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

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| In the Matter of | ) | |
| | ) | |
| Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities | ) | CG Docket No. 03-123 |
| | ) | |
| Amendment of Part 64 of the Commission's Rules To Protect Functional Equivalence and Enhance the Integrity of the Interstate TRS Fund | ) | RM No. 09-____<br>EB Docket No. 09-____ |

# PETITION FOR RULEMAKING


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## EXECUTIVE SUMMARY

Under the FCC's leadership, great strides have been made in bringing "functionally equivalent" telecommunications relay services ("TRS") to all deaf, hard-of-hearing, and speech-disabled Americans. In this Petition, Sorenson Communications, Inc. ("Sorenson") proposes a series of rules that will further advance the statutory goals of functional equivalence and universal access by clarifying what types of calls may legitimately be compensated by the Interstate TRS Fund ("Fund"). Today, the lack of clarity on this issue imperils the statutory goals and the integrity of the Fund by permitting providers – especially Internet-based TRS providers – to seek compensation for handling an ever-expanding array of calls of dubious legitimacy. The rules proposed herein will rectify this problem by giving the Fund Administrator and providers the clarity they need to identify non-compensable calls, and the Enforcement Bureau the clarity it needs to penalize providers that seek compensation for illegitimate calls.

Beyond clarifying what types of calls are non-compensable, the proposed rules will require providers to maintain professional work environments that are inhospitable to minute-pumping or other illicit schemes that could artificially inflate a provider's call volume. The rules also will give communications assistants narrow but important discretion to disconnect or interrupt certain Internet-based relay calls that likely do not meet the statutory definition of TRS and that therefore should not be compensated.

Sorenson estimates that the proposed rules, once adopted, will save the Fund millions of dollars per year and, more importantly, will ensure that the Fund remains dedicated to compensating deaf-to-hearing and hearing-to-deaf calls that advance the goals of functionally equivalence and universal access. Sorenson urges the Commission

to move expeditiously in releasing a Notice of Proposed Rulemaking to seek public comment on the rules proposed herein.

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## PETITION FOR RULEMAKING

Pursuant to section 1.401 of the FCC's rules,[1] Sorenson Communications, Inc. ("Sorenson") files this Petition asking the Commission to initiate a rulemaking proceeding to identify certain types of Internet-based telecommunications relay services ("TRS") calls that may not be compensated by the Interstate TRS Fund ("Fund"). These rules, along with tighter mandatory minimum standards to be observed by providers and new authority for communications assistants ("CAs"), will protect functional equivalence and enhance the integrity of the Fund by ensuring that it compensates providers only for

[1] 47 C.F.R. § 1.401. Section 1.401(c) requires a party filing a rulemaking petition to indicate how its interests will be affected by the action requested. Here, Sorenson believes that its interests are aligned with those of all other legitimate providers of TRS. The actions requested herein will enhance the legitimacy of TRS by outlawing compensation for calls that inflate the size of the Fund without advancing functional equivalence or universal access. All legitimate TRS providers will benefit from that development, and, most importantly, so will their deaf, hard-of-hearing, and speech-disabled customers.

legitimate deaf-to-hearing and hearing-to-deaf relayed calls. A draft of the proposed rules is attached hereto.

## I. INTRODUCTION AND SUMMARY

Under the Commission's leadership, the interstate TRS program has been a resounding success. By "bridg[ing] the gap between the communications-impaired telephone user and the community at large," TRS has, as Congress intended, opened new vistas for an entire segment of the populace that historically has been excluded from "the business and social mainstream of the Nation."[2] Several forms of relay, including video relay service ("VRS") and IP Relay service, have harnessed the power and versatility of the Internet, enabling deaf and hard-of-hearing callers to communicate with a speed and nuance that was unimaginable only ten years ago. These services have made great strides in meeting the prime mandate of section 225: the provision of "functionally equivalent" relay services to all deaf, hard-of-hearing, and speech-disabled Americans.[3]

This success brings with it challenges. As more deaf, hard-of-hearing, and speech-disabled Americans learn of the relay services available to them and take advantage of those services to participate in mainstream social, economic, and educational activities, the payments to providers from the Fund continue to grow. Although Sorenson believes that the vast majority of TRS calls are legitimate, some callers and providers have used TRS in unlawful or questionable ways that result in illegitimate minutes being billed to the Fund.[4]

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2 H.R. Rep. No. 101-458 (IV), at 28; *id.* (II), at 129-30.

3 47 U.S.C. § 225(a)(3), (b)(1).

4 Such misconduct is deplorable but hardly surprising. In Universal Service programs, the FCC has long recognized that effective safeguards against waste, fraud, and abuse are necessary to deter unscrupulous parties from behaving in ways that

The FCC is to be commended for having prohibited a few of these practices and sought comment on the need for additional regulation.[5] Regrettably, however, the Commission has not adopted a single codified rule that identifies specific types of calls that may not be compensated by the Fund. Compounding this problem, the Commission's rules generally require CAs to handle all calls as "transparent conduits," with no discretion to use their professional judgment to determine whether even highly suspicious calls may be legitimate or not.[6] Furthermore, the FCC has not enforced the uncodified directives it has propounded, such as the prohibition against offering consumers incentives to make TRS calls. Given this murky regulatory environment, ethical and honest providers are hesitant to deem certain calls to be non-compensable, and unscrupulous providers are emboldened to manufacture minutes or engage in other illicit schemes to inflate their call volumes. Not surprisingly, reports of serious

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artificially inflate the size of the Universal Service Fund. *See, e.g.*, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, Order, 18 FCC Rcd 27090, ¶¶ 10-12 (1999) (directing the Administrator to recover funds that, in the first year of the schools and libraries program, were committed in violation of the Telecommunications Act of 1996); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, Order, 15 FCC Rcd 22975, ¶ 13 (2000) (emphasizing that the schools and libraries support mechanism "is not intended to cover . . . cases in which the Commission has determined that a school or library has engaged in waste, fraud, or abuse").

[5] The National Association of the Deaf ("NAD") and Registry of Interpreters for the Deaf ("RID") also are to be praised for adopting high standards of professionalism and ethical conduct for interpreters. *See* NAD-RID Code of Professional Conduct, *available at*: <http://www.rid.org/UserFiles/File/pdfs/codeofethics.pdf>.

[6] *See* 47 C.F.R. § 64.604(a)(2)(i)-(ii), (a)(3); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478, ¶ 11 & n.37 (2006) ("*2006 TRS Misuse FNPRM*").

misconduct have surfaced, and providers and consumers increasingly have begun to express concern.[7]

Sorenson urges the Commission to address this problem by initiating a rulemaking proceeding in which the FCC proposes a comprehensive set of codified rules designed to protect functional equivalence and the integrity of the Fund. The proposed rules fall into three categories. The first would prohibit the Administrator, acting on behalf of the FCC, from paying compensation for several types of calls that are the result of minute-pumping practices or other practices that cannot be justified under the Americans with Disabilities Act ("ADA"). Internet-based TRS providers would check a box on their monthly submissions to NECA, confirming that they are not seeking compensation for any non-compensable minutes. By providing clarity about the types of calls that may not be compensated by the Fund, these rules will help ensure that the Fund remains devoted to compensating deaf-to-hearing or hearing-to-deaf calls that are functionally equivalent to traditional hearing-to-hearing calls. The second category of rules would impose new mandatory minimum standards designed to create professional workplace conditions that are inhospitable to conduct that could cause illegitimate minutes to be billed to the Fund. Collectively, these new standards will significantly enhance the likelihood that the minutes submitted by all Internet-based relay providers reflect functionally equivalent relayed calls. Finally, a third category of rules would give Internet-based relay providers (or their interpreters) authority to refuse to handle, disconnect, or interrupt calls that likely do not meet the statutory definition of TRS. This

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[7] For example, some websites have reported recently that the Department of Justice is investigating two VRS providers that allegedly perpetrated fraudulent calling schemes. *See, e.g.*, Ed's Telecom Alert, "FBI Warrants and Warning" (July 8, 2009), *available at*: <http://www.edsalert.com/2009/07/08/fbi-warrants-and-warning>.

authority will further enhance the integrity of the Fund and protect functional equivalence.

Adopting the proposed rules will have an immediate and substantial beneficial effect. For example, anecdotal evidence suggests that some providers are artificially manufacturing Internet-based TRS calls from and to their employees. Indeed, Sorenson believes that some VRS providers have established business plans that depend significantly on their relayed call volume consisting of calls placed by their employees. Absent regulation, it is likely that such employee-based minute pumping will continue to increase. If the Administrator were authorized to compensate all employee calls, providers would be able massively to inflate their compensable minutes by, for example, hiring banks of callers to do nothing but place outreach and education TRS calls, eight hours per day, seven days a week. The size of the Fund would balloon and continue to grow at a steep trajectory without achieving the statutory goal of providing functionally equivalent deaf-to-hearing communications.

Directing the Administrator to compensate only "natural" employee calls is not a realistic option, since it is virtually impossible to distinguish natural from manufactured calls, and providers can use a number of undetectable means to stimulate calls to and from employees. Sorenson therefore believes the best solution is to prohibit compensation from the Fund for all calls to and from employees while they are "on the clock," except for calls from consumers to a provider's technical support staff. An exception for inbound technical support calls is warranted because deaf consumers often have legitimate questions or concerns about their Internet-based TRS service and want to resolve those issues quickly by placing a relayed call to a hearing technical support

employee. Such consumer-initiated calls concerning quality of service go to the heart of the functional equivalence mandate and cannot readily be ginned up through undetectable means. Therefore, it is appropriate to exempt inbound technical support calls from the prohibition on compensating employee calls. Significantly, this prohibition would restrict only compensation – not the freedom to place calls. A provider's employees would be free to continue placing and receiving as many Internet-based relay calls as they want, with the caveat that the provider would not be able to obtain compensation for "on the clock" calls that are not inbound technical support calls.

Sorenson estimates that adopting this and the other rules proposed herein would save the Fund millions of dollars per year. Whether the amount saved is large or small, however, the critical point is that adoption of the proposed rules will ensure that the Fund remains dedicated to its central mission of compensating functionally equivalent deaf-to-hearing and hearing-to-deaf relayed calls.

Sorenson urges the Commission to act quickly in initiating a rulemaking to consider the critical reforms proposed herein. Doing so not only will protect functional equivalence and save the Fund millions of dollars, but will allow providers and the Commission to refocus on the core statutory missions of functional equivalence and universal access.

## II. THE FCC SHOULD PROPOSE AND SEEK COMMENT ON RULES THAT WILL ENSURE THAT THE FUND COMPENSATES ONLY MINUTES THAT ARE LEGITIMATE UNDER THE ADA

The Commission should expeditiously seek comment on whether to amend Part 64 of its rules by adding new provisions that will enhance the integrity of the Fund. The

proposed rules are described below, and the full text of each rule is set forth in the attached Appendix A.

### A. The FCC Should Seek Comment on Prohibiting the Administrator from Compensating Calls Resulting from Minute-Pumping and Other Practices that Artificially Inflate the Fund

Sorenson believes that three types of Internet-based TRS calls are responsible for generating a significant portion of the illegitimate or questionable minutes that are currently being submitted to the Administrator: (i) calls generated by various "minute-pumping" practices, including calls to or from providers' employees, contractors, and agents; (ii) calls handled by unaccountable providers that have entered into revenue-sharing arrangements; and (iii) calls to "podcast" and similar numbers that provide the audio of recorded broadcasts or other events, such as news shows, lectures, and talk radio. These calls should not be compensated by the Fund. Sorenson therefore proposes that the FCC adopt a new subsection (f)(3)(v)(B) in section 64.604, which would bar the Administrator from compensating these types of calls.[8]

*Minute pumping.* The Commission has held that providers should handle only those calls that users independently "choose to make,"[9] without any financial or similar inducement by the provider that would cause callers to make more or longer calls than

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[8] Sorenson is also proposing a rule prohibiting the Administrator from compensating international IP Relay calls. The FCC has already barred such compensation, but has not adopted a rule to that effect. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 18 FCC Rcd 12823, ¶ 42 (2003). Sorenson believes that a new rule would bring added prominence, clarity, and enforceability to this prohibition.

[9] *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices Are Improper and Reminds that Video Relay Service (VRS) May Not Be Used as a Video Remote Interpreting Service*, Public Notice, 20 FCC Rcd 1471, DA 05-141 at 3 (2005) ("*2005 Improper Practices PN*").

they otherwise would have made.[10] The Commission has embodied this no-minute pumping principle in two uncodified prohibitions. The "no incentives" prohibition bars providers from offering or giving users or a third party any financial or other valuable benefit that has the effect of encouraging or enticing a consumer to place more or longer calls, or rewarding him or her for doing so.[11] The "no urging" prohibition similarly bars providers from contacting consumers and requiring, requesting, or suggesting that the consumer make relay calls.[12]

Although the Commission has identified several types of practices that run afoul of these prohibitions,[13] reports suggest that some providers continue to engage in minute-pumping schemes. Some of the variations of these schemes that have been recently reported include:

- Paying independent marketing firms to have deaf employees place marketing calls through the providers' VRS.[14]

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10 *2005 Improper Practices PN*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd 1466 (2005) ("*2005 Financial Incentives Declaratory Ruling*").

11 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶¶ 89-94 (2007), as amended by *Erratum*, 22 FCC Rcd 21842 (2007) ("*2007 Order & Declaratory Ruling*"). The distribution of equipment, such as videophones, to deaf, hard-of-hearing, and speech-disabled consumers promotes the statutory goal that functionally equivalent TRS be made available to all such consumers in an efficient manner. Providers therefore may distribute free equipment so long as the consumers receiving the equipment are not placed under any obligation to use the equipment to make more or longer TRS calls, or to make any TRS calls whatsoever.

12 *2007 Order & Declaratory Ruling*, 22 FCC Rcd 20140, ¶ 94; *2005 Improper Practices PN*, DA 05-141 at 3.

13 *2007 Order & Declaratory Ruling*, 22 FCC Rcd 20140, ¶¶ 92-94.

14 *Ex Parte* Comments of the National Association for State Relay Administration, CG Docket No. 03-123, at 7 (Nov. 10, 2008; filed Nov. 19, 2008) ("NASRA Nov. 19 *Ex Parte* Comments").

- Requiring consumers to use the provider's VRS in order to receive a free videophone.[15]
- Paying a deaf person to make VRS calls through a provider.[16]
- Paying deaf persons to place calls to a pre-supplied list of phone numbers that provide information or news, or that have long wait times.[17]
- Sponsoring and/or advertising lectures, story times, or other events that deaf callers can "listen to" by placing VRS calls to a bridge number.[18]
- Tying a provider's sponsorship of an event, program, or entity, or a "charitable contribution" by a provider, to the placement of VRS calls through that provider.[19]

To address these and other illicit practices, the rules proposed herein would prohibit the Administrator from compensating any call that is tainted by an incentive scheme implemented by an Internet-based TRS provider, or any call placed by a consumer within one month after a provider has contacted that consumer and urged, required, requested, or suggested that he or she make more or longer TRS calls.[20] The proposed rules list numerous examples of non-compensable incentive schemes, and that list could be updated periodically by the Commission to ensure that the rules keep pace with the evolving practices of bad actors.

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15 NASRA Nov. 19 *Ex Parte* Comments at 7-8.

16 Comments of Ed Bosson, CG Docket No. 03-123, at 2 (May 28, 2009; filed June 16, 2009) ("Bosson Comments").

17 Bosson Comments at 2.

18 Bosson Comments at 3; Comments and Petition for Declaratory Ruling of Sorenson Communications, Inc., CG Docket No. 03-123, at 6-7 (Apr. 24, 2009) ("Sorenson Revenue Sharing Comments and Petition for Declaratory Ruling").

19 Sorenson continues to receive anecdotal reports of this kind of practice, as well as others described above.

20 This prohibition would not affect legitimate outreach, education, or marketing. For example, when a provider sends an employee to train a consumer to use a new videophone, that training generally should not be construed as triggering the one-month ban on compensation. Only if the trainer were to require or urge the consumer to make VRS calls would the ban be triggered.

The proposed rules also address a separate kind of minute-pumping arrangement that has not been clearly addressed by the Commission. Specifically, some providers encourage or require employees or affiliated entities to place or receive compensable relayed calls. Some egregious examples of this variant of minute-pumping include:

- Paying full-time teams of deaf salespersons to place telemarketing calls through the providers' VRS.[21]
- Requiring deaf employees to make multiple video conference calls every day, even though they could have met in conference rooms and used on-site interpreters.[22]
- Creating a to-do list for selected staff to make pointless relay calls.[23]

Other types of employee TRS calls include run-of-the-mill business calls, outreach, education, and marketing calls, and "test" calls from a consumer's home to determine whether a videophone is working properly or to train a consumer how to use it. While these calls are ostensibly more defensible than the foregoing examples, they too pose an unacceptable risk to the integrity of the Fund. If seemingly run-of-the-mill calls to and from a provider's employees are compensable, providers will have an incentive to maximize the number of those calls. Providers may act on this incentive in subtle ways. For example, a provider could staff one department with deaf employees who frequently have to perform out-of-office work, but choose a hearing manager to oversee that department. This structural arrangement will ensure that a number of VRS calls will have to be placed each day between the on-site manager and his various off-site employees. Such subtle actions would be virtually impossible to detect, regulate against, or police, but could have a major impact on the size of the Fund.

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21 NASRA Nov. 19 Ex Parte Comments at 6-7.

22 Bosson Comments at 2.

23 Bosson Comments at 2.

Outreach and educational calls are not immune from this problem. Sorenson fully supports robust outreach and education, but believes that these activities should not become profit centers for TRS providers.[24] Providers should willingly engage in outreach and education to support the statutory goal of universal access. Sorenson therefore does not bill the Fund for any of the numerous outreach and educational calls it makes. Instead, Sorenson ensures that those calls are point-to-point (and hence non-compensable) and sees no reason why other providers cannot do the same. By using point-to-point calls for outreach and education, Sorenson creates a demand for deaf employees and advances the statutory goal of universal access without impacting the Fund.

By contrast, conducting outreach and education through compensable TRS calls appears to be unlawful and is already inflating the size of the Fund. As noted, the FCC has held that providers should handle only those calls that users independently choose to make, and that providers may not contact users and urge or direct them to make calls.[25] Any provider that directs or requires its employees to make TRS calls would seemingly violate this prohibition. Moreover, allowing relayed outreach and educational calls to be compensable would create a number of perverse incentives. Providers could base their entire business plans on handling a particular volume of outreach and education calls rather than handling the calls of individual consumers, and some providers may have already started down this path. Such a plan would place an enormous, unwarranted strain on the Fund. For example, a provider could hire hundreds of deaf persons to spend eight

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[24] The rates for VRS and IP Relay presumably already are set to compensate providers for outreach and education. Providers should not need additional funds generated by placing compensable outreach and education calls.

[25] *See supra* notes 9, 12.

hours per day placing VRS calls to hearing people to educate them about VRS and the need not to hang up when one receives a VRS call.[26] Since the adult hearing population has more than 200 million people, the scope of this enterprise would be virtually unlimited. VRS providers would be compensated without any need to focus on their core mission of handling consumers' calls, and the size of the Fund would experience a massive inflation.

Allowing test calls to be compensable would pose similar problems. The Commission has held that the costs of developing and installing end-user TRS equipment are not compensable from the Fund. So long as this prohibition remains in effect,[27] it would not make sense to allow providers to bill for test calls designed to ascertain whether end-user equipment is working or to train a user on how to use the equipment. If such calls were compensable, providers would have an incentive to increase the incidence and length of test calls, thereby subjecting the Fund to further inflation.

Given the foregoing risks, the rules proposed by Sorenson would prohibit the Administrator from compensating any call placed by or to an employee, agent, or contractor of an Internet-based TRS provider while he or she is at his or her place of work or while he or she is performing work on behalf of that provider, except that inbound calls to a provider's technical support staff would remain compensable.[28]

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[26] Such calls would not appear to be restricted by the Do Not Call rules, which apply only to commercial calls designed to "induce the purchase of goods and services." 16 C.F.R. § 310.4(b)(1)(iii)(B).

[27] *2007 Order & Declaratory Ruling*, 22 FCC Rcd 20140, ¶ 82; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, 21 FCC Rcd 8063, ¶ 17 (2006). Sorenson does not agree with these rulings, but concedes that they are in effect.

[28] *See* attached Appendix A at 9, proposed rule § 64.604(f)(3)(v)(B)(ii).

Providers would still be free to have their employees make as many Internet-based relayed calls as they see fit, with the caveat that such employee calls are not compensable.

Prohibiting compensation for all "on the clock" employee calls other than inbound technical support calls would advance the public interest in at least five ways. First, it would bar providers from engaging in the unseemly and unlawful practice of self-generating revenue streams by hiring teams of callers to place Internet-based TRS calls. Second, as a result of this prohibition, employee-generated minutes would no longer be billed to the Fund, saving millions of possibly illegitimate dollars per year. Third, providers would continue to place non-compensable outreach, education, and marketing calls in order to attract new customers and retain the loyalty of existing ones. For example, it is in a provider's financial interest to educate schools, libraries, businesses, and other institutions about how VRS can work at those institutions, and such awareness would, in turn, encourage more employment of deaf and hard-of-hearing individuals and help those institutions better serve their deaf and hard-of-hearing customers. Fourth, the prohibition would not affect providers' ability to seek compensation for calls placed by consumers to a provider's technical support staff. Continuing to authorize compensation for such calls will ensure that consumers obtain high-quality customer service when they choose to place calls to providers. Fifth, the prohibition would open new employment opportunities for deaf and hard-of-hearing individuals. For example, when conducting outreach, education, or marketing campaigns that target deaf consumers, providers can be expected to hire teams of deaf ASL users to make point-to-point calls. Today, by

contrast, providers have an incentive to hire teams of hearing individuals so as to ensure that the calls are compensable hearing-to-deaf VRS calls.

To ensure that the foregoing prohibitions on compensation are enforceable, the proposed rules would require each Internet-based TRS provider to check a box on its monthly submission to the Administrator, confirming that it is not seeking compensation for any non-compensable minutes.[29] These reasonable measures will go a long way toward enhancing the integrity of the Fund and ensuring that it remains dedicated to compensating functionally equivalent deaf-to-hearing calls.

*Revenue-sharing schemes*. Under the Commission's rules, a relay provider is eligible to collect from the Fund if it meets certain criteria.[30] These eligibility provisions contemplate that a provider may subcontract with other entities in certain circumstances, and traditionally such subcontracting has occurred only if the resulting relay service is branded under the eligible entity's name and the eligible entity assumes legal responsibility for any violation of the FCC's rules. This approach ensures maximum accountability: the public knows which entity is legally responsible for the provision of TRS, and the FCC can exert maximum authority over that entity by denying it payment from the Fund, assessing forfeitures, or, in extreme cases, stripping the provider of its eligibility. In addition, eligible providers are subject to ongoing FCC oversight and reporting requirements, and hence the FCC's ability to enforce its rules and policies is most robust with respect to eligible providers.

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29 *See* attached Appendix A at 8, proposed rule § 64.604(f)(3)(v)(A).

30 47 C.F.R. §§ 64.604(c)(5)(iii)(F), 64.606; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (2005) ("*FCC Certification Order*").

As Sorenson has recently explained, however, some providers have engaged in revenue sharing schemes that deviate from the traditional subcontracting practice. These schemes come in two flavors:

- A firm that is not eligible to collect from the Fund provides TRS under its own brand name, and sells the minutes generated by its TRS to an eligible entity whose sole function is to obtain payments from the Fund and then kick back a portion of those payments to the non-eligible provider.[31]
- A TRS provider that is eligible to collect from the Fund pays a non-eligible entity for the right to brand relay service under the non-eligible entity's name and to offer service through the non-eligible entity's Internet site.[32]

These schemes allow firms to avoid adequate accountability and evade enforcement of the Commission's standards. For example, under the first scheme, if the service provided by a non-eligible entity fails to comply with the FCC's rules, users do not know which entity should be the subject of a complaint to the Commission. The non-eligible firm that provides the service is not subject to the FCC's regulation, and may be a fly-by-night operation that is difficult to contact, much less influence; by the same token, the eligible entity that obtains payment from the Fund is unknown to users, making it impossible for them to register complaints.

Because providers operating pursuant to these schemes are not accountable, they are more likely than accountable providers to engage in minute-pumping and other illicit schemes and to provide service that is not functionally equivalent. To protect consumers and the integrity of the Fund, the proposed rules include a provision prohibiting the Administrator from compensating any minutes generated by either of these schemes.[33]

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31 Sorenson Revenue Sharing Comments and Petition for Declaratory Ruling at 3-8.

32 Sorenson Revenue Sharing Comments and Petition for Declaratory Ruling at 8-9.

33 *See* attached Appendix A at 9, proposed rule § 64.604(f)(3)(v)(B)(iv).

*Calls to "podcast" and similar numbers.* Congress defined "telecommunications relay services" to be "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."[34] Although this definition is often truncated to its most important component – functional equivalence – the full definition makes clear that functional equivalence has a critical prerequisite: the placement of a relayed call in which a deaf, hard-of-hearing, or speech-disabled person is able to communicate with a hearing person who is not speech-disabled. Congress determined that only those calls would advance the goal of integrating deaf, hard-of-hearing, and speech-disabled persons into the social and economic "mainstream,"[35] and therefore functional equivalency – in greater or lesser degrees – can be advanced only for those calls.

Recently, an increasing number of VRS calls have been placed to "podcast" or similar numbers in which the caller is merely a passive listener to a recorded broadcast or other event, without any "ability . . . to engage in communication" with a hearing person as required by section 225.[36] These calls do not meet the definition of TRS and therefore

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34 47 U.S.C. § 225(a)(3).

35 *Supra* note 2.

36 47 U.S.C. § 225(a)(3) (defining TRS as telephone transmission services that "provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication . . . with a hearing individual"). The term "podcast" is often used to describe "a series of digital media files (either audio or video) that are released episodically and downloaded through web syndication." Wikipedia, "Podcast," *available at*: <http://en.wikipedia.org/wiki/Podcasting>. The audio portion of many podcasts can

may not be compensated from the Fund. Accordingly, the rules proposed herein would define those relayed calls to be non-compensable,[37] but would leave providers free to continue to handle such calls.

### B. The FCC Should Seek Comment on New Mandatory Standards

TRS providers are currently subject to a wide array of technical, operational, and functional mandatory minimum standards, which are codified in section 64.604 of the Commission's rules.[38] These standards were adopted to ensure that payments from the Fund would be made only to providers that meet certain minimum thresholds of functional equivalence.[39]

Although those standards have generally worked well to advance functional equivalence, it is becoming increasingly apparent that they need to be updated for Internet-based relay providers. Some of these providers have created lax work environments and tolerated unprofessional employee behavior that create opportunities for mischief and call into question the legitimacy of the minutes they submit for compensation. For example, some VRS providers have allowed their CAs to work from home rather than in a supervised call center; to record compensable minutes through unreliable, hand-written notations of start and stop times instead of using automated

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be accessed by dialing specific telephone numbers. A list of many podcasts and their associated phone numbers can be found at: <http://www.podlinez.com/>.

[37] *See* attached Appendix A at 8-9, proposed rule § 64.604(f)(3)(v)(B)(i). To the extent necessary, the FCC should create an exception to its existing rule requiring TRS providers to handle calls to "recorded message[s] and interactive menu[s]." 47 C.F.R. § 64.604(a)(3)(vii).

[38] 47 C.F.R. § 64.604.

[39] 47 C.F.R. § 64.604(c)(5)(iii)(E) ("The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604").

means; and to switch back and forth between handling VRS calls and handling VRI calls, thereby potentially inflating the reported compensable costs attributable to VRS by including the non-compensable costs of in-person interpreting. Some providers likewise allow callers to choose a particular CA rather than being randomly assigned one, creating the opportunity for CAs to converse with friends during billable calls. Such practices are ripe for abuse and should not be tolerated within an increasingly mature, technologically savvy industry.

Sorenson proposes to address these inadequacies by adding a new subsection (d) to section 64.604 of the FCC rules. That subsection would require Internet-based TRS providers, as a condition precedent to receiving compensation from the Fund, to (i) implement an anonymous whistle-blower mechanism for employees seeking to report misconduct that might result in non-compensable minutes being submitted to the Administrator for compensation, (ii) automatically record billable time to the nearest second, (iii) ensure that CAs work in call centers under direct supervision of a manager, (iv) randomly assign CAs to calls, and prevent any CA from handling a call placed by someone he or she knows, (v) ensure that all VRS calls are routed to call centers that are dedicated solely to handling VRS calls; (vi) ensure that CAs have adequate initial and refresher training on applicable FCC rules; and (vii) ensure that when a consumer calls or emails a provider to seek technical support, the consumer is given a choice in the communication mechanisms that can be used to contact the provider, including at least one non-relay option such as email.

In addition, an eighth new standard would require Internet-based relay providers to use computerized algorithms on a monthly basis to detect anomalous calling patterns

that might be the result of minute-pumping schemes or other illicit practices designed to inflate the provider's minutes. Under this standard, each provider periodically would submit its algorithms confidentially to the FCC and the Fund administrator, thereby giving those entities a broad menu of diagnostic tools to review any provider's submitted minutes. Since no provider would know what algorithms its competitors had submitted, any provider inclined to submit non-compensable minutes would face a heightened deterrent to doing so.[40]

### C. The FCC Should Seek Comment on Authorizing Providers and CAs to Disconnect or Interrupt Calls that Likely Do Not Meet the Statutory Definition of TRS

Traditionally, the Commission has insisted that CAs behave as "transparent conduits" or the functional equivalent of "dial tone."[41] Describing CAs in this manner is intended to ensure that CAs preserve the confidentiality of relayed conversations and do not interfere with calls or use their judgment to refuse to handle certain calls. While Sorenson agrees that CAs should not be given unlimited authority to determine the

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[40] These algorithms should include a method by which providers track the percentage of all calls handled by a provider that are calls to or from the provider's employees, contractors, or agents. If an unusually large percentage of calls are employee calls, that anomaly may be a sign that the provider (or some rogue employees of the provider) are attempting to engage in a minute-pumping scheme.

[41] *Supra* note 6; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, ¶¶ 10-11, 30-33 (2006); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 20 FCC Rcd 13165, ¶¶ 17, 19, 24 (2005) ("*2005 Report and Order*"); *2005 Improper Practices PN*, DA 05-141 at 4; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, ¶¶ 154-55 (2004) ("*2004 TRS Order & FNPRM*"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking , 15 FCC Rcd 5140, ¶¶ 2, 60 (2000).

legitimacy of particular TRS calls, it has become apparent that for certain types of relayed calls, a CA's professional judgment is needed to determine whether the calls likely meets the statutory definition of TRS. For these calls, Sorenson proposes that the FCC adopt a new rule, section 64.610, which will grant CAs authority to interrupt or disconnect certain calls if in their professional judgment certain specified criteria have been met. Granting this authority will deter those who feel they can place illegitimate TRS calls with impunity because they are shielded by the "transparent conduit" policy, and thereby will further enhance the integrity of the Fund.

Today, for example, VRS interpreters are often subject to abusive, obscene, or threatening remarks or behavior directed at them by video callers. When a video interpreter becomes the subject of a video caller's abusive, obscene, or threatening remarks or behavior, the call is no longer facilitating conversation between the statutorily prescribed calling and called parties; nor is the call functionally equivalent to a traditional voice telephony call, which does not include an interpreter to whom behavior or remarks can be directed. The proposed rules would permit video interpreters to disconnect calls in which they are the target of carefully defined types of behavior, and to interrupt other calls by giving the calling parties a warning to cease their misbehavior or suffer disconnection. Because it is very difficult to describe this behavior in an objective, non-ambiguous fashion, however, CAs will have to use some degree of professional judgment in determining whether (for example) a "threatening or abusive" remark has been directed at them. The proposed rules seek to limit the circumstances in which this judgment may be exercised as much as possible.

Proposed section 64.610 also would give CAs the following limited authority:

- When the CA is confronted with only a blank screen, or a screen that otherwise does not display the face of the video caller (including when the caller is using a privacy screen), the CA may disconnect the call if the caller's face does not reappear on the screen within two minutes.[42]

- When a deaf caller places a VRS voice carryover ("VCO") call, but the voice phone is answered or used by anyone other than the deaf videophone user, the VRS CA may disconnect the call for facilitating a hearing-to-hearing voice call rather than a legitimate VCO call.

- Providers may implement criteria for identifying calls in which a hearing person is placing IP Relay calls to hearing merchants in furtherance of a fraud or scam that benefits the caller financially.[43] When authorized under the criteria, the CA handling the call may interrupt the call to notify the called party to use caution with any financial transactions and to ask if he or she would like to terminate the call. Providers will be required to submit these criteria confidentially to the FCC for review and to make any adjustments ordered by the FCC.

Sorenson has attempted to calibrate these standards so as to minimize the CA's subjective discretion and interference while also maximizing the likelihood that this interference will significantly curtail the placement, handling, and billing of the most common types of relayed calls that do not meet the statutory definition of TRS.

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[42] The FCC should seek comment on whether a stricter or looser standard is warranted. Sorenson notes that in some circumstances, the disappearance of the caller's face could be legitimate (for instance, the caller may be watching the screen at an oblique angle that renders him or her outside the purview of the VI's screen; or the caller may have momentarily gone into another room to answer the door, *etc.*).

[43] Sorenson and other IP Relay providers regularly receive IP Relay calls from persons in foreign countries, such as Nigeria. Reports suggest that many of these calls are placed by hearing people who are attempting to use IP Relay to defraud American merchants. *2006 TRS Misuse FNPRM*, 21 FCC Rcd 5478, ¶¶ 6-9; Letter from Michael D. Maddix, Sorenson, to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123 (Feb. 23, 2007) ("Sorenson Feb. 23, 2007 Fraud Prevention *Ex Parte*"). The FCC sought comment on how to address these calls in 2006, and again in 2008. *2006 TRS Misuse FNPRM*, 21 FCC Rcd 5478, ¶¶ 12-16; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, ¶ 95 (2008) ("*June 2008 TRS Numbering Order*"). In the *June 2008 TRS Numbering Order*, the FCC suggested that its registration requirements would curtail these situations. *Id.* ¶¶ 92-94. Sorenson believes, however, that some fraudulent IP Relay calls will continue to be placed, and therefore the proposed rule is warranted.

The Commission should not hesitate to adopt these rules. Although, as noted, the FCC has sought comment on how to combat some of these practices,[44] it has not issued guidance regarding the steps providers may take to refuse or terminate calls that appear not to be TRS calls. In the absence of such guidance, providers are in a predicament as to whether to terminate an apparently illegitimate call, and risk complaints about any mistakes; or to take the call, and risk billing the Fund for an illegitimate call that wastes the time of interpreters and, in some cases, imposes a severe psychic toll on them as well. The proposed rules would put an end to this predicament.

### D. The FCC Should Seek Comment on Whether To Deny Compensation for Other Types of Calls and Whether New Enforcement Rules Should Be Adopted

Beyond the rules proposed above, the Commission should seek comment on whether to deny compensation for other types of calls that may artificially inflate the size of the Fund.[45] For example, the FCC should seek comment is how to handle calls to looping interactive voice response ("IVR") numbers. As noted above, the FCC's rules require relay providers to handle calls to "recorded message[s] and interactive

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44 *2006 TRS Misuse FNPRM*, 21 FCC Rcd 5478.

45 As part of this effort, the FCC should ask the public to refresh the record on pending public matters relating to non-TRS calls, minute-pumping practices, and revenue-sharing schemes, including the 2004 rulemaking proceeding on the abuse of CAs during IP Relay and VRS calls; the 2006 rulemaking on the misuse of VRS and IP Relay; the 2008 NASRA *ex parte* identifying four practices that appear to violate the FCC's no-incentives rules; and the 2009 Sorenson Petition for Declaratory Ruling on illicit revenue-sharing schemes. *2004 TRS Order & FNPRM*, 19 FCC Rcd 12475, ¶¶ 255-58; *2006 TRS Misuse FNPRM*, 21 FCC Rcd 5478; NASRA Nov. 19 *Ex Parte* Comments; Sorenson Revenue Sharing Comments and Petition for Declaratory Ruling. Taking this step will help ensure that the new rules to be adopted in this proceeding address the full range of relevant issues, including those already under consideration in older, less comprehensive proceedings that may have grown stale.

menu[s]."[46] Some IVRs simply repeat their introductory message over and over again if the caller takes no action (*e.g.*, daily weather or time-of-day IVRs). Since these calls can last indefinitely, some providers, CAs, or callers may be tempted to inflate these calls for illicit or mischievous purposes. At the same time, providers generally are not supposed to take action based on the content of relayed calls. The Commission should seek comment on whether such calls are legitimate forms of relay, and if so, whether such calls should be compensable or otherwise regulated or restricted. For example, should providers be required to detect and terminate calls to looping IVRs that last for more than a specified period of time? Should providers be subject to per-month usage caps for such calls (*e.g.*, no more than x% of all VRS minutes per month should be to looping IVRs)? The FCC also should seek comment on how providers should determine whether a caller was listening to a looping IVR.

It would be prudent for the Commission to seek comment on whether to adopt more stringent enforcement rules regarding the types of misconduct addressed herein. Sorenson does not believe that such a step is warranted, however: the problem is not lack of enforcement authority, but the absence of clear, codified rules that can be readily enforced. Adopting the rules proposed herein would solve this problem. Any person or entity who violated those rules would be subject to the full range of the FCC's enforcement arsenal, including the assessment of sizeable monetary forfeitures per

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46 *See* 47 C.F.R. § 64.604(a)(3)(vii).

violation or each day of a continuing violation,[47] and, in the most egregious cases, stripping the provider of its eligibility to receive compensation from the Fund.[48]

Lacking applicable rules, however, the FCC has thus far been reluctant to bring enforcement actions against TRS providers. Despite having recourse to a full arsenal of enforcement weapons, the Commission has not – to the best of Sorenson's knowledge – issued a single notice of apparent liability ("NAL") against a TRS provider for violating the no-incentives prohibition (to name just one example), even though circumstantial evidence suggests that some providers have repeatedly flouted this prohibition. Sorenson urges the Commission to change this dynamic by adopting the proposed rules as quickly as possible and dedicating ample resources to enforcing the rules once they are adopted.

Beyond exercising its authority to assess forfeitures, the Commission should conduct "additional and more comprehensive auditing of the providers,"[49] including their data, practices, and procedures. The Commission also should ensure that the Administrator complies with the FCC's directive to strengthen its procedures to verify payment claims and report any discrepancies or errors uncovered in its review of provider data.[50] To this end, the Commission should ensure that the Administrator has sufficient personnel with expertise in detecting fraudulent calling patterns, and should direct the Enforcement Bureau to investigate apparent violations of relevant FCC rules and issue

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47 *See* 47 C.F.R. § 1.80(b)(3); 47 U.S.C. § 503(b)(2)(D).

48 *See Publix Network Corporation*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487 (2002). Additionally, any party aggrieved by a provider's misconduct could bring a complaint against that party under existing FCC rules codified at section 64.604(c)(6). 47 C.F.R. § 64.604(c)(6).

49 *2007 Order & Declaratory Ruling*, 22 FCC Rcd 20140, ¶ 86 (2007).

50 Letter from Anthony Dale, Managing Director of FCC, to Bill Hegmann, President and CEO of NECA (Oct. 30, 2008), *available at*: <http://www.fcc.gov/omd/trs-letters/2008/2008.Oct.30-Internal_Controls-TRS_Fund_Administration.pdf>.

NALs where appropriate. Upon adoption of the proposed rules, moreover, the Commission and the Administrator should aggressively use the confidential provider-submitted algorithms to review the calling patterns of all providers for anomalies that might indicate minute-pumping or other illicit schemes.

## III. THE COMMISSION HAS AUTHORITY TO ADOPT THE RULES PROPOSED HEREIN

As noted, the primary mandate of the Commission under section 225 is to ensure that all deaf, hard-of-hearing, and speech-disabled Americans have access to relay services that are "functionally equivalent" to the phone services used by hearing Americans.[51] The Commission is required by section 225 to classify as a relay service any service that advances the goal of functional equivalency and otherwise meets the statutory definition of TRS. Any legitimate interstate calls made through such a relay service must be fully compensated by the Fund, regardless of the effect of such compensation on the size or growth of the Fund. The Commission lacks statutory authority to predetermine what it believes to be an "appropriate" Fund size, and then use that predetermined size to reverse-engineer compensation decisions, such as the appropriate per-minute rate of a particular relay service.

At the same time, the Commission has robust authority to protect the integrity of the Fund by ensuring that compensation will not be provided for minutes generated by the practices proscribed by the proposed rules, including placing or handling non-TRS calls, minute pumping, and illicit revenue sharing. As explained above, each of those practices is inconsistent with the statutory goal of functional equivalence, and the Commission therefore has authority – and, indeed, an obligation – to adopt the proposed

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[51] 47 U.S.C. §§ 225(a)(3), (b)(1).

rules, which make clear that minutes generated by these practices are non-compensable. The Commission likewise has authority to establish mandatory minimum standards and grant authority to CAs, where doing will minimize the incidence of illicit calls and thereby protect functional equivalence.

## IV. THE FCC SHOULD OPEN NEW DOCKETS FOR THIS PROCEEDING

For years, all TRS matters have been placed in the same docket: CG Docket No. 03-123.[52] As a result, filings associated with numerous distinct proceedings have accumulated in this docket, including, for example, those involving yearly rates, numbering and E911, no-incentives, the recognition of new forms of relay, petitions for FCC certification, and various petitions for declaratory ruling. This prolonged accumulation has rendered the docket unwieldy, even to the point of being unusable for persons seeking to search for a particular filing.

The FCC has previously found that the establishment of a new docket is warranted "for administrative purposes . . . , to make it easier for parties to locate materials related to [a particular] program."[53] To prevent CG Docket No. 03-123 from becoming even more unwieldy, the FCC should assign a new CG docket number to the instant proceeding and should continue to do so with each new TRS-related proceeding in the future. Because this rulemaking raises important enforcement issues, the FCC should assign a unique EB docket number to this proceeding as well.

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[52] Previously, there was another single docket, now discontinued: CC Docket No. 98-67. *2005 Report and Order*, 20 FCC Rcd 13165, ¶ 38.

[53] *Establishment of a Program to Monitor the Impact of Joint Board Decisions*, Order, 2 FCC Rcd 5266, ¶ 5 n.9 (1987).

## V. CONCLUSION

For the foregoing reasons, the Commission should initiate a rulemaking proceeding in which the FCC proposes to protect functional equivalence and enhance the integrity of the Fund by adopting the attached rules.

Respectfully submitted,

*/s/ Regina M. Keeney*

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## Appendix A
## Text of Proposed Rules

**Section 64.604 of the FCC's rules shall be revised as follows:**

§ 64.604 Mandatory minimum standards.

The standards in this section are applicable December 18, 2000, except as stated in paragraphs (c)(2), (d), (f)(3)(v), and (h) of this section.

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(a) *Operational standards.* -- (1) *Communications assistant (CA).* (i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A "qualified interpreter" is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

(2) *Confidentiality and conversation content.* (i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

(3) *Types of calls.* (i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

(iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.

(iv) Relay services shall be capable of handling pay-per-call calls.

(v) TRS providers are required to provide the following types of TRS calls: (1) Text-to-voice and voice-to-text; (2) VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; (3) HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO.

(vi) TRS providers are required to provide the following features: (1) Call release functionality; (2) speed dialing functionality; and (3) three-way calling functionality.

(vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

(viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.

(4) *Emergency call handling requirements for TTY-based TRS providers.* TTY-based TRS providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would

have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

(5) *STS called numbers*. Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) *Technical standards* -- (1) *ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* (i) TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(ii) TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network. A TRS facility shall ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(A) The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility.

(B) Abandoned calls shall be included in the speed-of-answer calculation.

(C) A TRS provider's compliance with this rule shall be measured on a daily basis.

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(iii) Speed of answer requirements for VRS providers are phased-in as follows: by January 1, 2006, VRS providers must answer 80% of all calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80% of all calls within 150 seconds, measured on a monthly basis; and by Janury 1, 2007, VRS providers must answer 80% of all calls within 120 seconds, measured on a monthly basis. Abandoned calls shall be included in the VRS speed of answer calculation.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* (i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 CFR 64.1600 et seq.

(6) *Caller ID.* When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

(c) *Functional standards* -- (1) *Consumer complaint logs.* (i) States and interstate providers must maintain a log of consumer complaints including all complaints about TRS in the state, whether filed with the TRS provider or the State, and must retain the log until the next application for certification is granted. The log shall include, at a minimum, the date the complaint was filed, the nature of the complaint, the date of resolution, and an explanation of the resolution.

(ii) Beginning July 1, 2002, states and TRS providers shall submit summaries of logs indicating the number of complaints received for the 12-month period ending May 31 to the Commission by July 1 of each year. Summaries of logs submitted to the Commission on July 1, 2001 shall indicate the number of complaints received from the date of OMB approval through May 31, 2001.

(2) *Contact persons.* Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following:

(i) The name and address of the office that receives complaints, grievances, inquiries, and suggestions;

(ii) Voice and TTY telephone numbers, fax number, e-mail address, and web address; and

(iii) The physical address to which correspondence should be sent.

(3) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population. In addition, each common carrier providing telephone voice transmission services shall conduct, not later than October 1, 2001, 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.

(d) *Standards for Internet-based TRS providers.* Effective January 1, 2010, Internet-based TRS providers shall be subject to the following standards, in addition to those listed above:

(1) *Whistle blowers.* Providers shall permit any employee, agent, or contractor to disclose to a designated manager any known or suspected violations of FCC rules, or any other activity that the reporting person believes to be unlawful, wasteful, fraudulent, or abusive, or that otherwise could result in the improper billing of minutes to the Interstate TRS Fund. Providers must make available at least one means by which such disclosure may be made anonymously. Providers must promptly investigate any report of wrongdoing and, when warranted, take appropriate corrective action. Providers may not discipline any employee, agent, or contractor solely for reporting under this provision.

(2) *Recording of time.* For each Internet-based TRS call, providers must automatically record compensable conversation time to at least the nearest second, with more accurate recordings permitted.

(3) *Supervision of interpreters.* CAs must work in a call center under direct supervision of a manager. Providers shall not allow CAs to work at home or in other unsupervised locations.

(4) *Random selection of interpreters.* CAs must not handle calls where they personally know either party to the call. Callers must not be able to select a particular CA, and vice versa.

(5) *Training of interpreters.* All newly-hired CAs must receive adequate training on applicable FCC rules. Providers shall have each CA sign an acknowledgment that he or she has read and understood those rules. After their initial training, CAs must receive additional training regarding the rules on an annual basis.

(6) *Dedicated facilities.* Providers must ensure that all VRS calls are routed to call centers that are dedicated solely to handling VRS calls. VRI and community

interpreting may not be performed in a VRS call center while that facility is being used to process VRS calls.

(7) *Detection of illegitimate minutes.* Providers must implement commercially reasonable methods to detect minutes that should not be billed to the Fund under existing FCC rules. At a minimum, these methods shall include the use of monthly computerized algorithms to review a provider's aggregate TRS calling patterns for anomalies that likely reflect TRS calls that are not permitted under the FCC's rules and orders or that are otherwise unlawful or illegitimate. Each provider shall submit confidentially to the FCC and the Administrator an annual report describing its algorithms and any other methods used to detect illegitimate minutes. The FCC or NECA independently may use any of these algorithms and methods to detect illegitimate calls, but must not share them with or disclose them to providers or the public.

(8) *Calls from customers to a provider.* When a consumer calls or emails a provider to seek technical support, the provider must give the consumer a choice in the communication mechanisms that can be used to contact the provider, including at least one non-relay option. A list of options also must appear in all materials where the provider lists its contact information, including on the provider's website and in any printed contact documents distributed to users. For example, consumers seeking to contact the technical support staff of a provider should be presented with multiple options such as: deaf-to-deaf calls, hearing-to-hearing calls, deaf-to-hearing relay calls, hearing-to-deaf relay calls, email, fax, *etc.* Only if the consumer chooses the deaf-to-hearing or hearing-to-deaf option should a compensable TRS call be placed.

(e) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

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(f) *Jurisdictional separation of costs* -- (1) *General.* Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

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(2) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, with respect to VRS, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.

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(3) *Telecommunications Relay Services Fund.* Effective July 26, 1993, an Interstate Cost

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Recovery Plan, hereinafter referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(i) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

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(ii) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject carrier must contribute at least $ 25 per year. Carriers whose annual contributions total less than $ 1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total $ 1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the Federal Register). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer & Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

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(iii) *Data collection from TRS providers.* TRS providers shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested by the administrator, necessary to determine TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The

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administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of TRS Fund payments.

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(v) *Payments to TRS Providers.* (A) *General.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (f)(3)(iii), of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. Effective January 1, 2010, the form shall include a box to be checked by the submitting provider confirming that the provider is not seeking compensation from the Interstate TRS Fund for any Internet-based TRS minutes prohibited by subsection (f)(3)(v)(B) below. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator. The formulas should appropriately compensate interstate providers for the provision of VRS, whether intrastate or interstate.

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(B) *Prohibited Payments to Internet-based TRS providers.* Effective January 1, 2010, the administrator must not compensate for minutes submitted by Internet-based TRS providers for the following types of relayed calls.

*(i)* *Calls to recorded events.* The administrator shall not compensate for minutes resulting from calls to "podcast" or similar numbers that provide the audio of recorded broadcasts or other events, such as news shows, lectures, or talk radio programs. The administrator shall post a list of proscribed phone numbers on its website and shall update this list on a weekly basis. In compiling this list, the administrator may rely on reliable lists maintained by

third parties, such as: http://www.podlinez.com/ (listing podcasts and their associated phone numbers).

*(ii)* *Employee calls.* The administrator shall not compensate for minutes resulting from calls placed by or to a provider's employees, agents, or contractors while they are at their place of employment or while they are performing work for which they are being compensated by that provider or by any employee, agent, or contractor of that provider, except that inbound calls to a provider's technical support staff shall be compensable. This prohibition includes, but is not limited to, outreach, educational, or marketing calls and test calls.

*(a)* *Outreach, educational, or marketing calls.* The administrator shall not compensate for minutes resulting from outreach, educational, or marketing calls placed by a provider's employees, agents, or contractors. For example, if a provider wants to have a deaf employee call a hearing business to educate it about VRS (or have a hearing employee call a deaf business), the provider may place a relayed call for that purpose but that call will not be compensable. Alternatively, the provider may have a deaf employee call a deaf business, or a hearing employee call a hearing business.

*(b)* *Test calls.* The administrator shall not compensate for minutes resulting from calls initiated by an employee, agent, or contractor of a provider, or by a TRS user at the request or suggestion of an employee, agent, or contractor of a provider, for the purpose of assessing the quality of (i) end-user equipment installed by the provider; (ii) the Internet connection to that equipment; or (iii) the communication between a CA and the end user of that equipment.

*(iii)* *Phone-in events.* The administrator shall not compensate for minutes resulting from calls to "lectures" or other phone-in events that can be "listened to" by relay users, if those events have been created, sponsored, or advertised by the provider that handled those calls or by another entity paid by or working in concert with that provider.

*(iv)* *Revenue-sharing arrangements.* The administrator shall not compensate for minutes resulting from Internet-based TRS calls unless the entity seeking compensation from the administrator (*a*) is eligible under section 64.604(f)(3)(vi), and (*b*) clearly identified itself to the calling parties at the outset of the calls as the TRS provider for those calls.

*(v)* *Calls tainted by a proscribed incentive.* A provider shall not advertise, offer, or give users or a third party any financial or other benefit that could encourage or entice a consumer to select the provider as his or her default provider or to place more or longer TRS calls than he or she otherwise would have placed, or reward him or her for doing so, nor shall the administrator

compensate for minutes resulting from calls that may have been placed as a result of these practices. Examples of prohibited practices include, but are not limited to: (*a*) linking the salary, bonus, or other compensation or benefit of any CA to relay calls or minutes; (*b*) paying deaf or hearing salespersons to place telemarketing calls through a provider's VRS; (*c*) paying independent marketing firms to have deaf or hearing employees place marketing calls through a provider's VRS; (*d*) requiring consumers to use a provider's VRS in order to receive a free videophone; (*e*) paying a deaf or hearing person to make VRS calls to a provider; (*f*) paying a deaf or hearing person to place calls to a pre-supplied list of phone numbers that provide information or news, or that have long wait times; (*g*) offering consumers sweepstake giveaways that are tied to usage of TRS; (*h*) tying a provider's sponsorship of an event, program, or entity to usage of TRS; (*i*) giving charitable contributions based on TRS calls made; (*j*) giving charitable contributions or other gifts or payments based on failure to meet specific performance standard (*e.g.*, if a TRS call is not answered within a specific period, a contribution will be made to a third party organization); (*k*) offering a financial incentive or reward for a consumer to register with a provider (including to register with a default provider under section 64.611(a)), add the provider to the consumer's speed dial list, or to become a provider's "VIP" customer; (*l*) offering a reward to consumers in exchange for placing or receiving a TRS call in which the consumer will give feedback on the quality of a provider's service; and (*m*) conditioning the ongoing use or possession of relay equipment, or the receipt of different or upgraded equipment, on a consumer making relay calls through a provider's service or the service of any other provider. Notwithstanding the foregoing, no Internet-based TRS call shall be deemed to be tainted by an improper incentive solely because a provider has distributed a videophone or other end-user equipment to a consumer, and providers may lawfully distribute videophones and other end-user equipment to consumers so long as such distribution is not tainted by an incentive proscribed in this subsection *(v)* or a contact proscribed in subsection *(vi)* below.

*(vi)* *Calls tainted by a proscribed contact.* A provider shall not contact a consumer and urge, require, request, or suggest that he or she make more or longer TRS calls, nor shall the administrator compensate for minutes resulting from any call placed by a consumer within one month after the provider has contacted a user in this way. This rule shall not be interpreted to prohibit or diminish legitimate outreach, education, marketing, or other contacts that do not urge, require, request, or suggest that a consumer make more or longer TRS calls. For example, this rule shall not be triggered simply because a provider's employee has installed a videophone for a consumer and trained him or her how to use it.

*(vii)* *International IP Relay calls.* The administrator shall not compensate for minutes resulting from any IP Relay call in which one of the endpoints is located outside of the United States.

(vi) TRS providers eligible for receiving payments from the TRS Fund are:

(A) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.606; or

(B) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(C) Interstate common carriers offering TRS pursuant to § 64.604; or

(D) Video Relay Service (VRS) and Internet Protocol (IP) Relay providers certified by the Commission pursuant to § 64.606.

(vii) Any eligible TRS provider as defined in paragraph (f)(3)(vi) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(viii) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required in paragraphs (f)(3)(i) through (f)(3)(x) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of the TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM) and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall account for the financial transactions of the TRS Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the TRS Fund in accordance with the United States Government Standard General Ledger. When the administrator, or any independent auditor hired by the administrator, conducts audits of providers of services under the TRS program or contributors to the TRS Fund, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the TRS Fund, the administrator shall also comply with all relevant and applicable federal financial management and reporting statutes. The administrator shall establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of the advisory committee deliberations.

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(ix) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer & Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (see 47 CFR 54.701 of this chapter), the North American Numbering Plan administration cost recovery (see 47 CFR 52.16 of this chapter), and the long-term local number portability cost recovery (see 47 CFR 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

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(x) The administrator's performance and this plan shall be reviewed by the Commission after two years.

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(xi) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

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(g) *Complaints* -- (1) *Referral of complaint.* If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.606 is in effect, the Commission shall refer such complaint to such state expeditiously.

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(2) Intrastate complaints shall be resolved by the state within 180 days after the complaint is first filed with a state entity, regardless of whether it is filed with the state relay administrator, a state PUC, the relay provider, or with any other state entity.

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(3) *Jurisdiction of Commission.* After referring a complaint to a state entity under paragraph (g)(1) of this section, or if a complaint is filed directly with a state entity, the Commission shall exercise jurisdiction over such complaint only if:

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(i) Final action under such state program has not been taken within:

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(A) 180 days after the complaint is filed with such state entity; or

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(B) A shorter period as prescribed by the regulations of such state; or

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(ii) The Commission determines that such state program is no longer qualified for

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certification under § 64.606.

(4) The Commission shall resolve within 180 days after the complaint is filed with the Commission any interstate TRS complaint alleging a violation of section 225 of the Act or any complaint involving intrastate relay services in states without a certified program. The Commission shall resolve intrastate complaints over which it exercises jurisdiction under paragraph (g)(3) of this section within 180 days.

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(5) *Complaint Procedures.* Complaints against TRS providers for alleged violations of this subpart may be either informal or formal.

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(i) *Informal Complaints* -- (A) *Form.* An informal complaint may be transmitted to the Consumer & Governmental Affairs Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

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(B) *Content.* An informal complaint shall include the name and address of the complainant; the name and address of the TRS provider against whom the complaint is made; a statement of facts supporting the complainant's allegation that the TRS provided it has violated or is violating section 225 of the Act and/or requirements under the Commission's rules; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the defendant TRS provider (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's hearing or speech disability).

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(C) *Service; designation of agents.* The Commission shall promptly forward any complaint meeting the requirements of this subsection to the TRS provider named in the complaint. Such TRS provider shall be called upon to satisfy or answer the complaint within the time specified by the Commission. Every TRS provider shall file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Such designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address.

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(ii) *Review and disposition of informal complaints.* (A) Where it appears from the TRS provider's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and defendant in the manner requested by the complainant (e.g., letter, facsmile transmission, telephone (voice/TRS/TTY) or Internet e-mail.

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(B) A complainant unsatisfied with the defendant's response to the informal complaint

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and the staff's decision to terminate action on the informal complaint may file a formal complaint with the Commission pursuant to paragraph (g)(5)(iii) of this section.

(iii) *Formal complaints.* A formal complaint shall be in writing, addressed to the Federal Communications Commission, Enforcement Bureau, Telecommunications Consumer Division, Washington, DC 20554 and shall contain:

(A) The name and address of the complainant,

(B) The name and address of the defendant against whom the complaint is made,

(C) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(D) The relief sought.

(iv) Amended complaints. An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(v) *Number of copies.* An original and two copies of all pleadings shall be filed.

(vi) *Service.* (A) Except where a complaint is referred to a state pursuant to § 64.604(g)(1), or where a complaint is filed directly with a state entity, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(B) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(vii) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

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(viii) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

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(ix) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

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(h) *Treatment of TRS customer information.* Beginning on July 21, 2000, all future contracts between the TRS administrator and the TRS vendor shall provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS user. Such information shall not be sold, distributed, shared or revealed in any other way by the relay center or its employees, unless compelled to do so by lawful order.

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**The following new section shall be added to the FCC's rules:**

§ 64.610 Authority To Protect the Integrity of the Interstate TRS Fund

(a) *General.* Notwithstanding any other provision in this subpart, effective January 1, 2010, providers and CAs handling Internet-based TRS calls shall have authority to protect the integrity of the Interstate TRS Fund and the goal of functional equivalence by engaging in the practices described in subsection (b) below.

(b) The following practices are authorized:

(1) *Illegitimate IP Relay calls.* Providers may implement criteria for identifying calls in which a person who is likely not deaf, hard-of-hearing, or speech-disabled places IP Relay calls to hearing merchants or hearing employees of banks in furtherance of a fraud or scam that benefits the caller financially. When authorized under the criteria, the CA handling the call may interrupt the call to notify the called party to use caution with any financial transactions and to ask if he or she would like to terminate the call. If the parties continue with the call, the CA may not interrupt again. Within 30 days after the effective date of this subsection (b)(2), or 30 days of implementing criteria under this subsection (b)(2), whichever is later, providers must submit to the FCC confidential filings identifying any criteria to be used under this subsection. After receiving a provider's criteria, the FCC may confidentially direct that provider to modify the criteria, and providers must promptly comply with any such directive.

(2) *Abusive or obscene calls.* When a call is accepted by a provider, the following guidelines regarding abusive or obscene behavior may be followed:

(i) If, at any time during call setup or during a VRS call, the CA can see on his or her screen that the video caller is engaging in sexually explicit behavior, the VRS CA may disconnect the call immediately. The term "sexually explicit behavior" shall have the meaning set forth in 18 U.S.C. § 2256(2)(A) or (2)(B).

(ii) If, at any time during call setup or during a VRS call, the CA can see on his or her screen the exposed genitalia or buttocks of a video caller, or the exposed breasts of a female video caller, the CA may instruct the caller to cover up and explain that if this does not happen, the call will be disconnected. If the caller refuses to cover up, the CA may disconnect the call immediately. Notwithstanding the foregoing, if at any time during call setup or during a call, the VRS CA sees only genitalia, buttocks, or female breasts on the screen, the VI may disconnect immediately.

(iii) If, at any time during an Internet-based TRS call, either party to the call makes threatening or abusive remarks, particularly of a sexual or violent nature, about or directed to the CA, the CA may inform the party or parties that they must stop making the threatening or

abusive remarks or the call will be disconnected. If the party or parties refuse to adjust their behavior, the CA may disconnect the call without further warning.

(iv) A CA may keep a written record of any instance described in subsections (b)(2)(i)–(iii) above.

(3) *VRS calls – no face.* If at any time during call setup or during a relayed call, a VRS CA is confronted with only a blank screen, or a screen that otherwise does not display the face of the video caller, the CA may disconnect the call if the video caller's face does not reappear on the screen within two minutes. A VRS user therefore may use a privacy screen for up to two minutes at a time and may make multiple uses of a privacy screen during a call so long as the user removes the privacy screen to check in with the CA at intervals of no more than two minutes. If a caller uses a privacy screen for more than two minutes without checking in, the CA may disconnect the call.

(4) *VRS VCO calls.* VRS VCO is to be used only when a deaf or hard-of-hearing video caller wishes to use his or her own voice to speak to the hearing party to the call. A VRS CA may disconnect a VRS VCO call if he or she observes either of the following situations:

(i) the VCO voice phone is answered by anyone other than the videophone user; or

(ii) the VCO voice phone is answered by the videophone user who proceeds to hand the VCO voice phone off to another person.

(c) *Safe harbor.* An Internet-based TRS provider will not be liable in an FCC enforcement action or an FCC complaint proceeding for engaging in any practice authorized by subsections (b)(1)–(4) above.