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

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JUN 28 2010
FCC Mail Room

In the Matter of	)	
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
	)	

NOTICE OF INQUIRY

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By the Commission:

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I. INTRODUCTION

1. In this Notice of Inquiry (*NOI*), we take a fresh look at the Commission's video relay service (VRS) rules so that we can ensure that this vital program is effective, efficient, and sustainable in the future. Video relay service allows persons with hearing or speech disabilities to use American Sign Language (ASL) to communicate with friends and family and to conduct business in near real time. In this proceeding, we seek to improve the program to ensure that it is available to and used by the full spectrum of eligible users, encourages innovation, and is provided efficiently so as to be less susceptible to the waste, fraud, and abuse that plague the current program and threaten its long-term viability. Our goal is to solicit a wide range of thoughts and proposals for making the program work better for those who could benefit from it and those who pay into it.

II. BACKGROUND

2. Telecommunications relay services (TRS) are designed to "provide the ability for an individual who has a hearing impairment or speech impairment to engage in a 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 or speech impairment to communicate using voice communication services by wire or radio."[1] There are many forms of TRS, but all require a communications assistant (CA) to convey communications between the person with a speech or hearing disability and another individual. The CA serves as a conduit between the called and the calling party.

3. A person making a TRS call over the public switched telephone network traditionally relies on a text telephone (TTY) machine to transmit and receive text messages. To place a TRS call using a TTY, the individual dials 711 or a toll free TRS number. When a CA answers the call, the TRS user gives the CA the number of the hearing party he wishes to call by typing that number into his TTY; the CA then places an outbound voice call to that hearing party.[2] During the call, the CA voices all text communications sent by the TTY user to the hearing individual and types the hearing individual's responses so that the TTY user can read the responses as text. As illustrated in the following diagram, the CA serves as the link in the conversation, relaying text into voice and vice versa.[3] The process is performed in reverse when a voice telephone user initiates the call to a TTY user.

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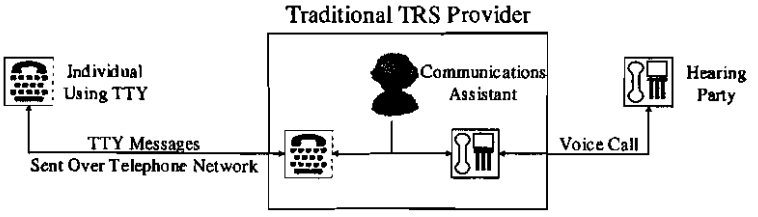
[1] 47 U.S.C. § 225(a)(3). While the Americans with Disabilities Act (ADA) defines TRS as communication between a person with a disability and a person without a disability, in the past, the Commission has recognized limited circumstances in which a provider may be compensated for calls involving the use of two forms of TRS, for example, when the user of one form of relay (e.g., voice carryover) calls a user of another form of relay (e.g., hearing carryover). *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67 & CG Docket No. 03-123, 18 FCC Rcd 12379 at 12396-12404, paras. 26-34 (2003). On January 28, 2009, nine providers filed a petition seeking a declaratory ruling by the FCC to clarify that such relay calls involving multiple communication assistants and relay technologies are forms of TRS eligible for reimbursement from the Interstate TRS Fund. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Petition for Declaratory Ruling, filed by AT&T; CAC; CSDVRS, LLC; GoAmerica, Inc.; LifeLinks, LLC; Snap Telecommunications, Inc.; Sorenson Communications, Inc.; Sprint Nextel Corporation; and Viable, Inc. (Jan. 28, 2009). We expect to address the merits of this petition in a separate proceeding.

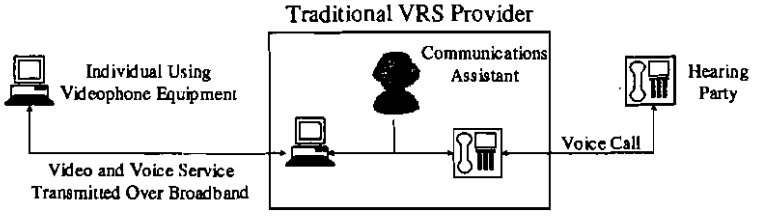
[2] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5142, para. 2 (2000) (*2000 TRS Order*).

[3] Other forms of TRS are also available. For example, Internet Protocol (IP) captioned telephone service is a TRS that "permits an individual who can speak but who has difficulty hearing . . . to simultaneously listen to the other party and read captions of what the other party is saying." 47 C.F.R. § 64.601(a)(12).



4. In 2000, the Commission recognized that the widespread adoption of broadband could transform the communications landscape for TRS users.[4] For example, real-time video-to-video communication promised the possibility that persons who use ASL could sign to each other via "point-to-point" calls, rather than typing to each other using TTYs.

5. Furthermore, real-time video communication via broadband also opened the door for a new form of TRS: video relay service. VRS replaces the TTY-to-TTY link between TRS user and a CA with a video-to-video link, allowing the person who uses ASL to communicate with another individual through a CA who can communicate in sign language. The CA interprets the call by voicing what the ASL user signs to the hearing individual, and signing back the hearing individual's responses. A typical VRS call is illustrated in the following diagram.



6. By enabling persons whose primary language is ASL to communicate in sign language instead of having to type their communications, VRS enables callers to more fully express themselves through facial expressions and body language that cannot be easily expressed in text. This ability to make or receive a telephone call and communicate in ASL with a voice telephone user has dramatically enhanced the personal and professional lives of many persons who are deaf or hard-of-hearing by allowing these individuals to engage in more natural conversations both with each other and with hearing individuals.

7. Individuals wishing to use VRS must typically purchase their own broadband connections, just as traditional TRS users must purchase their own telephone services. Commission rules require that a VRS user then register with a VRS provider,[5] who will assign a geographically appropriate ten-digit number to the user for use with his videophone equipment,[6] will ensure that all calls (whether VRS or

[4] *See 2000 TRS Order*, 15 FCC Rcd at 5152–54, paras. 21–27.

[5] *See* 47 C.F.R. § 64.611(b). Commission rules define the VRS provider with whom a user registers as that user's "default provider." The user then may choose to place all his VRS calls through that provider or dial-around that provider to place calls with other VRS providers.

[6] *See* 47 C.F.R. § 64.611(a)(1). We intend the term videophone equipment to encompass a broad array of technologies that allow a user to communicate visually and, if desired, audibly with another end user.

point-to-point video) are properly routed to and from the user's videophone equipment,[7] and will pass on the VRS user's location to emergency personnel should he place an emergency call.[8] A VRS user automatically connects to his default VRS provider whenever he makes a VRS call.[9] Some VRS providers offer their registered users additional services or equipment, such as videophone equipment specially designed to handle VRS calls and point-to-point video service calls[10] or toll-free numbers so that hearing parties can reach the VRS user without paying long-distance charges.[11]

8. As required by statute, the Commission has established the Interstate TRS Fund ("Fund") to ensure that TRS users "pay rates no greater than the rates paid for functionally equivalent voice communications services . . . ."[12] The Fund is intended to compensate TRS providers for the reasonable costs of providing TRS.[13] Specifically, the Fund compensates VRS providers for their relay services at per-minute rates using payment tiers, designed to reflect the economies of scale of larger providers.[14] The Interstate TRS Fund also reimburses VRS providers for some of the additional costs they incur in providing VRS, such as emergency call routing.[15]

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[7] *See* 47 C.F.R. § 64.611(a)(2).

[8] *See* 47 C.F.R. § 64.605(b)(2).

[9] *See* 47 C.F.R. § 64.611(a)(2).

[10] *See Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5448–49, para. 16 (2006) (*VRS Interoperability Declaratory Ruling*).

[11] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Order, 24 FCC Rcd 14342, 14342–43, para. 2 (WCB CGB 2009) (waiving certain requirements in order to give the Commission time to reconsider TRS toll-free issues generally); *see also* Letter from Sean Belanger, Chief Executive Officer, CSDVRS, LLC, to Julius Genachowski, Chairman, FCC, CG Docket No. 03-123, at 2 (filed Jan. 29, 2010).

[12] 47 U.S.C. § 225(d)(1)(D); 47 C.F.R. § 64.604(c)(4).

[13] 47 C.F.R. § 64.604(c)(5)(iii)(E). The Interstate TRS Fund collects contributions from all interstate telecommunications carriers so that all users of telecommunications share the costs of providing TRS. 47 C.F.R. § 64.604(c)(5)(iii)(A).

[14] *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, 20167–68, paras. 67–72 (2007) (*2007 TRS Rate Methodology Order*). In the 2009–10 year, for example, the Interstate TRS Fund has compensated VRS providers at the rate of $6.7025 per minute for the first 50,000 monthly minutes, $6.4352 per minute for monthly minutes between 50,001 and 500,000, and $6.2372 for monthly minutes above 500,000. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 24 FCC Rcd 8628, 8634, paras. 16–18 (2009).

[15] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11627, para. 100 (2008) (*Internet-based TRS Numbering Order*) (authorizing reimbursement for "additional costs incurred by a provider that directly relate to: (1) ensuring that database information is properly and timely updated and maintained; (2) processing and transmitting calls made to ten-digit numbers assigned pursuant to this *Order*; (3) routing emergency calls to an appropriate PSAP; (4) other implementation related tasks directly related to facilitating ten-digit numbering and emergency call handling; and (5) consumer outreach and education related to the requirements and services adopted in this *Order*").

III. DISCUSSION

9. We present this *NOI* in two parts. In Part I, we ask broad questions on exactly how VRS providers should be compensated if the Commission retains the current, multiple provider model for delivering VRS. We ask specific questions about whether and, if so, how, the current, established compensation methodology should be altered. This first part of the *NOI* would presume to build on the existing ratemaking structures. In Part II, we ask whether we should consider fundamental changes to the delivery of VRS and market structure for the service. In both parts, our objective is to find ways to ensure that this vital program is effective, efficient, and sustainable. We specifically seek comment on the most effective and efficient way to make VRS available and to determine what is the most fair, efficient, and transparent cost recovery methodology.

10. The Commission has already taken several steps to tackle these challenges. On December 17, 2009, the Commission held a public workshop to discuss ways to make the provision of VRS more fair, efficient, and transparent and to discuss mechanisms for combating waste, fraud, and abuse.[16] Since that workshop, the Commission has convened an inter-Bureau task force to study these issues, with an eye towards resolving immediate problems with the program, while comprehensively reexamining the market for VRS. In that vein, the Consumer and Governmental Affairs Bureau issued a declaratory ruling on February 25, 2010 to clarify the scope of compensable VRS calls and curb certain abusive practices that have threatened the program's sustainability.[17] In addition, we recently released the *VRS Declaratory Ruling, Order, and NPRM*, in which we reiterated and adopted rules, and sought comment on a broad array of possible changes to our rules, in order to further detect and deter the misuse of VRS and the billing of illegitimate minutes to the Fund.[18] This *NOI* is the next step in taking a fresh look at the VRS program as a whole. We recognize that we will not be able to complete this proceeding before the next TRS rate cycle takes effect, *i.e.*, July 1, 2010. We expect to complete this proceeding before Fund year 2011-12, which begins on July 1, 2011.

A. Part I – Adjustments and Modifications to Improve the Current Video Relay Service Compensation Methodology

1. Accounting Issues

11. VRS providers, despite differences in size, should theoretically all be incurring the same types of compensable costs. For example, they should all incur similar types of costs associated with communications assistants, equipment used by communication assistants, telephone and internet service and expenses, overhead elements and structures, including management-related expenses. We seek comment on the extent to which this is the case. We currently apply the Commission Part 32 – Uniform System of Accounts to TRS providers.[19] We seek comment on whether Part 32 continues to provide the

[16] *See* FCC Announces Workshop on VRS Reform to be Held on December 17, 2009, Press Release (Dec. 3, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294966A1.doc; Video Relay Service Reform Workshop Video (Dec. 17, 2009), http://www.fcc.gov/live/2009_12_17-workshop.html.

[17] *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, 25 FCC Rcd 1868 (CGB 2010) (*Compensable VRS Calls Declaratory Ruling*).

[18] *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, FCC 10-88 (rel. May 27, 2010) (*VRS Declaratory Ruling, Order, and NPRM*).

[19] 47 CFR § 64.604(c)(5)(iii)(C) and (E). The "Preface" of the Commission's Uniform System of Accounts, 47 CFR § 32.1, states: "The revised Uniform System of Accounts (USOA) is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. The USOA also provides the financial community and others with financial performance results. In order for an accounting system to fulfill these purposes, it must exhibit consistency and stability in financial reporting (including the results published for regulatory purposes). Accordingly, the USOA has been designed to reflect stable, recurring financial data based to the extent regulatory (continued . . .)

best system of accounting for VRS providers. If so, we also seek comment on what specific sub-accounts are appropriate to require for all VRS providers. We are especially interested in comments from the Fund administrator concerning which specific sub-accounts[20] are properly required for all VRS providers, balancing the need for accurate cost and accounting data and not imposing unnecessary burdens on providers.[21]

12. We also seek comment on whether the Commission should "cap" or set reasonableness limits (*e.g.*, based on scale) on the compensability of costs in total or for specific cost categories. For example, we seek comment on whether the Commission should define reasonable ranges, or establish maximum compensable amounts, for executive compensation, outreach expenses, and other expenses that, to date, have fluctuated substantially from provider to provider. We also seek comment on whether the Commission should set limits for other types of costs, such as cash working capital and building costs and dividend payments to investors. More specifically, to what extent should the Fund support debt repayment to capitalize for growth? Comments should provide supporting rationale for the positions.

2. Company-Specific Compensation

13. We seek comment on whether to establish company-specific compensation for each provider. Commenters should address whether a company-specific methodology would enable greater accuracy in matching compensation to costs than an averaged or three-tiered system. Comments should address the "tiered" system used in recent years and whether the tiered system should continue as is, be discontinued, or be modified. Commenters should also address whether a company-specific methodology is fairer to all providers. We also seek comment on whether a change to using company-specific calculations of compensation would require a rule change.

14. We further seek comment on whether a company-specific compensation methodology that continues to disburse funds based on minutes of use would require company-specific demand projections. Alternatively, this type of minutes-based compensation methodology could be based on historical demand adjusted by an industry-wide projected growth factor to establish the size of the fund. The administrator could project the growth in demand for VRS based on trend analysis and apply the growth factor to each provider's historical (actual) demand for the prior year. We seek comment on this method and encourage commenters to propose other methods of projecting growth.

15. We seek comment on the proper use of historical cost information. We note that four years of data comparing compensation rates based on projected compensable costs with what the rates based on actual, historical, compensable costs could have been, demonstrate a potentially significant discrepancy between the two approaches.[22] Should historical costs be used to establish compensation

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considerations permit upon the consistency of the well established body of accounting theories and principles commonly referred to as generally accepted accounting principles."

[20] A term used in bookkeeping. For example, the insurance expense account may have various different subcategories such as building and property insurance, auto/fleet insurance, general liability, environmental, professional liability, law enforcement, and other insurance.

[21] In the recently-released *VRS Declaratory Ruling, Order, and NPRM*, we sought comment on the need for transparency in the costs of providing VRS service that is compensated from the Fund, and whether we should require that all VRS provider cost and demand data be made available to the public. *VRS Declaratory Ruling, Order, and NPRM*, at paras. 51-54.

[22] *See, e.g.*, National Exchange Carrier Association, Inc. (NECA), *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket No. 03-123, at 13-14 (filed May 1, 2009) (*NECA 2009 TRS Rates Filing*); *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20165, para. 56 n.170 (requiring VRS providers to continue to file with the Fund administrator annual costs and demand data because "this information, which includes actual costs for prior years, will be helpful in reviewing the compensation rates ... [adopted] and
(continued . . .)

rates, and if so, in what way? What factors should be considered or applied to historical costs to develop reasonable projected costs? How should demand growth factors be considered relevant to provider compensation? Does a compensation scheme that is based on historical costs provide incentives for efficient delivery of VRS?

16. Commenters should address any other issues they deem appropriate concerning VRS compensation.

3. Outreach and Marketing Costs

17. The lack of data concerning the number of actual and potential users of VRS makes it difficult to assess the effectiveness of funded outreach programs. It is also difficult to determine the extent to which outreach expenditures by providers have overlapped with one another, and therefore, the extent to which the funds devoted for this purpose have been reasonable or excessive. In addition, some have suggested that provider-sponsored outreach is too similar to marketing and that only the Commission or its Fund administrator would be sufficiently neutral to effectively conduct an outreach program. We therefore seek comment on whether, and the extent to which, the Fund should compensate providers for outreach and marketing activities, including whether such funding should be capped for each provider.

18. As a predicate matter, we seek comment on how to define "outreach" for purposes of this analysis. What components and activities should be considered part of outreach? How does "outreach" differ from "marketing"? Are there any safeguards that the Commission should adopt to help ensure that expenditures attributable to each are differentiated? Should permissible costs be limited to those costs associated with outreach connected to the relay service used to perform the outreach (*e.g.*, using VRS to perform outreach related to VRS)? To whom may providers direct outreach activities for which providers may be compensated from the Fund – *i.e.*, to potential users only, or also to the general public? What should the purpose(s) of compensable outreach be?

19. In addition, we seek comment on how to compensate providers for outreach or marketing activities that we deem to be of the type eligible for compensation from the Fund. For example, should each provider be given a specified sum of money to spend on outreach and marketing (*e.g.*, based on cost per gross add)? Alternatively, should outreach costs be reimbursed through per-minute compensation up to a certain percentage of the rate established for each minute of use? We also seek comment on whether the Commission or administrator would be able to more effectively conduct a TRS outreach program through a coordinated, nationwide effort than the current provider efforts sponsored by individual providers.

4. Research and Development Costs

20. In recent years, the Commission has disallowed expenses associated with research and development, except to the extent that such expenses are necessary to meet our mandatory minimum standards.[23] Nevertheless, newly emerging communication technologies could offer significant potential for achieving greater functional equivalency for VRS users, and we recognize that Congress has directed

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whether they reasonably correlate with projected costs and prior actual costs"); *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 (2009) ("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"). *See also* para. 30, *infra*.

[23] *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12547-12548, para. 189 (2004) (*2004 TRS Order*).

the Commission to ensure that our TRS regulations do not discourage or impair the development of improved technology.[24] We therefore seek comment on whether and, if so, the extent to which, the Commission should revise its rules to explicitly permit compensation for research and development, as well as what controls the Commission should put in place to ensure that such compensation is provided equitably across all VRS providers. For example, should compensation for research and development be included as part of the per minute rate, or would it be preferable to have an established sum for this purpose, which could be divided among providers? Should there be a cap on reimbursable expenditures for research and development (*e.g.*, based on a percentage of revenue)? We also seek comment on what steps the Commission should take to ensure that the results of research and development, which would be supported by the Fund, are fairly shared so that all providers and ultimately all users are able to enjoy the results. Furthermore, as a threshold matter, we seek comment on how the Commission should define research and development for the sake of this analysis, and to ensure that if we revise our rules in this area, the revised rules are contoured to effectuate the goals of section 225(d)(2) of the Act.

5. Videophone Equipment

21. At present, all VRS users obtain their videophone equipment from VRS providers. Concerns have been raised about the level of interoperability of videophone equipment and whether the current state of interoperability promotes functional equivalency for VRS users.[25] Even if the Commission retains the current model for compensating and delivering VRS, there are numerous questions surrounding the functionalities, costs, and distribution of videophone equipment. To begin with, how should the Commission compare the cost and quality of different videophones with the cost and quality of different voice telephones? For example, a voice telephony user generally has numerous equipment options, ranging from the least expensive landline telephones to mobile phones to personal digital assistants that integrate voice and data communications. In addition, a voice telephony user may purchase a voice telephone from a selection of retail establishments, rather than being limited to his or her service provider. Do VRS users have similar options and if so, what are they? What is the most efficient way for people who are deaf or hard-of-hearing to obtain videophone equipment? How far should the Commission go to ensure that affordable videophone equipment is available to VRS users? Should the Commission create a program to create direct user subsidies for the provision of videophones? Should efforts be made to switch VRS users over to mainstream video technology so they can acquire phones from retail establishments and not be dependent on individual providers for their phones? What are the approximate costs of videophones in retail establishments? Are there videophones that are priced comparably to voice phones? If the least expensive videophones are priced similarly to the least expensive voice telephones, does the Commission need to subsidize videophone equipment? Various states have equipment distribution programs that provide specialized customer premises equipment to people with disabilities. To what extent do such programs distribute videophones? What can be learned from these programs that could be applied to a national equipment program? Does allowing a VRS provider to subsidize the purchase of videophones improve deployment of needed videophone equipment or deter competition? Should VRS providers be allowed to require long-term contracts with VRS users if they do subsidize the equipment as many wireless telephone companies do now?[26]

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[24] 47 U.S.C. § 225(d)(2).

[25] *See* note 43, *infra*.

[26] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 08-27, Thirteenth Report, 24 FCC Rcd 6185, 6272–73, paras. 185–86 (WTB 2009).

6. Protection of Providers from Under-Compensation and Avoidance of Over-Compensation

22. As noted above, VRS providers are to be compensated for the reasonable costs of providing VRS. One way of ensuring that providers are neither under- or over-compensated for these services is to employ a true-up mechanism. We seek comment on the concept of a "true up." In the context of pooling for common carriers, the National Exchange Carrier Association has permitted a two-year period within which local exchange carriers are permitted to correct cost and data submissions – a "true up." In the past, the Commission has considered a "true-up" mechanism to address over-payments from the TRS Fund.[27] We seek comment on whether there are legal limitations to the Commission applying a "true-up" mechanism to either recoup excess payments when actual expenses and rate of return on capital investment are less than the per-minute compensation rate, or additionally compensate providers when the opposite is true. Proponents of a "true-up" mechanism should also propose specific procedures and supporting legal arguments allowing such provisions. For example, parties should address whether a "true-up" provision would constitute retroactive ratemaking.

23. We also seek comment on the current process for allowing providers a rate-of-return on capital investment. Specifically, we ask whether the current rate-of-return methodology remains appropriate. Are there alternatives to the current process that would properly compensate providers for their investment in an efficient manner? Commenters should address the administrative burdens on providers of their proposals and assess the potential benefits against the administrative burdens. Commenters should also compare these benefits and burdens with those of continuing to apply the Commission's prescribed rate of return to video relay services.

7. Certification

24. Our rules currently offer potential VRS providers three routes to receive compensation from the Interstate TRS Fund; they can: (a) become part of a certified state program, (b) subcontract for another entity eligible to provide TRS, or (c) receive certification directly from the Commission.[28] What kind of (if any) certification process is appropriate for providers of videophone equipment, video communications service, or relay interpreter services? Should such certification differ from the current certification process for VRS providers?

25. In the context of our existing rules, does the current federal certification process go far enough to ensure that potential providers are qualified to provide VRS in accordance with our rules? For example, should there be site visits to the applicant's physical VRS facilities either before and/or after they are granted certification? What other due diligence should the Commission require prior to considering a grant of certification? The Commission has several pending applications for VRS certification and routinely continues to receive inquiries from persons interested in learning how they can become VRS providers. The proliferation of such requests, while potentially fostering competition and innovation, raises concerns because some interested parties have no prior TRS or telecommunications experience. To what extent should entities that do not own or operate any TRS facilities, but who plan on merely contracting out the actual handling of calls, be eligible for VRS certification? To what extent should applicants be required to have prior telecommunications experience? Should the Commission grant provisional certification, and if so for how long? Assuming that there should be some threshold requirements even for provisional certification, what should these

[27] The Commission sought and received comments on a true-up accounting methodology in the *2006 TRS Cost Recovery FNPRM*. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd. 8379, 8393, para. 29 (2006) (*2006 TRS Cost Recovery FNPRM*). Nonetheless, we seek further comments on such methodology given the incredible growth of the VRS program over the past 4 years.

[28] *See* 47 C.F.R. § 64.604(c)(5)(iii)(F).

be? The Commission's existing certification process requires that applicants obtain common carrier status before being granted certification. However, certain states have been known to "rubber stamp" applications for such status, even where the applicant has no prior background of or intention of engaging in other telecommunications services. Does it make sense to continue to require applicants for VRS certification to obtain common carrier status from a state?

26. The Commission is also concerned that the current certification process does not offer adequate oversight and assurance that certified VRS providers are offering satisfactory service and are only seeking reimbursement for authorized service. How should our rules be changed to sufficiently deter potential fraud and abuse? To what extent should compensation of non-certified providers be permitted or prohibited?[29] Because the Interstate TRS Fund pays for both interstate and intrastate VRS calls, do states have the appropriate incentives to monitor certified VRS providers? What type of state oversight is currently available for VRS providers that receive intrastate compensation by virtue of their state contract? Should affiliation with a state relay program be sufficient to receive such compensation, or should federal certification be required of all providers to ensure effective oversight of their practices? How much authority, if any, should the Commission delegate to the Interstate TRS Fund Administrator to monitor or audit VRS providers for compliance with our rules? Should the Commission require that VRS providers be recertified annually?

B. Part II – Broader and Economic Issues Concerning Video Relay Service

27. In this part, we ask whether we should consider fundamental changes to the delivery of VRS, including questions on the structure of the VRS market. We are aware that, at present, numerous issues involving VRS remain unresolved, including specific petitions requesting that the Commission disallow certain relay practices and clarify its VRS compensation rules and rules of service. The Commission is continuing its review of all filings in the CG 03-123 and 10-51 dockets and the WC Docket No. 05-196, and will consider these other filings as we move forward in this VRS reform process.

28. We focus on three key issues. First, we wish to make sure that the VRS program fully serves the needs of its intended users as well as it can. We seek to ensure that this program is meeting the needs of the entire eligible population.

29. Second, it has been several years since the adoption of Section 225 of the Communication Act. Clearly, advances in technology and the way that people communicate necessitate a reexamination of the Commission's VRS program. Technological advancements, in areas such as video communication devices and video transmission protocols may enable a more efficient and effective VRS program than that which currently exists.

30. Third, we are concerned that the program is fraught with inefficiencies (at best) and opportunities for fraud and abuse (at worst). For example, the TRS Fund administrator had projected that the Fund would have reached a funding requirement of $891 million for the 2009-10 Fund year. Eighty-eight percent of this, or $780 million, would have been payment for VRS minutes.[30] The size of

[29] GoAmerica, Inc. Petition for Rulemaking, CG Docket No. 03-123 (filed Jan. 23, 2009) (seeking rulemaking to revise the provider certification rules and prohibit white-label VRS providers that offer service to users directly but receive compensation through a third-party, certified provider).

[30] *See NECA 2009 TRS Rates Filing* Exh. 2. In the wake of indictments for fraud associated with VRS, *see* para. 31, *infra,* the TRS Fund administrator subsequently proposed revised overall funding requirements from $891 million to approximately $702 million, and revised VRS funding requirements from $780 million to $640 million. 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, 4 (filed March 30, 2010) (*NECA 2010 Supplement to Filing).*

the Fund is driven by the number of users, the compensable minutes per user, and the per-minute compensation rate for each minute of use. Although the data on each of these factors is not reported individually, the TRS Fund administrator reports that VRS minutes of use will grow to an estimated 98.2 million for the 2010-11 Fund year, equaling a demand increase of 261 percent since calendar year 2005.[31] To the extent that this growth represents increased access to VRS users who rely on this service for communication, the VRS program has been a success in fulfilling the objectives of the ADA. However, to the extent that such increases are attributable to fraudulent or abusive activities designed to generate illegitimate VRS minutes, steps need to be taken to reform the program. Over the past few years, the per-minute compensation rates have significantly exceeded the estimated average per-minute costs of providing VRS.[32] In December 2008, the House Committee on Energy and Commerce concluded that "[t]here is substantial evidence that the FCC has failed to set reasonable rates for the compensation of TRS providers. As a result, consumers are being significantly overcharged to finance the TRS Fund and TRS providers are being significantly overcompensated."[33] In addition, auditors who reviewed provider costs that had been reported on the Relay Service Data Requests (RSDR) reported that they were not able to validate all of those costs. The auditors explained that not only were providers unable to offer supporting documentation to prove that their submitted costs were appropriate as TRS costs, but that some providers did not even "have a methodology to allocate indirect costs, and could not reconcile the costs claimed on the RSDR to their accounting records."[34]

31. Moreover, we know that the VRS program, as currently structured, presents easy opportunities for fraud and abuse. Although the increased payments to VRS providers have been driven, in part, by legitimate growth in the number of minutes of VRS used, we now know that that at least part of that growth was generated by the illicit activities of some of the VRS providers themselves.[35] This past year, the Department of Justice indicted 26 individuals for fraud.[36] These individuals allegedly boosted some VRS providers' revenues by hiring persons with hearing or speech disabilities to make VRS calls for the sole purpose of raising revenues.[37] Additionally, we continue to receive numerous allegations of abusive practices by VRS providers—such as using VRS to avoid paying for video remote interpreting services (VRI),[38] hosting or promoting teleseminars for the express purpose of generating

[31] *See* NECA, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* CG Docket No. 03-123, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, at Exh. 2 (filed Apr. 30, 2010). By contrast, in 2010–11, all other interstate TRS users will use 84 million minutes of service *Id.* Additionally, the total disbursements from the Fund for 2002 were $61 million. *See id.* at Exh. 3-1.

[32] The Interstate TRS Fund Administrator estimated that the weighted-average per-minute cost of providing VRS was $4.1393 in 2008, whereas the weighted-average per-minute compensation rate was $6.395. *See NECA 2009 TRS Rates Filing* at 14, Exh. 3-7.

[33] House Committee on Energy and Commerce Majority Staff Report, "Deception and Distrust: The Federal Communications Commission Under Chairman Martin" (December 9, 2008) at 7.

[34] Letter from KPMG, LLC to Dr. Kent R. Nilsson, FCC Inspector General, July 30, 2008 at 3, House Committee Report, Exhibit 7 (reporting its findings of performance audits of seven TRS providers).

[35] *See NECA 2010 Supplement to Filing* at 2 n. 3.

[36] *See* Twenty-Six Charged in Nationwide Scheme to Defraud the FCC's Video Relay Service Program, Press Release (Nov. 19, 2009), available at http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html.

[37] *See id.* at 2.

[38] *See 2004 TRS Order,* 19 FCC Rcd at 12537, para. 162 n.466. Video Remote Interpreting (VRI) is a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are together at the same location. This service uses a video connection to provide access to an interpreter who is at a remote location. As with "in-person" interpreters, VRI services are generally contracted and paid for on a fee-for-service basis.

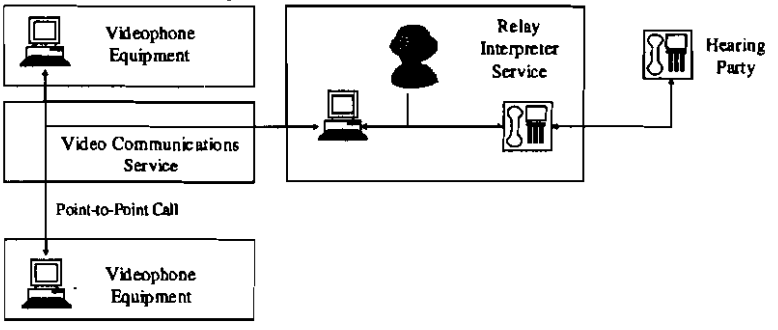
VRS minutes,[39] and paying individuals or organizations to place VRS calls using a particular provider's service[40]—over the past few years. These practices threaten the very sustainability of the VRS program; neither the Commission nor the American public can further allow the fraudulent abuse of a program designed to deliver essential telecommunications services to persons with speech or hearing disabilities. As the Commission moves forward in this reform effort, it will seek to ensure an equitable VRS compensation rate that fosters increased provider compliance with its TRS rules, while ensuring that revisions to its rules preserve the rights of the program's users.

1. The Components of Video Relay Service

32. VRS is defined in the Commission's rules as a form of TRS that "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment."[41] VRS communications require the interaction of three separate yet interlinked components: videophone equipment, video communication service, and ASL relay interpreter service.[42] Although some VRS providers now supply all three components as a single package, we question whether this vertical integration is necessary, and therefore separate them for purposes of analysis herein.

33. The diagram below illustrates this concept. For example, hypothetically, an end user could obtain videophone equipment in the form of a tablet computer equipped with a camera and wireless Internet access. That equipment could allow the end user to access both a public Internet-based video communication service, which would enable both point-to-point communications with other similarly equipped individuals, and a choice of ASL relay interpreter services (*e.g.*, via a desktop "connect to interpreter" button) that would allow communication with hearing parties.

The Components of VRS Communications



[39] *See* Sorenson Communications Comments and Petition for Declaratory Ruling, CG Docket No. 03-123, at 7–8, exhs. A–C (filed Apr. 24, 2009); *Compensable VRS Calls Declaratory Ruling*, 25 FCC Rcd at 1870-71, para. 6 ("VRS calls made or arranged, in whole or in part, for the purpose of generating compensable minutes of use . . . are not and have never been compensable from the TRS Fund").

[40] *See* National Association for State Relay Administration Comments, CG Docket No. 03-123, at 5–8 (filed Nov. 19, 2008) (providing four examples of abusive conduct that appear to violate federal law); *Compensable VRS Calls Declaratory Ruling*, at 4, para. 6 ("[P]ractices by VRS providers that encourage users to place VRS calls that they might not ordinarily make—such as paying independent marketing firms to have deaf employees place marketing calls through the providers' VRS...violate the Commission's established policy...").

[41] 47 C.F.R. § 64.601(a)(18).

[42] We note that the video communication service component of VRS consists of both a transmission medium (*i.e.*, a broadband connection) as well as a service (audio and video) that is provided over that transmission medium.

34. *Videophone Equipment.* We seek to understand the types of videophone equipment most used by deaf and hard-of-hearing individuals. What are the functionalities that VRS users need from their videophone equipment? To what extent does existing videophone equipment rely on proprietary protocols rather than common standards? Should we require updated protocols based on common, industry-consensus standards to be used by videophone equipment distributed by VRS providers?

35. In the context of our existing rules, should videophone equipment supplied by VRS providers, and the networks on which they operate, also be standardized so that they retain a mandatory minimum set of functionalities regardless of the provider selected by the VRS user?[43] We specifically seek comment on whether it is feasible for the Commission to adopt technical standards that would ensure the continuation of videophone equipment functionality after a consumer switches default providers. Where user features are housed in the provider's network (rather than the videophone equipment itself), is it technically feasible to use a standardized protocol within the network so that switching providers will not eliminate functionalities of the user's equipment?

36. We seek to understand the extent to which VRS users are limited to using videophone equipment specifically designed for VRS use, as well as the extent to which changes in the VRS program should occur that would allow users to utilize off-the-shelf equipment for VRS calls. Do most users currently rely on videophone equipment that is distributed by VRS providers? Is there off-the-shelf hardware or software, such as webcams or other general-user technology, that could serve as an acceptable substitute for videophone equipment and software that are specially designed for VRS users? What are the quality-of-service differences (if any) between videophone equipment built especially for VRS and off-the-shelf products, such as video-cameras used with equipment such as desktop computers, tablets, or mobile phones? What level of videophone equipment functionality is required to ensure that VRS calls made with videophone equipment are functionally equivalent to calls made by hearing individuals? How might this functionality evolve over the next three to five years? For example, should standardized real-time text communications be a feature on videophone equipment? What are the costs and benefits of different devices, and is the videophone equipment currently distributed by VRS providers still needed, *e.g.*, given the rapid spread of inexpensive, easy-to-use webcams? What features are typically associated with voice telephone handsets (*e.g.*, speed dial lists) and can they be provided with commercial, off-the-shelf videophone equipment? Is mobile videophone equipment suitable for VRS available today, and if not, what technological innovations or market developments are needed before they can become commercially viable as a market offering?

37. *Video Communication Service.* What are the functionalities that VRS users need from video communication service providers? For example, the Commission determined that assigning VRS users geographically appropriate ten-digit numbers was functionally equivalent to assigning users of the public

[43] Under the Commission's Internet-based TRS Numbering Orders, providers must ensure that videophone equipment that they distribute retain certain, but not all, features when a user ports his number to a new default provider. Specifically, a default provider that furnishes videophone equipment to a consumer need not ensure that the videophone equipment's enhanced features (*e.g.*, address book, speed dial list) can be used when the consumer ports the number to and uses the equipment with the new provider. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, *E911 Requirements for IP-Enabled Service Providers,* WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11615, para. 60 (2008) (*Internet-based TRS Numbering Order*); Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 822, para. 68 (2008) (*Second Internet-based TRS Numbering Order*); 47 C.F.R. § 64.611(c)(1). We note that the Commission waived this requirement until July 1, 2010. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196; *Structure and Practices of the Video Relay Service Program,* CG Docket No. 10-51, Order, 25 FCC Rcd 3331 (CGB/WCB 2010). Users have expressed concerns about losing some of the features that they deem basic to their communication services when such porting occurs.

switched telephone network numbers based on their local switch.[44] Are there other functionalities necessary to ensure functional equivalence for VRS users that are not currently being provided? VRS users usually obtain broadband transmission separately from their VRS service. Does this separation affect what constitutes functionally equivalent service? Several years ago, interconnected Voice over Internet Protocol (VoIP) was primarily provided as an over-the-top, nomadic service. Today, many facilities-based broadband providers offer interconnected VoIP with quality-of-service guarantees. Could video communication service witness a comparable transition in the near future? How can we assure that video communication services used for VRS remain functionally equivalent to comparable service over the next three to five years?

38. *Relay Interpreter Service.* What are the functionalities that VRS users need from ASL relay interpreter services? The Commission has held that reaching a CA is the equivalent of getting a dial tone,[45] and that functional equivalency means that CAs must be available at all times and sufficient in number so that a VRS user may reach a CA without long waiting times.[46] We seek comment on what other functionalities are required from relay interpreter service to ensure functional equivalence for VRS users. Have CAs met the quality-of-service expectations of VRS users? For example, is the speed and accuracy of CA interpretation fully meeting the needs of VRS users? How do the relay interpreter services of VRS providers compare to the capabilities of other forms of relay? How may the needs of VRS users evolve over the next three to five years?

39. *General View of VRS Components.* Looking at these components together, how and why do VRS users currently choose their providers? What are the primary qualities that VRS users look for when selecting a VRS provider? How well do the current VRS providers meet the needs of VRS users for reliable relay interpreter service, innovative equipment, and functionally equivalent video service? How well do video communication service providers and videophone equipment developers meet the needs of individuals who do not use VRS (*i.e.*, individuals who use only point-to-point video communication service)? Why do end users switch VRS providers, and how do the incentives and costs associated with switching VRS providers differ from the incentives and costs of switching other video communications service providers? Is there any need for the three components described above to be vertically integrated?

40. Are there other necessary components or different ways to consider the structure of this vital service? How has the development of broadband communication affected the need for the various components of VRS?

2. The Demand for Video Relay Service

41. The Commission has the duty to ensure that TRS is available to all persons with a speech or hearing disability "to the extent possible."[47] To achieve that statutory objective, the Commission must better understand the potential universe of VRS users and the obstacles that limit the availability or usefulness of VRS to those users. Such information is essential to understanding how effective the program is and how we can improve it.

42. First, we seek data about the number of current VRS users. Although we know the number of ten-digit numbers that have been assigned to VRS users, we do not have data on how many individual

[44] *Internet-based TRS Numbering Order*, 23 FCC Rcd at 11608–09, para. 41.

[45] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466, 1469, para. 8 (CGB 2005).

[46] *See* 47 U.S.C. § 225(d)(1)(C) (operating-hours requirement); 47 C.F.R. § 64.604(b)(4) (same); 47 C.F.R. § 64.604(b)(2)(iii) (speed-of-answer requirements, requiring 80% of VRS calls to be answered within 120 seconds).

[47] 47 U.S.C. § 225(b)(1).

VRS users there are. Should we require VRS providers to report the number of VRS users they serve? What sorts of information do VRS providers have about their users, and what information should we require them to collect?

43. Although we recognize that data about the number of potential VRS users is limited, to estimate the potential user base we remain interested in obtaining any data that might be available about the number of people in the United States who are deaf, hard of hearing, or have a speech disability that limits voice communication. How many of those people communicate in ASL? Approximately what percentage of those individuals currently use VRS? Approximately what percentage use traditional TTY-based TRS? What percentages use both? Is there a way to determine these numbers in a reasonably accurate manner?

44. Second, we seek data on the extent to which there may be technological barriers to using VRS. The Commission's work on the National Broadband Plan has identified numerous barriers experienced by people with disabilities and other Americans to obtaining broadband.[48] However, data collected to date has not specifically identified the number of persons with a speech or hearing disability who lack a broadband connection at home or access to one. Is such data available? Does the cost of broadband Internet access or videophone equipment deter eligible end users from using VRS?

45. Third, we seek data and insight into the trends in VRS minutes of use (MoU) per user over time. What factors are driving total VRS MoU per user? Point-to-point MoU per user? Interpreted MoU per user? How might these factors change over time? How do they compare with the trends in functionally equivalent voice communication services?

46. Fourth, to what extent are potential VRS users meeting their communications needs through other means? For example, how many potential VRS users rely instead on traditional TTY-based TRS programs or other IP text relay programs, and why? What are the trends in terms of number of VRS users? Do these trends show that VRS is a complement or a replacement for other forms of TRS? To what extent do individuals who are deaf and hard of hearing use video communication services and/or equipment that are not designed specifically for VRS use (*e.g.*, Skype)? How can the Commission collect reliable data to understand the extent to which consumers rely on commercially-available video communication services and equipment as a substitute for VRS, and to understand the reasons for choosing one type of service over another? We have anecdotal reports that upwards of 80% of video communication calls made by deaf or hard-of-hearing individuals using VRS equipment are point-to-point video calls that do not involve relay interpreter service. Is this accurate? To what extent do VRS users rely on non-compensable videophone-to-videophone calls in lieu of VRS and why? How many deaf or hard-of-hearing individuals use texting via mobile phones or other mobile equipment as an alternative means of communication? If hearing people who can communicate using ASL are eligible to receive ten-digit numbers for their videophones, to what extent would this reduce the number of calls that would otherwise have to take place using VRS?[49]

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[48] *See e.g.*, John Horrigan, *Broadband Adoption and Use in America* 26 (OBI Working Paper No. 1, 2010) ("The largest group of nonbroadband adopters—non-Internet users—has a high likelihood of having some sort of disability. Overall, 39 percent of non-adopters have some sort of disability."), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf.

[49] The Commission has been asked to allow providers to assign ten-digit numbers to hearing people in various petitions. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Association of Late-Deafened Adults, Inc, National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, and American Association of the Deaf-Blind, Petition for Partial Reconsideration (filed Jan. 29, 2009); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Petition for Partial Reconsideration and Limited Waiver by GoAmerica (filed Jan. 29, 2009).

47. Finally, we seek information about other reasons why potential users do not actually use VRS. What factors, including practical, economic, or informational, contribute to the apparently low adoption rate? For instance, does the cost of broadband Internet access or videophone equipment deter eligible end users from using VRS? Do eligible individuals lack information about the program or their eligibility? Do some persons with a speech or hearing disability, such as persons who are deaf-blind, find VRS difficult to use and if so, why? Is there demographic or other information we can use to segment the market and understand the needs of eligible individuals?

3. The Supply of Video Relay Service

48. The Commission has the duty to ensure that TRS is available "in the most efficient manner."[50] In this section, we seek to understand the provision of VRS from a supplier's perspective and the obstacles that might limit competition among VRS providers or otherwise reduce efficiency in the provision of this service. Among other things, we note that under the present VRS model, multiple providers offer substantially similar services with no opportunity for price competition. In undertaking this review, we consider each of the three components described earlier.[51]

49. *Relay interpreter service.* What are the cost drivers for, and the cost structure of relay interpreter service (*e.g.*, start-up versus operating costs, fixed versus variable)? Are there ways to reduce costs and improve efficiencies for the services, including sharing CA resources among VRS providers? How significant are economies of scale for relay interpreter services, particularly in relation to the requirement that VRS calls be answered within a short period of time at all hours of the day?[52] What obstacles are there for new entrants or innovation? What is the most efficient way for a relay interpreter service provider to contract for individual CAs? Do relay interpreter services need to be provided centrally, or could they be provided on an on-demand, as-needed basis? How many potential CAs are there in the United States? Are there enough CAs to meet current demand, and will there be enough interpreters to meet projected demand in three to five years?

50. *Video communication service.* What is the cost structure of video communication service? How many hearing individuals use video communication services? Do VRS users and VRS providers use the services offered in the general market for point-to-point video communication services, or do they rely only on specialized offerings? Do the business models and practices of mass market video communication service providers (*e.g.*, Skype) provide a good analogue for understanding this component of the market? Do the business models and practices of mass market interconnected VoIP providers (*e.g.*, Vonage) provide a good analogue? What technologies or business models could provide these services in the most efficient manner? For example, what are the technological differences between Purple's P3 software and Skype's products (both of which enable point-to-point video communications)?[53] How important are economies of scale for video communication service? What obstacles are there for new entrants or innovation in video communication service?

51. *Videophone equipment.* What is the cost structure of the videophone equipment market? How large is the non-VRS videophone equipment market and how does it intersect with the VRS specific videophone equipment market? What technological innovations or market developments would be needed for mobile VRS to become available and economically viable? What obstacles are there for

[50] 47 U.S.C. § 225(b)(1).

[51] *See* para. 32, *supra.*

[52] *See* para. 38, *supra.*

[53] *Compare* Purple Communications, Inc., P3 Software Keeps You Connected, http://www.purple.us/p3/index.html (last visited June 8, 2010), *with* Skype, Free Video Calls and Video Conferencing with Skype, http://www.skype.com/allfeatures/videocall/ (last visited June 8, 2010).

new entrants or innovation in the market for videophone equipment? How can we reduce the cost of videophone equipment?

52. We are also interested in the relationship among the three components. What are the advantages and disadvantages of a single entity providing relay service and videophone equipment? What are the advantages and disadvantages of the two components being offered independently from each other? For example, what if any economies of scope does a provider gain by supplying both of these components? To what extent does the provision of one component enable the provider to leverage its market position in the markets for the other component? To what extent do market participants (of any or both of the two components) rely on common or proprietary standards for services or equipment? How can we increase sufficient competition among providers in each component? How can the components be most efficiently coupled (or uncoupled) to provide the necessary service for eligible users?

4. The Regulation of Video Relay Service

53. In this section, we seek to understand how the Commission's regulations, including the current regime for compensating VRS providers, have affected the structure of the market and demands on the Interstate TRS Fund. As an initial matter, we recognize the statutory importance of VRS, along with our obligation to "ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner," to Americans who are deaf, hard of hearing and speech disabled.[54] As in other areas of the NOI, we explore in this section possible approaches to better deliver a service that has become essential to its user community while also ensuring that this be done as efficiently as possible.

54. *Paying for VRS Today.* The Commission established the Interstate TRS Fund to compensate carriers only for the costs that an interstate relay call incurs beyond those that a non-relay interstate call would incur.[55] Today, multiple VRS providers compete to provide services to users.

55. Under current rules, VRS providers may not charge users for their relay interpreter services and have limited ability to charge users for other aspects of the service they provide.[56] Instead, VRS providers recoup the vast majority of their costs from the Interstate TRS Fund. Our rules require these providers to submit to the administrator of the fund each month's VRS minutes of use, VRS operating expenses, VRS investment, and any other historical or projected costs or usage data that the administrator reasonably requests.[57] The Interstate TRS Fund administrator aggregates this data and reports the projected usage and costs to the Commission so that the Commission can establish appropriate compensation rates each year.

56. The Interstate TRS Fund compensates VRS providers using an industry-wide per-minute rate each year. The current compensation rate was established in 2007 based on the projected average costs and minutes of use for all of the VRS providers, was discounted for larger providers to reflect their economies of scale, and has been discounted each year since then to reflect a 0.5% productivity gain.[58]

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[54] 47 U.S.C. § 225(b)(1).

[55] 47 C.F.R. § 64.604(c)(5)(iii)(E). The Interstate TRS Fund collects contributions from all interstate telecommunications carriers so that all telecommunications users share the costs of providing TRS. 47 C.F.R. § 64.604(c)(5)(iii)(A).

[56] For example, VRS providers may not pass on the costs of acquiring ten-digit numbers to their registered users unless and until they receive approval from the Commission or the Consumer and Governmental Affairs Bureau. *See Second Internet-based TRS Numbering Order,* 24 FCC Rcd at 813, para. 48.

[57] *See* 47 C.F.R. § 64.604(c)(5)(iii)(C).

[58] *See* note 14, *supra*; *2007 TRS Rate Methodology Order,* 22 FCC Rcd at 20167–68, paras. 66–71. The costs include both variable costs (such as paying communications assistants for their labor) and fixed costs (such as buildings, equipment, return-on-investment, and other corporate overhead). *See 2009 TRS Rate Filing* at 14–15.

Because this industry-wide per-minute compensation rate does not vary with each provider's costs but instead with a pre-established productivity factor, VRS providers' primary incentive is to increase the number of minutes of VRS used while maintaining control of their costs.

57. For certain VRS-related expenses, the Interstate TRS Fund compensates VRS providers based on the additional costs each individual provider incurs in providing the service.[59] The Interstate TRS Fund does not, however, compensate VRS providers for all of the costs they might incur in providing their service offering. For example, the Commission did not authorize the Interstate TRS Fund to compensate VRS providers for assigning ten-digit numbers to registered users or for providing number portability, because voice telephone users generally bear these costs.[60] In addition, the Interstate TRS Fund does not compensate VRS providers for the costs of providing point-to-point video service because such service does not involve a CA and is not a form of TRS.[61]

58. The Commission has to date declined to directly compensate VRS providers for any videophone equipment.[62] The Commission has analogized videophone equipment to consumer premises equipment and has treated "expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or any necessary software"—as the user's cost of receiving service and hence not compensable by the Interstate TRS Fund.[63] Accordingly, some VRS providers sell videophone equipment to their registered users for a fee.[64] In contrast, other VRS providers offer free videophones or video software to their registered users, absorbing the cost.[65]

59. We seek comment on the existing TRS reimbursement structure and on other aspects of our regulation of VRS. What aspects of this structure have led to the explosive growth of the Interstate TRS Fund from $61 million in 2002 to over $900 million in 2009? What changes would make the VRS compensation scheme more effective, more efficient, and sustainable in the long-term? Is the structure of our compensation scheme, for example paying VRS providers for both fixed and variable costs of VRS based on the number of minutes of use, inefficient? Does it create incentives for fraud and abuse that threaten the program's sustainability?

60. *The Principle of Cost-Causation.* We seek comment on whether the cost-recovery aspects of our current VRS regulations may distort the incentives of VRS providers and, in turn, may affect the expectations of users. The Commission has long recognized that economic efficiency in a competitive market requires cost-recovery methods to reflect cost-causation principles so long as those principles do not conflict with other statutory obligations.[66] Cost-causation principles thus counsel that regulators

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[59] *See Internet-based TRS Numbering Order*, 23 FCC Rcd at 11627, para. 100.

[60] *See Second Internet-based TRS Numbering Order*, 24 FCC Rcd at 813–14, paras. 48–51. Similarly, the Interstate TRS Fund does not compensate VRS providers for costs associated with a VRS user's use of a toll-free telephone number or E911 charges that may be imposed under a state or local E911 funding mechanism. *See id.* at 815–16, paras. 52–56.

[61] *See Internet-based TRS Numbering Order*, 23 FCC Rcd at 11627, para. 100.

[62] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, para. 17 (2006).

[63] *Id.*

[64] *See, e.g.*, Z-150, ZVRS, http://www.zvrs.com/z-series/z-150 (last visited June 8, 2010). We recognize that some VRS providers sell some video equipment at a deeply discounted price.

[65] *VRS Interoperability Declaratory Ruling*, 21 FCC Rcd at 5448, paras. 15–16 (noting that several providers distribute, install, and repair videophone equipment for VRS users at no cost to the user).

[66] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, CC Docket No. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 16060, para. 180 (1997) (*Access Charge Reform Order*).

should seek to align the recovery of costs with the way they are incurred.[67] When a cost causer does not internalize all the costs it causes, the incentives of both providers and users may be distorted.

61. We are concerned that our VRS compensation rules may have created such economic distortions. How, if at all, has the compensation methodology distorted the components of VRS communications? To reduce these distortions in the market for long-distance services, the Commission has changed the cost-recovery methodology so that most non–traffic-sensitive costs are recovered through "fixed, flat-rated fees."[68] Would a similar solution work to correct distortions in the market for VRS? What would that solution look like?

62. To better understand how our regulations affect the incentives of VRS providers, we seek comment below on alternative regulatory regimes for VRS communications with an eye towards making the VRS program more effective, efficient, and sustainable.

5. The Incentives of Providers

63. The Commission wants to ensure not only that the VRS program is available and fully responsive to the needs of people with hearing and speech disabilities, but also that the use of VRS is driven by real demand, not artificial stimulation. What measures should the Commission take to better realize the goal of reimbursing VRS providers for the costs of providing relay service, to ensure that VRS providers have incentives to provide and promote use of VRS, without creating incentives for VRS providers to encourage high-volume use that VRS users would otherwise not incur?[69] We are particularly interested in knowing: (1) How can we encourage competition that would reduce the costs of VRS? (2) How can we channel the efforts of VRS providers to foster innovation and improve services for VRS users? (3) What data or analyses are particularly important for us to understand in choosing how to restructure the VRS market to improve its efficiency and effectiveness? (4) If the Commission decides to modify either what constitutes VRS or the regulation of VRS, how should the Commission structure the transition to avoid service disruptions? (5) What institutional oversight is required at the federal and state level, and how extensive must that oversight be to combat waste, fraud, and abuse?

64. *Choice of VRS Provider.* Many states now choose their intrastate TRS providers through government contracts. Comments received by the Commission in response to a 2006 NPRM opposed using a similar competitive bidding model for the VRS market. Specifically, parties expressed concerns that competitive bidding in the states has sometimes resulted in the selection of a bidder with a lower quality of service. If the Commission decided to use competitive bids to award VRS contracts to a single provider or a limited number of providers, are there ways to ensure that consumers would still be able to receive functionally equivalent service? Or would eliminating choice among multiple providers create a disservice to consumers? Could competitive bidding or a single contract model work for certain components of VRS communications, such as the relay interpreter component? If the contract were to compensate only relay interpreter services, how would that affect the other components of the VRS market? If such a contract were to be awarded, how should the contract pay the winning bidder (*e.g.*, using a flat, fixed fee for service, a per-minute compensation rate, a per-user compensation rate, or some other method)?

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[67] *See id.* at 15992, para. 24.

[68] *Access Charge Reform,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12967, para. 12 (2000), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel v. FCC,* 265 F.3d 313 (5th Cir. 2001), *cert. denied, Nat'l Ass'n of State Util. Consumer Advocates v. FCC,* 70 U.S.L.W. 3444 (U.S. Apr. 15, 2002); *Access Charge Reform Order,* 12 FCC Rcd at 16007–34, paras. 67–122.

[69] Note that "VRS provider" in this section may refer to providers of one or more of the three components described above.

65. *Rate-of-Return Regulation.* Could rate-of-return regulation be a solution? Although VRS providers must now report their individual costs to the Interstate TRS Fund, they need not separate out, for example, the costs of providing point-to-point video service from the costs of providing VRS. And a VRS provider's own costs do not exclusively determine its compensation; instead the Commission has relied on industry-wide costs to determine compensation levels. Would rate-of-return regulation effectively deter fraud or decrease the cost to the Fund? Would rate-of-return regulation reduce or eliminate existing incentives for VRS providers to contain costs? How would such regulation affect the effectiveness of the VRS program at reaching out to unserved eligible users?

66. *Modified Price-Cap Regulation.* Could a modified price-cap compensation system work either on an individual-provider or industry-wide basis? An individual-provider price-cap system would freeze each VRS provider's per-minute or per-user revenues (or costs) at existing rates and then adjust those rates each year to account for inflation and productivity growth. An industry-wide price-cap system would make the same calculations but would use industry-wide data in establishing an industry-wide per-minute or per-user rate. If the Commission adopted a price-cap compensation system, should it do so on an individual-provider or an industry-wide basis? On what data should the Commission premise the efficiency factor that reduces the cap to reflect presumed productivity growth? Should compensation remain on a per minute-of-use basis or would compensating for registered users better align the incentives of VRS providers? Would some combination of the two work, such as allocating the recovery of usage-sensitive relay interpreter service costs to per-minute rates and allocating all other costs, including the fixed costs of relay interpreter service, to per-user rates? Would such a combination be economically efficient? Would it be administrable? Rather than relying on VRS providers' historical average costs, should the Commission establish a price-cap system using a forward-looking cost proxy model? If so, what data would the Commission need in order to establish a rigorous model and how often should the Commission update the results of that model?

67. *Forward-Looking Cost Model Support.* Could the Commission develop a model to approximate the costs of an efficient VRS provider and compensate actual providers on that basis? In the long run, forward-looking economic cost better approximates the costs that would be incurred by an efficient VRS provider than the embedded costs of current incumbents.[70] How could the Commission develop a model of the forward-looking costs of a VRS provider? Should that model encompass all three components of VRS communications or would separate models be necessary for relay-interpreter service providers (a labor-intensive business), videophone equipment providers (a capital-intensive business), and video communication service providers? What data would be necessary to construct a forward-looking cost model? Assuming the Commission creates an appropriate model, how should support be determined? On a per-minute basis? On a per-user basis? Should the Interstate TRS Fund pay all the forward-looking costs of VRS providers, or only those above and beyond those a hearing party would pay for voice service? Should the model account for economies of scale, and (if so) how?

68. *Reverse Auctions.* In a reverse auction, interested parties bid to provide a supported service; the winner of a reverse auction is the qualified bidder (or bidders) that submitted the lowest bid (or bids). Reverse auctions allow market signals to supplement, or even replace, cost estimates made from either historical cost accounting data or forward-looking cost models.[71] Could the Commission hold reverse auctions to designate a fixed number of eligible VRS providers for a set period of time? How could we structure those auctions to promote the effectiveness and efficiency of the program without sacrificing

[70] *Cf. Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8899, para. 224 (1997).

[71] *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495, 1500, para. 11 (2008). *See generally* Evan Kwerel and Alex D. Felker, *Using Auctions to Select FCC Licensees* (OSP Working Paper No. 16, 1985), *available at* http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp16.pdf (describing the benefits of auctions).

sustainability and quality of service? One possibility is that the Commission could hold reverse auctions to determine the lowest cost providers of VRS, which would be wholly supported by the Interstate TRS Fund, and separate that component of the market from the provision of equipment and underlying point-to-point video communication services. Would such a system be economically efficient? How could we structure the reverse auctions to be most efficient? How frequently should the Commission hold reverse auctions? If held every few years, would the stability of long-term contracts outweigh the potential for innovative cost-cutting? Could reverse auctions for VRS be held in real time in a manner that would promote constant competition while also ensuring compliance with the needs of VRS users?[72]

69. *Structural Safeguards.* We seek comment on whether structural and accounting safeguards might be effective at encouraging efficiency in the VRS market. Would requiring structural separation between the participants in the videophone equipment, video communication service, and relay interpreter service components of the market improve competition? If the Commission required such structural separation, how should it compensate participants in each of the components (if at all)? If the Commission required structural separation, how could we best promote competition in each of the three components of the market? Should the relay interpreter services component of VRS be treated as common-carrier services that could be purchased at tariffed rates by any video communication service provider on behalf of their registered users?

70. *Jurisdictional Separations.* The Commission has thus far treated all VRS calls as interstate calls paid for by the Interstate TRS Fund. Has this treatment helped or harmed the effectiveness, efficiency, and sustainability of the VRS program? We seek input on intrastate TRS programs. How does usage of traditional, intrastate TRS compare with usage of VRS in terms of both number of users and minutes of use? What differences between state programs and the federal VRS program could account for differences in effectiveness, efficiency, or sustainability? Has the dual-allocation of authority over traditional TRS increased oversight of providers because the Commission and the states are both responsible for monitoring and paying for service? Could that dual-allocation of authority work with the VRS program, and if so, how? States currently contribute a portion of the funding to support 800 and 900 number telephone calls made over TRS. If a certain percentage of VRS calls are intrastate, should states be required to compensate a portion of the funding needed to sustain the VRS program?

6. The Incentives and Needs of VRS Users

71. We seek comment in this section on how to better align the incentives of VRS users with cost-causation principles. As a matter of public policy, the Commission must ensure that federal subsidies are justified and legitimate, because TRS subsidies ultimately are borne by all telecommunications subscribers. In doing so, we must keep in mind the statutory requirement that TRS users "pay rates no greater than the rates paid for functionally equivalent voice communications services."[73] We thus first seek input on how to ensure that the Commission properly identifies functionally equivalent voice services and rates. We then seek comment on how to structure any federal subsidies to ensure that VRS providers meet the needs of VRS users without over-compensating VRS providers.

72. *Analogous Service and Rates.* To ensure that VRS users do not pay rates higher than the rates for "functionally equivalent" voice services, we need to identify such functionally equivalent services. What voice communications services are most functionally analogous to VRS and point-to-

[72] We note that the Commission sought feedback on reverse auctions in the *2006 TRS Cost Recovery FNPRM* and several VRS providers filed comments in opposition to this model. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379 (July 20, 2006) (*2006 TRS Cost Recovery FNPRM*). However, given the evolution of the VRS program over the past few years, we seek further comment on this approach.

[73] *See* 47 U.S.C. § 225(d)(1)(D).

point video communication service? Once we identify the functionally equivalent services, how can the Commission determine the extent to which VRS users are paying rates that are no greater (or less) than those paid by voice telephone users? How should the Commission account for the fact that current VRS offerings require the VRS user to subscribe to and pay for broadband Internet access in order to use VRS? How should the Commission account for information services, such as voicemail or speed-dialing, which are often bundled with voice telephone service?

73. *Videophone Equipment.* In Part I, above, we ask numerous questions concerning the current functionalities, costs, and distribution of videophone equipment.[74] These same questions equally apply to the Commission's consideration of changes to the structure of the VRS program in the future, and are inherently intertwined with questions regarding what is the most effective, efficient, and sustainable structure. As such, we likewise seek comment on them in the context of potential changes to the structure of the VRS program.

74. *Individual Subsidies.* Would VRS users be better served if the Commission did not subsidize particular components of VRS communications, but instead directly subsidized the VRS needs of those individuals? The Commission's low-income program, for example, pays providers but then requires those providers to pass along the benefits to end users. Some providers offer unlimited local calling from a fixed location, whereas others offer mobile service with free long-distance but with limited number of minutes of use each month. Could a similar model work for VRS? Should it be specifically tailored to low-income persons with disabilities? Should a direct subsidy model include a component that would offset the costs of installing a videophone? How do these questions comport with the National Broadband Plan's recommendation that the Commission consider whether to establish separate subsidy programs to fund broadband services and assistive technologies under the TRS program?[75]

75. *Individual Vouchers.* Should the Commission issue vouchers directly to deaf and hard-of-hearing individuals to spend on the TRS program? Would a voucher system allow TRS users to tailor their demands so that providers are more responsive to them rather than to regulators? For example, one eligible user might use a subsidy to purchase broadband Internet access service, while another might use a subsidy to purchase videophone equipment or long distance service. Is a flexible voucher like this workable and efficient? Could such an individual voucher increase the effectiveness of TRS as a whole while keeping the program sustainable? How frequently should a VRS user be entitled to receive a voucher and, if usable for the acquisition of videophone equipment, for what type and quantity of equipment?

76. *Consumer Incentives.* The Communications Act requires that TRS users "pay rates no greater than the rates paid for functionally equivalent voice communication services [].''[76] We seek comment on whether, if this is not already the case, the incentives for VRS use need to be aligned with the cost of providing the service in a way that makes the use of this service comparable to the use of voice communications services. For example, voice communications services often include a usage-based price component and wireless telephony packages typically include a set number of minutes the user can make each month at no additional cost; end users then pay on a per-minute basis for any overages. In that regard, we seek comment on whether the lack of usage restrictions on VRS creates any incentives for VRS use that do not exist for voice telephone use. Conversely, we recognize that VRS users must acquire broadband service to be able to use VRS, and thereby inherently incur costs that voice communication services consumers may or may not incur. Therefore, we seek comment on

[74] *See* para. 21, *supra.*

[75] Connecting America: The National Broadband Plan (rel. Mar. 16, 2010) at 182 (Recommendation 9.10) *available at* http://www.broadband.gov/plan/.

[76] 47 U.S.C. § 225(d)(1)(D).

whether the cost of broadband service as a prerequisite for VRS use is a disincentive for potential VRS users to use VRS. If either is true, are there structures that might be put in place to align the behavior of VRS users with the behavior of voice telephone users?

7. Other Regulations Affecting VRS Communications

77. We seek comment here on other regulations that affect the VRS program's effectiveness, efficiency, and sustainability.

78. *Registration.* We also seek input on the effect of our VRS user registration requirements on competition among VRS providers in the various components. As discussed above, VRS users must register with a VRS provider and doing so imposes certain duties on the provider in exchange for certain benefits. Although a VRS user need not use the relay interpreter services of his default provider, he must affirmatively dial-around to another VRS provider if he seeks to use their relay interpreter services. Does the link between videophone service and relay interpreter service help or hinder the development of competition in each of these potential markets? How do our registration requirements affect the various components of VRS communications?

79. *Additional Reporting.* VRS providers must report their costs and minutes of use today to the Interstate TRS Fund Administrator. Should the Commission impose additional reporting requirements on VRS providers, for example separately reporting each driver of the fund (number of users, compensable minutes of use per user, and estimated cost per minute of use)? At present, all providers must submit detailed call records. However, in the event there is dramatic growth in use (*e.g.*, more than a specified percentage) within a given period of time, should providers be required to provide additional information explaining the nature and cause of such growth? If so, what information would be useful to evaluate whether the increased use is consistent with Commission rules?

80. *Other Regulations.* This Notice seeks comment on all aspects of VRS regulation, both as it is today and as it should be in the future. What future trends, new developments, or changes in industry structure can we expect in the next three to five years? How can the Commission reform the VRS program to ensure its continued effectiveness, efficiency, and sustainability over the next three to five years? What other regulations should the Commission adopt or modify now to prepare for the future?

IV. PROCEDURAL MATTERS

81. *Comment Filing Procedures.* Interested parties may file comments and reply comments regarding this Notice on or before the dates indicated on the first page of this document.[77] **All filings related to this Notice should refer to CG Docket No. 10-51. We strongly encourage parties to develop responses to this Notice that adhere to the organization and structure of this Notice. Furthermore, we are specifically interested in concrete data or analyses that respond to the questions in this Notice.** Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[78]

- § Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- § Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-

[77] *See* 47 C.F.R. §§ 1.415, 1.419.

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

class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.

82. In addition, parties must send one copy of each pleading to: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300; fax: (202) 488-5563; (2) Mark Stone, Consumer and Governmental Affairs Bureau, mark.stone@fcc.gov; (3) Nicholas Alexander, Wireline Competition Bureau, nicholas.alexander@fcc.gov; (4) Diane Mason, Consumer and Governmental Affairs Bureau, diane.mason@fcc.gov; and (5) Nicholas A. Degani, Wireline Competition Bureau, nicholas.degani@fcc.gov.

83. Documents in CG Docket No. 10-51 will be available for public inspection and copying via ECFS (http://fjallfoss.fcc.gov/ecfs2/) and during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

84. *Accessible Formats*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

85. *Ex Parte Presentations*. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[79] Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.[80] Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.[81]

86. *Paperwork Reduction Act*. This Notice does not propose any information collections subject to the Paperwork Reduction Act of 1995 (PRA).[82] This Notice, therefore, 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.[83]

[79] 47 C.F.R. §§ 1.1200 *et seq.*

[80] *See* 47 C.F.R. § 1.1206(b)(2).

[81] 47 C.F.R. § 1.1206(b).

[82] Public Law 104-13.

[83] Public Law 107-198; *see* 47 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSE

87. Accordingly, IT IS ORDERED that, pursuant to sections 4(i)–(j), 201(b), 225, and 303(r), 47 U.S.C. §§ 154(i)–(j), 201(b), 225, 303(r), this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSSION

Marlene H. Dortch
Secretary