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

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In the Matters of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for)	
Individuals with Hearing and Speech Disabilities)	
)	
E911 Requirements for IP-Enabled Service)	WC Docket No. 05-196
Providers)	
)	
Internet-Based Telecommunications Relay Service)	WC Docket No. <u>10-191</u>
Numbering)	

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on steps the Commission should take to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS), specifically, Video Relay Service (VRS) and IP Relay.¹ VRS allows individuals with hearing and speech disabilities to communicate using sign language through video equipment, and IP Relay allows these individuals to communicate in text using a computer. We seek to encourage use of geographically appropriate local numbers,² and ensure that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community.

2. In June 2008, the Commission instituted a ten-digit numbering plan for iTRS in order to make access by deaf and hard-of-hearing people functionally equivalent to access enjoyed by the hearing community, as required by statute. The Commission recognized that doing so would further the functional equivalency mandate by ensuring that Internet-based TRS users can be reached by voice

¹ "Internet-based TRS" refers to both Video Relay Service (VRS) and IP Relay, unless otherwise specified. 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, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11592 n.3 (2008) (*First Internet-based TRS Order*).

² The term "local numbers" refers to geographically appropriate ten-digit numbers that are linked to the North American Numbering Plan (NANP).

telephone users in the same way that voice telephone users are called.³ The Commission sought to ensure that iTRS users can be reached via telephone, just as hearing users can be reached via telephone.⁴ As a result of that order, most deaf and hard-of-hearing iTRS users have obtained local telephone numbers. Although iTRS providers are required to assign local numbers to their customers, at least some iTRS providers assign a toll free number as well, even if the customer does not request one. Thus, a large number of personal toll free numbers have been issued to iTRS users.

3. The automatic issuance and prevalence of toll free iTRS numbers presents several concerns. For example, the use of toll free numbers increases the risk of confusion and delay during an emergency call. The automatic issuance of toll free numbers also may be inconsistent with the statutory requirement to provide service that is functionally equivalent to hearing individuals, and is at odds with other Commission policies such as local number portability (LNP).⁵ Consumer groups representing deaf and hard-of-hearing users have raised similar concerns, and agreed with the Commission on the need to limit or prohibit the distribution of toll free numbers by iTRS providers.⁶ In this Notice, we seek comment on proposed rules designed to align access to local and toll free numbers by iTRS users more closely with the way that hearing users obtain toll free numbers. We expect to establish rules that will ensure that an iTRS user's local number is used routinely as the primary telephone number that hearing users dial to reach the deaf or hard-of-hearing user via an iTRS provider and that deaf and hard-of-hearing users employ for point-to-point calling with other deaf and hard-of-hearing users.⁷

II. BACKGROUND

4. *Authority.* The Commission has authority to adopt and implement a system for assigning iTRS users local numbers linked to the NANP pursuant to sections 225 and 251(e) of the Communications Act of 1934, as amended (the Act).⁸ Section 225 requires the Commission to ensure that functionally equivalent TRS be available nationwide to the extent possible and in the most efficient manner, and directs the Commission to adopt regulations to govern the provision and compensation of TRS.⁹ Section 251 grants the Commission authority to oversee numbering administration in the United

³ *First Internet-based TRS Order*, 23 FCC Red 11592-93, para. 1.

⁴ *Id.* The Commission's rules require that an iTRS user register with a "default provider" who will assign a ten-digit number to the user for use with his or her equipment. When a hearing user dials the iTRS user's number, the voice call is routed by the Public Switched Telephone Network (PSTN) to the user's default provider. Based on the ten-digit number that was called, the provider looks up Internet addressing information and completes an Internet-based text or video call to the user, with the provider's communications assistant translating between the voice call and text (IP Relay) or the voice call and American Sign Language over video (Video Relay Service). *Id.* at 11069-10, paras. 42-43.

⁵ See *infra* para. 13.

⁶ See Letter from Eliot J. Greenwald, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, WC Docket No. 05-196 at 1-2 (filed Dec. 3, 2009); see also Letter from Rosaline Crawford, Director, National Association of the Deaf Law and Advocacy Center, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, CC Docket 98-67, WC Docket No. 05-196 at 2 (filed Jan. 13, 2010) (urging "the prompt issuance of an NPRM or other means for stakeholders to comment and provide input into the development of toll free 800 number policies") (NAD Jan. 13, 2010 *Ex Parte* Letter).

⁷ Point-to-point calls are made between deaf and hard-of-hearing individuals directly over the Internet with the assistance of the Internet-based TRS Numbering Directory.

⁸ See *First Internet-based TRS Order*, 23 FCC Red at 11598-601, paras. 14-19 (2008) (*First Internet-based TRS Order*); see also 47 U.S.C. §§ 225, 251.

⁹ Section 225 instructs the Commission to adopt regulations including regulations "establish[ing] functional requirements, guidelines, and operations procedures for [TRS]," as well as mandatory "minimum standards" (continued....)

States.¹⁰ Establishing rules governing the use of toll free numbers by iTRS providers in connection with iTRS services is a continuation of the implementation of the Commission's numbering plan, and is essential to the Commission's goal of making the numbering system used by deaf and hard-of-hearing individuals functionally equivalent to the system used by hearing individuals.

5. *Internet-based TRS Orders.* On June 24, 2008, the Commission issued the *First Internet-based TRS Order*, in which it adopted a uniform numbering system for iTRS. Prior to the Commission's numbering plan, there was no uniform numbering system for iTRS.¹¹ Rather, iTRS users were reached at a dynamic IP address, a proxy or alias number, or a toll free number.¹² In the case of toll free numbers, an iTRS user would provide the number to any hearing user.¹³ When a hearing user dialed the iTRS user's toll free number, the voice call was routed by the PSTN to the provider that had subscribed to the number and assigned it to a user. That toll free number was not linked to a user-specific local number but the provider would be able to translate the toll free number dialed by the hearing user to the iTRS user's IP address in the provider's database. However, prior to December 31, 2008, iTRS providers did not share databases, and therefore, the iTRS user and people calling that user were forced to use the service of the iTRS provider that gave the user the toll free number. This arrangement was in tension with the Commission's interoperability requirements, which prohibit a VRS provider that seeks compensation from the Interstate TRS Fund from restricting the use of its equipment or service so that a VRS user cannot place or receive a call through a competing VRS provider.¹⁴

6. The Commission established the numbering system to advance functional equivalency by ensuring that deaf and hard-of-hearing iTRS users can be reached by hearing telephone users in the same way that hearing telephone users are reached.¹⁵ The numbering system was designed to ensure that emergency calls placed by iTRS users would be directly and automatically routed to the appropriate emergency services authorities.¹⁶ The system also provides the benefits of local number portability, to

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governing the provision of TRS. 47 U.S.C. §§ 225(d)(1)(A), (d)(1)(B). Section 225 also requires TRS to offer service "in a manner that is functionally equivalent to the ability of an individual who does not have a [hearing or speech disability] to communicate using voice communication services." 47 U.S.C. § 225(a)(3).

¹⁰ In section 251(e)(1) of the Act, Congress expressly assigned to the Commission exclusive jurisdiction over that portion of the NANP that pertains to the United States. Moreover, the Commission has authority under section 251(b)(2) to impose LNP obligations on the local exchange carrier (LEC) numbering partners of iTRS providers. See 47 U.S.C. §§ 251(e)(1), (h)(2).

¹¹ *First Internet-based TRS Order*, 23 FCC Rcd at 11594, para. 4.

¹² *Id.* at 11594, paras. 4-5.

¹³ *Id.*

¹⁴ *Id.*; see also Telecommunications for the Deaf and Hard of Hearing, Inc., Coalition *et al.* Comments in Support of CSDVRS's Petition for Expedited Reconsideration, CG Docket No. 03-123, WC Docket No. 05-196 at 5 (filed Oct. 27, 2009) (stating that with respect to proxy numbers, "each provider ends up with a 'walled garden' where the customers can make point-to-point video calls to the other customers of that provider, but cannot make a point-to-point video call to a customer of another provider. In addition, for a voice telephone user to place a VRS call to a person with a videophone using a proxy number, the caller must use the VRS provider of the called party.") (TDI Comments in Support of CSDVRS Petition for Reconsideration); *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, 5454-59, paras. 29-43 (2006) (prohibiting the practice of restricting the use of VRS to a particular provider).

¹⁵ *First Internet-based TRS Order*, 23 FCC Rcd at 11592-93, para. 1.

¹⁶ *Id.*

allow deaf and hard-of-hearing iTRS users to port their telephone numbers from one iTRS provider to another.¹⁷ The Commission's numbering plan included the creation of a central database mechanism that maps the NANP telephone numbers assigned to iTRS users' devices to an appropriate IP address known as a Uniform Resource Identifier (URI).¹⁸ In the *First Internet-based TRS Order's Further Notice of Proposed Rulemaking*, the Commission sought comment on issues involved in using toll free numbers for iTRS, including any impact that such numbers may have on the provision of 911 service and whether iTRS users should be subject to a fee for use of a personal toll free number, as hearing users are.¹⁹

7. In the *Second Internet-based TRS Order*, released on December 19, 2008, the Commission addressed issues included in the *First Internet-based TRS Order's Further Notice of Proposed Rulemaking*.²⁰ Among other things, the Commission provided existing users a three-month "registration period," during which iTRS users could select a default provider, provide their Registered Location, and obtain their new ten-digit NANP telephone numbers, followed by a three-month "permissive calling period," which ended on November 12, 2009.²¹ During these registration and permissive calling periods, existing iTRS users were able to place and receive calls via the method used prior to implementation of the Commission's numbering plan.²² At the conclusion of the permissive calling period, however, providers were required to register any unregistered user before completing a non-emergency VRS or IP Relay call.²³

8. The Commission also found that, to further the goals of the numbering system, "Internet-based TRS users should transition away from the exclusive use of toll free numbers" and required all iTRS users to obtain "ten-digit geographically appropriate numbers, in accordance with our numbering

¹⁷ *Id.* at 11607, para. 35.

¹⁸ *Id.* at 11610-12, paras. 46-49. The iTRS Directory is administered by NewStar. See *Commission Awards Contract to NewStar Inc. to Build and Operate Centralized Database for Internet Based Telecommunications Relay Service Numbering System*, Public Notice, 23 FCC Rcd 13385 (WCB 2008).

¹⁹ *First Internet-based TRS Order*, 23 FCC Rcd at 11630, para. 111. The Commission acknowledged that certain Internet-based TRS providers were offering and issuing numbers that were used to provide toll free services using non-geographic area codes such as 800, 888, 877 and 866. See *id.* at 11602, para. 22 n.72.

²⁰ See generally *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, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791 (2008) (*Second Internet-based TRS Order*). The Commission addressed issues related to 911, registration, toll free numbers, eligibility and verification procedures, assignment of numbers, numbering costs, consumer protection, and various petitions for reconsideration and clarification.

²¹ *Id.* at 801, 802, paras. 21, 23. On June 15, 2009, the Consumer and Governmental Affairs Bureau extended from June 30, 2009 to November 12, 2009 the end date for the permissive calling period during which Internet-based Telecommunications Relay Service providers were permitted to continue to complete the non-emergency calls of unregistered users. 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, WC Docket No. 05-196, Order, 24 FCC Rcd 8000 (CGB 2009).

²² *Second Internet-based TRS Order*, 24 FCC Rcd at 802, paras. 22, 23.

²³ *Id.* at 802, para. 23; see also *Consumer & Governmental Affairs Bureau Reminds Video Relay Service (VRS) and Internet Protocol (IP) Relay Service Providers of Their Outreach Obligations and Clarifies Their Call Handling Obligations for Unregistered Users After the November 12 2009, Ten-Digit Numbering Registration Deadline*, CG Docket No. 03-123, WC Docket No. 05-196, Public Notice, 24 FCC Rcd 12877, 12878 (CGB 2009) (stating, among other things, that VRS and IP Relay communications assistants may assist an unregistered caller with the registration process before or after a call).

system.²⁴ The Commission reasoned that local numbers, and not toll free numbers, should be used when contacting Public Safety Answering Points (PSAPs).²⁵ Accordingly, the Commission stated that a user's toll free number must be mapped to the user's local, geographically appropriate number.²⁶ Moreover, the Commission found that, just as voice telephone users are responsible for the costs of obtaining and using toll free numbers, the TRS fund should not compensate providers for the use of toll free numbers by iTRS users.²⁷

9. *Toll Free Clarification Public Notice.* In August 2009, the Consumer and Governmental Affairs Bureau and the Wireline Competition Bureau (the Bureaus) released the *Toll Free Clarification Public Notice* to clarify the intent of the *Second Internet-based TRS Order* that any toll free number retained or acquired by an iTRS user must be directed to the user's local number in the Service Management System (SMS)/800 database²⁸ by November 12, 2009, and that a toll free number and a local number should not be directed to the same URI in the iTRS Directory.²⁹ Additionally, the Bureaus acknowledged that certain point-to-point calls, as well as inbound dial-around calls, would require the use of a local number.³⁰

10. *CSDVRS and TDI Petitions.* On September 10, 2009, CSDVRS filed a petition for expedited reconsideration of the *Toll Free Clarification Public Notice*.³¹ CSDVRS claimed, among other things, that the *Toll Free Clarification Public Notice* violated the Administrative Procedure Act, impeded VRS interoperability, and undermined functional equivalency by eliminating toll free numbers for point-

²⁴ See *Second Internet-based TRS Order*, 24 FCC Rcd at 806-07, para. 32.

²⁵ *Id.*

²⁶ *Id.* The *Second Internet-based TRS Order* required that iTRS users be assigned ten-digit, geographically appropriate numbers—numbers within the users' rate centers—and prohibited any workaround solutions. See *id.* at 805, para. 28. However, on November 5, 2009, the Wireline Competition Bureau granted iTRS providers a temporary waiver of the prohibition in the *Second Internet-Based TRS Order* against assigning a geographically approximate number to a user in cases where a provider cannot gain access to a number in the user's rate center. Accordingly, during the waiver period, iTRS providers may use their best efforts to obtain a "geographically approximate" number as close to a user's rate center as possible. 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, WC Docket No. 05-196, Order, 24 FCC Rcd 13645, 13650-51, paras. 9, 11 (CGB/WCB 2009).

²⁷ See *Second Internet-based TRS Order*, 24 FCC Rcd at 815-16, paras. 52-54. The Commission permitted iTRS providers to provide toll free numbers at their own cost. See *id.* at 815 n.189 ("We note that, to the extent that Internet-based TRS providers do not obtain compensation from the Fund for the charges associated with these toll-free numbers today, this Order simply preserves the status quo.").

²⁸ See 47 C.F.R. § 52.101(d) (defining the SMS/800 database as "[t]he administrative database system for toll free numbers. The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control. The Service Management System shares this information with the Service Control Points.").

²⁹ *Clarification Regarding the Use of Toll Free Numbers for Internet-based Telecommunications Relay Service*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Public Notice, 24 FCC Rcd 10626, 10627 (2009) (*Toll Free Clarification Public Notice*).

³⁰ *Id.* at 10628. Point-to-point calls are made between deaf and hard-of-hearing individuals directly over the Internet with the assistance of the Internet-based TRS Numbering Directory. See *supra* note 7. Inbound dial-around calls are calls placed to an iTRS user via an iTRS provider other than the user's default provider. See *id.* at 816, para. 54.

³¹ See CSDVRS LLC Petition for Expedited Reconsideration, CG Docket No. 03-123, CC Docket 98-67, WC Docket No. 05-196 at 2-17 (filed Sept. 10, 2009) (CSDVRS Petition for Expedited Reconsideration).

to-point and dial-around calls. Subsequently, the TDI Coalition, which represents deaf and hard-of-hearing iTRS users, filed a Petition for Emergency Stay³² and a Request to Return to the Status Quo Ante. The TDI Coalition asked the Commission to stay certain portions of the *Toll Free Clarification Public Notice*, and direct any iTRS provider that had removed toll free numbers from the iTRS Directory to reinstate those numbers.³³ The TDI Coalition claimed that this relief was necessary to avoid "disruption of service to the severe detriment of people who are deaf, hard-of-hearing, deaf-blind or have speech disabilities who currently use toll free numbers."³⁴

11. *Toll Free Waiver Order and Extensions.* In response to TDI's concerns that certain point-to-point calls would not be completed,³⁵ on December 4, 2009, the Bureaus waived the portion of the *Toll Free Clarification Public Notice* that stated that a toll free number and a local geographic number should not be directed to the same URI in the iTRS Directory.³⁶ Also, the Bureaus directed those iTRS providers that had removed working, assigned toll free numbers that did not point to the iTRS user's local number in the SMS/800 database in accordance with the *Toll Free Clarification Public Notice*, to reinstate those toll free numbers to the iTRS Directory.³⁷ This four-month waiver was designed to give the Commission time to consider the CSDVRS petition for reconsideration as well as iTRS toll free issues generally. The Commission also recognized that it would take consumers and certain small businesses time to transition to geographically appropriate local numbers. On April 2, 2010, the Bureaus extended the waiver for an additional four months, until August 4, 2010,³⁸ and on August 4, 2010, the Bureaus further extended the waiver until February 4, 2011.³⁹

12. *Continued Distribution of Toll Free Numbers.* Although Commission rules require iTRS providers to give each customer a local number, some providers are routinely distributing toll free

³² TDI Coalition Petition for Emergency Stay, CG Docket No. 03-123, WC Docket No. 05-196 (filed Oct. 27, 2009) (TDI Coalition Petition for Emergency Stay).

³³ See *id.* at 1-2; see also TDI Coalition Request for Return to the Status Quo Ante, CG Docket No. 03-123, WC Docket No. 05-196 at 4-5 (filed Nov. 12, 2009) (TDI Coalition Request for Return to the Status Quo Ante).

³⁴ TDI Coalition Request for Return to the Status Quo Ante at 2.

³⁵ TDI Coalition Petition for Emergency Stay at 6 (stating that implementation of the Commission's *Toll Free Public Notice* will "result in a videophone user being unable to place a call to a toll free number of a videophone user who does not have the same default VRS provider").

³⁶ 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 (WCB/CGB 2009) (*Toll Free Waiver Order*). CSDVRS's petition remains pending.

³⁷ Some providers interpreted the Commission's requirement that toll free numbers must be directed to their local number in the SMS/800 database by November 12, 2009 to mean that the toll free numbers directed to the same URI in the iTRS Directory as the local number had to be removed from the iTRS Directory by that date.

³⁸ *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; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order, 25 FCC Rcd 3331 (WCB/CGB 2010).

³⁹ *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, DA 10-1445 (WCB/CGB rel. Aug. 4, 2010).

numbers in addition to local numbers.⁴⁰ These toll free numbers are being distributed at no charge to the user and are provided even if the iTRS user does not request it. This practice encourages the use of toll free numbers, which is inconsistent with the Commission's ruling that iTRS users should "transition away from the exclusive use of toll-free numbers to ten-digit, geographically appropriate numbers, in accordance with our numbering system."⁴¹

13. There are several problems with the use of toll free numbers in the context of iTRS.

- *Lack of Functional Equivalency and Consumer Confusion.* The *First Internet-based TRS Order* attempted to ensure that "internet-based TRS users can be reached by voice telephone users in the same way that voice telephone users are called."⁴² Hearing users are not typically reached via personal toll free numbers, nor are they automatically provided a personal toll free number when they sign up for service. Moreover, evidence in prior proceedings reflects that the automatic issuance of toll free numbers can cause confusion and frustration.⁴³ An iTRS user may not understand the purpose of the toll free number, or understand that it is duplicative of the local number.⁴⁴ In addition, many iTRS users do not want to receive a toll free number, even if it is provided free of

⁴⁰ See, e.g., Sorenson Communications, Inc., Sorenson Gold Services, http://www.sorensontvrs.com/gold_services (last visited July 13, 2010) (explaining that it offers two numbers, a local ten-digit number and a "Direct VP" number (a toll free number), and further suggesting that the local number can be used for purposes such as resumes, forms, and online purchases, whereas the toll free number can be used free of charge by hearing callers from anywhere in the country).

⁴¹ See *Second Internet-based TRS Order*, 24 FCC Rcd at 806-07, para. 32.

⁴² *First Internet-based TRS Order*, 23 FCC Rcd at 11592-93, para. 1.

⁴³ *Toll Free Waiver Order*, 24 FCC Rcd at 14343, para. 3 n.9.

⁴⁴ See Letter from Sheri Ann Farinha, NorCal Services for Deaf & Hard of Hearing, to Mark Stone, Deputy Chief, Consumer and Governmental Affairs Bureau, FCC, WC Docket No. 03-123 at 2 (filed Oct. 8, 2009) (claiming that there is a great deal of confusion among consumers about toll free numbers and misleading information about whether these numbers are needed for basic telephone service); see also TDI Comments in Support of CSDVRS Petition for Expedited Reconsideration at 8 (stating that, although consumer groups "have advocated that iTRS providers should give out ten-digit geographic numbers to their residential users, and still prefer ten-digit geographic numbers over toll free numbers for residential users, the fact remains that some providers are still supplying toll free numbers to their residential users, and the toll free numbers are the numbers that those users know and have given out to their family and friends"); Rosaline Crawford, National Association of the Deaf Law and Advocacy Center, Remarks at the Roundtable on Ten-Digit Numbering and E911 Requirements for VRS and IP Relay, 03-123, 05-195 (Sept. 25, 2009) at 7 (transcript available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020142116>) ("On the 800 number issue, it is my understanding and, providers can correct me if I'm wrong, but the vast majority, if not virtually all ten-digit numbers that have been assigned to VRS numbers have a corresponding 800 number associated with them. And consumers have generally been told you can use either or both. You can use the 800 number, just like your ten-digit number, you can give it away in your friends and families. Please tell me, which do you want to show up on your screen as your caller ID. The 800 number as your caller ID or your local number as your caller ID.") (iTRS Roundtable Transcript).

charge.⁴⁵ Finally, because iTRS customers are issued a local number, they do not need toll free numbers to achieve functional equivalency.⁴⁶

- *Emergency Calling.* One of the primary purposes for developing a numbering system for iTRS that is linked to the NANP was to ensure that emergency calls placed by iTRS users “will be routed directly and automatically to the appropriate emergency services authorities” by iTRS providers.⁴⁷ The Commission reaffirmed that the local numbers will ensure automatic routing.⁴⁸ In a typical 911 call, the call taker at the PSAP will see the user’s local number displayed and will verbally confirm that number as the call-back number.⁴⁹ If the person placing an emergency call through iTRS provides a toll free number as the call-back number (for example, out of habit), there will be a discrepancy with the local number displayed. This discrepancy could cause confusion and in turn affect critical response time.⁵⁰
- *Lack of Portability and Impairment of Full Competition.* When an iTRS provider secures a toll free number for one of its users, the “toll free subscriber,” for porting purposes of the toll free number, is the iTRS provider and not the user.⁵¹ Thus, when an iTRS user leaves the service provider, the user cannot easily and reliably take the toll free number with him or her. For example, many iTRS providers that would otherwise be a competitive alternative to that service provider simply do not support provider-paid personal toll free numbers. As a result, an iTRS user that has relied heavily on a personal toll free number may be reluctant to switch providers. Further, although the Commission has found that iTRS providers are obligated to take all steps necessary to port on behalf of the user, we do not believe this is consistently achievable for toll free numbers.⁵² Moreover, as a technical matter, the Commission’s iTRS Directory is not able to

⁴⁵ See Sheri Ann Farinha, *NorCal Services for Deaf & Hard of Hearing iTRS Roundtable Transcript* at 6 (“And really we need to emphasize that there are many, many, users who do not want an 800 number, period. They want a real local ten-digit number.”).

⁴⁶ See *Second Internet-based TRS Order*, 24 FCC Rcd at 806-07, paras. 29-32 (discussing comments regarding use of toll free numbers).

⁴⁷ *First Internet-based TRS Order*, 23 FCC Rcd at 11593, para. 1.

⁴⁸ *Second Internet-based TRS Order*, 24 FCC Rcd at 806-07, para. 32.

⁴⁹ NATIONAL EMERGENCY NUMBER ASSOCIATION, STANDARD 56-005: 9-1-1 CALL ANSWERING STANDARD. “3.6 Standard Information Gathering,” at 8 (2006), available at <http://www.nena.org/standards/operations/911-call-answering>.

⁵⁰ The Wireline E911 Network operates on the selective routing of geographically appropriate ten-digit numbers, and toll free numbers rarely if ever appear in wireline and wireless E911 calls.

⁵¹ See CSDVRS Petition for Expedited Reconsideration at 15 (“Toll free numbers are owned by providers, not consumers.”). CSDVRS also states that a VRS provider would not fund and provide engineering support for an 800 number when the calls are directed to a competitor and would likely terminate the number. See *id.*; see also 47 C.F.R. § 52.101(e) (defining “toll free subscriber” as “[t]he entity that requests a Responsible Organization to reserve a toll free number from the SMS database”).

⁵² See *First Internet-based TRS Order*, 23 FCC Rcd at 11607, para. 35.

automatically synchronize the porting of a device's local number and toll free number from one provider to another.⁵³

Because local numbers are readily portable and toll free numbers are not, the automatic issuance of personal toll free numbers limits user choice and reduces competition, raising concerns about functional equivalency.⁵⁴ One policy goal of the Commission's numbering plan was to create competition in the iTRS market and enhance consumer choice.⁵⁵ For example, the Commission made clear that iTRS users could "dial around" their default provider in order to utilize the services of a different iTRS provider.⁵⁶ Moreover, the Commission stated that an iTRS user could select and register with a new default provider at any time and have his or her number ported to that provider.⁵⁷ To the extent that iTRS providers promote the use of toll free numbers, that practice is at odds with our interoperability requirements and competitive goals.⁵⁸

- *Number Conservation.* To the extent that iTRS providers automatically provide a personal toll free number at the same time they provide the requisite local number, the toll free number is duplicative. The Commission has articulated a policy of promoting number conservation.⁵⁹ Issuing toll free numbers that do not serve a unique purpose, and indeed, that the customer does not request, undermines that policy. While iTRS users are free to obtain a toll free number in the same manner as hearing users do, we seek to discontinue the automatic and unnecessary dissemination of toll free numbers.

⁵³ See Brian Rosen, *NeuStar, iTRS Roundtable Transcript* at 12-13 (stating that NeuStar is having great difficulty dealing with toll free numbers as there is no way to figure out if the number has been ported from one provider to another).

⁵⁴ The Commission has long held that the inability of users to easily transfer a toll free number is anticompetitive. See, e.g., *Toll Free Service Access Codes*, CC Docket No. 95-155, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11167, para. 5 (1997) (stating that competition in toll free service was in the public interest); *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5904, para. 133 (1991) (refusing to grant AT&T streamlined regulation of its 800 services because of the absence of toll free number portability); *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Second Report and Order, 8 FCC Rcd 3668, 3669, para. 10 (1993) (finding that once the toll free database had been implemented, AT&T's 800 services were subject to substantial competition).

⁵⁵ *First Internet-based TRS Order*, 23 FCC Rcd at 11609-10, para. 43; *Second Internet-based TRS Order*, 24 FCC Rcd at 823, para. 70.

⁵⁶ *First Internet-based TRS Order*, 23 FCC Rcd at 11609-10, para. 43.

⁵⁷ *Id.*

⁵⁸ See *supra* notes 40, 44-45, 51.

⁵⁹ See *Toll Free Service Access Codes*, CC Docket No. 95-155, Notice of Proposed Rulemaking, 10 FCC Rcd 13692, 13696, para. 12 (1995) (stating that section 1 and Title II of the Communications Act of 1934 compel "the Commission to promote the efficient use of enlisting toll free numbers and to ensure that new toll free numbers are assigned and used in an efficient, fair, and orderly manner"); see also *id.* at 13698, para. 22 ("In planning for the deployment of new toll free codes, our goal is to avoid rapid, unanticipated depletion of these scarce numbering resources."); *Toll Free Service Access Codes*, CC Docket No. 95-155, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9061-62, para. 6 (1997) (stating that the Commission adopted rules prohibiting the warehousing, hoarding, and brokering of toll free numbers in an "effort to conserve the toll free numbering resource").

- *Costs to the Fund.* In the *Second Internet-based TRS Order*, the Commission concluded that costs associated with iTRS users' toll free numbers are not compensable from the TRS Fund.⁶⁰ We remain concerned, however, that costs associated with obtaining and distributing toll free numbers may be directly or indirectly compensated. We are also concerned that extensive use of toll free numbers may increase per-minute costs to the Fund. Although staff analysis cannot determine whether "unlimited free calling" encourages more calls to be placed from hearing people to iTRS users, analysis does indicate that "unlimited free calling" encourages such calls to be held longer than otherwise would be the case; the extra minutes of traffic that toll free numbers generate in this fashion are compensable from the Fund.⁶¹

III. DISCUSSION

14. In this Notice, we seek comment on proposed rules intended to improve access to telephone numbers associated with iTRS and to ensure that such numbers are assigned in the same manner as numbers are assigned to hearing telephone users. While iTRS users are of course free to obtain toll free numbers, our goal is to encourage iTRS users to use the local number as their primary—and in most cases exclusive—telephone number, as this is the case for hearing users. Similarly, the local number should be the number that the user gives out for contact information, applications and resumes, and online purchases, and that is presented, for example, for Caller ID purposes. We are not seeking to prevent deaf or hard-of-hearing individuals who want the use of a toll free number from obtaining one. Instead, we are seeking to ensure that toll free numbers do not serve as default personal numbers simply because a customer is deaf or hard-of-hearing. Deaf and hard-of-hearing users who wish to use a toll free number for business or personal use may acquire a toll free number, or keep a toll free number that an iTRS provider has already assigned, in a manner consistent with how toll free numbers are used by hearing individuals.⁶²

15. Pursuant to our authority under sections 225 and 251 of the Act, we propose rules to address the problems identified above that are caused by the promotion and disproportionately high use of toll free numbers in connection with iTRS services.⁶³ Moreover, we seek comment on ways to ensure that those iTRS users who have a need for toll free numbers for business purposes or who wish to obtain a toll free number for personal use are able to use toll free numbers in the same manner as hearing users. Our specific requests for comment are set forth below.

16. *User-Selected Toll Free Use.* We propose that the first step in reforming the use of toll free numbers for iTRS be to prohibit iTRS providers, acting in the capacity of a user's default number provider, from also automatically assigning a new toll free number to the user.⁶⁴ The Commission's previous efforts have not led to a significant reduction in the assignment of toll free numbers by iTRS providers. We therefore believe that immediately prohibiting iTRS providers from automatically issuing toll free numbers is the best way to achieve the goal of encouraging the use of local numbers.

⁶⁰ See *Second Internet-based TRS Order*, 24 FCC Rcd at 815-16, paras. 52-54.

⁶¹ Our analysis of sample data indicates that calls to the toll free numbers are on average 10 to 15% longer than the calls to local numbers during the same period. Over the course of a year, this incremental length results in several millions of dollars of compensation from the Fund.

⁶² See NAD Jan. 13, 2010 *Ex Parte* Letter at 1-2 (stating that "800 numbers for Internet-based TRS users must function in the same manner as business and personal 800 numbers used by telephone users").

⁶³ See *infra* Appendix A.

⁶⁴ See *infra* para. 17 (emphasizing that the prohibition is only for automatic issuance of toll free numbers, not for the use of toll free numbers that are issued upon request).

Furthermore, the consumer groups representing iTRS users support this approach.⁶⁵ Indeed, consumer groups have expressed a desire to work with the Commission to promote use of local numbers as the primary contact for deaf and hard-of-hearing persons.⁶⁶ We seek comment on this approach.

17. *Continuing Use of and Access to Toll Free Numbers.* We emphasize that our proposed rules do not preclude iTRS users from having toll free numbers if they want them. On the contrary, we believe that iTRS users should have the same access to toll free numbers that hearing users do. A hearing user who wants a toll free number for personal or business use contacts a toll free service provider to obtain a toll free number; we believe that deaf and hard-of-hearing users should do the same.⁶⁷ Moreover, we recognize that it would be disadvantageous to iTRS users who want to continue to use a toll free number to have to obtain a new number and inform people of that new number. Accordingly, we propose that any iTRS user who wants to keep a toll free number that was issued by an iTRS provider may do so. At the user's request, the iTRS provider must facilitate the transfer of the user's toll free number to a direct subscription with a toll free service provider, making the iTRS user the toll free subscriber for that number. At that point, the iTRS user will be a customer of the toll free service provider: the toll free service provider will bill the iTRS user directly, and the iTRS provider that originally provided the toll free number will have no continuing role in administering the toll free number on the user's behalf.

18. *No Support for Toll Free Numbers from TRS Fund.* The Commission has concluded that the costs associated with assigning and providing to iTRS users toll free numbers are not compensable from the TRS Fund.⁶⁸ Thus, if an iTRS user transfers his or her toll free number from an iTRS provider to a toll free service provider (or obtains a toll free number directly from a toll free service provider), the user assumes responsibility for all costs associated with the toll free number.⁶⁹

19. *Transfer of Toll Free Numbers.* We seek comment on ways that iTRS providers can help transfer a toll free number assigned by the iTRS provider to the user's direct subscription with a toll free service provider. We seek comment on any jurisdictional or policy issues the Commission should consider in regard to this change in toll free subscription. Consistent with our *Toll Free Clarification*

⁶⁵ See, e.g., NAD Jan. 13, 2010 *Ex Parte* Letter at 1 (stating that consumer groups will be publishing information on why local numbers are superior to toll free numbers and encouraging consumers to use their local numbers and discontinue use of their toll free numbers); National Association of the Deaf, *Why Local 10-Digit Numbers Are Superior to Toll Free Numbers*, <http://www.nad.org/blogs/debrapattin/local-10-digit-numbers-are-superior-toll-free-numbers> (last visited July 13, 2010); see also *supra* notes 44-45, 51.

⁶⁶ See, e.g., Letter from Eliot J. Greenwald, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, WC Docket No. 05-196, at 1-2 (filed Dec. 4, 2009) (TDI Coalition Dec. 4, 2009 *Ex Parte* Letter). The TDI Coalition has recommended that iTRS providers identify those users who have a need for toll free numbers and take back any toll free numbers that users do not want. See *id.*; Letter from Eliot J. Greenwald, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, WC Docket No. 05-196 at 1 (filed Nov. 25, 2009) (TDI Coalition Nov. 25, 2009 *Ex Parte* Letter); see also *supra* note 6.

⁶⁷ We agree with the TDI Coalition that "[s]ince hearing people have access to toll free numbers, functional equivalency requires access to toll free numbers by people who are deaf or hard of hearing." Letter from Eliot J. Greenwald and Troy F. Tanner, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, WC Docket No. 05-196, CG Docket No. 10-51 at 1 (filed Mar. 11, 2010) (TDI Coalition Mar. 11, 2010 *Ex Parte* Letter).

⁶⁸ See *Second Internet-based TRS Order*, 24 FCC Rcd at 815-16, paras. 52-54.

⁶⁹ See TDI Coalition Mar. 11, 2010 *Ex Parte* Letter at 2 ("[T]here is a legitimate need for toll free numbers by businesses as well as by some residential users who would want to pay for toll charges incurred by people calling them").

Public Notice, toll free numbers that are used in conjunction with the iTRS Numbering Directory will be mapped to the user's local number.⁷⁰ We seek comment on any technical or policy issues involved with this proposal or mapping the toll free number to the user's local number in the SMS/800 database.

20. We also seek comment on how iTRS providers should assist an iTRS user in the process of transferring his or her toll free number to a toll free service provider. We propose that, at a minimum, iTRS providers modify the user notifications they currently provide⁷¹ to include information on how users can acquire or transfer a toll free number and how toll free numbers may be linked to ten-digit telephone numbers in the iTRS Directory. We also seek comment on whether there are any additional steps the Commission should take to protect users or ensure they get unbiased and full information? We want to make the transition to a new toll free number process as easy as possible for iTRS users. Commenters should therefore address what information would be most helpful to users, and what steps the Commission can take to minimize customer confusion.

21. *Toll Free Numbers in the iTRS Directory*. When a hearing customer obtains a toll free number from a toll free provider, that number is mapped to the user's local number in the SMS/800 database. We believe that when a deaf or hard-of-hearing person obtains a toll free number from a toll free provider, the number should also be mapped to the user's local number in the iTRS Directory.⁷² This will permit a deaf or hard-of-hearing user to be reached at a toll free number both by other deaf and hard-of-hearing users on direct calls that are completely Internet-based, and by hearing users who "dial around" the user's default provider.

22. Parties have identified routing problems that occur when toll free numbers are not linked to the associated local numbers in the iTRS Directory.⁷³ We also recognize that these routing problems

⁷⁰ *Toll Free Clarification Public Notice*, 24 FCC Red at 10627. For example, this mapping could occur in the SMS/800 database.

⁷¹ See 47 C.F.R. § 64.611(f) (requiring iTRS providers to provide user notifications about numbering E911).

⁷² See NAD Jan. 13, 2010 *Ex Parte* Letter at 2 (stating that "to ensure effective routing, Internet-based TRS user 800 numbers must be maintained in the Internet-based TRS number database"); see also Elliot Greenwald, Counsel for TDI Coalition *et al.*, iTRS Roundtable Transcript at 13 (stating that from a consumer's perspective, toll free numbers must be maintained in the iTRS Directory so that toll free service of these users is functionally equivalent to hearing users); CSDVRS Petition for Expedited Reconsideration at 17-18 (arguing that toll free numbers should be maintained in the iTRS Directory so iTRS users can "continue using these numbers in a manner that is functionally equivalent to the manner in which voice telephone consumers can use them").

⁷³ See, e.g., Letter from Kelby Brick, Vice President - Regulatory & Strategic Policy, Purple Communications, Inc. to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, WC Docket No. 05-196 at 1 (filed Dec. 2, 2009) (Purple Dec. 2, 2009 *Ex Parte* Letter) ("When an individual calls another person's toll-free videophone number from an alternate provider's video phone, the iTRS database will not recognize the number being called. As such it will not go through. Rather, what will happen is this: (1) the call will appear to be a call to a hearing party and will route to the caller's default VRS provider; (2) the caller will thus get connected to a video interpreter and become very confused (assuming the caller does not abandon the call immediately after seeing a relay queue splash screen on the video screen); (3) if the call progresses any further, the VI will attempt to make a hearing call to the toll-free number which results in being connected to another VI of the toll free number owners' default VRS provider; (4) the call, if it gets this far, will then be terminated immediately."); see also Letter from Jeff Rosen, General Counsel, Snap!VRS to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123, WC Docket No. 05-196 at 1 (filed Dec. 2, 2009) ("Whether calling out or receiving calls, VP200 customers with their 800 numbers removed from the iTRS database are not connecting point to point with Snap!VRS Ojo customers; those calls are instead being automatically diverted to VRS."); TDI Coalition Mar. 11, 2010 *Ex Parte* Letter at 2 ("In order to facilitate point-to-point video calling and provide for the ability of any user to call the toll free number of any other user in a way that is functionally equivalent to the ability of voice telephone users to call the toll free number of any other voice (continued....)");

can create a "walled garden" for the dominant iTRS provider.⁷⁴ Therefore, we believe that mapping the toll free number to the local number in the iTRS directory is an important aspect of functional equivalency because it allows deaf and hard-of-hearing users to receive calls through any iTRS provider, and propose that such mapping to the iTRS directory be mandatory. We seek comment on that proposal.

23. *Transition Period.* We recognize that it would take time for iTRS users to become aware of and conform to the toll free number procedures that may result from this Notice. We agree with the TDI Coalition that we need to allow a reasonable period of time for consumer outreach and education to transition consumers from toll free numbers to local numbers.⁷⁵ We believe that a one-year transition period would be sufficient. During this time, the Commission, iTRS providers, and consumer groups can engage in outreach efforts to educate users on the problems of toll free numbers in the iTRS context, the benefits of using geographically appropriate numbers in this context, and the steps for obtaining toll free numbers directly from a toll free service provider. Moreover, iTRS users can update contact information, obtain a toll free number from a toll free provider, if desired, and make any other necessary adjustments. We also expect to use the transition period to educate users on the new procedures for obtaining a toll free number. We seek comment on our proposal to allow a one-year transition period. We also seek comment on whether there are any other issues we must consider in connection with the proposed transition period.

24. *Removing Non-Selected Toll Free Numbers from the iTRS Directory.* We believe that an important outcome of this proceeding should be to cleanse the iTRS Directory of extra or unwanted toll free numbers. Accordingly, we propose that after the transition period, any toll free numbers that have not been mapped to local numbers in the SMS/800 database by a toll free service provider be removed from the iTRS Directory. We seek comment on whether there is any reason not to remove these numbers from the iTRS Directory. Moreover, we seek comment on whether there should be a process where, during the transition period, iTRS users who know they do not want their toll free number(s) can request that those numbers be deleted from the iTRS Directory. Such a procedure may help clean up the iTRS Directory on an ongoing basis as opposed to being done all at once at the end of the transition period. We seek comment on whether this proposal may cause any service disruption to users and, if so, steps we can take to minimize such disruption. We also seek comment on whether there are any technical or policy considerations regarding, for example, toll free number administration, that must be addressed.

25. *Consumer Outreach.* We believe that the success of the Commission's numbering plan was in major part due to the outreach efforts by consumer groups, as well as by iTRS providers and the Commission. We believe this will be the case for our efforts to revise the Commission's policies and

(Continued from previous page)

telephone users, there is a need for toll free numbers associated with iTRS use to both point to ten digit geographic numbers in the SMS/800 database and to be populated in the iTRS database.").

⁷⁴ Purple Dec. 2, 2009 *Ex Parte Letter* at 1 ("If, on the other hand, a customer using a videophone (such as the Sorenson VP-200) calls a toll free videophone number that is managed by the same provider, the call will connect successfully as a point-to-point call. This is due to the fact that those toll-free numbers are still being maintained in the default providers' proprietary routing database similar to the old proxy number system."); see also CSDVRS Petition for Expedited Reconsideration at 10 (claiming that not mapping an iTRS user's toll free number to his or her local number in the iTRS database provides "added incentive for these individuals to stay with that dominant provider . . . so that they can continue using 800 numbers for their incoming and point-to-point calls").

⁷⁵ See TDI Coalition Mar. 11, 2010 *Ex Parte Letter* at 2 ("In order to give the consumer outreach and education program a chance to be successful, there will need to be a sufficient transition period to allow for consumers to have sufficient time to be educated on the matter and to elect to either switch their number use to ten digit geographic numbers or to continue to use toll free numbers."); see also TDI Coalition Nov. 25, 2009 *Ex Parte Letter* at 1 (suggesting that the transition period could be similar to what happens when there is a change of area code).

procedures regarding toll free number use in connection with iTRS service as well.⁷⁶ Consumer groups representing deaf and hard-of-hearing iTRS users have stated that iTRS providers have given inconsistent information regarding the use of and need for toll free numbers.⁷⁷ We recognize that deaf and hard-of-hearing individuals may be used to the current process for obtaining toll free numbers and that any change will require substantial education and outreach. We also recognize that iTRS providers will need to play a major role in consumer education because of their relationships with the users and their history as providers of toll free numbers. Consumer advocacy groups as well as the Commission will also play a significant role in consumer outreach and education efforts. The Commission is committed as well to playing a significant role in conducting consumer outreach and education on this issue. We seek input on ways to make information about the availability and use of toll free numbers available to iTRS users, such as fact sheets and websites. We encourage consumers to assist in outreach efforts through their community contacts, and welcome other ideas about what the Commission might do to help facilitate consumer outreach efforts.⁷⁸

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility

26. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the Notice and must have a separate and distinct heading designating them as responses to the IRFA.

B. Paperwork Reduction Act

27. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

⁷⁶ *See* TDI Coalition Mar. 11, 2010 *Ex Parte* Letter at 2 ("In order to avoid consumer confusion and disruption of service, there will need to be an extensive consumer outreach and education program on the part of those iTRS providers who distributed toll free numbers as well as the Commission.")

⁷⁷ *See supra* notes 40, 44-45, 51; *see also* TDI Coalition Comments in Support of CSDVRS Petition for Expedited Reconsideration at 8 (stating that they "do not condone the way some providers have pushed toll free numbers on consumers").

⁷⁸ The TDI Coalition recommends that, although iTRS providers must continue to have the freedom to inform customers of the availability of toll free numbers, the Commission could prohibit providers from disseminating misleading information regarding the alleged benefits of toll free numbers to residential users. The TDI Coalition also recommends that iTRS providers inform all users who are considering taking toll free numbers that point-to-point video calls are already toll free since they utilize the Internet. *See* TDI Comments in Support of CSDVRS Petition for Expedited Reconsideration at 13-14.

C. Other Procedural Matters

1. Ex Parte Presentations

28. This proceeding 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 presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.⁸⁰ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.⁸¹

2. Comment Filing Procedures

29. Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁸² interested parties may file comments and reply comments regarding the further notice on or before the dates indicated on the first page of this document. All filings should refer to WC Docket No. 10-191.⁸³ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's e-Rulemaking Portal; or (3) by filing paper copies.⁸⁴

30. **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs/> or the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

31. **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.

32. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-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.

33. Effective December 28, 2009, 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, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington DC 20554.

34. **People with Disabilities:** 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 and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

⁷⁹ 47 C.F.R. §§ 1.1200-1.1216.

⁸⁰ 47 C.F.R. § 1.1206(b)(2).

⁸¹ 47 C.F.R. § 1.1206(b).

⁸² 47 C.F.R. §§ 1.415, 1.419.

⁸³ We hereby incorporate all comments and *ex parte* presentations in CG Docket No. 03-123 and WC Docket No. 05-196 into this docket. Commenters need not resubmit material previously filed in those proceedings.

⁸⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Red 11322 (1998).

35. Parties should send a copy of their filings to Heather Hendrickson, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C225, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to heather.hendrickson@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

36. Documents in WC Docket No. 10-191 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

V. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 225, 251(e), and 255 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 225, 251(e), and 255, and sections 0.91, 0.141, 0.291, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.141, 0.291, 0.361, 1.3, that this Notice of Proposed Rulemaking IS ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Draft Proposed Rules for Public Comment

Part 64 of Title 47 of the Code of Federal Regulations includes the following proposed amendments:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403 (b)(2)(B), (C), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.611 is amended by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), adding a new paragraph (e) as follows and amending paragraph (g) as follows:

(e) *Toll Free Numbers.* A VRS or IP Relay provider:

- (1) May not assign or issue a toll free number to any VRS or IP Relay user.
- (2) That has already assigned or provided a toll free number to a VRS or IP Relay user must, at the VRS or IP Relay user's request, facilitate the transfer of the toll free number to a toll free subscription with a toll free service provider that is under the direct control of the user.
- (3) Must remove from the Internet-based TRS Numbering Directory any toll free number that has not been transferred to a subscription with a toll free service provider and for which the user is the subscriber of record as of [end date of transition period].

(g) *User Notification.* Every VRS or IP Relay provider must include an advisory on its website and in any promotional materials addressing numbering or E911 services for VRS or IP Relay.

- (1) At a minimum, the advisory must address the following issues:

- (v) The process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and
- (vi) The process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory.

(2) VRS and IP Relay providers must obtain and keep a record of affirmative acknowledgement by each Registered Internet-based TRS User of having received and understood the advisory described in this subsection.

3. Section 64.613 is amended to read as follows:

§ 64.613 Numbering Directory for Registered Internet-based TRS Users

(a) TRS Numbering Directory.

(1) The TRS Numbering Directory shall contain records mapping the geographically appropriate NANP telephone number of each Registered Internet-based TRS User to a unique Uniform Resource Identifier (URI).

(2) For each record associated with a VRS user's geographically appropriate NANP telephone number, the URI shall contain the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

(3) As of [date of final rules], Internet-based TRS providers must ensure that the toll free number of a user that is associated with a geographically appropriate NANP number will be associated with the same URI as that geographically appropriate NANP telephone number.

(4) Only the TRS Numbering Administrator and Internet-based TRS providers may access the TRS Numbering Directory.

APPENDIX B

Initial Regulatory Flexibility Analysis

CG Docket No. 03-123, WC Docket No. 05-96, WC Docket No. 10-191

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁸⁵ the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁸⁶ In addition, the Notice and the IRFA (or summaries thereof) will be published in the Federal Register.⁸⁷

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

2. In the Notice, the Commission seeks comment on steps the Commission should take to improve toll free access for Internet-based Telecommunications Relay Service (iTRS). Specifically, as a continuation of the Commission's ten-digit numbering plan for iTRS, we propose rules, and seek comment, to ensure that toll free numbers are as available, and used, by deaf and hard-of-hearing users as they are for hearing users. For example, the Commission seeks comment on ways to ensure that iTRS users in most cases use a local number as the primary telephone number. The Commission seeks comment on prohibiting iTRS providers from assigning new toll free numbers to users. The Commission also seeks comment on methods for an iTRS provider to assist an iTRS user in the process of transferring his or her assigned toll free number to a subscription with a toll free service provider. The Commission seeks comment on a proposal that a deaf or hard-of-hearing iTRS user that obtains a toll free number from, or ports a toll free number to, a toll free service provider that has mapped the number to the user's local number in the SMS/800 Database, may also have that toll free number mapped to the user's local number in the iTRS Directory. The Commission seeks comment on a one-year transition period for iTRS users to transfer toll free numbers to a direct subscription with a toll free service provider. The Commission also seeks comment on whether there is any reason not to remove any non-user selected toll free numbers from the iTRS database. The Commission seeks comment on consumer outreach efforts to educate and assist iTRS users with the changes to toll free access.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this *Notice of Proposed Rulemaking* is contained in sections 1, 4(i), 4(j), 225, 251(e), and 255 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 225, 251(e), and 255, and sections 0.91, 0.141, 0.291, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.141, 0.291, 0.361, 1.3.

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

⁸⁵ 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁸⁶ 5 U.S.C. § 603(a).

⁸⁷ See *id.*

Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁸⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹¹

5. With regard to whether a *substantial number* of small entities may be affected by the requirements proposed in this, the Commission notes that, of the fifteen providers affected by the Notice, four meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is: all such firms having 1,500 or fewer employees.⁹² The fifteen providers currently receiving compensation from the Interstate TRS Fund for providing any form of TRS are: American Network, AT&T Corp.; CSDVRS; CAC; GoAmerica; Hamilton Relay, Inc.; Hands On; Healing; Kansas Relay Service, Inc.; Michigan Bell; Nordia Inc.; Snap Telecommunications, Inc; Sorenson; Sprint; and State of Michigan.

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

6. Should the Commission decide to adopt any of the proposed rules to improve toll free access for iTRS, such action could potentially result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements for affected iTRS providers. For instance, VRS and IP Relay providers would be required to include an advisory on their websites describing the process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and the process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory. We seek comment on the effect of these proposals, and commenters are encouraged to quantify the costs and benefits of any reporting, recordkeeping, or compliance requirement that may be established in this proceeding.

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

⁸⁸ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

⁸⁹ 5 U.S.C. § 601(6).

⁹⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

⁹¹ 15 U.S.C. § 632.

⁹² 13 C.F.R. § 121.201, NAICS code 517110. According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. *Id.* Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.") *Id.*

Significant Alternatives Considered

7. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.⁹³ As stated above, only four current providers would be affected by this Notice.

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

None.

⁹³ See 5 U.S.C. § 603(c).