CA is permitted to terminate a call determined to be illegitimate, should the provider nevertheless be compensated for the conversation time of the call prior to termination? Further, if we were to allow the IP Relay provider and the CA discretion to disconnect apparently illegitimate calls, should the provider be required to maintain records of such terminated calls, consistent with Section 225(d)(1)(F)?[39] Would it be appropriate to include in such records the date, time, and nature of the call and the reason why the provider or CA determined that the call was illegitimate?

16. Finally, we request commenters to consider whether Section 705 of the Communications Act, 47 U.S.C. § 605, or any other federal or state statute, would restrict the Commission's authority to take any of the remedial actions discussed above.[40] We also request parties to provide any additional information that may be relevant to preventing the misuse of IP Relay.

B. Misuse of VRS as Substitute for an In-Person Interpreter or a Video Remote Interpreting Service

17. We seek comment on whether, and if so, how, we can ensure that VRS is not used as a substitute for hiring an in-person interpreter or a VRI service. Is it possible for VRS providers and their CAs to determine whether a particular VRS call is a legitimate call or is being used as a substitute for an in-person interpreting service or VRI? Do VRS providers presently have procedures in place to ensure that the VRS calls they handle and submit to the Fund administrator for payment are legitimate VRS calls? If not, what procedures could be implemented to prevent such abuse?

18. We further seek comment on whether the VRS provider or CA should be given the discretion to make the determination that a call is not a legitimate VRS call, and to terminate the call. If so, should we adopt rules to guide the exercise of this discretion? Should the Commission waive or modify any of the TRS regulations to enable VRS providers to ensure that the calls they handle are legitimate?

19. We also seek comment on whether additional steps, such as user registration, might be adopted to curtail the misuse of VRS. How might registration be implemented and what information should be required of the user? Are there steps that could be taken, or technology implemented, to prevent the wrongful use of registration information?

20. We further seek comment on whether any procedures should be employed to safeguard legitimate calls and ensure consumers' confidence in the integrity and confidentiality of VRS. Assuming

[39] 47 U.S.C. § 225(d)(1)(F) (prohibiting CAs from "keeping records of the content" of any call beyond the duration of the call).

[40] Section 705 of the Communications Act prohibits, in part, persons who assist in receiving and transmitting telephone calls from divulging or publishing the existence or contents of a call except in certain enumerated circumstances. *See* 47 U.S.C. § 605(a). We seek comment, for example, on whether Section 705 applies to TRS CAs and, if so, whether permitting a CA to terminate a relay call based on information derived from the CA's role in relaying the call would be precluded by this provision.

a VRS provider or CA is permitted to terminate a call determined to be illegitimate, should the provider nevertheless be compensated for the conversation time of the call prior to termination? Further, if we were to allow the VRS provider and the CA discretion to disconnect apparently illegitimate VRS calls, should the provider be required to maintain records of such terminated calls, consistent with Section 225(d)(1)(F)?[41] Would it be appropriate to include in such records the date, time, and nature of the call and the reason why the provider or CA determined that the call was illegitimate?

21. Finally, we request commenters to consider whether Section 705 of the Communications Act, 47 U.S.C. § 605, or any other federal or state statute, would restrict the Commission's authority to take any of the remedial actions discussed above.[42] We also request parties to provide any additional information that may be relevant to our resolution of this issue.

IV. PROCEDURAL MATTERS

22. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.430 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, 1.430, interested parties may file comments on or before 30 days after publication of this *Notice* in the Federal Register, and reply comments on or before 45 days after publication of this *Notice* in the Federal Register. All filings should refer to CG Docket No. 03-123. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[43] For additional information on this proceeding, please contact Greg Hlibok in the Consumer & Governmental Affairs Bureau, Disability Rights Office, at: (866) 410-5787 x16757 (Voice), or (202) 418-0431 (TTY).

23. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number: CG Docket No. 03-123. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfshelp@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and instructions will be sent in reply. You also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at http://www.fcc.gov/e-file/email.html. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

24. For hand deliveries, the Commission's contractor, Best Copy and Printing, will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th

[41] 47 U.S.C. § 225(d)(1)(F) (prohibiting CAs from "keeping records of the content" of any call beyond the duration of the call).

[42] *See* note 40, *supra.*

[43] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (April 6, 1998).

Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

25. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the *Notice*. We further direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. We strongly encourage that parties track the organization set forth in this *Notice* in order to facilitate our internal review process. Comments and reply comments must otherwise comply with section 1.48 and all other applicable sections of the Commission's rules.[44]

26. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). This Public Notice can also be downloaded in Word and Portable Document Format at <http://www.fcc.gov/cgb.dro>.

27. *Ex Parte Rules.* This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[45] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[46] Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

28. *Initial Regulatory Flexibility Analysis.* With respect to this *Notice*, an Initial Regulatory Flexibility Analysis (IRFA) is contained in the Appendix. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in the *Notice*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* specified in paragraph 24 above. The Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[47]

29. *Initial Paperwork Reduction Act of 1995 Analysis.* This document contains proposed or modified information collection requirements. The Commission, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, and as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document. Public and agency comments are due 60 days after date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44

[44] *See* 47 C.F.R. § 1.48.

[45] 47 C.F.R. §§ 1.200 *et seq.*

[46] *See* 47 C.F.R. § 1.1206(b)(2).

[47] *See* 5 U.S.C. § 603(a). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

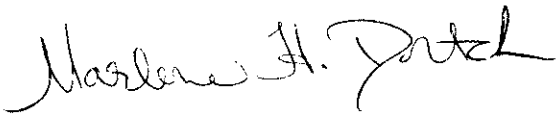
U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, this Further Notice of Proposed Rulemaking IS ADOPTED.

31. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX: INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),[1] 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 Further Notice of Proposed Rulemaking (FNPRM). 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 provided in paragraph 24 of 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 (SBA).[2] In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. Providers of telecommunications relay services (TRS), mandated by Title IV of the Americans with Disabilities Act of 1990,[4] relay telephone calls between persons with hearing and speech disabilities and persons without such disabilities. Under the Commission's regulations, the communications assistant (CA) may not refuse calls or disclose the contents of any call. The Commission adopted these regulations as part of the functional equivalency principle[5] to ensure that relay users, like voice telephone users, may access the telephone system and have any conversation they want, confidentially, despite the fact that the call involves a third person (the CA).[6] Because IP Relay and VRS offer consumers anonymity as the call is placed via the Internet, and not the PSTN, the Commission has become aware that these services are being misused. Persons have been using IP Relay to purchase goods from merchants using stolen or fraudulent credit cards. Such misuse is harmful both to the merchant who is defrauded and to legitimate relay users who may no longer be able to convince merchants to accept orders via relay.

3. With respect to VRS, the Commission has expressed concern that it is being misused as a substitute for hiring a Video Remote Interpreting (VRI) service or an in-person interpreter. The Commission is also concerned that the rapid and steady increase in the size of the Interstate TRS Fund may in part be a result of such misuse of IP Relay and VRS. Therefore, the FNPRM seeks comment on whether the Commission should waive or modify certain TRS rules to permit IP Relay and VRS providers to screen out and, where appropriate, terminate, IP Relay calls involving fraudulent credit card purchases or VRS calls that are illegitimate. These TRS rules might include those that prevent a CA from refusing calls, generally prohibit a CA from disclosing or keeping records of the content of a call, prohibit a CA from intentionally altering a relayed conversation, and required CAs to relay all calls verbatim.[7]

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[1] *See* 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] *See* 47 U.S.C. § 225.

[5] *See* 47 U.S.C. § 225(a)(3).

[6] *See* para. 9 of the FNPRM, *supra*.

[7] *See* 47 C.F.R. §§ 64.604(a)(2)(i) & (ii), 64.604(a)(2)(ii).

4. More specifically, the FNPRM provisionally considers granting the IP Relay provider or CA the discretion to determine that a call is not a legitimate TRS call on a case-by-case basis, and to block, terminate, or refuse to handle the call, alert the merchant who receives the call that the call may be fraudulent. The FNPRM also asks for any recommendation on a possible alternative measure to prevent the misuse of IP Relay. In doing so, the Commission contemplates adopting new rules that guide the provider and the CA the exercise of that discretion. Further, the proposed user registration is being contemplated as an additional measure to curtail the misuse of IP Relay. The FNPRM also asks for an alternative measure.

5. The FNPRM provisionally proposes that, assuming that the IP Relay provider and the CA were granted the discretion to disconnect apparently illegitimate calls, the provider should be required to maintain records of such terminated calls, consistent with Section 225(d)(F).[8] The FNPRM contemplates on any rule changes permitting IP Relay providers or CAs to terminate apparently illegitimate calls be made permanently or temporarily.

6. The FNPRM seeks input on whether Section 705 of the Communications Act, 47 U.S.C. § 605, or any other federal or state statute,[9] may restrict the Commission's authority to take any of the remedial actions discussed above. Finally, the FNPRM asks whether the providers that terminated these apparently illegitimate calls should be compensated from the Interstate TRS Fund nonetheless.

7. In contemplating an appropriate measure to ensure that VRS is not used as a substitute for an in-person interpreter of VRI service, the FNPRM asks for recommendations on how the Commission can ensure that VRS is not being misused. The FNPRM proposes a possible rule change that grants the VRS provider or CA the discretion to make the determination that a call is not a legitimate VRS call, and to terminate the call. The FNPRM also tentatively considers waiving or modifying certain TRS regulations to enable VRS providers to ensure that the calls they handle are legitimate.[10]

8. In addition, the proposed user registration is being contemplated as an additional measure to curtail the misuse of VRS. The FNPRM contemplates whether the rule change that permits VRS providers or CAs to terminate apparently illegitimate calls should be permanent or temporary. Finally, the FNPRM asks whether the providers that terminated these apparently illegitimate calls should be compensated from the Interstate TRS Fund nonetheless.

B. Legal Basis

9. The authority for the 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. §§ 151, 154(i) and (j), 201-205, 218 and 225, and Sections 64.601-64.608 of the Commission's regulations, 47 C.F.R. §§ 64.601-64.608.

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[8] 47 U.S.C. § 225(d)(1)(F) (prohibiting CAs from "keeping records of the content" of any call beyond the duration of the call).

[9] *See*, e.g., 18 U.S.C. § 2511 (which is noted in section 705).

[10] *See* para 18 of the FNPRM, *supra*.

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

10. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[11] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[12] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[13] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[14]

11. As noted above, the FNPRM seeks comment on whether IP Relay and VRS providers should be given the discretion to determine that a call is not a legitimate TRS call on a case-by-case basis, and to block, terminate, or refuse to handle the call, or (for IP Relay) alert the merchant who receives the call that the call may be fraudulent, or take some other steps to prevent the misuse of IP Relay and VRS. As a result, we believe that the entities that may be affected by the proposed rules are only those TRS providers that offer IP Relay and VRS. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees.[15] Currently, there are eight TRS providers that offer VRS and/or IP Relay, which consist of interexchange carriers, local exchange carriers, other common carriers, and non-profit organizations. Approximately three or fewer of these entities are small businesses under the SBA size standard.[16]

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

12. The FNPRM's proposed rules would permit CAs to terminate certain IP Relay and VRS calls in circumstances where they believe the call is illegitimate. A registration requirement, if adopted, might require VRS and IP Relay providers to register each user so that the provider would have identifying information of the person making the call, and might require the provider or user to update this information as necessary. The rules, if adopted, might also require the providers to keep records of calls that are terminated.

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[11] 5 U.S.C. § 603(b)(3).

[12] 5 U.S.C. § 601(6).

[13] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 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."

[14] 15 U.S.C. § 632.

[15] 13 C.F.R. § 121.201, NAICS Code 517110.

[16] *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.

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

13. The RFA requires an agency to describe any significant, alternatives, specific to small businesses, 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."[17]

14. The Commission considers the proposed rule changes in the FNPRM as a possible means of achieving the competing public policy goals of ensuring that TRS works as a transparent conduit for the calling and called parties and preventing the misuses of IP Relay and VRS services. This FNPRM invites comment on a number of alternative means by which IP Relay and VRS providers might undertake to curtail illegitimate calls. For example, this FNPRM asks if the Commission should amend TRS rules to allow providers the discretion to refuse or terminate illegitimate IP Relay and VRS calls.

15. The FNPRM also seeks comment on other means by which the Commission might curtail the misuse of IP Relay and VRS, including by adopting a registration requirement. The Commission also asks if there may be alternatives to requiring registration or imposing new obligations on providers, such as waiving certain TRS rules. These alternatives could mitigate any burden the proposed registration requirement might have on small businesses.

16. The Commission notes that by promulgating the rules in allowing the provider and the CA the discretion to terminate apparent illegitimate calls, it would lessen an adverse economic impact on small businesses. The proposed rule change would save many small businesses that may be affected by these illegitimate calls. For instance, small businesses are more vulnerable with illegitimate calls involving fraudulent credit card purchases because they often are not equipped to verify the credit card numbers. The proposed rule change that calls for granting the provider and the CA the discretion to terminate apparent illegitimate calls would not create an additional financial burden on any provider, including small businesses.

17. The FNPRM contemplates requiring the providers to maintain records of terminated calls, and seeks comment on what these records should include. The FNPRM notes, however, that such a requirement might conflict with the Commission's rules,[18] and also seeks comment on this issue. The FNPRM therefore contemplates that it may not be possible to require providers to maintain any records.

18. Further, the FNPRM also invites comment on whether any proposed rule change and/or requirement should be permanent or temporary. To the extent the adopted measure requiring the providers to maintain records is temporary, any burden on small businesses would be lessened.

F. Federal rules that may duplicate, overlap, or conflict with the proposed rules

19. None.

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[17] 5 U.S.C. § 603(c)(1) - (4).

[18] *See* paras 15, 20 of the FNPRM, *supra*.