DOCKET FILE COPY ORIGINAL

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

MAILED
JUN 28 2010
FCC Mail Room

In the Matter of	)	
	)	
Telecommunications Relay Services	)	
and Speech-to-Speech Services for	)	CG Docket No. 03-123
Individuals with Hearing and Speech	)	
Disabilities	)	

ORDER

Adopted: June 18, 2010 **Released: June 28, 2010**

By the Commission:

I. INTRODUCTION

1. The Commission hereby adopts per-minute compensation rates from the Interstate Telecommunications Relay Services (TRS)[1] Fund (Fund) for each form of TRS for the 2010-2011 Fund year. These rates are based in part on options proposed by the National Exchange Carrier Association (NECA), the Interstate TRS Fund administrator, in filing its annual *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate* for the period of July 1, 2010, through June 30, 2011.[2] The interim rates for 2010-2011 for Video Relay Service (VRS) shall be: $6.2390 for Tier I, $6.2335 for Tier II, and $5.0668 for Tier III.[3] The rates for the other forms of TRS shall be: $2.256 for

[1] TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability through a communications assistant (CA). *See* 47 U.S.C. § 225(a)(3) (defining TRS); 47 C.F.R. § 64.601(21). As noted below, TRS is provided in a variety of ways. Interstate TRS calls, and currently for Internet Protocol (IP) based forms of TRS, both intrastate and interstate TRS calls, are compensated from the Fund. *See, e.g., Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket 98-67, Declaratory Ruling and Second Further Notice of Proposed Rule Making, 17 FCC Rcd 7779, 7784-86, paras. 15-22 (Apr. 22, 2002) (declining to apply jurisdictional separation of costs to IP Relay, and directing the Fund administrator to reimburse all IP Relay minutes from the Fund).

[2] NECA, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed Apr. 30, 2010) (*2010 TRS Rate Filing*). *See National Exchange Carrier Association Submits the Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services Fund for the July 2010 Through June 2011 Fund Year*, CG Docket No. 03-123, Public Notice, 25 FCC Rcd 4682 (Apr. 30, 2010) (*2010 TRS Rate PN*) (seeking public comment on *2010 TRS Rate Filing*).

[3] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20163-64, paras. 53-56 (Nov. 19, 2007) (*2007 TRS Rate Methodology Order*).

interstate traditional TRS;[4] $3.1566 for Speech-to-Speech (STS);[5] $1.6951 for Captioned Telephone Service (CTS) and Internet Protocol (IP) CTS;[6] and $1.2985 for IP Relay.[7]

2. As discussed below, the interim VRS rates adopted herein represent the average of the current tiered rates and NECA's proposed rates based on actual, historical costs.[8] These rates have been adopted on an interim basis and reflect a balance between the goal of ensuring that VRS providers recover from the Fund only the reasonable costs caused by their provision of VRS[9] and the goal of ensuring quality and sufficient service during a one-year period while we consider reform in this area. We note that the Commission intends to further examine VRS rates in the near future as part of upcoming proceedings, including the *2010 VRS NOI,*[10] and audits.

3. Based on the adoption of these rates and NECA's proposals, the Commission hereby adopts a carrier contribution factor of 0.00585, and a funding requirement of $433,990,484.98 for the 2010-2011 Fund year.[11] The Commission adopts these rates, and this contribution factor and funding requirement, for a period of one year, except as otherwise provided herein.

---

[4] The Commission adopted the Multistate Average Rate Structure (MARS) plan to calculate the annual interstate traditional TRS rate. *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20149-57, paras. 16-35; *see also 2010 TRS Rate Filing* at 10, Exh. 1-1, and App. C.

[5] The traditional TRS MARS rate also applies to interstate STS. *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20156, para. 34. Consistent with the *2007 TRS Rate Methodology Order*, however, NECA's proposed STS rate includes an additional per-minute amount of $1.131 to be used for STS outreach. *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20165, para. 57; *see also 2010 TRS Rate Filing* at 11, Exh. 1-1, and App. C.

[6] The Commission also adopted the MARS Plan for interstate CTS and IP CTS. *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20157-58, paras. 36-38; *see also 2010 TRS Rate Filing* at 12, Exh. 1-2, and App. D.

[7] For IP Relay, the Commission previously adopted a three-year rate using a price cap methodology, which will expire June 30, 2010. *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20158-60, paras. 39-46. Therefore, NECA proposes an IP Relay rate for the 2010-2011 Fund year and recommends that the Commission use the proposed rate as a base if it continues to use a price cap methodology to determine rates for IP Relay. *See 2010 TRS Rate Filing* at 15, 15 n.32, and Exh. 1-3.

[8] The "actual" costs submitted by providers, and on which NECA based proposed rates, have not been independently audited by the Commission, NECA, or any entity designated by either. We note, however, that KPMG, working on behalf of the Commission's Office of Inspector General, completed performance audits of seven TRS providers for Fund years 2004, 2005, 2006, and 2007 to "determine whether the Relay Services Data Requests (RSDR) and the Monthly Reports of Relay Service Minutes that were certified and submitted by TRS providers are (i) consistent with applicable laws and regulations and (ii) supported by sufficient documentation to warrant reimbursement with TRS Funds." *See* House Committee on Energy and Commerce Majority Staff Report, "Deception and Distrust: The Federal Communications Commission Under Chairman Kevin J. Martin" (Dec. 9, 2008) Exh. 7, Letter from Terry L. Carnahan, KPMG LLP, to Kent R. Nilsson, Inspector General, Federal Communications Commission, July 30, 2008, *at* http://energycommerce.house.gov/images/stories/Documents/PDF/Newsroom/fcc%20majority%20staff%20report%20081209.pdf. KPMG's letter summarizing the audits' results noted, among other findings, "pervasive issues...related to the lack of adequate supporting documentation for the TRS costs reported by the providers on the RSDR...." *Id.*

[9] *See* 47 U.S.C. § 225(d)(3)(B).

[10] *See Structure and Practices of the Video Relay Service Program,* CG Docket No. 10-51, Notice of Inquiry, FCC 10-111 (June 28, 2010) (*2010 VRS NOI*).

[11] *See* Section II.E., *infra.*

II. BACKGROUND

A. The *2010 TRS Rate PN*

4. On April 30, 2010, the Consumer and Governmental Affairs Bureau (Bureau) released the *2010 TRS Rate PN* seeking comment on the *2010 TRS Rate Filing*. Specifically, the Bureau sought:

- to refresh the record on the portion of the Commission's *2009 PN and NPRM* regarding whether VRS tiered rates should be recalculated based on data reflecting the provider submitted actual costs of providing VRS, rather than projected costs of providing the service;[12]
- comment on NECA's calculation for VRS rates using weighted averages of VRS providers' *actual* historical cost data for 2009 and then adding increases of 1.6% for cash working capital, 3.2% for growth in expenses, and $0.0083 per minute for ongoing E911 and ten-digit numbering costs;[13]
- comment on whether the Commission should adopt 2010-2011 interim Fund year VRS rates based on NECA's proposed use of weighted averages in calculating each of the tiers, as described in the *2010 TRS Rate Filing*, as opposed to calculations correlated to the current tiered VRS rates;[14]
- comment on NECA's proposed per-minute compensation rates for all other forms of TRS based on the rate calculation methodologies established in the *2007 Rate Methodology Order;* and,[15]
- comment on NECA's proposed carrier contribution factor of between 0.00379 and 0.00908, and funding requirement of between $280.8 and $673.3 million, depending on which calculation the Commission chose to adopt for VRS rates.[16]

Over 22,000 comments, reply comments, and *ex partes* were filed in response to the *2010 TRS Rate PN*.[17]

---

[12] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Public Notice and Notice of Proposed Rulemaking, 24 FCC Rcd 6029, 6033, para. 11 (May 14, 2009) (*2009 PN and NPRM*).

[13] *2010 Rate PN*, 25 FCC Rcd at 4683. *See also 2010 TRS Rate Filing* at 22-24; 25, Table 3, VRS Rate Alternatives; and Exh. 2.

[14] *Id.*

[15] *See 2010 TRS Rate PN*, 25 FCC Rcd at 4683.

[16] *See 2010 TRS Rate Filing* at 29 and Exh. 3.

[17] Although many individual comments express positions regarding NECA's proposed VRS rates, the majority were substantively the same and generally requested that the Commission refrain from reducing VRS rates too sharply. The following are filings made by providers, consumer groups, or Members of Congress in this proceeding: Sorenson Communications, Inc. (Sorenson) *Ex Parte* (May 4, 2010); Sorenson *Ex Parte* (May 7, 2010) (Sorenson May 7, 2010 *Ex Parte*); Purple Communications, Inc. (Purple) *Ex Parte* (May 7, 2010); CSDVRS, LLC (CSDVRS) Comments (May 10, 2010); Registry of Interpreters for the Deaf, Inc. (RID) Comments (May 11, 2010); Washington School for the Deaf Comments (May 11, 2010); California Department of Education Comments (May 12, 2010); Convo Communications, LLC (Convo) Comments (May 12, 2010); Purple Comments (May 14, 2010); Sorenson Comments (May 14, 2010); AT&T, Inc. (AT&T) Comments (May 14, 2010); Snap Telecommunications, Inc. (Snap) Comments (May 14, 2010); Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network, California Coalition of Agencies Serving the Deaf and Hard of Hearing, American Association of the Deaf-Blind, Hearing Loss Association of America (TDI, *et al.*) Comments (May 14, 2010); PAH! VRS (PAH) Comments (May 14, 2010); STi Prepaid, LLC (STi Prepaid) Comments (May 14, 2010); Modern Deaf Communication Comments (May 17, 2010); Speech Communication Assistance by Telephone (SCT) Comments (May 17, 2010); Letter from United States Senators Amy Klobuchar, Orrin Hatch, Mark Warner, Kay Bailey

(continued....)

B. The TRS Compensation Methodologies

5. The *2007 TRS Rate Methodology Order* established the current rate methodology used for the 2009-2010 Fund year for the various forms of TRS.[18] For VRS, the Commission adopted a tiered rate methodology based on call volume, to address differences in provider size.[19] Tier I includes the first 50,000 monthly VRS minutes; Tier II includes monthly minutes between 50,001 and 500,000; and Tier III includes monthly minutes above 500,000.[20] For interstate traditional TRS, STS, interstate CTS, and IP CTS, the Commission adopted the MARS Plan, explained below.[21] For IP Relay, the Commission adopted a price cap methodology.[22]

III. DISCUSSION

A. The Compensation Rates for VRS for the 2010-2011 Fund Year

6. We adopt interim, one-year rates of $6.2390 for Tier I, $6.2335 for Tier II, and $5.0668 for Tier III for VRS by averaging NECA's proposed per-minute rates calculated as a measure of actual, historical provider costs, and the current rates, which were based on providers' projected costs. As described in detail below, projected costs for VRS for a given Fund year have consistently proven to be higher than actual costs for that Fund year, and there is currently no "true-up" mechanism for reconciling, after the Fund year, the rates at which providers are reimbursed from the Fund and their actual costs for the Fund year. We therefore believe that setting rates that better approximate the actual cost of providing VRS while ensuring that VRS is provided in accordance with the Communications Act of 1934, as amended (Act) should be our primary goal. By NECA's calculation, the rates based on actual, historical costs would be $5.7754 for Tier I, $6.0318 for Tier II, and $3.8963 for Tier III for the 2010-2011 Fund year, all of which include allowances of 1.6%[23] for cash working capital, 3.2% for growth in expenses,

---

(...continued from previous page)
Hutchinson, John Thune, David Vitter, and Mike Johanns (May 19, 2010); Western Pennsylvania School for the Deaf Comments (May 20, 2010); California Foundation for Independent Living Centers Comments (May 20, 2010); The Lighthouse for the Blind Comments (May 21, 2010); Deaf Seniors of America Comments (May 21, 2010); Deaf and Hard of Hearing Citizens of Delaware Valley, Inc. Comments (May 21, 2010); RID Reply Comments (May 21, 2010); CSDVRS Reply Comments (May 21, 2010); STi Prepaid Reply Comments (May 21, 2010); TDI, *et al.* Reply Comments (May 21, 2010); Purple Reply Comments (May 21, 2010); Sorenson Reply Comments (May 21, 2010) Sorenson *Ex Parte* (May 24, 2010); Snap *Ex Parte* (May 25, 2010); Sorenson *Ex Parte* (May 25, 2010); Sorenson *Ex Parte* (May 26, 2010); Letter from 29 Members of United States House of Representatives (May 28, 2010); Purple *Ex Parte* (May 28, 2010) (Purple May 28, 2010 *Ex Parte*); USTelecom *Ex Parte* (June 2, 2010); Sorenson *Ex Partes* (June 3, 2010); CSDVRS *Ex Parte* (June 7, 2010); Madison Dearborn Patners, LLC *Ex Parte* (June 8, 2010); Sorenson *Ex Parte* (June 9, 2010); Sorenson *Ex Parte* (June 10, 2010); Sorenson *Ex Parte* (June 15, 2010); Sorenson *Ex Parte* (June 17, 2010); Purple *Ex Parte* (June 17, 2010); Sorenson *Ex Parte* (June 18, 2010).

[18] *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd 20140.

[19] *See id.* at 20160-65, paras. 47-56.

[20] *See id.*

[21] *See id.* at 20153-58, paras. 26-38.

[22] *See id.* at 20158-60, paras. 39-46.

[23] We note that CSDVRS argues that the cash working capital allowance of 1.6% is insufficient because it is based on payment after thirty days, and in fact, payment from NECA is not made until sixty-five days. *See* CSDVRS Comments at 10. The compensation for cash working capital, however, is paid monthly on a per-minute basis through the Fund reimbursement process, so it does not substantially matter whether the lag time from a specific cost submission is thirty days or sixty-five days. Therefore, we find reasonable the determination of a 1.6% amount for cash working capital used by NECA in its rate calculation. We address cash working capital and other payment issues in the *2010 VRS NOI*. *See* FCC 10-111 at paras. 11-12, 22-23.

and $0.0083 per minute for ongoing E911 and ten-digit numbering costs.[24] However, in light of concerns expressed by providers and users, and to ensure sufficient, quality service for users while the Commission considers broad reform, we decline to reduce the VRS rates to that level at this time.

1. Interim VRS Rates for the 2010-2011 Fund Year

7. Several commenters urge the Commission to adopt multi-year rates, particularly for VRS, to provide stability to the market and predictability for business planning purposes.[25] We find, however, that adopting a multi-year rate structure would be premature at this time. Specifically, we are simultaneously initiating a broad inquiry into the VRS market structure that seeks comment on cost compensability and other factors. The *2010 VRS NOI* specifically seeks comment on, among other things: a company-specific compensation model, compensation of outreach and marketing costs, compensation of research and development costs, the appropriate treatment of videophone and related equipment costs, and protections from under- or over-compensation of VRS providers.[26] All stakeholders, including VRS providers, will have the ability to present their ideas and suggestions for a VRS compensation structure that takes into account principles of market stability and predictability in the *2010 VRS NOI* proceeding.[27] Moreover, we believe that establishing multi-year VRS rates at this time may hamper our efforts to implement in a timely manner reforms that we may determine are needed as a result of the *2010 VRS NOI* proceeding. Therefore, we decline to establish multi-year rates that do not take into account the record in that proceeding.[28]

[24] *See 2010 TRS Rate Filing* at 22-24; 25, Table 3 VRS Rate Alternatives; and Exh. 2.

[25] *See, e.g.,* Sorenson Comments at 26, AT&T Comments at 2, Snap Comments at 3.

[26] *See 2010 VRS NOI* at paras. 13-23.

[27] *See, e.g., id.* at Section III.B.5.

[28] We note that prior to the *2007 TRS Rate Methodology Order*, all TRS rates, including rates for VRS, had always been adopted for one-year periods.

2. Rates Based on Actual vs. Projected Costs for VRS

8. The table below reflects current compensation rates, NECA-proposed rates, rates proposed by providers in the record, and the rates we adopt today.

Table 1: FY 2009-10 VRS Rates, and Proposed and Adopted FY 2010-11 VRS Rates

	Current Rates	NECA-proposed Rates (based on 2009 costs)	Range of Rates Proposed by Providers[29]	Rates Adopted Today
Tier I	$6.70	$5.78	$5.78 to $6.98	$6.24
Tier II	$6.43	$6.03	$5.95 to $6.75	$6.23
Tier III	$6.24	$3.90	$4.61 to $5.95	$5.07

9. As a starting point, we find that NECA's use of providers' actual, historical costs in proposing VRS rates provides a valuable point of reference for setting VRS rates. Specifically, a comparative analysis by NECA of providers' projected and actual cost and demand over the past several years reveals that there is a substantial disparity between providers' reported projected costs and demand, and what turns out to be their actual costs and demand. In particular, based on the data received from providers, NECA indicates that VRS providers' weighted average actual per-minute costs as submitted to NECA were $4.4603 in 2006, $3.9604 in 2007, $4.1180 in 2008, and $4.1596 in 2009.[30] By contrast, the compensation rates were in the following ranges for each of those years: $6.644 in 2006, $6.444 to $6.77 in 2007, $6.30 to $6.7632 in 2008, and $6.2373 to $6.7362 in 2009.[31] In addition, in the past, the Commission has not provided a process for reconciling providers' actual costs to their compensation from the Fund, and we decline to do so here.

10. We are therefore compelled at least to consider this disparity in determining where to set VRS rates going forward to ensure that providers recover only the reasonable costs caused by their provision of VRS.[32] With the benefit of four years' data showing that providers' projections consistently

[29] These ranges reflect comments made by providers eligible to receive direct reimbursement from the Fund about tiers that currently apply to their service. They do not include eomments on rates that are irrelevant to the commenter's business, (*e.g.*, comments on the Tier III rate from providers who do not provide minutes at the Tier III level).

[30] *2010 TRS Rate Filing* at 17, Table 2, Historical VRS Cost Summary.

[31] The rates above represent the rates adopted for Fund years within which the calendar years listed are represented, including the lowest and highest tiered rates in the years for which tiered rates were in effect.

[32] *See, e.g.*, STi Prepaid Reply Comments at 3 ("VRS providers have realized an unreasonably high rate of return of late, approaching or exceeding 50% amongst all three tiers in 2009"). We further note that fraud associated with the

(continued....)

overstate their costs, we can no longer justify basing VRS compensation rates only on projected costs. Furthermore, NECA, which has been the Fund administrator since the inception of the Fund, used weighted averages in proposing tiered rates based on actual costs.[33] To the extent that one provider commands a substantial share of the VRS market, we find that NECA's use of weighted averages is appropriate, and properly balances, on one side, the greater relative costs incurred by smaller providers with, on the other, not penalizing providers operating at lower costs for their greater efficiency. We therefore conclude that NECA's methodology, and use of actual cost information submitted by the providers and certified under penalty of perjury to be true and correct, were reasonable.

11. Commenters – both providers and users - object to the use of historical costs for establishing provider compensation for VRS. Sorenson and AT&T argue that rates based on historical costs would not fully compensate providers, in part because NECA does not allow providers to submit costs for research and development or equipment.[34] PAH asserts that an historical cost methodology does not recognize different cost structures of new market entrants.[35] Sorenson further contends that an historical cost methodology does not incorporate economic incentives promoting efficiencies.[36] These commenters and others also express concern that an immediate reduction in VRS rates to the NECA-proposed levels could jeopardize the VRS service.[37]

12. We intend to consider fully in a separate public proceeding, pursuant to the *2010 VRS NOI,* the most appropriate way to calculate and set future rates. In the meantime, however, we decline to perpetuate the large discrepancy between actual costs and provider compensation in the face of substantial evidence that providers are receiving far more in compensation than it costs them to provide service. The Commission has an obligation to protect the integrity of the Fund and to deter and detect waste.[38] We have therefore sought to find a reasonable balance between the past rates based on projections that consistently overstate true costs and overcompensate VRS providers, and the NECA-proposed rates based on actual costs that would represent a significant and sudden cut to providers' compensation. We conclude that adjusting NECA's proposed rates based on actual costs for a one-year, interim period strikes the correct balance. We also note that the rates adopted herein fall within the range of rates

---

(...continued from previous page)
provision of VRS makes it imperative that the Commission consider the impact of inflated reimbursement rates for the service on the incentive to commit fraud. *See generally Twenty-six Charged in Nationwide Scheme to Defraud the FCC's Video Relay Service Program*, United States Department of Justice (DOJ) (Nov. 19, 2009) at http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html; *see also Two Former Executives of Indicted Relay Services Company Plead Guilty to Defrauding FCC Program,* DOJ (Jan. 13, 2010) at http://www.justice.gov/opa/pr/2010/January/10-crm-031.html; *Two Former Executives of Video Relay Services Company Plead Guilty to Defrauding FCC Program,* DOJ (Feb. 18, 2010) at http://www.justice.gov/opa/pr/2010/February/10-crm-157.html; *Four Former Owners and Employees of Three Video Relay Service Companies Plead Guilty to Defrauding FCC Program*, DOJ (March 5, 2010) at http://www.justice.gov/opa/pr/2010/March/10-crm-229.html; *Three Former Owners and Employees of Two Video Relay Service Companies Plead Guilty to Defrauding FCC Program,* DOJ (March 9, 2010) at http://www.justice.gov/opa/pr/2010/March/10-crm-237.html.

[33] *See 2010 TRS Rate Filing* at 23-24.

[34] Sorenson Comments at 21; AT&T Comments at 5.

[35] PAH Comments at 5.

[36] Sorenson Comments at 23-24.

[37] *See, e.g.*, Snap Comments at 2; Sorenson May 7, 2010 *Ex Parte* at 2.

[38] *See Structure and Practices of the Video Relay Services Program,* CG Docket No. 10-51, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, FCC 10-88, at para. 8 (May 27, 2010).

proposed by providers for each of the tiers, as reflected in Table 1, above.[39] As such, we expect that the interim rates adopted will permit service providers to continue offering service in accordance with our rules to consumers, while we consider the *2010 VRS NOI.*

13. Because we conclude that NECA's proposed rates based on actual costs are reasonable and supported by record evidence, we exercise our discretion to use them as a basis for setting an interim rate for the 2010-2011 Fund year. We believe, however, that future VRS compensation rates, and the appropriate methodology for establishing them, should be determined after a full examination of the record in the *2010 VRS NOI.* In the interim, we are obliged to adopt a set of rates that compensates VRS providers for reasonable costs caused by their provision of VRS "in the most efficient manner" possible, and is otherwise consistent with the Act and our rules.[40]

14. Sorenson argues that "any decision to create a new methodology - based on historical costs or any other approach that deviates from the incentive-based (or projected-"cost") approach adopted in 2007 - would amount to a rule change that could be adopted only pursuant to a new rulemaking proceeding."[41] Even if Sorenson is correct that, by adopting these interim VRS rates, the Commission is somehow changing a "rule," the Commission has provided ample notice and opportunity for public comment regarding this action. For example, the Commission has twice expressly sought comment recently in this proceeding on the use of actual cost data as a basis for determining rates. On May 14, 2009, the Commission released a Notice of Proposed Rulemaking seeking comment on whether, notwithstanding the rate methodology established in the *2007 TRS Rate Methodology Order*, the Commission should modify the compensation rates for VRS for each tier for the 2009-2010 Fund year, "based on data reflecting the actual costs of providing this service."[42] Specifically, the Commission found that the VRS rates adopted in the *2007 TRS Rate Methodology Order* "may not accurately reflect the providers' reasonable actual costs of providing service in compliance with our rules."[43] The *2010 TRS Rate PN* specifically sought to refresh the record on this question.[44] Moreover, in the *2007 TRS Rate Methodology Order* itself, the Commission expressly required VRS and IP Relay providers to continue to file with the Fund administrator annual costs and demand data based on both actual and projected costs, as they had in the past, even as it set compensation rates for VRS for a three-year period.[45] The Commission stated that "this information, which includes actual costs for prior years, will be helpful in reviewing the compensation rates ... [adopted] and whether they reasonably correlate with projected costs and prior actual costs."[46] Moreover, we are taking the additional precaution of establishing VRS rates on an interim basis to address a significant disparity between actual costs and provider compensation while we undertake to examine VRS compensation more broadly in a formal rulemaking proceeding. We note that in the past, the Commission has been afforded substantial deference when imposing regulations on an interim basis,[47] particularly where it is acting in the public interest. We therefore find Sorenson's arguments in this regard to be without merit.

---

[39] *See* Sorenson Comments at 4; CSDVRS Comments at 7-9; Purple Comments at 8-12; Snap Comments at 2-3; AT&T Comments at 5-6.

[40] *See* 47 U.S.C. § 225(b)(1).

[41] Sorenson Comments at 24.

[42] *2009 PN and NPRM*, 24 FCC Rcd at 6033, para. 11.

[43] *Id.*

[44] *2010 TRS Rate PN,* 25 FCC Rcd at 4682.

[45] *2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20165, para. 56 n.170.

[46] *Id.*

[47] *See, e.g., Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1105 (D.C. Cir. 2009).

15. Further, provider criticisms of NECA's proposal relying on actual cost data to set VRS rates -- based on the argument that costs allowed by NECA do not include all of the true costs of providing VRS -- should, in theory, apply equally to reliance on projected cost data in VRS rate setting because the *categories* of compensable costs are the same whether actual or projected. Therefore, they are not persuasive as a challenge to reliance on actual cost data. In any event, we also find that such arguments are, in essence, proposals to change the categories of costs that should be compensable, as they have been established by the Commission. Thus, these arguments are more appropriate for consideration in the *2010 VRS NOI* proceeding, which will examine the rate-setting methodology. Because the rates adopted in the *2007 TRS Rate Methodology Order* expire June 30, 2010,[48] and the *NOI* proceeding will not be completed by then, we find it necessary to take the interim measure of adopting rates based on the best currently available data and, in part, on the recommendations of NECA. We emphasize that these rates are an interim measure, and that any future VRS compensation structure will be informed by the record in the *2010 VRS NOI* proceeding.

3. Tiered Rate Structure

16. We conclude that for the 2010-2011 Fund year, the interim rate shall continue to be tiered based on the demand thresholds established in the *2007 TRS Rate Methodology Order*: Tier I shall include monthly minutes submitted in the range of 0 – 50,000, Tier II shall include monthly minutes from 50,001 to 500,000, and Tier III shall include monthly minutes submitted above 500,000.[49] We note that several commenters support a restructuring of the tiers. Purple references the growth in the number of minutes submitted annually as support for their argument that Tiers I and II should be expanded.[50] Purple additionally argues that if the rate for Tier III is too low, it would disincentivize Tier I and II providers from growing their business.[51] Snap, Convo, and PAH support the widening of the tier levels.[52] Convo supports including two additional tiers for similar reasons relating to incentives and change in demand since 2007.[53]

17. Based on the data upon which NECA relied, we find that the current tier structure remains a workable, reliable to way to account for the different costs incurred by carriers based on their size and volume of TRS minutes relayed.[54] The rationale for adopting the tiers in the *2007 TRS Rate Methodology Order* remains applicable; that is, providers with a relatively small number of minutes generally have higher costs.[55] Further, we lack sufficient record evidence to depart from the existing tier

[48] *See 2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20160-65, paras. 47-56.

[49] *See id.* at 20164-65, para. 56.

[50] *See* Purple Comments at 9. *See also* Purple Reply Comments at 5-6; Purple May 28, 2010 *Ex Parte*. Purple advocates for adjusting the tiers, but strongly supports continuing the tiered system. *See* Purple Reply Comments at 6-8.

[51] Purple Reply Comments at 6.

[52] *See* Snap Comments at 25-26, Convo Comments at 13, and PAH Comments at 8-9.

[53] *See* Convo Comments at 13.

[54] The data considered by NECA in its filing evince that each of the subject providers usually -- or, in most cases, always -- falls within the particular current tier that NECA categorized it in its analysis. *See generally 2010 TRS Rate Filing* at 20-21, 23-24. Moreover, to the extent we adopt rates for Tier I and Tier II that differ by one cent, the occasional instance of a typically Tier I provider falling slightly within Tier II, or vice-versa, is immaterial. *Cf., e.g.,* AT&T Comments at 3 ("[t]he same public interest benefits that led the Commission to adopt a tiered rate methodology for VRS rates - competition and the appropriate level of compensation for VRS providers - are more compelling than ever"); CSDVRS Reply Comments at 4 ("[t]he tiered rate plan plainly is not a 'reward for inefficiency,' but more accurately represents an incentive to grow and achieve greater efficiency").

[55] *See 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20163, para. 52.

structure in favor of any particular alternative. We therefore decline to change the tier structure at this time. We note, however, that we will fully consider the continuing appropriateness of the tier levels, including whether the tiers should continue to be utilized, through the *2010 VRS NOI* proceeding.

4. Consistency of this Action with the ADA

18. The Commission concludes that the adoption of the VRS rates herein is consistent with its obligations under Title IV of the ADA, codified as section 225 of the Communications Act.

19. Sorenson correctly states:

> Although section 225 does not specifically address rate issues, it mandates four goals that the Commission must advance in all TRS matters, including when setting rates for interstate relay services. In particular, section 225 requires the Commission to "ensure" that all deaf, hard-of-hearing, and speech disabled individuals have (i) nationwide access, "to the extent possible," (ii) to "functionally equivalent" relay services, (iii) that are made available "in the most efficient manner," (iv) pursuant to FCC rules that permit "the development of improved technology."[56]

20. In complying with these statutory requirements, the Commission often must balance the interests of contributors to the Fund, who are ratepayers, with the interests of *users* of TRS. As Sorenson notes, our obligation includes the mandate to ensure that the goals of the statute are met "in the most efficient manner," which we conclude necessitates adopting reasonable compensation rates that do not overcompensate entities that provide TRS. As noted before, we now have four years of data demonstrating that VRS providers have been significantly overcompensated, evidenced by a comparison of the best available data concerning their actual costs per minute to the per minute compensation they have been receiving based on their projected costs per minute. Because the rates we adopt herein exceed the VRS providers' average actual costs as reported by them, we conclude that they are consistent with the requirements in section 225, and furthermore reflect a full awareness of the Commission's obligations under section 225 and a commitment to further the goals of functional equivalency through strengthening and sustaining VRS.

B. The Compensation Rate for TRS and STS for the 2010-2011 Fund Year

21. The Commission adopts NECA's proposed per-minute base rate of $2.0256 for traditional TRS and STS for the 2010-2011 Fund year. The base rate for TRS and STS is formulated by NECA following the MARS analysis adopted in the *2007 TRS Rate Methodology Order*.[57] The MARS rate is calculated by collecting each state's *intrastate* TRS and STS rates and minutes of use data, and averaging this data to determine the appropriate interstate rate as described in the *2010 TRS Rate Filing*.[58] NECA states that the total dollar amount paid by the states for intrastate TRS and STS for calendar year 2009 was $51,659,084.60, and total intrastate conversation minutes were 25,503,645.33.[59] The ratio of

[56] Sorenson Comments at 7 (footnotes omitted). *See* 47 U.S.C. § 225 (a)(3), (b)(1), and (d)(2).

[57] *See 2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20180-82, Apps. B-D; *see also 2010 TRS Rate Filing* at 8-11, Exh. 1-1, and App. C.

[58] *See id.* States with anomalies in their funding mechanisms for TRS and STS are excluded from the MARS calculation. For example, if a state reimburses a provider at a flat rate, that state's data is not included in the calculation. *See 2010 TRS Rate Filing* at 9 n.17.

[59] *See 2009 TRS Rate Filing* at 9, Ex. 1-1, and App. C.

total dollars to total minutes equals the proposed compensation rate of $2.0256 per minute.[60] This rate is approximately 10.6 percent higher than the 2009-2010 rate of $1.8311.[61]

22. Although the base rate for STS is the same as for TRS, in the *2007 TRS Rate Methodology Order,* the Commission recognized that many potential STS users were not being made aware of this important service.[62] Therefore, for the 2007-2008 Fund year, the Commission added an additional amount of $1.131 per minute to the STS compensation rate calculated under the MARS plan to be used for outreach purposes.[63] The Bureau decided to retain the outreach payment for the 2008-2009 and 2009-2010 Fund years.[64] The Commission stated that it would revisit the additional reimbursement amount for STS outreach in future Fund years, and determine whether to continue it, as well as whether to increase or decrease the amount.[65]

23. NECA's current rate proposal for STS includes the same amount for outreach, although NECA suggests that the Commission may want to revisit whether there may be other effective ways to inform potential users about the availability of this service.[66] In addition, at the April 2010 Interstate TRS Advisory Council Meeting, the Council passed a resolution recommending that the additional funding for STS outreach be directed toward a nationwide marketing outreach entity to promote STS.[67] Speech Communications Assistance by Telephone (SCT) supports this alternative approach, and also requests that the Commission adopt the additional amount for a three-year period.[68] We will continue the additional funding for STS as adopted in the *2007 TRS Rate Methodology Order* for the 2010-2011 Fund year in light of NECA's and commenters' belief that continued additional support for outreach is needed. However, we will monitor the impact of this funding for the next cycle and consider alternative approaches to STS outreach in the future.

C. The Compensation Rates for CTS and IP CTS for the 2010-2011 Fund Year

24. The Commission adopts NECA's proposed per-minute compensation rate of $1.6951 for CTS and IP CTS for the 2010-2011 Fund year. These rates are also calculated using the MARS formula.[69] In the *2007 TRS Rate Methodology Order*, the Commission determined that because there is no state data for IP CTS, it would be reimbursed at the same rate as CTS.[70] NECA states that the total

---

[60] *See id.*

[61] *See 2009 TRS Rate Filing* at 9.

[62] *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20166, para. 61.

[63] *Id.*

[64] *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, 23 FCC Rcd 9976 at 9978-79, para. 6 (June 24, 2008) (*2008 TRS Rate Order*); *see also Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, 24 FCC Rcd 8628 at 8630-31paras. 7-8 (June 26, 2009) (*2009 TRS Rate Order*).

[65] *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20166, para. 61; *see also 2008 TRS Rate Order*, 23 FCC Rcd at 9978-79, para. 6.

[66] *See 2010 TRS Rate Filing* at 11.

[67] *See 2010 TRS Rate Filing* at 11 n.23. We note that AT&T filed in support of this approach. AT&T Comments at 6.

[68] *See* SCT Comments at 1.

[69] *See id.* at 10.

[70] *2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20158, para 38.

dollar amount paid by the states for CTS for calendar year 2009 was $42,073,234.75, and total intrastate conversation minutes were 24,820,429.79.[71] The ratio of total minutes to total dollars equals the proposed compensation rate of $1.6951 per minute.[72] This rate represents a 1.03% increase from the 2009-2010 rate of $1.6778.[73]

D. The Compensation Rate for IP Relay for the 2010-2011 Fund Year

25. The Commission adopts NECA's proposed per-minute compensation rate of $1.2985 for IP Relay for the 2010-2011 Fund year. This rate includes $0.0503 per minute for ongoing ten-digit numbering and E911 costs and $0.0204 per minute as a rate of return on capital investment as explained in NECA's filing.[74] Beginning July 1, 2010, all numbering and E911 costs associated with IP Relay, as well as VRS, will be compensated on a per-minute basis. The Commission adopted a price cap formula in the *2007 TRS Rate Methodology Order* for three years which expires June 30, 2010.[75] We find it appropriate to continue to use the price-cap methodology used in setting the previous rates for IP Relay, and to adopt NECA's proposed rate for the 2010-2011 Fund year based on IP Relay providers' projected costs and demand.[76]

26. Unlike VRS, for IP Relay, the Commission explicitly stated that at the end of the first three-year cycle, it would adopt IP Relay rates for another three-year cycle.[77] Therefore, NECA's proposed rate for the 2010-2011 Fund year for IP Relay will serve as a base rate for a new three-year cycle for IP Relay that will expire June 30, 2013. As has been done in the previous cycle based on the *2007 TRS Rate Methodology Order*, this rate will be adjusted annually by an inflation factor and an efficiency factor, and will include any appropriate exogenous costs submitted by providers.[78] The inflation factor is the Gross Domestic Product minus the Price Index (GDP-PI), and the efficiency factor is the inflation factor minus 0.5 percent to account for productivity gains.[79]

E. The Carrier Contribution Factor and Funding Requirement

27. Because we adopt NECA's proposed compensation rates for the various forms of TRS, with the adjustment of VRS rates to prevent a steep and disruptive decrease in per-minute compensation, and because we agree that NECA's projected minutes of use for each service are supported by the record and thus reasonable, the remaining issue to resolve is the treatment of NECA's March 30, 2010 *Supplemental Filing* recommending a decrease in 2009-2010 funding requirements from $891 million to

[71] *See 2010 TRS Rate Filing* at 11-12, Exh. 1-2, and App. D.

[72] *See id.* at 12.

[73] *See id.*

[74] *See id.* at 14-15 and 15 n.31. NECA explains that the additional amount for ten-digit numbering and E911 costs for IP Relay was calculated by dividing provider projected ten-digit numbering costs by their projected demand.

[75] *See 2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20159-60, paras. 43-46.

[76] *See 2010 TRS Rate Filing* at 12-13. NECA notes that the data from one IP Relay provider was excluded due to that provider's late filing of their annual data. *Id.* at 14 n.29.

[77] *See 2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20160, para. 45. We note that one provider suggests the IP Relay rate should be adopted for five years. Sorenson Comments at 6 n.4. We decline at this time to deviate from the methodology adopted in the *2007 Rate Methodology Order* for IP Relay.

[78] *See 2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20159-60, para. 43.

[79] *See id.*

$701.8 million, and a reduction in the carrier contribution factor from 0.01137 to 0.00886.[80] NECA made this recommendation based on the finding that actual VRS minutes for a seven-month period of July 2009 through January 2010 consistently averaged 18% below projections.[81] Therefore, based on trend analysis, NECA determined that it was appropriate to recommend to the Commission that the Fund size be reduced prior to the end of the 2009-2010 Fund year.[82] The Commission has not yet acted on the recommendations in the *Supplemental Filing*. We decline to reduce the current year's Fund size as recommended, and instead conclude that NECA's recommended Fund adjustment should be applied to the funding requirement for 2010-2011.[83] Therefore, the Commission adopts for a total funding requirement of $433,990,484.98[84] and carrier contribution factor of 0.00585[85] which will result in a total Fund size of $705,048,502.19.[86]

28. NECA calculates the total annual funding requirement by adding together the projected payments to TRS providers for each form of TRS, based on the proposed rates and projected minutes of use,[87] plus administrative expenses, less surplus amounts from the 2010-2011 Fund year that can be used to offset the 2010-2011 Fund year requirement.[88] The contribution factor is based on the ratio between total expected TRS Fund expenses and interstate end-user telecommunications revenues.[89]

29. We note that AT&T urges the Commission to either refund contributing common carriers any Fund surplus in excess of one month's distributions or apply the surplus toward the 2010-2011 Fund year.[90] In order to avoid the administrative burden of calculating appropriate reimbursements and

---

[80] *See* NECA, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* CG Docket Nos. 03-123 & 10-51, Interstate Telecommunications Relay Service Fund Supplement to Annual Filing for TRS Contribution Factor Decrease, at 1 (filed March 30, 2010) *(NECA March 2010 Supplemental Filing).*

[81] *Id.* at 2.

[82] *See id.* at 3, Table 1, VRS Actual vs. VRS Projected Demand, and 6-7.

[83] NECA proposes this as an option in determining the funding requirement for 2010. *See 2010 TRS Rate Filing* at 28. Specifically, NECA presents an alternative for each of the funding requirements required based on each of the proposed VRS rate calculations that includes and excludes the surplus from the 2009-2010 year.

[84] The funding requirement is based on NECA's projected demand for each form of TRS, the rates adopted in this *Order*, the inclusion of Fund administrator expenses, and the additional amount proposed to safeguard the Fund, minus interest income and surplus amounts from the previous Fund year. *See 2010 TRS Rate Filing* at 27-29 and Exh. 2d.

[85] The carrier contribution factor is determined by dividing the total funding requirement ($433,990,484.98) by the funding base (total interstate end-user telecommunications revenues, which equals $74,132,147,621). *See 2010 TRS Rate Filing* at Exh. 2d.

[86] The total Fund size equals the funding requirement, plus the anticipated Fund surplus after June 2010 minutes are paid. *See 2010 TRS Rate Filing* at Exh. 2d.

[87] For purposes of calculating the Fund size, NECA projects the following demand for the 2010-2011 Fund year for each form of TRS: 6,314,946 minutes for traditional TRS; 127,878 minutes for STS; 12,882,918 for CTS; 12,659,322 for IP CTS; 52,029,872 for IP Relay; and 98,156,982 minutes for VRS. *See 2010 TRS Rate Filing* at Exh. 2d. Because providers of services compensated using the MARS Plan are no longer required to submit demand projections, TRS, STS, and CTS demand projections are estimated based on actual historical demand. *See id.* at 25-26. IP Relay and VRS demand projections are based on the providers' projected minutes of use for the 2010-11 Fund year. *See id.* at 26.

[88] *Id.* at 27-29 and Exh. 2d. The surplus amount used in the offset of the funding requirement for 2010-2011 includes the $189,200,000 adjustment recommended in the *NECA March 2010 Supplemental Filing.*

[89] *2010 TRS Rate Filing* at 27-29 and Exh. 2d.

[90] AT&T Comments at 2 and 7-8.

monitoring whether carriers pass on those reimbursements to rate payers who have supported carriers' Fund obligations, the Commission concludes the most administratively reasonable approach is to apply the surplus from the 2009-2010 Fund year to the 2010-2011 funding requirement.

30. The Commission also notes that STi Prepaid argues that carriers with revenue bases that are primarily international should not be required to pay into the Fund.[91] The Commission also acknowledges that STi Prepaid filed an Application for Review on June 4, 2009 of the Bureau's earlier rulings that carriers with primarily international revenues must continue to contribute to the Fund.[92] We decline to address STi's application in this rate order, but we anticipate that the Commission will address the issue of the proper treatment of international revenues in Fund calculations in the near future in conjunction with broader reform efforts.

IV. PROCEDURAL MATTERS

31. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

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

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

V. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and section 64.604(c)(5)(iii) of the Commission's rules, 47 C.F.R. § 64.604(c)(5)(iii), that this ORDER IS hereby ADOPTED.

35. IT IS FURTHER ORDERED that NECA shall compensate providers of interstate traditional TRS for the July 1, 2010 through June 30, 2011 Fund year, at the rate of $2.256 per completed interstate conversation minute.

36. IT IS FURTHER ORDERED that NECA shall compensate providers of interstate Speech-to-Speech service for the July 1, 2010 through June 30, 2011 Fund year, at the rate of $3.1566 per completed interstate conversation minute.

---

[91] STi Prepaid Comments at 1-5.

[92] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Application for Review, filed by STi Prepaid, LLC (formally Telco Group, Inc.) (June 4, 2009) (refreshing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Application for Review, filed by Telco Group, Inc., (June 26, 2006)) (seeking review of *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Declaratory Ruling, 21 FCC Rcd 5247 (May 16, 2006); Declaratory Ruling on Reconsideration, 21 FCC Rcd 5962 (May 25, 2006)).

37. IT IS FURTHER ORDERED that NECA shall compensate providers of interstate captioned telephone service and intrastate and interstate IP captioned telephone service for the July 1, 2010 through June 30, 2011 Fund year, at the rate of $1.6951 per completed conversation minute.

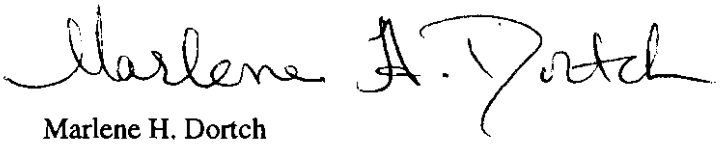
38. IT IS FURTHER ORDERED that NECA shall compensate providers of intrastate and interstate IP Relay service for the July 1, 2010 through June 30, 2011 Fund year, at the rate of $1.2985 per completed conversation minute.

39. IT IS FURTHER ORDERED that NECA shall compensate providers of intrastate and interstate Video Relay Service at the rates of $6.2390 for the first 50,000 monthly minutes (Tier I), $6.2335 for monthly minutes between 50,001 and 500,000 (Tier II), and $5.0668 for minutes above 500,000 (Tier III) per completed conversation minute for the July 1, 2010 through June 30, 2011 Fund year.

40. IT IS FURTHER ORDERED that the Interstate TRS carrier contribution factor shall be 0.00585, and the funding requirement shall be $433,990,484.98, and the, for the July 1, 2010 through June 30, 2011 Fund year.

41. IT IS FURTHER ORDERED that this *Order* is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary