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Federal Communications Commission
Washington, D.C. 20554

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In the Matters of	)	
IP-Enabled Services	)	WC Docket No. 04-36
Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities	)	WT Docket No. 96-198
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
The Use of N11 Codes and Other Abbreviated Dialing Arrangements	)	CC Docket No. 92-105

REPORT AND ORDER

Adopted: May 31, 2007 **Released: June 15, 2007**

By the Commission: **Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements.**

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I. INTRODUCTION

1. In this Report and Order (*Order*), we extend the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended (the Act),[1] to providers of "interconnected voice over Internet Protocol (VoIP) services," as defined by the Commission,[2] and to manufacturers of specially designed equipment used to provide those services. We adopt this measure under our Title I ancillary jurisdiction in order to give full effect to the accessibility policies embodied in section 255, and to further our statutory mandate to make available a nationwide communications system that promotes the safety and welfare of all Americans. In addition, we extend the Telecommunications Relay Services (TRS)[3] requirements contained in our regulations, 47 C.F.R. §§ 64.601 *et seq.*, to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act[4] and our Title I ancillary jurisdiction. Among the TRS requirements that we extend to interconnected VoIP providers, we require such providers to contribute to the Interstate TRS Fund (Fund)[5] under the Commission's existing contribution rules,[6] and to offer 711 abbreviated dialing for access to relay services.[7] Together, these measures will ensure that, as more consumers migrate from traditional phone service to interconnected VoIP services, the disability access provisions mandated by Congress under sections 255 and 225 will apply to, and benefit users of, interconnected VoIP services and equipment.

II. BACKGROUND

A. Sections 255 and 251(a)(2) of the Communications Act of 1934 (Disability Access)

2. In adopting section 255, Congress sought to ensure that *all* Americans, including the approximately 54 million Americans with disabilities, could benefit from advances in telecommunications services and equipment. Section 255 requires manufacturers of "telecommunications equipment or

[1] *See* 47 U.S.C. § 255. Section 255 was added to the Communications Act by the Telecommunications Act of 1996. Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996). *See also* 47 C.F.R. §§ 6.1-6.23 (Commission rules implementing section 255).

[2] *See* 47 C.F.R. §§ 9.3, 54.5 (defining "interconnected VoIP service" and "interconnected VoIP provider").

[3] TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables a person with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users through a relay provider and a Communications Assistant (CA). *See* Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990); 47 U.S.C. § 225(a)(3); 47 C.F.R. § 64.601(14) (defining TRS).

[4] *See* 47 U.S.C. § 225(b)(1).

[5] As discussed below, the Fund compensates providers of eligible interstate TRS services, and other TRS services not compensated by the states, for their reasonable costs of providing service. *See* 47 C.F.R. § 64.604(c)(5)(iii)(E).

[6] 47 C.F.R. § 64.604(c)(5)(iii)(A), (B).

[7] *See* 47 C.F.R. § 64.603.

customer premises equipment"[8] to ensure that such equipment is accessible to and usable by individuals with disabilities, if readily achievable, and requires providers of a "telecommunications service"[9] to ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.[10] Where such access is not readily achievable, the manufacturer or service provider must ensure that the equipment or service is "compatible with" existing peripheral devices or specialized customer premises equipment (CPE) commonly used by individuals with disabilities to achieve access, if such compatibility is readily achievable.[11] Section 255(a) incorporates by reference the ADA definitions of the terms "disability" and "readily achievable."[12] Section 255(e) directs the Architectural and Transportation Barriers Compliance Board (Access Board), "in conjunction with the Commission," to develop "guidelines for accessibility of telecommunications equipment and customer premises equipment."[13] Finally, section 251(a)(2) of the Act, which appears among the general duties of telecommunications carriers, prohibits such carriers from installing "network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255."[14]

3. On September 29, 1999, the Commission issued an order implementing the disability access provisions in sections 255 and 251(a)(2).[15] Among other things, the Commission's section 255 rules: (1) require manufacturers of telecommunications *equipment* or *CPE* to ensure that their equipment is designed, developed and fabricated to be accessible to individuals with disabilities, if readily achievable and, where such accessibility is not readily achievable, to ensure that the equipment is compatible with

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[8] For ease of reference, we will use the term "equipment" hereinafter to refer both to "equipment" and "CPE" unless otherwise specified.

[9] "The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

[10] 47 U.S.C. § 255(b) ("A manufacturer of telecommunications equipment or [CPE] shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable."); 47 U.S.C. § 255(c) ("A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.").

[11] 47 U.S.C. § 255(d) ("Whenever the requirements of subsections (b) and (c) are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized [CPE] commonly used by individuals with disabilities to achieve access, if readily achievable.").

[12] "Disability" is defined to include "a physical or mental impairment that substantially limits one or more of the major life activities of such individual," "a record of such impairment," or the state of "being regarded as having such an impairment." 42 U.S.C. § 12102(2); *see* 47 U.S.C. § 255(a)(1) (adopting definition set forth in 42 U.S.C. § 12102(2)(A)); "Readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9); *see* 47 U.S.C. § 255(a)(2) (adopting definition set forth in 42 U.S.C. § 12181(9)). In determining whether an action is readily achievable, the ADA lists factors to be considered, including the nature and cost of the action, and the financial resources of the covered entity, among others. 42 U.S.C. § 12181(9)(A)-(D).

[13] 47 U.S.C. § 255(e). The Access Board is an independent federal regulatory agency created under section 502 of the Rehabilitation Act of 1973, 29 U.S.C. § 792, to enforce the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151-4157. It consists of 25 members – 12 federal agency representatives and 13 members appointed by the President of the United States from the general public of whom at least a majority shall be individuals with disabilities.

[14] 47 U.S.C. § 251(a)(2).

[15] *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (July 14, 1999) (*Section 255 Order*); *see also* 47 C.F.R. §§ 6.1-6.23 (implementing rules).

existing peripheral devices or specialized CPE, if readily achievable;[16] (2) require telecommunications *service* providers to ensure that their service is accessible to individuals with disabilities, if readily achievable and, where such accessibility is not readily achievable, to ensure that the service is compatible with existing peripheral devices or specialized CPE, if readily achievable;[17] (3) prohibit telecommunications carriers from installing network features, functions, or capabilities that do not comply with the guidelines and standards established in the *Section 255 Order*;[18] (4) require manufacturers and service providers to evaluate the accessibility, usability, and compatibility of covered services and equipment throughout the design and development process;[19] (5) require manufacturers and service providers to ensure that information and documentation provided in connection with equipment or services be accessible to people with disabilities, where readily achievable, and that employee training, where provided at all, account for accessibility requirements;[20] (6) incorporate, with minor modifications, the Access Board definition of the term "accessible" for both products and services, along with the list of actions the Access Board required manufacturers to undertake in order to render products accessible;[21] and (7) define the term "readily achievable," consistent with the ADA definition, as "easily accomplishable and able to be carried out without much difficulty or expense" and provide that determinations as to what is "readily achievable" be made on a case-by-case basis considering, among other factors, the cost and nature of the action and overall resources of the entity.[22]

4. In the *Section 255 Order*, the Commission also applied requirements "comparable to those under section 255" to two information services that it deemed "critical to making telecommunications accessible and usable by people with disabilities."[23] In particular, the Commission's review of the record led it to conclude that its failure to ensure accessibility of voicemail and interactive menu services, and the related equipment that performs these functions, would "seriously undermine the accessibility and usability of the telecommunications services covered by sections 255 and 251(a)(2)."[24] Thus, the Commission asserted ancillary jurisdiction to extend the accessibility requirements to providers of voicemail and interactive menu services and to the manufacturers of related equipment.[25]

5. The *Section 255 Order* included a Notice of Inquiry (*NOI*), which sought comment on applying accessibility requirements to "IP telephony" and "computer-based equipment that replicates telecommunications functionality."[26] The *NOI* sought comment on the extent to which Internet telephony

[16] 47 C.F.R. § 6.5(a)(1)-(2) (delineating accessibility obligations of manufacturers).

[17] 47 C.F.R. § 6.5(b)(1)-(2) (delineating accessibility obligations of service providers).

[18] 47 C.F.R. § 6.5(c) (implementing 47 U.S.C. § 251(a)(2)).

[19] 47 C.F.R. § 6.7(a) ("Manufacturers and service providers shall evaluate the accessibility, usability, and compatibility of equipment and services covered by this part and shall incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers and service providers shall identify barriers to accessibility and usability as part of such a product design and development process").

[20] 47 C.F.R. § 6.11(a) (detailing methods by which manufacturers and service providers shall ensure access to information and documentation it provides to its customers, if readily achievable); 47 C.F.R. § 6.11(c) (addressing training requirements).

[21] 47 C.F.R. § 6.3(a) (defining "accessible").

[22] 47 C.F.R. § 6.3(g) (defining "readily achievable").

[23] *Section 255 Order*, 16 FCC Rcd at 6455, para. 93.

[24] *Section 255 Order*, 16 FCC Rcd at 6459, para. 103.

[25] *Id.*, 16 FCC Rcd at 6455-62, para. 108; *see also* 47 C.F.R. §§ 7.1-7.23.

[26] *Section 255 Order*, 16 FCC Rcd at 6483-84, paras. 173-76.

was impairing access to communications services among people with disabilities, the efforts that manufacturers were taking to render new technologies accessible, and the degree to which these technologies should be subjected to the same disability access requirements as traditional telephony facilities.[27]

6. In response to the *NOI*, disability advocates generally argued that manufacturers and providers will not voluntarily remedy accessibility issues unless compelled to do so by regulation.[28] Several commenters specifically pointed to the need for mandatory standards to ensure that IP telephony is compatible with TTYs.[29] They argued that if IP telephony is not accessible to those with disabilities, the purposes of section 255 would be thwarted.[30] Several industry commenters argued that the Commission should not extend the requirements of section 255 to IP-telephony under its ancillary jurisdiction absent evidence of widespread use of IP-telephony and evidence that the service is an "essential component of telecommunications."[31] Industry commenters also pointed to the voluntary development of accessibility standards by a number of standards-setting organizations as evidence that regulatory intervention is not needed.[32]

B. Section 225 of the Communications Act of 1934 (TRS)

7. Title IV of the Americans with Disabilities Act of 1990 (ADA), which added section 225 to the Act,[33] instructs 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.[34] The statute requires each common carrier offering "telephone voice transmission services" to offer TRS to persons with hearing and speech disabilities that is "functionally equivalent" to voice telephone service.[35] When section 225 was first implemented, TRS calls were placed using a TTY[36] connected to the public switched telephone network (PSTN).[37] Since then, the Commission has recognized other forms of TRS, including

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[27] *Id.*, 16 FCC Rcd at 6484-86, paras. 177-185.

[28] *See, e.g.*, Comments of The American Foundation for the Blind at 20 (Jan. 13, 2000); Comments of Trace/Gallaudet at 9 (Jan. 13, 2000).

[29] *See, e.g.*, Comments of The National Association of the Deaf at 11-19 (Jan. 13, 2000). A "TTY," or text telephone, is a device that sends text over the telephone network. *See* 47 C.F.R. § 64.601(15) (defining TTY).

[30] *See, e.g.*, Comments of The National Association of the Deaf at 11 (Jan. 13, 2000).

[31] *See, e.g.*, Reply Comments of MCI at 6 (Feb. 14, 2000); *see also* Comments of Microsoft at 11-12 (Jan. 13, 2000).

[32] *See, e.g.*, Comments of VON Coalition at 5-11 (Jan. 13, 2000) (describing various industry standards targeted at improving accessibility for the hearing impaired and identifying potential solutions).

[33] Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990); 47 U.S.C. § 225.

[34] 47 U.S.C. § 225(b)(1).

[35] 47 U.S.C. § 225(a)(3), (c). As defined in section 225, the term "telecommunications relay services" means "telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device." 47 U.S.C. § 225(a)(3).

[36] *See* 47 C.F.R. § 64.601(15) (defining TTY).

[37] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571, 98-67; CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479, para. 3 n.18 (June 30, 2004) (*2004 TRS Report & Order*) (describing how a traditional TRS call works).

Speech-to-Speech, and captioned telephone service, as well as several Internet-based forms of TRS such as Video Relay Service (VRS), IP Relay, and IP captioned telephone service.[38]

8. Section 225 creates a cost recovery regime under which providers of TRS are compensated for their reasonable costs of providing TRS.[39] Specifically, section 225 provides that the "costs caused by" the provision of *interstate* TRS "shall be recovered from all subscribers for every interstate service," and the "costs caused by" the provision of *intrastate* TRS "shall be recovered from the intrastate jurisdiction."[40] With respect to interstate TRS, there are two components to the cost recovery framework set forth in the Commission's rules: (1) collecting contributions from common carriers providing interstate telecommunications services to create a fund from which eligible TRS providers may be compensated;[41] and (2) compensating eligible TRS providers from the fund for the costs of providing eligible TRS services.[42] Under Commission rules, interstate telecommunications carriers contribute to the Interstate TRS Fund based on a percentage of their interstate end-user telecommunications revenues.[43] All contributions are placed in the Fund, which is administered by the TRS Fund administrator, currently the National Exchange Carrier Association, Inc. (NECA). The TRS Fund administrator uses these funds to compensate eligible TRS providers for the costs of providing TRS.[44]

C. Interconnected VoIP Services

9. On March 10, 2004, the Commission initiated a rulemaking proceeding to examine issues relating to services and applications that use Internet Protocol (IP), including but not limited to VoIP services[45] (collectively, "IP-enabled services").[46] The Commission noted that some IP-enabled services, to the extent that they are viewed as "replacements for traditional voice telephony[,]" raise "social policy concerns" relating to emergency services, law enforcement, disabilities access, consumer protection, and universal service.[47] It further considered whether a service's functional equivalence to, or substitutability for, traditional telephony provides a basis for determining the appropriate regulatory treatment of that

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[38] *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379, 8381-82, para. 3 (July 20, 2006) (describing various forms of TRS).

[39] 47 U.S.C. § 225(d)(3). Congress directed that TRS users cannot be required to pay rates "greater than the rates paid for functionally equivalent voice communication services." 47 U.S.C. § 225(d)(1)(D).

[40] 47 U.S.C. § 225(d)(3)(B); *see also* 47 C.F.R. § 64.604(c)(5)(ii). The costs of intrastate TRS generally are recovered by the states through rate adjustments or surcharges on local phone bills. Currently, the costs of all IP Relay, VRS, and IP captioned telephone service calls are compensated from the Fund.

[41] 47 C.F.R. § 64.604(c)(5)(iii)(A).

[42] 47 C.F.R. § 64.604(c)(5)(iii)(E).

[43] 47 C.F.R. § 64.604(c)(5)(iii)(A), (B).

[44] Contributors to the Interstate TRS Fund annually must file with the Universal Service Administrative Company a completed Telecommunications Reporting Worksheet (FCC Form 499-A). The revenue data reported on this form is used by NECA to calculate carriers' TRS Fund obligations.

[45] The Commission has not formally defined the term "VoIP" but has stated that its use of the term generally encompasses "any IP-enabled services offering real-time, multidirectional voice functionality, including, but not limited to, services that mimic traditional telephony." *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4866, para. 3 n.7 (March 10, 2004) (*IP-Enabled Services NPRM*). VoIP services include "interconnected VoIP services," defined at 47 C.F.R. § 9.3. *See* note 2 *supra*.

[46] *IP-Enabled Services NPRM*, 19 FCC Rcd 4863.

[47] *Id.*, 19 FCC Rcd at 4886-87, para. 36.

service.[48]

10. With regard to disability access requirements, the Commission sought comment on "how we should apply the disability accessibility requirements set forth in sections 255 and 251(a)(2) to any providers of VoIP or other IP-enabled services."[49] Noting that the Commission previously had relied on its ancillary authority under Title I of the Act to apply section 255 obligations to providers of voicemail and interactive menu services, both of which were deemed "information services" under the Act, the Commission asked whether that approach would be "appropriate with regard to any providers of VoIP or other IP-enabled services" that the Commission ultimately may deem to be information services.[50]

11. The Commission also sought comment on "how migration to IP-enabled services will affect our statutory obligation to ensure that interstate and intrastate telecommunications relay services are available to hearing-impaired and speech-impaired individuals."[51] More specifically, the Commission sought comment on how "other decisions" it may make in the *IP-Enabled Services* proceeding "might affect contributions to the Interstate TRS Fund" and whether, in this regard, the Commission "should amend its [TRS] rules in light of the increasing use of IP-enabled services."[52]

12. In response to the *IP-Enabled Services NPRM*, a majority of commenters addressing these issues recommended that the Commission apply "social policy" regulations, such as disability access and TRS contribution requirements, to VoIP services and other IP-enabled services, whether those services are deemed to be an "information service" or a "telecommunication service" under the Act.[53] Other commenters argued, however, that social policy considerations would be best addressed by competitive market forces and therefore urged the Commission to defer regulation until it is demonstrated that the market will not address these issues.[54]

13. Shortly after the release of the *IP-Enabled Services NPRM*, the Commission hosted a "Solutions Summit" at which members of the disability community, industry representatives, and Commission staff discussed ways to address problems of disabilities access as communications services increasingly move to Internet-based platforms.[55] The information gathered at this forum has informed the

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[48] *Id.*, 19 FCC Rcd at 4887, para. 37.

[49] *Id.*, 19 FCC Rcd at 4901-03, paras. 58-60.

[50] *Id.*, 19 FCC Rcd at 4902, para. 58. The Commission has issued two pronouncements in recent years concerning the appropriate legal classification of particular IP-enabled services as "telecommunications service[s]" or "information service[s]" under the Act. *See Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Order, 19 FCC Rcd 3307 (2004); *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 03-45, Order, 19 FCC Rcd 7457 (Feb. 19, 2004). The ultimate classification of these services as telecommunications services or information services is significant to the extent that "telecommunications services" generally are subject to a comprehensive regulatory regime under Title II of the Act (including section 255), while "information services" fall under the Commission's Title I jurisdiction and generally are subject to more limited regulation by the Commission. The actions we take today do not prejudge the Commission's ultimate classification of interconnected VoIP service as a "telecommunications service" or as an "information service" under the statutory definitions of those terms.

[51] *IP-Enabled Services NPRM*, 19 FCC Rcd at 4903, para. 60.

[52] *Id.*

[53] *See, e.g.*, Comments of Communication Service for the Deaf at 5-9 (May 28, 2004).

[54] *See, e.g.*, Comments of Motorola at 14-15 (May 28, 2004).

[55] *FCC Internet Policy Working Group To Hold Second "Solutions Summit" On Friday, May 7, 2004 to Focus on Disabilities Access Issues Associated With Internet-based Communications Services*, Public Notice, WC Docket No. 04-36 (rel. March 11, 2004).

Commission's understanding of various advancements, innovations, and disabilities access issues relating to VoIP services for purposes of our *IP-Enabled Services* rulemaking proceeding.[56]

14. Subsequently, the Commission addressed issues relating to the provision and regulation of interconnected VoIP services in a number of proceedings. First, on November 9, 2004, the Commission adopted the *Vonage Order*,[57] in which it addressed the scope of the Commission's regulatory authority over an interconnected VoIP service that contained both intrastate and interstate components. The Commission preempted an order of the Minnesota Public Utilities Commission that applied Minnesota's traditional "telephone company" regulations to Vonage's DigitalVoice service -- an interconnected VoIP service under the definition subsequently adopted by the Commission.[58] Without classifying Vonage's service as either an "information service" or a "telecommunications service" under the Act, the Commission held that DigitalVoice cannot be separated into interstate and intrastate communications for compliance with Minnesota's requirements without negating valid federal policies and rules.[59] The *Vonage Order* made "clear that this Commission, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to DigitalVoice and other IP-enabled services having the same capabilities."[60] The Commission further indicated that it intended to resolve "important regulatory matters with respect to IP-enabled services" in the *IP-Enabled Services* rulemaking proceeding.[61]

15. On three occasions, the Commission has extended certain Title II obligations to interconnected VoIP providers.[62] On May 19, 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act and its authority under section 251(e) to require interconnected VoIP providers to supply 911 emergency calling capabilities to their customers for services that utilize the PSTN.[63] On June 21, 2006, the Commission in the *2006 Interim Contribution Methodology Order*, among other things, established universal service contribution obligations for interconnected VoIP providers based on its permissive authority under section 254(d) and its ancillary jurisdiction under Title I of the Act.[64] On

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[56] *See* Voice over IP (VoIP) Summit, May 7, 2004 *at* http://www.fcc.gov/voip/voipsummit.html (containing links to summit presentations).

[57] *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Pub. Util. Commn.*, Order, 19 FCC Rcd 22404 (2004) (*Vonage Order*), *aff'd*, *Minnesota Pub. Util. Comm'n. v. FCC*, 483 F.3d 570 (8th Cir. Mar. 21, 2007).

[58] *See IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (June 3, 2005) (*VoIP 911 Order*) (defining "interconnected VoIP service"), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 C.F.R. § 9.3 (definition of "interconnected VoIP service" adopted in *VoIP 911 Order*).

[59] *Vonage Order*, 19 FCC Rcd at 22411-12, para. 14.

[60] *Id.*, 19 FCC Rcd at 22405, para. 1.

[61] *Id.*, 19 FCC Rcd at 22411, n. 46 & 22432, para. 44.

[62] Additionally, on August 5, 2005, the Commission determined that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act (CALEA). *See Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005) (*CALEA First Report and Order*), *aff'd*, *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

[63] *See VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1.

[64] *See Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (rel. June 27, 2006) (*2006 Interim Contribution Methodology Order*), *aff'd in relevant part*, *Vonage Holdings Corp., v. FCC*, 2007 WL 1574611 (D.C. Cir. June 1, 2007).

March 13, 2007, the Commission extended section 222's customer proprietary network information obligations to interconnected VoIP providers using its Title I authority.[65]

III. DISCUSSION

16. We require providers of "interconnected VoIP service," as defined by the Commission,[66] and manufacturers of equipment or CPE that is specially designed to provide this service, to comply with disability access requirements mirroring those in section 255 and in the Commission's section 255 rules.[67] This conclusion is consistent with the objective identified by the Commission in the *IP-Enabled Services NPRM* of facilitating the deployment of broadband services and applications, relying "wherever possible" on competition and applying "discrete" regulatory requirements only where such requirements are "necessary to fulfill important policy objectives."[68] We also require providers of interconnected VoIP service to comply with the TRS requirements contained in our regulations, 47 C.F.R. §§ 64.601 *et seq.* Among the TRS requirements that we extend to interconnected VoIP providers, we require such providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711 abbreviated dialing for access to relay services.[69] We conclude that the actions we take today are necessary to give full effect to the accessibility objectives embodied in sections 255 and 225, and to fulfill our statutory mandate to make available a nationwide communications system that promotes the safety and welfare of all Americans.[70]

A. Disability Access Obligations of Interconnected VoIP Providers and Manufacturers

17. Although VoIP industry commenters contend that voluntary measures and market-based approaches will ensure reliable access to VoIP services and products for people with disabilities,[71] the record reveals a gap between emerging technologies and the implementation of features needed to render those technologies accessible.[72] As a result, as increasing numbers of consumers replace their traditional

[65] *See Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-22 (rel. April 2, 2007) (*CPNI Order*).

[66] *See* 47 C.F.R. § 9.3 (defining "interconnected VoIP service").

[67] Nothing in this *Order* alters telecommunications carriers' duty "not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255." *See* 47 U.S.C. § 251(a)(2).

[68] *IP-Enabled Services NPRM*, 19 FCC Rcd at 4867, para. 5.

[69] *See* 47 C.F.R. § 64.603.

[70] 47 U.S.C. §§ 151, 255.

[71] *See, e.g.*, Comments of 8x8, Inc. at 20-22 (March 28, 2004) (regulatory intervention is unwarranted because competitive forces are providing solutions to disabilities access problems); Comments of VON Coalition at 1, 25 (March 28, 2004) (asserting that disabilities access should result from voluntary agreements, rather than regulation).

[72] *See, e.g.*, National Council on Disability, "The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination," at 4-8 (Dec. 19, 2006) (noting that the lack of disability safeguards for Internet-based and other emerging technologies is "beginning to take their toll" as reflected in the emergence of "inaccessible user interfaces on consumer equipment" and "a lack of interoperable and reliable text transmissions," among others); Comments of The American Foundation for the Blind at 2 (May 28, 2004) ("Voluntary measures and market-based approaches have not, and will not, ensure reliable access to IP-enabled communication for people with disabilities."); Comments of Inclusive Technology at 7-11 (May 27, 2004) (enumerating barriers faced by persons with disabilities in the use of VoIP services today, including software applications that are incompatible with screen readers and that provide no support for "screen magnification utilities;" and the use of touchscreens to navigate through software without an alternative modality such as voice commands).

circuit-switched phone service with interconnected VoIP service,[73] the health, safety, and livelihood of individuals with disabilities may be placed at risk by lack of ready and reliable access to interconnected VoIP service. In particular, although individuals with disabilities may subscribe to an accessible telecommunications service at home, such a service increasingly may not be available when the individual needs to place or receive a call at a location outside of the home, including a workplace or other public venue, or in the home of a family member or friend. In addition, the record is clear that, even where a fully accessible landline phone is available to an individual with a disability, the accurate and reliable transmission of information between the individual and a called party *via*, for example, a TTY, may not be assured if the called party is a VoIP service customer using a VoIP service that is not accessible.[74] For these reasons, where interconnected VoIP service substitutes for traditional phone service, the same disability access protections that currently apply to telecommunications services and equipment must apply to interconnected VoIP service and equipment. Because consumers have a reasonable expectation that interconnected VoIP services are replacements for traditional phone service, the same disability access protections that currently apply to telephony must apply to interconnected VoIP. Since its enactment in 1996, section 255 has created heightened awareness and expertise by service providers and manufacturers in matters relating to accessible telecommunications services. Section 255 also has served as an impetus for collaboration between industry and disability rights groups with respect to developing accessibility standards and technologies that have made possible greater participation in our society by individuals with disabilities.[75] Absent regulatory intervention, newly emerging interconnected VoIP services that hold the promise of independence and even fuller participation in our society by those with disabilities may instead result in their further alienation and exclusion within our society and place these individuals at increased risk in emergency situations.[76]

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[73] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7528-29, para. 19 (noting that the number of interconnected VoIP subscribers had grown from 150,000 in 2003 to 4.2 million by the end of 2005). *See also VoIP Service Revenue Doubles in North America, Europe, Asia Pacific in 2005*, Infonetics Press Release (July 26, 2006) *at* http://www.infonetics.com/resources/purple.shtml?ms06.vip.nr.shtml; *March Broadband Buzz*, Bear Stearns (March 12, 2007); *Cable Telephone Subscriptions Growth Accelerates*, IP Media Monitor (March 12, 2007) *at* http://ipmediamonitor.com/.

[74] *See, e.g.*, Comments of The National Association of the Deaf at 11-19 (Jan. 13, 2000) (describing barriers to achieving compatibility between TTY and IP technologies); *see also* National Council on Disability, "The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination," at 33 (Dec. 19, 2006) ("[C]oncerns exist about the extent to which TTY signals are accurately transmitted over the packet-switching technology used by Internet technologies. Although some packet loss that naturally occurs in Internet transmissions will not affect voice conversations, even low levels of packet loss can produce TTY garbling and other transmission errors. In addition, compression technologies often used over the Internet can distort TTY signals. So long as certain individuals remain dependent on this technology and TTYs continue to provide the only effective text method of communicating with emergency authorities, it will be necessary for IP text communications to support compatibility with analog TTY products, to the same extent that IP voice telephony products are compatible with analog PSTN voice telephony products.").

[75] In addition, we note that the Access Board has convened the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC) to provide recommended updates of accessibility standards and guidelines issued under section 255 of the Act and section 508 of the Rehabilitation Act. *See* 47 U.S.C. § 255, 29 U.S.C. § 794(d). We will review any final guidelines concerning these issues and assess, at that time, if any amendments to our section 255 rules would be appropriate.

[76] *See, e.g.*, National Council on Disability, "The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination," at 6 (Dec. 19, 2006) ("[H]igh-speed broadband Internet technologies can provide users with multiple options for conversing, the ability to perform numerous functions through a single device, 'always on' service, clear video communications, and software solutions for redundant interfaces and operational controls. However, these benefits will only accrue to people with disabilities if laws requiring the incorporation of accessible design are adopted now, when the costs and efforts associated with providing this access are still a mere fraction of the costs of producing mainstream products and services."); *see also* (continued....)

1. VoIP Services and Equipment to Which Disability Access Obligations Apply

18. ***Covered Entities.*** We require providers of "interconnected VoIP service" to comply with the disability access requirements we adopt today.[77] Consistent with our findings in the *VoIP 911 Order*, we conclude that the services for which section 255 accessibility obligations are most relevant include those that permit users to receive calls that originate on the PSTN and to terminate calls to the PSTN.[78] It is appropriate, in our view, to extend disability access obligations to interconnected VoIP services because these services increasingly are used to replace analog voice service.[79] From a disabilities standpoint, we agree with CSD that the applicability of disability access obligations should turn on the functionalities of a service, "not on the nature of its underlying transmissions or the technologies used to send those transmissions."[80]

19. Limiting the application of the rules we adopt today to providers offering service that is increasingly used to replace analog voice service balances the statutory imperative of making available a national communications network "to all the people of the United States"[81] with the goal of relying "wherever possible" on competition and applying "discrete" regulatory requirements only where "necessary to fulfill important policy objectives."[82] By limiting the application of our rules to those VoIP communications that use an interconnected VoIP service (and, thus, permit users to receive calls from *and* terminate calls to the PSTN), this approach ensures that, from the consumer's perspective, services that are perceived and used as a substitute for traditional telephony are subject to the same obligations that apply to traditional telephony.[83] In addition, given that much of the appeal of interconnected VoIP services to consumers derives from the ability to place calls to and receive calls from the PSTN, providers of these services benefit directly from their interconnection with the PSTN.[84] In light of this benefit and

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Suzanne Robitaille, "How VoIP Can Connect the Disabled," Business Week Online (April 28, 2004), *available at* http://www.businessweek.com/technology/content/apr2004tc20040428_4395_tc116.htm.

[77] *See* 47 C.F.R. §§ 9.3, 54.5 (defining "interconnected VoIP service"); *see also VoIP 911 Order*, 20 FCC Rcd at 10257-58, para. 24; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36; *CPNI Order*, 2007 WL 983953, para. 54 n.170.

[78] *VoIP 911 Order*, 20 FCC Rcd at 10256, para. 23 (in determining which IP-enabled services should be subject to regulation, "[w]e begin by limiting our inquiry to VoIP services, for which some type of 911 capability is most relevant").

[79] *Accord* Comments of ITAA at 9-11 (May 28, 2004) (arguing that only VoIP services that are "POTS-equivalent" should be subject to "social regulation"). The acronym "POTS" stands for "plain old telephone service."

[80] Comments of Communication Service for the Deaf, Inc. at ii-iii, 5-7 (May 28, 2004) (urging Commission to classify IP-enabled services that are functionally equivalent to traditional telephony or that provide a substitute for traditional telephony as telecommunications services for purposes of disability access mandates). As noted in our recent orders, an interconnected VoIP service offers the *capability* for users to receive calls from and terminate calls to the PSTN; the obligations we establish apply to all VoIP communications made using an interconnected VoIP service, even those that do not involve the PSTN. Furthermore, these obligations apply regardless of how an interconnected VoIP provider achieves access to and from the PSTN, whether directly or through a third party. *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36; *see also CALEA Order*, 20 FCC Rcd at 15008, para. 39; *CPNI Order*, 2007 WL 983953, n.180.

[81] 47 U.S.C. § 151.

[82] *IP-Enabled Services NPRM*, 19 FCC Rcd at 4867, para. 5.

[83] *Accord 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36. As the Commission had noted, however, the category of providers subject to these obligations may need to expand as new VoIP services increasingly substitute for traditional phone service. *Id. See also* Comments of SBC at 110 (May 28, 2004) (because calls move seamlessly between the PSTN and IP networks, both networks must afford adequate accessibility in order for explicit accessibility obligations upon telecommunications services to be effective).

[84] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7540, para. 43.

the related benefit of expanded PSTN subscribership made possible by section 255's disability access requirements, we find it reasonable to extend the disability access requirements that, until now, have generally applied only to telecommunications service providers, to providers of interconnected VoIP services. Finally, because the approach we adopt here minimizes the likelihood that providers with disability access obligations will compete directly with providers without such obligations, principles of competitive neutrality are served by extending these obligations to interconnected VoIP providers.[85]

20. We also apply disability access obligations mirroring those under section 255 to any equipment or CPE specially designed to provide interconnected VoIP service and that is needed to effectively use an interconnected VoIP service.[86] Because such specialized equipment and CPE are integral to the provision of interconnected VoIP service, we conclude that the disability access goals embodied in section 255 are best served by applying the section 255 requirements both to providers of interconnected VoIP service and to manufacturers of equipment that is specifically designed for that service, including specially designed software, hardware, and network equipment.[87] The additional qualification that covered equipment and CPE be limited to that needed to effectively use interconnected VoIP service also fulfills the underlying purpose of section 255 by avoiding applying our rules to products or features that, while popular, are not strictly needed to effectively use interconnected VoIP service. As the Commission found when it extended the accessibility requirements of section 255 to manufacturers of equipment and CPE used to provide voicemail and interactive menu services, we find that the failure to require accessibility of interconnected VoIP equipment would seriously undermine the accessibility and usability of interconnected VoIP services.[88]

21. ***Legal Authority.*** We exercise our Title I ancillary jurisdiction to establish a regulatory framework applying disability access requirements to all interconnected VoIP providers and related equipment manufacturers. Therefore, even if interconnected VoIP services ultimately are determined to be information services rather than telecommunications services, Title I provides authority for the actions the Commission takes in this *Order*.[89] We note that the action we take here is consistent with that taken by the Commission in the *Section 255 Order*, in which it determined that it has Title I authority to

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[85] *Id.*, 21 FCC Rcd at 7541, para. 44. By adopting the definition of "interconnected VoIP service" that we adopted in the *VoIP 911*, *2006 Interim Contribution Methodology*, and *CPNI* orders and that is codified in sections 9.3 and 54.5 of the Commission's rules, we anticipate that there will be less confusion among service providers and within the disability community regarding which entities are subject to these obligations. For this additional reason, we reject commenter suggestions to identify a subset of VoIP services other than the category we have identified here. *See, e.g.*, Comments of NCTA at 7-9 (May 28, 2004) (proposing similar four-part test for identifying which VoIP services should be subject to access requirements).

[86] *See, e.g.*, Comments of The National Association of the Deaf at 20 (Jan. 13, 2000) (asserting that manufacturers of hardware used to create IP telephony gateways, makers of private branch exchanges, gatekeepers, IP telephony software manufacturers, relay service equipment vendors and associated CPE manufacturers should be subject to disability access rules).

[87] Section 255(b) requires manufacturers of telecommunications equipment and CPE to implement "readily achievable" measures to ensure that their equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. 47 U.S.C. § 255(b). Whenever this requirement is not readily achievable, the manufacturer must ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. 47 U.S.C. § 255(d). In the *Section 255 Order*, the Commission determined that the terms "telecommunications equipment" and "customer premises equipment" have the meanings set forth in section 3 of the Act, and include software integral to the equipment's operation. *Section 255 Order*, 16 FCC Rcd at 6425, para. 12.

[88] *Section 255 Order*, 16 FCC Rcd at 6455-62, paras. 93-108.

[89] To the extent the Commission later finds that interconnected VoIP services are telecommunications services, these disability access obligations would, of course, be imposed by the express language of section 255.

regulate information services and equipment manufacturers and, on that basis, extended the section 255 obligations to providers of voicemail and interactive menu services and to the manufacturers of equipment needed to offer those services.[90]

22. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the agency subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."[91] First, we find that we have subject matter jurisdiction over interconnected VoIP services. As the Commission found in the *VoIP 911*, *2006 Interim Contribution Methodology*, and *CPNI* proceedings, interconnected VoIP service is covered by the Commission's general jurisdictional grant under sections 1 and 2(a) of the Act, coupled with the definitions set forth in section 3(33) ("radio communication")[92] and section 3(52) ("wire communication").[93] The Act gives the Commission subject matter jurisdiction over "all interstate and foreign commerce in communication by wire or radio"and "all persons engaged within the United States in such communication."[94] Interconnected VoIP services, as the Commission determined in the *VoIP 911*, *2006 Interim Contribution Methodology*, and *CPNI* orders, are covered by the statutory definitions of "wire communication" and/or "radio communication" because they involve "transmission

[90] *Section 255 Order*, 16 FCC Rcd at 6461, para. 106 ("Where, as here, we have subject matter jurisdiction over the services and equipment involved, and the record demonstrates that implementation of the statute will be thwarted absent use of our ancillary jurisdiction, our assertion of jurisdiction is warranted. Our authority should be evaluated against the backdrop of an expressed congressional policy favoring accessibility for persons with disabilities. This backdrop serves to buttress the actions taken today, not limit it."). We also note that the Commission's ancillary jurisdiction under Title I to impose regulatory obligations on broadband Internet access service providers was recently recognized by the Supreme Court. *NCTA v. Brand X Internet Services*, 545 U.S. 967, 996 (2005) (stating that after designating cable modem service an information service, "the Commission remains free to impose special regulatory duties on facilities-based [information service providers] under its Title I ancillary jurisdiction").

[91] *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. *See id.*, 392 U.S. at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *Midwest Video I*, 406 U.S. 649, 667-68 (1972) (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals,* Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. *See Midwest Video II*, 440 U.S. 689, 700 (1979).

[92] Section 3(33) of the Act defines "radio communication" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." 47 U.S.C. § 153(33).

[93] Section 3(52) of the Act defines the term "wire communication" or "communication by wire" to mean "the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." 47 U.S.C. § 153(52).

[94] 47 U.S.C. § 152(a); *see also* 47 U.S.C. § 151 (setting forth Commission's obligation to make available "to all the people of the United States...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...for the purpose of promoting safety of life and property through the use of wire and radio communication").

of [voice] by aid of wire, cable, or other like connection" and/or "transmission by radio" of voice, and the *Vonage Order* confirmed that interconnected VoIP services are subject to the Commission's interstate jurisdiction.[95] As such, we conclude that these services fall under the subject matter jurisdiction granted the Commission under the Act.

23. We similarly find that we have subject matter jurisdiction over equipment and CPE that is specially designed to provide interconnected VoIP service and that is needed to effectively use interconnected VoIP service. As noted above, the Act gives the Commission subject matter jurisdiction over "all interstate and foreign commerce in communication by wire or radio" and "all persons engaged within the United States in such communication."[96] Because the statutory definitions of "radio communication" and "wire communication" include not only transmission, but also the "instrumentalities, facilities, [and] apparatus" incidental to such transmission, we conclude that our subject matter jurisdiction over interconnected VoIP service extends to interconnected VoIP service equipment and CPE as well.[97] Because equipment that is specially designed to provide interconnected VoIP service constitutes an integral and necessary part of any interconnected VoIP service communication, such equipment is properly viewed as "incidental to such transmission" within the meaning of the statute.[98]

24. Second, we find that the disability access obligations adopted here are "reasonably ancillary" to the Commission's responsibility to implement section 255 and to give full effect to the accessibility policies embodied in section 255. To the extent that consumers are replacing their traditional phone service with interconnected VoIP service, we believe it is critical that the disability safeguards afforded by Congress with respect to legacy telecommunications services and equipment be carried forward to interconnected VoIP services and equipment.[99] Disability access regulation also is reasonably ancillary to

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[95] The Commission did not formally define the term "interconnected VoIP service" until the *VoIP 911 Order*. *See VoIP 911 Order*, 20 FCC Rcd at 10257-58, para. 24. In that order, the Commission noted that Vonage's Digital Voice service, which was at issue in the *Vonage Order*, was, in fact, an "interconnected VoIP service." *Id.*, 20 FCC Rcd at 10246-47, para. 3.

[96] 47 U.S.C. § 152(a); *see also* 47 U.S.C. § 151 (setting forth Commission's obligation to make available "to all the people of the United States...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...for the purpose of promoting safety of life and property through the use of wire and radio communication").

[97] *See* 47 U.S.C. § 153(33) (defining "radio communication"); *see also* 47 U.S.C. § 153(52) (defining "wire communication"). In addition, we note that section 255(b) applies, on its face, to manufacturers of telecommunications equipment and CPE and does not limit itself to equipment used for telecommunications services. 47 U.S.C. § 255(b).

[98] We note that in *American Library Association v. FCC*, 406 F.3d 689 (D.C. Cir. 2005), the court held that the Commission lacked authority to impose broadcast content redistribution rules on equipment manufacturers using ancillary jurisdiction because the rules at issue had no effect until after the regulated transmission was complete. The court reasoned that the television receivers and other "demodulators" that were the subject of the contested rules were not engaged in the process of radio or wire transmission when processing a specified indicator within the television signal (called a "broadcast flag") to the extent that the required processing would have taken place after the completion of a broadcast transmission. 406 F.3d at 700. In contrast, the rules we adopt today specifying the actions that must be taken with respect to the design, development, and fabrication of specialized interconnected VoIP equipment are intended to act directly on equipment that is an integral and necessary part of any interconnected VoIP service communication. Moreover, these rules apply to specialized equipment that is used during the course of the transmission or receipt of an interconnected VoIP service communication, not after the completion of a transmission, as was the determining factor for the court in *American Library Association*.

[99] We do not adopt commenter suggestions to classify all VoIP services or some subset thereof, for purposes of this proceeding or more generally, as "telecommunications services" within the meaning of section 3 of the Act, which would allow us to rely directly on section 255 to impose accessibility obligations on those VoIP providers. We will address the regulatory classification of IP-enabled services, including VoIP services, in a separate rulemaking (continued....)

the Commission's obligation to make available "to all the people of the United States...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...for the purpose of promoting safety of life and property through the use of wire and radio communications."[100] Given that accessible interconnected VoIP services may facilitate communications by individuals with disabilities who otherwise would not have access to a communications service of this, or any other, type and, therefore, result in increased subscribership, the extension of disability access requirements to interconnected VoIP services will further this statutory objective as well.[101] Finally, we conclude that imposing these requirements on manufacturers of equipment that is specially designed to provide interconnected VoIP service is reasonably ancillary to the Commission's responsibilities under section 255 given Congress's clearly expressed desire in the analogous telecommunications context to apply disability access requirements both to service providers and to equipment manufacturers, and in light of the Commission's finding, addressed above, that extending disability access obligations to interconnected VoIP equipment is critical to ensuring the accessibility of interconnected VoIP services.[102]

2. Specific Disability Access Requirements of Covered Service Providers and Manufacturers

25. We apply our section 255 rules and requirements, without substantive modification, to interconnected VoIP providers and related equipment manufacturers.[103] We note that the Commission adopted this approach in applying accessibility requirements to providers of voicemail and interactive menu services and to related equipment manufacturers.[104]

26. The Commission's section 255 rules and requirements are essentially performance criteria that focus on certain outcomes, as opposed to specifying exactly how access must be achieved. The rules do not specify particular standards that must be employed or particular technologies that must be used, which likely would vary across different products and services. Instead, they detail the operating characteristics and product capabilities necessary for accessibility. Because this approach has been effective in advancing the objectives of section 255 in other contexts, we conclude that it is appropriate to apply the current requirements to interconnected VoIP providers and equipment manufacturers.[105] The

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proceeding and we make no findings here regarding the appropriate regulatory classification of interconnected VoIP services. *See* note 50 *supra*.

[100] 47 U.S.C. § 151; *see also VoIP 911 Order*, 20 FCC Rcd at 10262, para. 29.

[101] 47 U.S.C. § 151. As noted in the *VoIP 911 Order*, 20 FCC Rcd at 10262, para. 29, the Commission has previously relied on Title I to satisfy both prongs of the standard for asserting ancillary jurisdiction (1) subject matter jurisdiction; and (2) the statutory goal furthered by the regulation. In *Rural Telephone Coalition v. FCC, e.g.*, the D.C. Circuit upheld the Commission's assertion of ancillary jurisdiction to establish a funding mechanism to support universal service in the absence of specific statutory authority as ancillary to its responsibilities under section 1 of the Act to "further the objective of making communications service available to all Americans at reasonable charges." *Rural Tel. Coalition v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988).

[102] The rules we adopt today, which apply to interconnected VoIP providers and to manufacturers of specially designed VoIP equipment and CPE, are reasonably ancillary to our responsibilities under section 255 and under Title I of the Act for the additional reasons set forth in paragraph 17 *supra*.

[103] *Section 255 Order*, 16 FCC Rcd 6417.

[104] 47 C.F.R. Part 7 (applying disability access requirements, without modification, to providers of voicemail and interactive menu services and related equipment manufacturers).

[105] *Accord* Comments of the American Foundation for the Blind at 4 (May 28, 2004) (noting that accessibility problems faced by people who are blind or vision impaired are "strikingly similar" to those that section 255 already has attempted to address and urging Commission adoption of section 255's "carefully constructed basis for defining equipment and services and implementing accessibility"); Comments of the New Jersey Division of the Ratepayer Advocate at 26-28 (May 28, 2004).

following reviews the Commission's current section 255 rules and requirements, which we now apply to interconnected VoIP providers and equipment manufacturers.

27. If "readily achievable," a covered interconnected VoIP *provider* must ensure that its service is accessible to and usable by individuals with disabilities. Whenever this requirement is not readily achievable, the provider must ensure that the service is compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, if readily achievable. A covered provider also must ensure that information and documentation provided in connection with an interconnected VoIP service is accessible, if readily achievable.

28. If "readily achievable," a covered *manufacturer of equipment* or *CPE* that is specially designed to provide interconnected VoIP service must ensure that the equipment is designed, developed, and fabricated so that any portion of the equipment that is used for interconnected VoIP service is accessible to and usable by individuals with disabilities, if readily achievable. Whenever this requirement is not readily achievable, the manufacturer must ensure that the equipment is compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, if readily achievable. A covered manufacturer also must ensure that information and documentation provided in connection with covered interconnected VoIP equipment or CPE is accessible, if readily achievable.

29. *All* covered entities subject to the rules and requirements adopted herein (*i.e.*, interconnected VoIP providers and interconnected VoIP equipment and CPE manufacturers) also are required to: (1) consider accessibility of covered equipment and services throughout their design, development, and fabrication, as early and consistently as possible; (2) where employee training is provided, consider accessibility issues in the development of such training; and (3) maintain records of the entity's accessibility efforts demonstrating compliance with section 255 that can be presented to the Commission in the event that consumers with disabilities file complaints.[106]

30. Some commenters suggest we convene a working group or advisory committee to make recommendations regarding interconnected VoIP-specific standards and requirements.[107] We decline to do so at this time. Once the rules and requirements adopted herein have taken effect, we will consider whether to convene a working group or advisory committee comprised of stakeholders to determine if standards or requirements beyond those provided here are needed. For example, to the extent that there are technical and operational problems concerning real-time text use over IP networks, it may be appropriate to convene a working group or advisory committee to examine this and other areas where additional or more specific standards or requirements may be needed.[108] We note that as we move from PSTN to VoIP, we need reliable, real-time text capability that is supported throughout the VoIP system so that people who rely on text and text intermixed with speech in order to converse can use the next

[106] As in the *Section 255 Order*, we do not delineate specific documentation requirements for "readily achievable" analyses. We fully expect, however, that manufacturers and service providers, in the ordinary course of business, will maintain complete records of the specific actions taken to comply with the disability access requirements that can be filed with the Commission in the event consumers with disabilities file complaints.

[107] *See, e.g.*, Comments of the National Association of State Utility Consumer Advocates at 64 (May 28, 2004) ("NASUCA has no recommendation at this time on specific compliance standards, but recommends that these standards be created through IP industry and disabilities working groups, through the use of access guidelines issued by the Architectural and Transportation Barriers Compliance Board and other disabilities compliance organizations, and through government-sponsored meetings such as the Commission's 'Solutions Summit' of May 7, 2004").

[108] *See* National Council on Disability, "The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination," at 30 (December 19, 2006) (noting that the IP industry has not yet developed a consistent and reliable protocol for carrying real-time interactive text).

generation phone system.[109] We further note that most of the VoIP-specific standards recommended by commenters regarding how providers and manufacturers must achieve accessibility, if readily achievable, will be addressed by the existing rules, to the extent that these rules focus on certain outcomes, as opposed to specifying exactly how access must be achieved.[110] Because the determination of what is readily achievable is entity specific, we do not adopt general standards applicable to all interconnected VoIP providers and manufacturers governing how entities must achieve accessibility, as was requested by various commenters.[111]

3. Designation of Agent for Service of Complaints and Inquiries

31. As in the *Section 255 Order*, we recognize the need to ensure that consumers can readily obtain information identifying the points of contact for manufacturers and service providers covered by these rules.[112] Accordingly, we require each covered manufacturer and interconnected VoIP provider to designate an agent for receipt and handling of accessibility complaints and inquiries, and to send this information to the Commission's Consumer & Governmental Affairs Bureau *via* email within thirty days after the effective date of the rules adopted herein.[113] All point of contact information (including name of designated agent, company name, mailing address, email address, telephone number, and facsimile number) should be emailed to SECTION255_POC@fcc.gov. In identifying a point of contact, parties must clearly indicate whether the individual identified represents a covered manufacturer or a covered service provider. The Commission will add this information to a website currently maintained by the Consumer & Governmental Affairs Bureau on which contact information for manufacturers and service providers presently subject to the disability access requirements of section 255 appears.[114] We also strongly encourage manufacturers and interconnected VoIP providers to employ their own measures to inform consumers about how to contact the appropriate offices within their companies regarding accessibility barriers or concerns.

B. TRS Obligations of Interconnected VoIP Providers

1. Application of Section 225 Requirements to Interconnected VoIP Providers

32. For the reasons set forth below, we extend the section 225 requirements contained in our rules to providers of interconnected VoIP services. Section 225 directs 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.[115] The statute further requires that TRS facilitate the ability of individuals with hearing or speech disabilities to engage in "communication by wire or radio" in a manner that is "functionally equivalent" to that of individuals who do not have such disabilities,[116] and requires each

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[109] *See* Letter from Karen Peltz Strauss, Rehabilitation Engineering Research Center on Telecommunications Access, to Marlene Dortch, FCC (dated May 23, 2007).

[110] *See, e.g.*, Comments of the Rehabilitation Research Center on Telecommunications Access at ii (Aug. 15, 2005).

[111] *See, e.g.*, Comments of Avaya at 13-17 (May 28, 2004) (listing potential accessibility barriers and opportunities associated with VoIP).

[112] This information may be needed by consumers who wish to obtain information from, or present disability related concerns or complaints to, a covered manufacturer or service provider.

[113] We note that this requirement is in addition to the requirement that providers annually complete and regularly update FCC Form 499-A, including maintaining accurate designated agent information in Block 2-B of that form.

[114] *See* FCC Disabilities Issues Link Page *at* http://www.fcc.gov/cgb/dro/section255_manu.html (list of section 255 equipment manufacturers); FCC Section 255 Service Providers *at* http://www.fcc.gov/cgb/dro/service_providers.html (list of section 255 service providers).

[115] 47 U.S.C. § 225(b)(1).

[116] 47 U.S.C. § 225(a)(3).

"common carrier providing telephone voice transmission services" to offer TRS.[117]

33. Consistent with our recent orders and with the disability access requirements adopted above, we apply the TRS requirements set forth in Subpart F of the Commission's Part 64 rules to providers of "interconnected VoIP services."[118] It is appropriate, in our view, to apply these requirements to interconnected VoIP services given that these services are increasingly used to replace analog voice service and because consumers reasonably perceive them as substitutes for analog voice service. Extending the TRS requirements to providers of interconnected VoIP services also ensures that providers of competing services are subject to comparable regulatory obligations.[119] Finally, extending these requirements to interconnected VoIP providers is appropriate inasmuch as interconnected VoIP providers benefit from their interconnection with the PSTN and from the expanded network-wide subscribership that is made possible by the TRS rules and requirements.[120]

34. We rely on our Title I ancillary jurisdiction to extend the TRS requirements in Subpart F to interconnected VoIP providers.[121] As noted above, ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the agency subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."[122] In the previous discussion, we noted that the Act gives the Commission subject matter jurisdiction over "all interstate and foreign commerce in communication by wire or radio" and "all persons engaged within the United States in such communication" and found that interconnected VoIP services are covered by the statutory definitions of "wire" and "radio" communication.[123] Based on this analysis, we found that the Commission's general grant of jurisdiction encompasses the regulation of interconnected VoIP services.[124]

35. We find that the TRS obligations adopted here are "reasonably ancillary" to the Commission's responsibility to ensure the availability of TRS under section 225(b)(1), and will give full effect to the purposes underlying section 225(b)(1), as enumerated in that section. Specifically, section 225(b)(1) imposes on the Commission a duty to ensure the availability of TRS in order to: (1) "carry out the purposes established under [section 1 of the Act];" (2) make available to "all" individuals in the United States a rapid, efficient nationwide communication service; and (3) "increase the utility of the

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[117] 47 U.S.C. § 225(c).

[118] *See* 47 C.F.R. §§ 9.3, 54.5 (defining "interconnected VoIP service"); *see also VoIP 911 Order*, 20 FCC Rcd at 10257-58, para. 24; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36; *CPNI Order*, 2007 WL 983953, para. 54 n.170.

[119] *Accord* Comments of ITAA at 9-11 (May 28, 2004) (arguing that only VoIP services that are "POTS-equivalent" should be subject to "social regulation").

[120] *Federal-State Joint Board on Universal Service, Smith Bagley, Inc. Petition for Waiver of Section 54.400(e) of the Commission's Rules*, Memorandum Opinion and Order, 20 FCC Rcd 7701, 7707, para. 15 (March 30, 2005) (discussing how increased subscribership enhances the value of a communications network). TRS increases subscribership to the extent that it permits individuals with hearing or speech disabilities who otherwise would not be able to access communications services to do so.

[121] *Accord* Comments of SBC Communications at 104-112 (urging Commission to exercise ancillary authority to extend TRS obligations to interconnected VoIP providers).

[122] *Southwestern Cable*, 392 U.S. at 177-78; *see also VoIP 911 Order*, 20 FCC Rcd at 10261-66, paras. 26-35.

[123] *See* para. 22 *supra*. *See also* 47 U.S.C. § 152(a); 47 U.S.C. § 151 (setting forth Commission's obligation to make available "to all the people of the United States...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...for the purpose of promoting safety of life and property through the use of wire and radio communication").

[124] *See* para. 22 *supra*.

telephone system" in the United States.[125] Extending the TRS requirements to interconnected VoIP providers will further the first two objectives articulated in section 225(b)(1) of making available to "all" persons a "rapid, efficient [nationwide] communication service."[126] Moreover, the action we take here will promote the third objective of section 225(b)(1) to "increase the utility of the telephone system" by making possible increased access to the telephone system by TRS users.[127] In sum, we find that extending the TRS requirements to interconnected VoIP providers will serve the core objectives of section 225 and our TRS rules by making TRS widely available and by providing functionally equivalent services for the benefit of individuals with hearing or speech disabilities.

2. TRS Fund Contribution Obligation of Interconnected VoIP Providers

36. Among the TRS requirements described above, we require providers of interconnected VoIP services to contribute to the TRS Fund. We conclude that this action will help to ensure the availability of TRS by creating a broader-based and more stable TRS funding mechanism.[128] In adopting section 225, Congress specifically contemplated that costs "caused by" interstate TRS would be recovered from "all subscribers for every interstate service."[129] As increasing numbers of consumers replace their traditional analog phone service with interconnected VoIP service,[130] we are concerned that fewer overall interstate telecommunications revenues will be available to support TRS.[131] At the same time, growing popularity of more expensive forms of TRS, such as VRS, has increased overall Fund requirements in recent years, placing upward pressure on the contribution factor that is used to calculate carrier assessments and payments into the Fund.[132] Increasing demand for VRS is likely to continue as Internet usage expands and consumers become more familiar with the service. If these trends continue as anticipated, providers of interstate telecommunications will be forced to shoulder an increasing share of the TRS funding

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[125] 47 U.S.C. § 225(b)(1).

[126] 47 U.S.C. § 225(b)(1); 47 U.S.C. § 151.

[127] 47 U.S.C. § 225(b)(1). As noted above, the Commission also relied on its ancillary jurisdiction in requiring interconnected VoIP providers to handle emergency 911 calls. *See* paras. 22-24 *supra*.

[128] *Accord* Comments of National Consumers League at 6 (May 28, 2004) (VoIP providers should be required to contribute to TRS because, without their participation, there will be fewer resources to make access to relay services available); Comments of Telecommunications for the Deaf at 8-9 (May 28, 2004) (regardless of regulatory classification, VoIP providers must contribute to TRS since failure to do so will threaten continued viability of TRS Fund); *but see* Comments of Nuvio at 10 (May 28, 2004) (opposing extension of TRS or other common carrier mandates to VoIP providers on basis that market forces will result in improved disability access).

[129] 47 U.S.C. § 225(d)(3)(B).

[130] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7536, para. 34. *See also VoIP Service Revenue Doubles in North America, Europe, Asia Pacific in 2005*, Infonetics Press Release (July 26, 2006) *at* http://www.infonetics.com/resources/purple.shtml?ms06.vip.nr.shtml (projecting that between 2005 and 2009, VoIP service revenues in North America will increase from $2.6 billion to $13.3 billion); *March Broadband Buzz*, Bear Stearns (March 12, 2007); *Cable Telephone Subscriptions Growth Accelerates*, IP Media Monitor (March 12, 2007) *at* http://ipmediamonitor.com/.

[131] We note that the interstate revenue base, which stood at a high of approximately $81 billion for the 2003-2004 Fund year, has dropped to approximately $77 billion for the 2007-2008 Fund year. *See* Relay Services' Reimbursement Rate, Contribution Factor & Fund Size History (prepared by the TRS Fund Administrator) *at* http://www.neca.org/images/RELAYRATESHISTORY_REVISED_08_21_06.pdf; *see also* Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CC Docket 03-123, Report, at 3 (filed by the TRS Fund Administrator May 1, 2007).

[132] *See* Relay Services' Reimbursement Rate, Contribution Factor & Fund Size History *at* http://www.neca.org/images/RELAYRATESHISTORY_REVISED_08_21_06.pdf. Since 2000, the TRS Fund has grown from approximately $60 million to over $400 million, largely due to the rapid growth in the use of VRS.

obligation as a percentage of their interstate end-user revenues. This situation is untenable both for individual contributors and for the Fund as a whole. Therefore, consistent with our statutory obligation to ensure the availability of TRS "to the extent possible and in the most efficient manner" to persons with hearing or speech disabilities, we extend the contribution requirements to interconnected VoIP providers.[133]

37. In addition to relying on our Title I ancillary authority, as discussed above, we also rely on the express authority of section 225(d)(3)(B) of the Act, which specifically addresses funding of TRS. That provision directs the Commission to issue regulations that "shall generally provide that costs caused by interstate relay services shall be recovered *from all subscribers for every interstate service*."[134] As noted previously, the Commission has found that an interconnected VoIP provider provides "interstate" telecommunications because its "jurisdictionally mixed" services carry both interstate and intrastate calls.[135] Following from the Commission's determination that interconnected VoIP services are properly classified as interstate, section 225(d)(3)(B) supports the extension of the TRS contribution requirements to providers of these services.[136]

38. Section 64.604(c)(5)(iii)(A) of the Commission's rules requires that every carrier "providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein."[137] The amount of each carrier's contribution is the product of the carrier's interstate end-user telecommunications revenues and a contribution factor determined annually by the Commission.[138] These carriers are required to file with the Universal Service Administrative Corporation (USAC)[139] each year a completed Telecommunications Reporting Worksheet (FCC Form 499-A).[140] The data reported by each carrier on FCC Form 499-A is used to calculate the carrier's contribution to the TRS Fund, the Universal Service Fund, and the cost recovery mechanisms for numbering administration and long-term number portability.[141]

39. We note that interconnected VoIP providers (except those that qualify for the *de minimis* or other exemptions) currently report their annual historic interstate end-user telecommunications revenue information for purposes of the universal service contribution requirements on FCC Form 499-A.[142] In

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[133] 47 U.S.C. § 225(b)(1).

[134] 47 U.S.C. § 225(d)(3)(B) (emphasis added).

[135] *Vonage Order*, 19 FCC Rcd at 22413, para. 18.

[136] While we recognize that interconnected VoIP services are not the only IP-enabled services that may be characterized as "interstate," the word "generally" in section 225(d)(3)(B) leads us to conclude that Congress intended to give the Commission a measure of discretion in identifying entities to which the requirement should apply. *See* 47 U.S.C. § 225(d)(3)(B) (directing the Commission to issue regulations that "shall *generally* provide that costs caused by interstate relay services shall be recovered from all subscribers for every interstate service") (emphasis added). At a minimum, it is well settled that the Commission, in issuing an order addressing a particular problem, need not address all aspects of the problem simultaneously. *See, e.g., Brand X*, 547 U.S. at 1001-02.

[137] 47 C.F.R. § 64.604(c)(5)(iii)(A).

[138] 47 C.F.R. § 64.604(c)(5)(iii)(B). Each subject carrier is required to contribute to the TRS Fund a minimum of $25 per year. *Id.*

[139] USAC serves as the Revenue Data Collection Agent for the universal service and TRS funds, as well as for the support mechanisms for the North American Number Plan and local number portability administration.

[140] *See* Telecommunications Reporting Worksheet, FCC Form 499-A (2007) *at* http://www.fcc.gov/formpage.html.

[141] *See* Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2007), at 1.

[142] *See 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544-47, paras. 50-62 (discussing revenue reporting issues and requirements applicable to interconnected VoIP providers' USF contribution obligation).

the *2006 Interim Contribution Methodology Order*, the Commission recognized that some interconnected VoIP providers may have difficulty complying with the reporting requirement because they do not currently have the ability to identify whether customer calls are interstate.[143] As a result, the Commission established an interim safe harbor for interconnected VoIP services, reflected as an estimate of the percentage of interconnected VoIP revenues attributable to interstate telecommunications.[144] In light of evidence in the record of extensive interstate use of interconnected VoIP services, the Commission determined that the closest analogue to this service was "wireline toll service," which "similarly offers interstate, intrastate toll, and international services."[145] Consequently, the Commission set the interim safe harbor for interconnected VoIP services at 64.9 percent, representing the average percentage of interstate revenues that wireline toll providers have reported to the Commission.[146] The Commission held, however, that if the safe harbor percentage overstates an interconnected VoIP provider's actual interstate revenues, the provider may instead contribute to the USF on the basis of actual revenue allocations or by conducting a traffic study.[147]

40. To ensure that interconnected VoIP providers' contributions for the TRS Fund are allocated properly, interconnected VoIP providers should include in their annual FCC Form 499-A filing, historical revenue information for the relevant Fund year.[148] The Commission will revise FCC Form 499-A at a later date, consistent with the rules and policies outlined in this *Order*.[149] Interconnected VoIP providers, however, should familiarize themselves with the TRS-specific portions of FCC Form 499-A and the accompanying instructions in preparation for this filing.[150] Contributions by each interconnected VoIP provider to the TRS and universal service funding mechanisms will be calculated by the respective fund administrator on the basis of any end-user revenues that the provider may derive from providing interstate

[143] *See id.*, 21 FCC Rcd at 7546, para. 56.

[144] *See id.*, 21 FCC Rcd at 7544-45, para. 53.

[145] *See id.*, 21 FCC Rcd at 7545, para. 53.

[146] *See id.* At the same time, the Commission sought comment on whether to eliminate or modify this interim safe harbor. *Id.*, 21 FCC Rcd at 7551, para. 69. We note that in the recent *Vonage Holdings Corp.* case, the court of appeals affirmed the portion of the Commission's *2006 Interim Contribution Methodology Order* in which the Commission had analogized VoIP to wireline toll service for purposes of setting the presumptive percentage of VoIP revenues that are generated interstate and internationally. *Id.*, 2007 WL 1574611, at **8-9.

[147] *See id.*, 21 FCC Rcd at 7545, para. 54. The Commission's 2006 order required interconnected VoIP providers planning to use traffic studies for purposes of calculating their interstate revenues to obtain prior Commission approval of "any traffic study on which an interconnected VoIP provider proposes to rely." *Id.*, 21 FCC Rcd at 7547, para. 57. In *Vonage Holdings Corp.*, the court of appeals vacated the portion of the Commission's *2006 Interim Contribution Methodology Order* in which the Commission had required interconnected VoIP providers to obtain pre-approval of VoIP traffic studies. *Id.*, 2007 WL 1574611, at *10. In particular, the court held that the Commission had not adequately explained how its determination to apply a pre-approval requirement to interconnected VoIP services but not to wireless services was consistent with the statutory directive that USF contributions be made on "an equitable and nondiscriminatory basis." *Id.* (quoting 47 U.S.C. § 254(d)).

[148] We note that, although interconnected VoIP providers also file the FCC Form 499-Q in connection with the Commission's USF contribution requirements, this form is not required for purposes of the Commission's TRS Fund contribution requirements.

[149] *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, n.103 (2002); *see also 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7548-49, paras. 60-61.

[150] FCC Form 499-A and its instructions are located on the Commission's form page *at* http://www.fcc.gov/formpage.html, and on the Universal Service Administrative Company's (USAC's) form page at http://www.usac.org/fund-administration/forms/default.aspx.

interconnected VoIP services.[151] An interconnected VoIP provider may report its interstate end-user revenues in FCC Form 499-A by using actual revenues, using a traffic study, or using the interim safe harbor percentage adopted in the 2006 *Interim Contribution Methodology Order*.[152] The contribution obligations adopted here will commence upon the effective date of the TRS rule revisions adopted herein. We anticipate that interconnected VoIP providers will begin making TRS contributions on a pro-rated basis in the latter half of calendar year 2007 for the 2007-2008 TRS Fund Year. The TRS Fund Administrator will bill interconnected VoIP providers on a pro-rated basis, based on the end-user revenue data reported on the FCC Form 499-A that is filed with USAC.

41. Finally, we delegate authority to the Commission's Wireline Competition Bureau, in consultation with the Consumer & Governmental Affairs Bureau, to make any revisions to the FCC Form 499-A or its instructions that may be necessary to effectuate the purposes and directives set forth herein.

3. 711 Abbreviated Dialing Requirements of Interconnected VoIP Providers

42. As part of interconnected VoIP providers' obligations under our section 225 rules, we require providers of such services, in addition to common carriers providing telephone voice transmission services, to offer 711 abbreviated dialing for access to relay services.[153] In the *711 Order*, the Commission adopted 711 abbreviated dialing requirements for "common carriers" that provide voice transmission services in order to enable TRS users "to initiate a TRS call from any telephone, anywhere in the United States," by dialing 711.[154] We similarly find that abbreviated 711 dialing requirements for interconnected VoIP providers are needed to ensure that TRS calls can be made from any telephone, anywhere in the United States, and that such calls will be properly routed to the appropriate relay center.[155] In particular, to the extent that interconnected VoIP providers currently are not legally obligated to support 711 calls placed by TRS users, we fear that 711 dialed calls will simply be dropped instead of routing them to the appropriate relay center. Thus, as more consumers give up their analog phone service for interconnected VoIP service upon the belief that the latter represents a substitute for their existing phone service, we are concerned that, absent regulatory intervention, TRS users, including voice telephone users initiating a TRS call, will be unable to readily access the appropriate relay center.

43. In adopting the 711 abbreviated dialing requirements for TRS in the *711 Order*, the Commission permitted covered entities to "select the most economical and efficient means of implementing 711 access, based on their network architecture."[156] We conclude that the same technical and operational flexibility should be extended to interconnected VoIP providers. For this reason, we do not mandate any particular technology for implementing 711 access to TRS. This approach will allow

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[151] FCC Form 499-A and Instructions to FCC Form 499-A (2007).

[152] In light of the recent decision in *Vonage Holdings Corp.*, 2007 WL 1574611, at *10, interconnected VoIP providers that elect to rely upon a traffic study for this purpose need not obtain prior Commission approval of such study at this time. *See* n. 147 *supra*.

[153] 47 C.F.R. § 64.603.

[154] *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Second Report and Order, 15 FCC Rcd 15188, 15191, para. 3 (Aug. 9, 2000) (*711 Order*); *see also* 47 C.F.R. § 64.603 ("each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call"); 47 C.F.R. § 64.601(1) (defining "711" as "[t]he abbreviated dialing code for accessing all types of relay services anywhere in the United States"). The Commission adopted 711 dialing access so that TRS users could initiate a call, anywhere in the United States, without having to remember and dial a 7 or 10-digit toll free number, and without having to obtain different numbers to access local TRS providers when traveling from state to state. *711 Order*, 15 FCC Rcd at 15191, para. 3.

[155] *See generally 711 Order*, 15 FCC Rcd 15196, para. 13.

[156] *711 Order*, 15 FCC Rcd at 15200, para. 22.

interconnected VoIP providers to choose solutions that avoid or minimize operational concerns as they prepare for 711 access. Finally, consistent with the Commission's TRS rules, we require interconnected VoIP providers to conduct ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible.[157]

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

44. The Report and Order contains new or modified information collection requirements. The Commission, 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, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Public and agency comments are due 60 days after the date of publication of this document 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.

45. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 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."

46. In this present document, we have assessed the effects of imposing disability access requirements on interconnected VoIP providers and manufacturers, and of imposing TRS contribution requirements on interconnected VoIP providers, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. For example, although we require covered entities to maintain records of their accessibility efforts that can be presented to the Commission to demonstrate compliance, we do not delineate specific documentation or certification requirements for "readily achievable" analyses. In addition, by adopting general performance criteria, as opposed to accessibility standards or performance measurements specifying exactly how access must be achieved, our rules provide small entities flexibility in determining how best to manage their compliance with these rules. Moreover, by adopting the "readily achievable" standard that currently applies to telecommunications service providers and manufacturers, covered interconnected VoIP providers and manufacturers are required to render their services or products accessible only if doing so is "easily accomplishable and able to be carried out without much difficulty or expense." Finally, because the information interconnected VoIP providers currently provide on the Telecommunications Reporting Worksheet (FCC Form 499-A) for purposes of the USF reporting requirements also will be used to determine these entities' TRS contribution, there will be no increased reporting burden on small businesses. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

B. Congressional Review Act

47. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

C. Accessible Formats

48. To request materials in accessible formats for people with disabilities (Braille, large print,

[157] *See 711 Order*, 15 FCC Rcd at 15217-18, paras. 61-64 (addressing 711 outreach).

electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This Report and Order can also be downloaded in Word and Portable Document Format (PDF) at http://www.fcc.gov/cgb/policy.

D. Regulatory Flexibility Analysis

49. Pursuant to the Regulatory Flexibility Act of 1980, as amended,[158] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix C.

V. ORDERING CLAUSES

50. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 225, 251, 255, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 225, 251, 255, and 303(r), the REPORT AND ORDER IS ADOPTED.

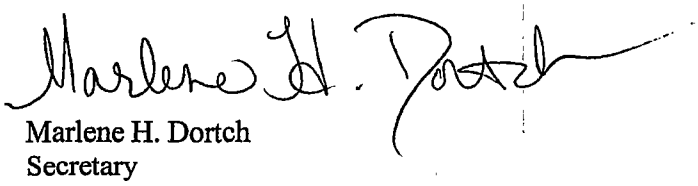
51. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4, 225, 251, 255, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 225, 251, 255, and 303(r), Part 6 of the Commission's rules, 47 C.F.R. Part 6 IS AMENDED, as set forth in Appendix B.

52. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4, 225, 251, 255, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 225, 251, 255, and 303(r), Part 64 of the Commission's rules, 47 C.F.R. Part 64, IS AMENDED, as set forth in Appendix B.

53. IT IS FURTHER ORDERED THAT the rules contained herein SHALL BECOME EFFECTIVE 60 days after publication of the Report and Order in the Federal Register, except for the rules containing information collection requirements subject to the Paperwork Reduction Act SHALL BECOME EFFECTIVE upon OMB approval of such requirements. The Commission will publish a document in the Federal Register announcing the effective date of these rules.

54. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

[158] 5 U.S.C. §§ 601 *et seq.*

APPENDIX A

List of Commenters

Commenters in WC Docket No. 04-36

Comments	Abbreviation
8X8, Inc.	8X8
AARP	AARP
ACN Communications Services, Inc.	CAN
Ad Hoc Telecommunications Users Committee	Ad Hoc
Alcatel North America	Alcatel
Alliance for Public Technology	APT
America's Rural Consortium	ARC
American Foundation for the Blind	AFB
American Public Communications Council	APCC
Amherst, Massachusetts Cable Advisory Committee	Amherst CAC
Arizona Corporation Commission	Arizona Commission
Artic Slope Telephone Association Cooperative, Inc. Cellular Mobile Systems of St. Cloud, LLC d/b/a Cellular 2000 Comanche County Telephone, Inc. DeKalb Telephone Cooperative, Inc. d/b/a DTC Communications Grand River Mutual Telephone Corporation Interstate 35 Telephone Company KanOkla Telephone Association, Inc. Siskiyou Telephone Company Uintah Basin Telecommunications Association, Inc. Vermont Telephone Company, Inc. Wheat State Telephone, Inc.	Artic Slope *et al.*
Association for Communications Technology Professionals in Higher Education	ACUTA
Association for Local Telecommunications Services	ALTS
Association of Public-Safety Communications Officials-International, Inc.	APCO
AT&T Corp.	AT&T
Attorney General of the State of New York	New York Attorney General
Avaya, Inc.	Avaya
BellSouth Corporation	BellSouth
Bend Broadband Cebridge Connections, Inc. Insight Communications Company, Inc. Susquehanna Communication	Bend Broadband *et al.*
Boulder Regional Emergency Telephone Service Authority	BRETSA
BT Americas Inc.	BTA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Cbeyond Communications, LLC GlobalCom, Inc.	Cbeyond *et al.*

MPower Communications, Corp.	
CenturyTel, Inc.	CenturyTel
Charter Communications	Charter
Cheyenne River Sioux Tribe Telephone Authority	Cheyenne Telephone Authority
Cisco Systems, Inc.	Cisco
Citizens Utility Board	CUB
City and County of San Francisco	San Francisco
City of New York	New York City
Comcast Corporation	Comcast
Communication Service for the Deaf, Inc.	CSD
Communications Workers of America	CWA
CompTel/ASCENT	CompTel
Computer & Communications Industry Association	CCIA
Computing Technology Industry Association	CompTIA
Consumer Electronics Association	CEA
Covad Communications	Covad
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Department of Homeland Security	DHS
DialPad Communication, Inc. ICG Communications, Inc. Qovia, Inc. VoicePulse, Inc.	Dialpad *et al.*
DJE Teleconsulting, LLC	DJE
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
EDUCAUSE	EDUCAUSE
Electronic Frontier Foundation	EFF
Enterprise Communications Association	ECA
Federation for Economically Rational Utility Policy	FERUP
Francois D. Menard	Menard
Frontier and Citizens Telephone Companies	Frontier/Citizens
General Communications, Inc.	GCI
Global Crossing North America, Inc.	Global Crossing
GVNW Consulting, Inc.	GVNW
ICORE, Inc.	ICORE
IEEE-USA	IEEE-USA
Illinois Commerce Commission	Illinois Commerce Commission
Inclusive Technologies	Inclusive Technologies
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	ITAA
Information Technology Industry Council	ITIC
Interstate Telcom Consulting, Inc.	ITCI
Ionary Consulting	Ionary
Iowa Utilities Board	Iowa Commission
King County E911 Program	King County
Level 3 Communications LLC	Level 3
Lucent Technologies Inc.	Lucent Technologies
Maine Public Utilities Commissioners	Maine Commissioners
MCI	MCI