

ineligible entity generally do not know that the “brand” or service through which they are making calls is really just a different marketing name linked to the eligible provider that is actually processing the call. Nor do these callers generally have a way to determine which eligible provider is actually responsible for their calls. Evidence also demonstrates that some providers have used multiple URL addresses as a tool to generate illicit minutes. Specifically, the providers engage callers to make illicit calls through one of several URL addresses, track these callers’ minutes through the different URL addresses to which they have been assigned, and then reward these callers financially.<sup>144</sup>

51. In the *VRS Call Practices NPRM*, we sought comment on a proposal to disallow compensation from the Fund unless the provider seeking compensation “clearly identified itself to the calling parties at the outset of the calls as the TRS provider for those calls.”<sup>145</sup> We also sought comment on prohibiting uncertified (or ineligible) entities from billing the TRS Fund through certified providers, as well as other ways to ensure that the entities that actually relay calls are accountable for compliance with our rules and that relay users know, on a call-by-call basis, which eligible provider is providing their service. We asked whether any entity receiving payments from the Fund, either directly or indirectly, should be required to register with the Commission. We further sought input on what limitations should be placed on subcontracting, to the extent it is allowed. For example, we sought comment on whether to adopt rules requiring that any subcontractor be disclosed to the Fund administrator before calls generated by that subcontractor are compensable, and whether we should require all subcontractors or entities actually handling calls to be identified in a provider’s monthly submission of minutes for payment.<sup>146</sup>

52. In its comments, CSDVRS (which acts as billing agent for many ineligible providers or “white labels”<sup>147</sup>) argues that banning such “white label” arrangements would be harmful to the deaf and hard of hearing community and would diminish competition in the VRS market.<sup>148</sup> CSDVRS proposes that the Commission allow subcontracting arrangements as long as the subcontractor is a facility-based entity, identifies itself as a subcontractor, and registers with the Commission or the Fund administrator.<sup>149</sup> BISVRS and PAHVRS (two “white labels”) also oppose banning “white-label”

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<sup>144</sup> Indictments have alleged that some providers have assigned unique URLs to individuals who have received payments for making calls to those URLs. This provides incentives for callers to increase the number of calls that they make to the URL to which they are assigned. See, e.g., *United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009) (“Defendants Velasquez, Thompson, and Martinez would arrange with Company 1 for each of the defendants’ paid callers to be assigned a unique URL—an internet web address such as AKLLVRS.com—that the caller could use to make VRS call through Company 1. The defendants and Company 1 referred to each URL as a separate ‘queue.’ Identifying each caller by his or her URL, or queue, allowed the defendants to track how many VRS minutes were generated by each paid caller.”); See also *United States v. John T.C. Yeh et al.* Criminal No. 09-856, D.N.J. (Nov. 18, 2009) (“Defendants John Yeh and Joseph Yeh would track the number of VRS call minutes generated by paid callers using the callers’ IP addresses or their Viable screen names that Mowl and Tropp would provide.”)

<sup>145</sup> *VRS Call Structure and Practices NPRM*, 25 FCC Rcd at 6031, ¶ 47 .

<sup>146</sup> *Id.* at 6021-32, ¶¶ 47-48.

<sup>147</sup> “White label” is a term coined by GoAmerica (which merged into Purple) and used by some commenters to refer to entities that are not eligible relay providers offering relay service, yet bill the Fund through an eligible provider. See *GoAmerica VRS Certification Petition* at 2.

<sup>148</sup> CSDVRS Comments at 21.

<sup>149</sup> *Id.* at 22.

arrangements because they say that such arrangements are vital to their businesses, allowing them to be competitive and make the service of their high-quality interpreters available.<sup>150</sup>

53. Convo recommends that one way of addressing problems with fraud would be to require “white label” providers to either apply for provisional certification or leave the VRS market; in this way Convo suggests that the Commission would have a vehicle to track these providers.<sup>151</sup> TDI supports Convo’s proposal for provisional certification as it would allow start-ups to provide service. TDI further suggests that all providers be certified by the Commission prior to offering VRS, and that a provider should become eligible for certification only after it has handled a minimum number of minutes, to be determined by the Commission.<sup>152</sup> Purple agrees that all entities wishing to offer VRS should have to apply for certification.<sup>153</sup> Finally, Sorenson proposes allowing subcontracting if the eligible provider seeking compensation from the Fund actually provides the core components of the relay service, and that such entity is “clearly identified...to the calling parties at the outset of the calls as the TRS provider for those calls.”<sup>154</sup>

54. *Discussion.* As described above, the Commission’s VRS eligibility requirements provide several avenues for entities to become eligible to receive compensation from the Fund, including interstate common carrier status, a contractual relationship with a state or interstate common carrier, and certification by the Commission. These eligibility requirements and service mandates are intended to ensure an adequate level of governmental oversight over relay providers, compliance with the Commission’s rules, and accountability in the operations of all VRS providers. Yet, virtually none of the fifty or so ineligible carriers that are now providing VRS have been vetted through any of these processes or are accountable for compliance with our rules, even though each has held itself out to the public as providing VRS service.

55. The proliferation of ineligible VRS providers that are providing VRS has had substantial adverse consequences. Most significantly, in addition to effectively rendering our eligibility process meaningless, it has hampered the Commission’s ability to exercise oversight over the provision of VRS and to prevent fraud. Several of the indictments have involved alleged illicit activities by individuals associated with or employed by ineligible providers.<sup>155</sup> Because these ineligible providers circumvent

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<sup>150</sup> BISVRS Comments at 4; PAHVRS Comments at 5.

<sup>151</sup> Convo Comments at 17.

<sup>152</sup> TDI Comments at 10, 12.

<sup>153</sup> Purple Comments (Sept. 13, 2010) at 13.

<sup>154</sup> Sorenson Comments (September 13, 2010) at 14-15.

<sup>155</sup> See, e.g., *United States v. John T.C. Yeh et al.* Criminal No. 09-856, D.N.J. (Nov. 18, 2009). (“On or about September 20, 2006, defendant John Yeh signed an agreement with Company 1, in which Company 1 agreed to bill NECA for Viable VRS services provided by Viable and that Viable would receive approximately 90% of the NECA reimbursement. On or about September 20, 2006, Defendant John Yeh signed a Memorandum of Understanding with a Las Vegas, Nevada based call center to provide VRS call center services for Viable and which provided that the call center would receive 55% of all money billed by or through Viable to NECA for VRS calls processed by the Las Vegas call center.”); (“On or about September 15, 2007, defendants John Yeh and Joseph Yeh signed a contract with a New York, New York based call center to provide VRS call center services for Viable in return for \$2.25 per VRS call minute processed by the call center. On or about February 29, 2008, defendant John Yeh signed a contract with a Round Rock, Texas based call center to provide VRS call center services for Viable in return for \$2.00 per VRS call minute processed by the call center. On or about October 10, 2008, defendant Joseph Yeh signed a contract with a Miami Lakes, Florida based call center to provide VRS call center services for Viable in return for \$2.00 per VRS call minute processed by the call center.”)

our eligibility requirements, proper oversight by the Commission and the Fund administrator is nearly impossible. Because the providers neither hold a Commission license, permit, certificate or other authorization, nor are they interstate common carriers, the Commission, as well as other investigatory authorities, often has a difficult time identifying who these entities are or what services they provide. This, in turn, has impacted the ability of the Commission to take swift and effective enforcement action when such action is deemed necessary.<sup>156</sup> Although the eligible provider is responsible for ensuring that the calls it bills to the Fund are legitimate, we are concerned that in many instances, the eligible provider may exercise very little oversight over the call handling operations of these affiliates and subcontractors. We note that the majority of all the fraud that has been reported to the Commission has been through the use of these ineligible providers, and that all of the individuals indicted to date in the ongoing criminal investigations of fraud in the VRS industry worked for ineligible providers.<sup>157</sup> We believe that this behavior will continue in the absence of affirmative Commission action.<sup>158</sup>

56. The record before us reveals other abuses involving schemes in which VRS providers paid others to use their service for the sole purpose of generating VRS minutes in order to inflate the compensation that the provider received from the TRS Fund. Criminal investigations have revealed that tens of millions of dollars have been fraudulently billed to the TRS Fund. Several of the fraudulent schemes perpetrated by individuals who have already pled guilty to the charges involved schemes whereby callers were paid ostensibly to make marketing calls to potential customers and outreach calls to entities that interact with deaf or hard-of-hearing callers.<sup>159</sup> In reality, these calls were made for the sole purpose of generating minutes of use. We are also aware of schemes whereby VRS providers engaged in revenue-sharing arrangements with entities acting as marketing firms, which hired people to make calls using the provider's VRS service for the sole purpose of generating billable minutes.<sup>160</sup> The VRS provider then paid the "marketing firm" a percentage of the compensation it received from the TRS Fund. Only when the Commission learned, usually through information provided by a whistleblowing

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<sup>156</sup> See 47 U.S.C. §503.

<sup>157</sup> See the series of indictments and guilty pleas listed in n.14 *supra*, along with the list of questionable VRS practices in the *OIG Semi Annual Report* of the criminal investigations to Congress, ¶17, *supra*.

<sup>158</sup> These arrangements also have made reliable ratemaking more challenging because it is difficult, if not impossible, to ascertain the actual cost of providing VRS when these entities are not required (and therefore do not) report their cost and demand data to the Commission; nor is such data necessarily reflected, in requisite detail, in the eligible providers' rate filings. While it may be that the Commission could require each VRS eligible provider that submits claims for these entities to gather such data and submit it to the Fund administrator, we are not convinced, given the track record to date of these ineligible companies, that such data would always be reliable. Many of these entities consist of only a handful of individuals who lack expertise in the field of relay services, and are hired by the eligible provider solely to publicize that provider's service.

<sup>159</sup> See, e.g. *United States v. Kim E. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009) ("Defendant Hawkins would establish a marketing company to employ deaf individuals to make calls to hearing individuals through Mascom for the stated purpose of 'marketing' Mascom, but with the actual purpose of generating illegitimate VRS minutes that would be billed to NECA."). *United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009) ("Deaf Studio 29 contracted with Company 1 to provide 'marketing services' using Company 1's VRS service. In return for providing the purported 'marketing services,' Deaf Studio 29 would receive approximately 25% of the money paid by NECA to Company 1 for the VRS call minutes generated by Deaf Studio 29."); See also Transcript of Testimony at 281-285, *United States v. Pena*, D.N.J. (2010)(No. 09-858).

<sup>160</sup> For example, individuals were paid by the marketing firm on a per-call or hourly basis to make calls, often following a script, to individuals and businesses (sometimes by just getting names from a phone book) with no intention of actually marketing the provider's VRS service, but rather to generate billable minutes on behalf of the provider.

employee, that such calls were made as part of a deliberate scheme to manufacture minutes, were they revealed as being illegitimate.

57. In order to reduce fraud and establish better oversight of the VRS program, and address the unauthorized revenue sharing arrangements that have escalated in the VRS program, we amend our rules in the following ways.<sup>161</sup> First, we require that *only* entities determined to be eligible to receive compensation from the TRS Fund under section 64.604(c)(5)(iii)(F) of our rules will be eligible to provide VRS and hold themselves out as providers of VRS to the general public. To ensure that this is achieved, we further require that VRS service be offered under the name by which the provider became certified and in a manner that clearly identifies that provider of the service. The foregoing requirement will not prevent a VRS provider from also utilizing sub-brands, such as those dedicated to particular states, communities or regions in which it provides service, but requires that each sub-brand clearly identify the eligible entity as the actual provider of the service. We further require that calls to any brand or sub-brand of VRS be routed through a single URL address for that brand or sub-brand.<sup>162</sup> Consumers have been hindered in making informed choices when selecting their VRS companies because of the complex branding and commercial relationships that have existed between white labels and eligible providers. Moreover, the use of multiple URLs facilitates fraud by enabling providers to track minutes of calls made by users assigned to specific URLs, as described above.<sup>163</sup>

58. Second, we amend our rules to make clear that an eligible provider is prohibited from engaging any third party entity to provide VRS CAs or call center functions (including call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration), on its behalf, unless that third party entity also is an eligible provider under our rules.<sup>164</sup> This provision will ensure that an eligible provider is responsible for providing the core components of VRS, rather than subcontracting out these responsibilities to third party entities, whose operations are not under the direct supervision of the Commission.

59. Third, to the extent an eligible provider contracts with or otherwise authorizes a third party to provide any other services or functions related to the provision of VRS other than interpretation services or call center functions, that third party entity must not hold itself out to the public as a provider of VRS and must clearly identify the eligible VRS provider to the public. This will make it easier for consumers, the Commission and the Fund administrator to tie service to the company providing that service.

60. Fourth, to provide effective oversight, we require that all third-party contracts or agreements be executed in writing and that copies of these agreements be available to the Commission and the TRS Fund administrator upon request. Such contracts or agreements shall provide detailed information about the nature of the services to be provided by the subcontractor.

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<sup>161</sup> See Appendix E for final rule, 47 C.F.R. 64.604(c)(5)(iii)(N)(l).

<sup>162</sup> For example, to the extent that an eligible provider offers Spanish-to-ASL VRS service, the provider may add a separate URL address dedicated to this particular version of service that nevertheless still identifies the eligible provider.

<sup>163</sup> See ¶50, *supra*.

<sup>164</sup> This exception will allow eligible VRS providers to contract with other entities who are also eligible providers to provide core components of its VRS. We are satisfied that because eligible entities have already met the Commission's eligibility requirements, they pose less risk to the integrity of the program. This prohibition against subcontracting also does not preclude eligible providers from directly hiring VRS CAs on a part-time basis, so that they may continue some of their community interpreting assignments. In addition, this does not preclude eligible providers from purchasing licensing rights to use certain technologies necessary to support call center functions.

61. Lastly, we seek to reduce the risk that marketing and outreach efforts will continue to be vehicles for manufacturing fraudulent minutes, such as those described above. To the extent an eligible VRS provider contracts with a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, the costs for such services cannot be compensated from the TRS Fund on a per-minute basis.<sup>165</sup> In addition, we require that all agreements in connection with marketing and outreach activities, including those involving sponsorships, financial endorsements, awards, and gifts made by the provider to any individual or entity, be described in the providers' annual submissions to the TRS Fund administrator.<sup>166</sup> We note that because purported outreach and marketing efforts have been a significant source of fraud<sup>167</sup> we caution providers that the Commission will scrutinize carefully all marketing and outreach efforts, including any contracts providing such services. We are hopeful that the above actions will go a long way toward reducing the fraud and abuse that has pervaded the VRS program.

62. We recognize that some companies currently offering VRS through an arrangement with an eligible provider may wish to continue providing this service on their own, yet may require additional time to make adjustments to their operations in order to come into compliance with the new requirements adopted in this *Order*. To give these entities an opportunity to continue to provide VRS as a subcontractor with an eligible provider until such time as they obtain certification under new procedures to be adopted pursuant to the accompanying FNPRM, we will consider requests for a temporary waiver of the new requirements.<sup>168</sup> A company requesting a waiver of the rules adopted in this *Order* will have the burden of showing that the waiver is in the public interest, that grant of the waiver request will not undermine the purposes of the rules that we adopt today, and that it will come into compliance with those rules within a short period of time.

63. Accordingly, we require applicants requesting a temporary waiver to provide, in writing, a description of the specific requirement(s) for which it is seeking a waiver, along with documentation demonstrating the applicant's plan and ability to come into compliance with all of these requirements (other than the certification requirement) within a specified period of time, which shall not exceed three

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<sup>165</sup> We remind providers that if the marketing is performed in-house, rather than through third parties, they cannot be compensated for VRS calls associated with such marketing on a per-minute basis because the calls would then be considered internally generated, and thus noncompensable. They may, however, include the expenses associated with in-house marketing in their cost submissions to the Fund administrator, to the extent these costs are reasonable and permissible. *See generally VRS Declaratory Ruling*.

<sup>166</sup> At present, such annual submissions are only required by providers that have become eligible to provide VRS through the Commission's certification program. 47 C.F.R. §64.606(g). However, in the accompanying *Notice*, we seek comment on a proposal to require all VRS providers to receive certification from the Commission, to better verify their qualifications before they begin providing service and to improve the Commission's oversight over their operations after service is initiated.

<sup>167</sup> *See, e.g. United States v. Kim E. Hawkins et al.*, Criminal No. 09-857, D.N.J. (Nov. 18, 2009); *United States v. Verson et al.*, Criminal No. 859, D.N.J. (Nov. 18, 2009); *See e.g.*, Transcript of Testimony at 281-285, *United States v. Pena*, D.N.J. (2010)(No. 09-858).

<sup>168</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

months from the date on which the rules become effective.<sup>169</sup> In addition, the waiver applicant must file for certification within thirty days after the final certification rules become effective. Evidence of the applicant's plan and ability to come into compliance with the new rules shall include the applicant's detailed plan for modifying its business structure and operations in order to meet the new requirements, along with submission of the following relevant documentation to support the waiver request: (1) a copy of each deed or lease for each call center the applicant currently owns or plans to acquire; (2) a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, partners, and members of its board of directors; (3) a list of the applicant's full-time and part-time employees; (4) proofs of purchase or license agreements for the use of equipment and/or technologies that the applicant currently uses or intends to use for its call center functions, including but not limited to, call distribution, routing, call setup, mapping, call features, billing for compensation from the Fund and user registration; (5) copies of employment agreements for the provider's executives and CAs; and (6) a list of financing arrangements pertaining to the provision of VRS, including documentation for financing of equipment, inventory, and other property. If the waiver applicant has not yet employed CAs, the applicant should provide a complete description of its plan for hiring new CAs within a specific period of time. The Commission will grant waivers only after a rigorous showing that the applicant has workable plans and the ability to continue providing VRS in a manner that will not undermine the measures adopted in this *Order* to eliminate the fraud and abuse that have plagued the VRS program.

#### I. Whistleblower Protections

64. As stated in the *VRS Call Practices NPRM*, we recognize that CAs and other employees of providers are often in the best position to detect possible fraud and misconduct by providers.<sup>170</sup> At the same time, we recognize that employees are often reluctant to report possible wrongdoing because they fear they may lose their jobs or be subject to other forms of retaliation. For this reason, there are numerous federal and state whistleblower laws that protect employees who report misconduct by their employers.<sup>171</sup>

65. Given the evidence of substantial relay fraud associated with the billing of illegitimate VRS minutes,<sup>172</sup> we sought comment on the following tentative conclusions: (1) that we should adopt a specific whistleblower protection rule for the employees and subcontractors of TRS providers; (2) that such a rule should protect any employee or subcontractor of any TRS provider who reports possible wrongdoing to his or her employer or to the Commission, the Fund administrator, or any federal or state law enforcement entity from retaliation by the employer; (3) that the rule should require providers to inform their employees that they can report fraud and misuse to the Commission's OIG; and (4) that given the importance of detecting and deterring fraud, this rule should become effective immediately.

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<sup>169</sup> We believe that the rules we adopt today are necessary to prevent fraud and abuse of the Fund, and we find that three months is an adequate time for companies to come into compliance with the new requirements.

<sup>170</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6032 ¶49.

<sup>171</sup> See, e.g., Whistleblower Protection Act of 1989, P.L. 101-12, 103 Stat. 16 (1989).

<sup>172</sup> See n.14, *supra*.

The *VRS Call Practices NPRM* also sought comment on any other issues related to whistleblower protections under the VRS program.<sup>173</sup>

66. Commenters in this proceeding generally support whistleblower protections for VRS CAs and other employees and contractors. Although some commenters express concern that whistleblower protections may be misused by disgruntled employees,<sup>174</sup> others indicate that VRS CAs are the “front line” and “key line of defense” when it comes to fraudulent practices.<sup>175</sup> CSDVRS asks the Commission to make sure that interpreters who make whistleblower claims are protected from possible violations of any ethical rules imposed by their certifying organizations and of the confidentiality rules imposed by the Act.<sup>176</sup> Sorenson disagrees that whistleblower rules should exonerate VRS CAs and providers for violating confidentiality rules since any whistleblower rules should not conflict with these rules, and, in most cases, call content would not need to be disclosed in a complaint.<sup>177</sup>

67. *Discussion.* Much of the information collected during the investigations of fraud and abuse in the VRS industry has come from current and former employees of VRS providers. Many of these individuals have expressed their belief that more relay employees would report activity that seems to run afoul of the Act and the TRS rules were they not afraid of retaliation from their employers. We note that most commenters focused on VRS CAs as potential whistleblowers, but that our questions in the *VRS Call Practices NPRM*, and the protections we adopt now, apply to all employees and contractors of all relay providers.

68. We herein adopt specific whistleblower protections for the employees and contractors of TRS providers.<sup>178</sup> Notwithstanding the existence of other federal and state whistleblower regulations, establishing a specific TRS whistleblower protection rule here will provide an explicit layer of protection for employees who are interested in disclosing information necessary to combat waste, fraud, and abuse with respect to relay services, and thus encourage them to do so. We further note that individuals always have been able to confidentially and anonymously provide to the Commission’s OIG or Enforcement Bureau information that they believe evidences a violation of the TRS statutory or regulatory requirements, including activity that could result in the improper billing of minutes to the Interstate TRS Fund.<sup>179</sup>

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<sup>173</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6032, ¶¶49-50.

<sup>174</sup> PAHVRS Comments at 23. BISVRS Comments at 1 (indicating that there should be consequences for those who file “false, inaccurate, or frivolous” complaints).

<sup>175</sup> PAHVRS Comments at 22; CSDVRS Comments at 24. Although in its comments, Hamilton notes that current federal and state whistleblower regulations already protect these individuals, Hamilton Comments (Sept. 7, 2010) at 4-6, in a subsequent communication with the Commission, Hamilton notes that it does not oppose an FCC whistleblower rule if it is not inconsistent with state rules, and is designed to protect CAs and deter TRS fraud. Hamilton *Ex Parte* Letter at 2. (October 6, 2010).

<sup>176</sup> CSDVRS Comments at 24.

<sup>177</sup> Sorenson Reply Comments (Sept. 16, 2010) at 2, n.9.

<sup>178</sup> This rule applies to all TRS providers and their subcontractors, not only Internet-based forms of TRS. These protections also apply to any companies that may be phasing out their VRS operations, per other requirements in this order.

<sup>179</sup> The OIG Hotline may be reached at (202) 418-0473 (voice), (888) 863-2244 (toll free voice), e-mail: [hotline@fcc.gov](mailto:hotline@fcc.gov), or FCC – OIG, 445 12th Street, S.W., Room 2-C762, Washington, D.C. 20554. The Enforcement

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69. Current or former employees of TRS providers or any contractors (“covered individuals”) will be protected from reprisal in the form of a personnel action if they disclose information they reasonably believe evidences a violation of the Act or TRS regulations (including any activities that could result in the improper billing of minutes to the TRS Fund) to a designated manager of the eligible TRS provider billing for those minutes, the Commission, the Interstate TRS Fund administrator, or any federal or state law enforcement entity.<sup>180</sup> For a disclosure to be protected, the covered individual must have a reasonable belief that the information is true.<sup>181</sup> The actual veracity of any disclosure, however, will not affect whether a disclosure is protected. If a TRS provider violates the TRS whistleblower protection rule, as with any rule violation, the Commission may take enforcement action.

70. We agree with those commenters who say that providers should be required to inform and notify their employees of the whistleblower protections,<sup>182</sup> and amend our rules accordingly.<sup>183</sup> Providers shall provide an accurate and complete description of these TRS whistleblower protections, including the right to notify the Commission’s OIG or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to their employees in writing (*e.g.* in employee handbooks, policies and procedures manuals, or bulletin board postings – either online or in hard copy) must include an accurate and complete description of these TRS whistleblower protections in those written materials. The Commission will also take steps to disseminate information about the TRS whistleblower protection rule.

71. With respect to the concern by some commenters that certified VRS CAs who make whistleblower claims be protected from potential ethical violations that are related to their community interpreter responsibilities, we note that the Commission does not have jurisdiction over organizations that certify sign language interpreters or any actions these organizations may initiate over an interpreter holding their certifications. Moreover, although the TRS rules define “qualified interpreter,”<sup>184</sup> and require CAs who handle VRS calls to meet those qualifications, the role of a CA during a VRS call is different than the role assumed by “interpreters” in community settings.<sup>185</sup> Unlike interpreters, CAs are

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Bureau may be reached at: (202) 418-7320, or FCC – EB, 445 12th Street, S.W., Room 4-C224, Washington, D.C. 20554.

<sup>180</sup> For purpose of this new rule, we define a personnel action as any significant change in duties, responsibilities, performance evaluations, working conditions, benefits, or pay that is inconsistent with a covered individual’s professional qualifications, training, or rank.

<sup>181</sup> We have no reason to believe that this rule will be misused by disgruntled employees. Individuals have always been allowed to disclose such information, many have done so, and we have not seen instances of misuse or frivolous claims.

<sup>182</sup> *See, e.g.*, BISVRS Comments at 1; RID Comments at 2; PAHVRS Reply Comments at 9 (whistleblower protections should be easy to understand and widely disseminated). Purple suggests that providers be required to have an internal compliance plan for whistleblower protections. Purple Comments (Sept. 7, 2010) at 8-9.

<sup>183</sup> *See* Appendix E for final rule, 47 C.F.R. § 64.604 (c)(5)(iii)(M).

<sup>184</sup> 47 C.F.R. § 64.601(a)(16).

<sup>185</sup> On previous occasions, the Commission has attempted to clarify the VRS CA’s role as compared to the role of a community interpreter. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475 at 12532-12537, ¶¶149-162 (2004) (*2004 TRS Report & Order*). The fundamental

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strictly bound by the standards set forth in our regulations. Thus, whatever ethical codes may be imposed upon these individuals by their certifying bodies in community interpreting situations do not necessarily govern VRS situations; rather the specific rules, including those dealing with confidentiality, that are contained in the Commission's mandatory minimum standards are the governing standards for CAs who handle VRS calls. We do not see any potential conflict between the TRS whistleblower protections and the TRS confidentiality rules. We also agree with Sorenson that, in most cases, call content will not need to be disclosed in a complaint.<sup>186</sup> Rather, disclosure will most likely entail "behind the scenes" schemes to generate relay calls that are made or arranged, in whole or in part, for the purpose of generating compensable minutes of use as a source of revenue. We note that these calls are not, and have never been, considered relay calls to which TRS confidentiality protections apply.<sup>187</sup>

## J. Data, Audits and Record Retention Requirements

### 1. Data Filed with the Fund Administrator to Support Payment Claims

72. In 2008, the Fund administrator instructed VRS providers that, beginning with May 2008 usage, monthly minutes of use submitted for payment must be supported by call data records that include the following information: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number or IP address; (6) outbound telephone number or IP address; (7) total conversation minutes; and (8) total session minutes.<sup>188</sup> In the *VRS Call Practices NPRM*, the Commission asked what other call-related data should be required to support payment claims.<sup>189</sup> In response, NECA suggests that all call detail records (CDRs) also be required to contain both ten-digit numbers and IP addresses for incoming and outgoing calls, and that the ID number of the call center that handles the call be included as well.<sup>190</sup>

73. *Discussion.* We agree with the approach recommended by NECA. The data that NECA requests is necessary to properly detect anomalies in submitted minutes, which can alert the Fund administrator and the Commission on the need to inquire further about, and if necessary, conduct an investigation into the legitimacy of such minutes. For example, with this expanded information, the Fund administrator will be better able to detect patterns of calls made to or from a particular IP address

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differences between the roles of a VRS CA and an interpreter should not be confused simply because both situations involve interpreting. *Id.*, 19 FCC Rcd 12535 at ¶157.

<sup>186</sup> Sorenson Comments (Sept. 16, 2010) at 2, n.9.

<sup>187</sup> See *VRS Declaratory Ruling*, 25 FCC Rcd at 1870-1871, ¶6. These calls do not meet the definition of a "TRS call" and are not subject to the same statutory and regulatory restrictions as are compensable TRS calls. See also *VRS Call Practices NPRM*, 25 FCC Rcd at 6025, ¶30, n.61 ("[W]hen both parties communicating via video use a privacy screen . . . communication is no longer possible, and therefore the call is no longer a TRS call and should be terminated").

<sup>188</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6028-29, ¶38 (citing Letter from Cathy Seidel and Kris Monteith to NECA (Nov. 26, 2008) (NECA Letter)).

<sup>189</sup> *Id.*

<sup>190</sup> NECA Letter at 2. CSDVRS suggests that CDRs be required to contain ten-digit numbers as well as IP addresses for each call. CSDVRS Comments at 17. We note that Convo supports this with the caveat that this information should be required "if available" because it may not be available if a user calls through Apple's iChat video. Convo Comments at 16.

or telephone number, as well as patterns related to the length of calls made to or from certain locations. Once investigations are initiated, this data will further prove useful in locating specific instances of illegitimate calling practices. Accordingly, the Commission now expands the data collection rules to require the filing of the following data associated with each VRS call for which a VRS provider seeks compensation:<sup>191</sup> (1) the call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handles the call; and (10) the URL address through which the call was initiated. As recommended, these data collection requirements will be codified.<sup>192</sup>

74. The Commission also amends its functional TRS mandatory minimum standards to require VRS and IP Relay providers to submit speed of answer compliance data, as proposed in the *VRS Call Practices NPRM*.<sup>193</sup> Under the Commission's rules, VRS providers are required to answer 80 percent of all calls within 120 seconds.<sup>194</sup> The provision of this data will enable the Commission to ensure compliance with this mandatory minimum standard, which is critical to ensuring that VRS providers promptly answer the calls that come into their centers. Although providers have been submitting such data at the request of the Fund administrator for the past several years, we believe that this obligation should be reflected in our rules to make clear that VRS and IP Relay providers must submit such data in order to be compensated from the Fund.

75. Finally, in the *VRS Call Practices NPRM*, the Commission tentatively concluded that its rules should be amended to require that the call record and speed of answer data be submitted electronically and in a standardized format in order to reduce the burden associated with compiling and filing this data and to facilitate the collection and analysis of this data by the Fund administrator and the Commission.<sup>195</sup> Commenters generally support this proposal.<sup>196</sup> We now amend our rules accordingly, to require such standardized electronic filings, which we believe will reduce the burden on TRS providers and facilitate efforts by the Fund administrator and the Commission to efficiently analyze the incoming data.<sup>197</sup>

## 2. Automated Call Data Collection

76. During the course of a VRS call, CAs must report call data at four intervals: (1) when the call session begins; (2) when the conversation begins; (3) when the conversation ends; and (4) when the call session terminates. In the *VRS Call Practices NPRM*, we sought comment on CSDVRS's petition requesting the Commission to clarify that our TRS rules require VRS providers to utilize an automated

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<sup>191</sup> The current data collection rules are at 47 C.F.R. § 64.604(c)(5)(iii)(C).

<sup>192</sup> See SnapVRS Comments at 20 (recommending that filing requirements be codified).

<sup>193</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6029, ¶40.

<sup>194</sup> 47 C.F.R. §64.604(b)(2)(iii).

<sup>195</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6029, ¶41.

<sup>196</sup> See, e.g., CSDVRS Comments at 18, SnapVRS Comments at 20, and Sorenson Comments (Sept. 13, 2010) at 13, and Sorenson Reply Comments (Sept. 27, 2010) at 4-5.

<sup>197</sup> See Appendix E for final rule, 47 C.F.R. § 64.604

system of tracking these start and end times of minutes submitted to the Fund for payment.<sup>198</sup> A similar petition subsequently submitted by Sorenson agreed that compliance with our rules requires submission of “true and adequate data” that can only be accomplished by automated record keeping of TRS minutes.<sup>199</sup> The *VRS Call Practices NPRM* tentatively concluded that the TRS rules should be modified to make clear that providers must automatically capture the conversation time, to the nearest second, for each call submitted for payment from the Fund.<sup>200</sup>

77. Commenters unanimously support a requirement for providers to use an automated system of keeping records of TRS minutes for submission to the Fund administrator.<sup>201</sup> Several providers support the Commission’s proposal to require VRS providers to automatically capture the conversation and session time to the nearest second, though both Hamilton and Sorenson urge that this be set as a minimum only, to allow more accurate recording times.<sup>202</sup> BISVRS further proposes that the Commission define the required data elements, classification of time, reporting of time increments, rounding methodology and reporting format.<sup>203</sup> CSDVRS asks the Commission to define an automated system as a system that prohibits human intervention in the start or termination of data collection for a call detail record, to prevent an “automated” system from being manipulated by the CA.<sup>204</sup>

78. *Discussion.* As noted in CSDVRS’ petition, at the start of a VRS call, a CA must obtain the telephone number of the party being called, acquaint him or herself with the sign language style of the caller, and then establish contact with the called party and explain the nature of the call, if necessary. These various tasks can distract CAs, and cause errors in tracking the initiation of session and conversational minutes where these are manually recorded. Moreover, all such tasks must be completed within seconds, in order to swiftly get the call connected and enable the conversation to begin. CSDVRS further notes that “[t]he likelihood of making mistakes when the reporting of such data is performed manually by the VI is further exacerbated by the need for the interpreter to systematically capture precise minutes to the nearest tenth of a second, all the while giving his or her undivided attention to the call in

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<sup>198</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6027-28, ¶ 36. See also CSDVRS, LLC, *Petition for Clarification or Rulemaking on Automated Data Collection*, CG Docket No. 03-123, at 2 (filed May 22, 2009) (*Automated Call Data Petition*) (seeking clarification that the TRS rules require automated record keeping of TRS minutes submitted to the Fund for reimbursement).

<sup>199</sup> *Sorenson VRS Call Practices Petition* at 18 (requesting that the Commission propose and seek comment on rules that will ensure that the Fund compensates only legitimate VRS calls). Sorenson cited to 47 C.F.R. § 64.604(c)(5)(iii)(C), which states, in part: “Data collection from TRS providers. TRS providers shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested by the administrator, necessary to determine TRS Fund revenue requirements and payments.”

<sup>200</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6028, ¶ 37.

<sup>201</sup> BISVRS Comments at 2; CSDVRS Comments at 16; GraciasVRS Comments at 2; Hamilton Comments (Sept. 13, 2010) at 4; Purple Comments (Sept. 13, 2010) at 10; Sorenson Comments (Sept. 13, 2010) at 11.

<sup>202</sup> CSDVRS Comments at 16; Hamilton Comments (Sept. 13, 2010) at 3-4 (recommending that providers be permitted to use a stricter measurement of less than a second if the Commission adopts a requirement to automatically capture data to the nearest second.); Sorenson Comments (Sept. 13, 2010) at 12 (recommending adoption of a rule that requires providers to automatically record session and conversation time to “at least the nearest second, with more accurate recordings permitted”). See also Sorenson Comments (Sept. 13, 2010) at 11; Sorenson Reply Comments (Sept. 27, 2010) at 4-5.

<sup>203</sup> BISVRS Comments at 2.

<sup>204</sup> CSDVRS Comments at 17.

progress.”<sup>205</sup> We agree with CSDVRS and other commenters that when such minute tracking is done manually, it is ripe for unintentional errors. Moreover, we agree that allowing the CA to manually determine start and end times can also facilitate fraud through the manipulation of such records.<sup>206</sup> Accordingly, we modify our rules to specifically require automated record keeping of all TRS minutes submitted to the Fund administrator.<sup>207</sup> As Hamilton notes, this will provide a method to help ensure the accuracy and integrity of minutes submitted to the Fund administrator.<sup>208</sup>

79. The rule that we now adopt requires all TRS providers to use an automated record keeping system to capture the following data when seeking compensation from the Fund: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times, at a minimum to the nearest second; (4) conversation start and end times, at a minimum to the nearest second;<sup>209</sup> (5) incoming telephone number (if call originates with a telephone) and IP address (if call originates with an IP-based device) at the time of the call; (6) outbound telephone number and IP address (if call terminates to an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.<sup>210</sup> We define automated recordkeeping system for purposes of these rules as a system that captures data in a computerized and electronic format in a manner that does not allow human intervention during the call session (for either conversation or session time). An electronic system that requires the CA or provider’s employee to manually press a start and/or end command key in order to capture the required data or to terminate the data recording does not constitute an automated system under this requirement.

### 3. Transparency and the Disclosure of Provider Financial and Call Data

80. In 2009, in response to the *2009 Rate NPRM* seeking comment on whether the VRS rates should be modified for the 2009-2010 Fund year,<sup>211</sup> a consumer group filed a Motion for Protective Order seeking access to VRS providers’ cost data.<sup>212</sup> The consumer group argued that, absent access to

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<sup>205</sup> See *Automated Call Data Petition* at 3.

<sup>206</sup> *Id.* at 2.

<sup>207</sup> See Appendix E for final rule. 47 C.F.R. § 64.604 (c)(5)(iii)(C)(4)

<sup>208</sup> Hamilton Comments (Sept. 13, 2010) at 3.

<sup>209</sup> The Interstate TRS Fund compensates for conversation minutes, which begin when the called party answers the outbound telephone call from the CA and end when either party to the call hangs up. See generally 47 C.F.R. § 64.604(c)(5)(iii)(E). Conversation minutes do not include time for call set-up, ringing, waiting for an answer, and wrap-up, or calls that reach a busy signal or no answer. This is compared to session minutes, which do include these tasks, to the extent they are necessary to dial and set up a call. We note that the requirement we adopt above to capture conversation and session start and end times to the nearest second are minimum thresholds only, and that providers are free to exceed this measurement by automatically capturing shorter periods of time for these start and end times, for example to the nearest 10<sup>th</sup>, 100<sup>th</sup>, or even thousandth of a second.

<sup>210</sup> These requirements apply to all forms of TRS calls, including VRS, traditional TRS, speech-to-speech, IP Relay, captioned telephone relay service, and IP captioned telephone relay service, whether the calls originate by a voice caller or by an individual using a video device or any type of specialized customer premises equipment.

<sup>211</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Public Notice and Notice of Proposed Rulemaking, 24 FCC Rcd 6029 (May 14, 2009) (*2009 VRS Rate NPRM*).

<sup>212</sup> *Telecommunications for the Deaf and Hard of Hearing, Inc., Motion for Protective Order*, CG Docket No. 03-123 (May 20, 2009). Specifically, the consumer group proposed that it have access to the cost data associated with

(continued....)

the underlying cost data, it could not meaningfully comment on the appropriateness of any particular VRS rates.<sup>213</sup> Several providers filed oppositions to that Motion, arguing that there would be no way to guarantee that sensitive proprietary data could be sufficiently protected by a protective order that grants access to their data to consumers.<sup>214</sup> In the *VRS Call Practices NPRM*, we sought comment on the need for the type of transparency that had been requested in the consumer group's Motion. Specifically we asked whether we should require that all VRS provider cost and demand data be made available to the public and, if so, how such a requirement should be implemented.<sup>215</sup> Most VRS providers strongly oppose requiring full disclosure of a provider's financial and call detail data because they say doing so would harm innovation and competition.<sup>216</sup>

81. *Discussion.* We conclude that the information requested for disclosure in the Motion for Protective Order is proprietary, and therefore, should not be subject to public scrutiny. The Commission recognizes consumer advocates' interests in obtaining this type of data in order to provide effective advice to the Commission. However, public disclosure of such data is not typically required under Freedom of Information Act (FOIA) rules.<sup>217</sup> We believe that access to individual provider cost data should be limited to the Commission, the Fund administrator, and designated auditors because of its highly proprietary nature, and in light of the significant fraud and abuse that has taken place in this industry. The Commission must consider cost and demand data as part of the VRS compensation rate-setting process, and we will work in conjunction with the Fund administrator to carefully scrutinize data submitted by providers.

#### 4. Provider Audits

82. In the *VRS Call Practices NPRM*, we sought comment on whether we should amend the TRS mandatory minimum standards to include more specific and stringent auditing rules in order to better safeguard the integrity of the Fund.<sup>218</sup> Commenters generally support more specific and stringent auditing rules but several providers stress that the Commission already has the power to enforce and

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the VRS compensation rates noted in the *2009 VRS Rate NPRM*, subject to a protective order, so that it could more meaningfully comment on the appropriate VRS rate.

<sup>213</sup> *Id.*

<sup>214</sup> See, e.g., Sorenson Opposition, CG Docket No. 03-123 (June 1, 2009); AT&T, Inc. *et al.*, Opposition to Motion for a Protective Order (June 1, 2009).

<sup>215</sup> See *VRS Call Practices NPRM*, 25 FCC Rcd at 6034, ¶54.

<sup>216</sup> See AT&T Comments at 14 (pointing out that "no other competitive industry, regardless of whether the members of that industry receive public funding, is required to disclose competitively sensitive information"). See also Hamilton Comments (Sept. 13, 2010) at 6; PAHVRS Comments at 24; CSDVRS Comments at 25; Sorenson Comments (Sept. 13, 2010) at 17. Convo recommends a partial disclosure whereby providers would be required to disclose certain expenses to the Commission, such as the costs of outreach, research and development, regulatory compliance, and so forth, which then would be available to the public in an aggregated format. Convo Comments at 20. Hamilton suggests that increasing transparency on the scheduling and progress of audits would improve public confidence that the submitted data is being scrutinized to ensure the integrity of the TRS Fund. Hamilton Comments (Sept. 13, 2010) at 76.

<sup>217</sup> See 47 C.F.R. §§0.441-0.470.

<sup>218</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6034, ¶55.

exercise its existing audit authority and that adopting new rules is not necessary.<sup>219</sup> Providers agree that frequent and effective audits will help alleviate some problems of cost miscalculation, abuse and fraud that “plague the relay” program.<sup>220</sup> With respect to the timing and frequency of auditing, CSDVRS suggests that audits be scheduled at the provider’s convenience so that these do not “coincide with their annual tax deadlines or conflict with their annual accounting cycles.”<sup>221</sup> Convo suggests that audits be scheduled every five years, unless an audit is needed to address repeated incidences of minor violations or upon noting a pattern of minutes needing to be withheld for payment.<sup>222</sup> Hamilton and SnapVRS each propose a similar approach.<sup>223</sup> Verizon recommends conducting an annual audit of newly certified providers for the first few years and doing so periodically thereafter.<sup>224</sup>

83. Several providers suggest that the Fund administrator conduct audits as it is familiar with the TRS rules and compensation process.<sup>225</sup> Providers recommend that the scope of audits should be as broad as possible to include provider data, practices, and procedures, as well as compliance, regular revenue, call records, and the call system.<sup>226</sup> Commenters further suggest that providers be subject to substantial financial penalties and withholding of compensation for failure to comply with the Commission audits.<sup>227</sup>

84. *Discussion.* We strongly believe in the importance of conducting regular audits to ensure the integrity of the TRS Fund. In order to provide the Commission the flexibility and discretion it needs in determining when audits are necessary, we amend the TRS mandatory minimum standards to require that all TRS providers submit to audits annually or, if necessary, at any other time deemed appropriate by the Commission, the Fund administrator, or by the Commission’s OIG.<sup>228</sup> We also conclude that providers that fail to fully cooperate in audits, for example, by failing to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of TRS payments until sufficient documentation is provided. We believe that this policy will promote greater transparency and accountability in the compensation process.

## 5. Record Retention

85. In the *VRS Call Practices NPRM*, we sought comment on a proposed rule to require Internet-based TRS providers, which includes all VRS providers, to retain their call detail records, other records that support their claims for payment from the Fund, and records used to substantiate the costs

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<sup>219</sup> Hamilton Comments (Sept. 13, 2010) at 7; Purple Comments (Sept. 13, 2010) at 14; Sorenson Comments (Sept. 13, 2010) at 20.

<sup>220</sup> CSDVRS Comments at 27; Hamilton Comments (Sept. 13, 2010) at 7; Verizon Comments at 3.

<sup>221</sup> CSDVRS Comments at 27. CSDVRS also proposes that providers be required to submit to an audit within 60 days of the request. *Id.* at 28.

<sup>222</sup> Convo Comments at 21.

<sup>223</sup> Hamilton Comments (Sept. 13, 2010) at 7; SnapVRS Comments at 26-27.

<sup>224</sup> Verizon Comments at 4.

<sup>225</sup> Convo Comments at 21; SnapVRS Comments at 27.

<sup>226</sup> *See, e.g.*, Sorenson Comments (Sept. 13, 2010) at 20; SnapVRS Comments at 27.

<sup>227</sup> CSDVRS Comments at 28; Verizon Comments at 3.

<sup>228</sup> We note that such audits may, as necessary, include on-site visits to the provider. *See* Appendix E for final rule.

and expense data submitted in the annual relay service data request form, for five years.<sup>229</sup> We also sought comment on how we might define more specifically the scope of the records subject to the proposed rule.<sup>230</sup>

86. No providers oppose our proposed rule for record retention.<sup>231</sup> BISVRS suggests that if this is for auditing purposes, then it should be included in the auditing requirements.<sup>232</sup> Sorenson proposes that records specifically include “conversation dates and start and end times, session dates and start and end times, incoming and outgoing telephone numbers or IP addresses for each call, CA IDs for each call, and total monthly conversation minutes and total monthly session minutes.”<sup>233</sup>

87. *Discussion.* We amend the TRS rules to require that providers of all forms of Internet-based TRS retain all required call detail records, other records that support their claims for payment from the Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form for a minimum of five years, in an electronic format that is easily retrievable for the Commission and Fund administrator for possible future use, including audits.<sup>234</sup> We conclude that the retained records must include the following data that is used to support payment claims submitted to the Fund administrator: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call. The records subject to this rule are critical to providing information necessary for effective oversight of all Internet-based TRS services, including VRS, and for conducting audits of individual providers. In addition, the data identified above may be necessary for the Commission or law enforcement agencies to investigate violations of the Commission’s rules and orders or civil or criminal statutes. Because the time required to complete comprehensive reviews and possible investigations into the operations of VRS providers may be significant, we believe it is reasonable to require retention of these records for a period of five years.

## 6. Provider Certification Under Penalty of Perjury

88. In the *VRS Call Practices Order*, the Commission adopted an interim rule requiring the CEO, CFO, or other senior executive of a relay service provider for all forms of TRS to certify, under penalty of perjury that: (1) minutes submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Act and the Commission’s rules and orders, and are not the result of impermissible financial incentives, payments or kickbacks to generate calls, and (2) cost and demand

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<sup>229</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6035, ¶57. Five years is the amount of time E-Rate eligible entities are required to retain records in accordance with section 54.516(a)(2) of the Commission’s rules. 47 C.F.R. § 54.516(a)(2). We find these entities to be similarly situated to VRS providers seeking compensation from the Fund, and therefore conclude that we should adopt an analogous document retention time requirement.

<sup>230</sup> *Id.* We did not see the need to apply this requirement to traditional TRS providers because these providers are subject to rigorous recording and reporting requirements under their contracts with the states.

<sup>231</sup> Convo Comments at 21; Purple Comments at 14; SnapVRS Comments (Sept. 13, 2010) at 27; Verizon Comments at 4.

<sup>232</sup> BISVRS Comments at 3.

<sup>233</sup> Sorenson Comments (Sept. 13, 2010) at 20-21; *see also* Sorenson Reply Comments (Sept. 27, 2010) at 4-5.

<sup>234</sup> *See* Appendix E for final rule, 47 C.F.R. § 64.604 (c)(5)(iii)(C).

data submitted to the Fund administrator in connection with the determination of compensation rates or methodologies are true and correct.<sup>235</sup> We sought comment on whether the Commission should make this interim rule permanent<sup>236</sup>

89. All commenters support provider certification, but some differ as to who should be the certifying individual.<sup>237</sup> For example, AT&T suggests that, rather than rely on a designated executive officer, any “mandated officer” be permitted to certify as to a provider’s submissions on an annual basis, and that either that officer or an “authorized employee of the TRS provider” be allowed to certify as to the monthly submissions submitted to the Fund administrator. Similarly, AT&T claims that this arrangement would be similar to other Commission filings in other areas,<sup>238</sup> and that requiring a designated executive officer to certify as to their submissions on a monthly basis would be burdensome and therefore cause delays.<sup>239</sup> Several other providers also note that the provider certification rule will not necessarily reduce the risk of fraud because the executives listed do not always have full knowledge about or control over the information contained in their submissions; rather, they rely on their staff for the collection of this information.<sup>240</sup> Nevertheless, two providers – CSDVRS and PAHVRS – agree that this requirement will help meet the Commission’s goal of holding providers accountable for their submissions.<sup>241</sup> SnapVRS further recommends that the Commission develop standardized certification language to ensure that the certifying officer not be held personally liable for “undiscovered information, either a minor error or a more serious issue being purposefully concealed by someone” else.<sup>242</sup>

90. *Discussion.* We note that the interim provider certification rule became effective on February 15, 2011, when OMB approved the new information collection requirement. In compliance therewith, VRS providers’ senior executive officers have been certifying their submissions under penalty of perjury on a monthly basis. The Commission and the Fund administrator have not received any reports on the record of problems, delays with these submissions or further complaints that submission of this form is at all burdensome for providers. We determine that the continuance of this practice is a critical component of our efforts to curtail fraud and abuse. Requiring a signed statement sworn to be true under penalty of perjury is a vehicle long and regularly used in a myriad of legal contexts to guarantee the veracity of the declarations, as well as to provide a means for civil enforcement and criminal prosecution to hold high level officials accountable for the actions of their companies.<sup>243</sup> Providers’ suggestions in their comments that their executives may not have full knowledge about, or clear control over, the information submitted to the Fund administrator illustrates why the rule is necessary. It would be irresponsible for the Commission, which is charged with maintaining the

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<sup>235</sup> *VRS Call Practices Order*, 25 FCC Rcd at 6013-21, ¶¶1-16. In light of evidence of fraud against the Fund and in order to protect the integrity of the Fund, the Commission found that it was consistent with the public interest to adopt an immediate interim rule without notice and comment, pursuant to 5 U.S.C. §553(b)(3)(B).

<sup>236</sup> *VRS Call Practices NPRM*, 25 FCC Rcd at 6035, ¶58.

<sup>237</sup> CSDVRS Comments at 29; PAHVRS Comments at 6; Purple Comments (Sept. 13, 2010) at 14; Sorenson Comments (Sept. 13, 2010) at 21; SnapVRS Comments at 27-28.

<sup>238</sup> AT&T Comments at 14-15.

<sup>239</sup> AT&T Comments at 15.

<sup>240</sup> BISVRS Comments at 4; CSDVRS Comments at 29; PAHVRS Comments at 6; SnapVRS Comments at 27-28.

<sup>241</sup> CSDVRS Comments at 29; PAHVRS Comments at 6.

<sup>242</sup> SnapVRS Comments at 28.

<sup>243</sup> *See, e.g.*, 47 C.F.R. §1.16.

integrity of the VRS Fund, to continue to remit hundreds of millions of dollars annually to providers who admit that their chief executives are unable, or chose not, to attest to the veracity of their claims for compensation.

91. The Commission therefore permanently adopts the rule set forth in the NPRM, requiring the CEO, CFO, or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, to make the required certifications under penalty of perjury.<sup>244</sup> We concur with SnapVRS's recommendation to include standardized language in this certificate that addresses the liability of the certifying officer and the provider. Accordingly, we adopt the following language for the necessary certificate:

I swear under penalty of perjury that (1) I am \_\_ (name and title), \_an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate; and (2) the TRS calls for which compensation is sought were handled in compliance with Section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

The Commission believes that this certification will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the compensation data submitted to the Fund administrator.

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

92. As noted in the attached *Order*,<sup>245</sup> our rules establish that four types of entities are eligible to provide Internet-based TRS and receive payment from the interstate TRS Fund:<sup>246</sup> (1) a certified state TRS provider or an entity operating relay facilities operated under contract with a certified state TRS program; (2) an entity that owns or operates relay facilities under contract with a common carrier providing interstate services; (3) interstate common carriers offering TRS; and (4) VRS and IP Relay providers certified by the Commission. In the *2010 VRS NOI*, we raised concerns about the extent to which the Commission's current eligibility requirements are effective to ensure that potential VRS providers are qualified to provide VRS in accordance with our rules, and in particular, what due diligence we should exercise prior to granting certification to a VRS provider.<sup>247</sup> Specifically, we noted that some providers seeking to receive compensation from the Fund may not have had prior TRS or telecommunications experience, and asked about the extent to which such experience should be a requirement for certification.<sup>248</sup> We also asked about the extent to which entities that do not own or

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<sup>244</sup> See Appendix E for final rule, 47 C.F.R. § 64.604(c)(5)(iii)(C)(5).

<sup>245</sup> See ¶47, *supra*.

<sup>246</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4) (provider eligibility rules); see generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (2005).

<sup>247</sup> *2010 VRS NOI*, 25 FCC Rcd at 8605-8606, ¶¶25-26.

<sup>248</sup> *Id.* at 8605, ¶25.

operate any TRS facilities, but merely subcontract out the call center functions needed to handle VRS calls, should be eligible for VRS certification.<sup>249</sup>

93. In addition to seeking comment on ways to improve the VRS program, the *NOI* sought comment on ways to strengthen our oversight of certified carriers to ensure that, once certified, providers operate in accordance with our rules.<sup>250</sup> For example, we sought comment on whether we should conduct on-site visits to the provider's physical VRS facilities before and after certification.<sup>251</sup> We also asked about the extent to which states are effectively exercising oversight over the VRS providers with which they contract, and whether Commission certification of all VRS providers is necessary to ensure that only qualified providers are certified and that all eligible providers are subject to effective supervision by the Commission.<sup>252</sup> In addition, we sought input on whether re-certification should be required on an annual basis, and whether demonstration of common carrier status should continue to be a condition of certification.<sup>253</sup>

94. Commenters generally support revising the certification process to ensure that all VRS providers are qualified and held accountable for both their own and their subcontracted operational practices and activities.<sup>254</sup> Several commenters suggest that the key to improving the Commission's oversight of certified providers is to discontinue the provision of services by uncertified (or "white label") providers.<sup>255</sup> Convo specifically urges that certified providers be required to own, operate and manage facilities, including owning or leasing an automatic call distribution (ACD) platform.<sup>256</sup> Nearly all commenting parties recommend that providers not be eligible to receive compensation from the Fund based on their status as providers under a certified state program, and propose that all VRS providers instead be certified directly by the Commission.<sup>257</sup> For example, Purple indicates that the states lack the incentive to properly oversee VRS providers because they do not pay for the service.<sup>258</sup> Many commenters similarly point out that effective oversight can only be accomplished by Commission adoption of rigorous compliance requirements, including frequent auditing and reporting, as well as a revised certification process.<sup>259</sup>

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<sup>249</sup> *Id.* The accompanying *Order* explains that such call center functions, include call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration. See ¶56, *supra*.

<sup>250</sup> *Id.* at 8606, ¶26. Rules governing the current certification process are at 47 C.F.R. §64.606 *et. seq.*

<sup>251</sup> *Id.* at 8605, ¶25.

<sup>252</sup> *Id.* at 8606, ¶¶25, 26.

<sup>253</sup> *Id.*

<sup>254</sup> AT&T Comments at 16; Convo Comments at 21-23; CSDVRS Comments at 26-27; PAHVRS Comments at 25-28; Purple Comments at 24 and 35; Sprint Comments at 13; SkyVRS Comments at 1; TDI Comments at 15; Verizon Reply Comments at 4-5.

<sup>255</sup> Convo Comments at 22-23; Purple Comments at 24; TDI Comments at 15. We have addressed this concern in the accompanying *Order*. See ¶¶47-57 *supra*.

<sup>256</sup> Convo Comments at 22-23.

<sup>257</sup> AT&T Comments at 16; Purple Comments at 35; Sprint Comments at 13; Verizon Reply Comments at 4. *But see* Sorenson Reply Comments at 6, asserting that there is "no evidence that providers that participate in state programs are more prone to misconduct than are FCC-certified providers."

<sup>258</sup> Purple Comments at 35.

<sup>259</sup> Convo Comments at 22; CSDVRS Comments at 26-27; Purple Comments at 24; TDI Comments at 15.

95. In this *FNPRM*, we seek comment on a number of proposed modifications to our certification process for all Internet-based relay providers, including VRS providers,<sup>260</sup> to ensure that all entities seeking certification in the future – or currently certified entities seeking re-certification – are fully qualified to provide Internet-based relay service in compliance with our rules and requirements, including all of the new obligations adopted in the accompanying *Order*, to reduce waste, fraud and abuse, and improve oversight.<sup>261</sup> To the extent that we have procedures in place to effectively verify the qualifications of an entity prior to allowing that entity to become certified as an eligible provider, we will be better able to limit fraud and minimize our oversight burden once such entities are providing service. We approach this process with the goal of establishing clear criteria for granting certification to qualifying entities for a limited period of time, and adopting measures that will enable us to exercise the oversight needed to determine whether we should revoke such certification when a provider is not complying fully with our rules. At the outset, we note that any modifications to our certification process that we adopt in this proceeding will be only one part of the Commission's larger plans to reform the structure of the VRS program.<sup>262</sup> Accordingly, such modifications may be transitional until a more comprehensive, permanent structure for the VRS program is established by the Commission.<sup>263</sup>

96. We make the following proposals to ensure that the certification process enables the Commission to identify providers that are qualified to provide Internet-based relay services in accordance with our rules. First, we propose that all Internet-based relay providers be required to receive certification from the Commission, under the procedures and guidelines proposed herein, to be eligible to receive compensation from the TRS Fund. Under this proposal, certification by the Commission would be the sole method by which an Internet-based TRS provider could become eligible to receive compensation from the TRS Fund. An Internet-based relay provider would no longer be permitted to receive compensation from the TRS Fund merely: (1) by virtue of its contract with a certified state TRS program; (2) through its contract with an interstate common carrier; (3) because it is an interstate common carrier; or (4) because it is certified by a state. Eligibility through these methods has failed to ensure that providers are qualified to provide VRS or to provide the Commission with the requisite information to determine whether providers are complying with our TRS rules. We believe that these alternative eligibility methods have facilitated participation in the VRS program by unqualified, non-compliant providers.<sup>264</sup> Moreover, they have hampered the Commission's efforts to exercise stringent Commission oversight over entities providing service. For example, although an entity currently may become eligible to seek reimbursement from the TRS Fund for its provision of Internet-based relay services through a state contract, states generally do not have their own rules governing Internet-based relay services; nor do they directly compensate Internet-based relay providers. Therefore, they generally have little or no incentive to either verify the qualifications of the providers with which they contract or exercise the oversight needed to ensure full compliance with the Commission's TRS

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<sup>260</sup> We note that although the *2010 VRS NOI* asked only about the certification for VRS providers, this *FNPRM* extends our proposals to all Internet-based relay providers, including providers of VRS, IP Relay and IP-based captioned telephone relay service.

<sup>261</sup> Under the new rules, all certified providers will also be subject to stringent auditing requirements, including possible on-site visits. See ¶71, *supra*.

<sup>262</sup> See generally *2010 VRS NOI*.

<sup>263</sup> At such time, the certification process that we adopt initially in this proceeding may be superseded.

<sup>264</sup> We note, for example, that CAC, a VRS provider certified under a state program, served as a billing agent for Viable, whose executives and associates pled guilty for defrauding the FCC. Transcript of Testimony at 47, 48, and 74, *United States v. Pena*, D.N.J. (2010)(No. 09-858).

rules once those contracts are executed and service commences.<sup>265</sup> In short, because the Commission bears the responsibility for managing the TRS Fund, it must have the exclusive responsibility to certify providers as eligible to collect from the Fund; this will ensure that Internet-based TRS is provided by qualified providers and will enable the Commission to exercise effective oversight over these providers. We seek comment on this proposal.

97. We propose that all providers that are not already certified by the Commission, be required to apply to the Commission for certification to provide Internet-based TRS. We seek comment on this proposal. We further propose that an applicant be certified or be permitted to renew its certification<sup>266</sup> only upon a determination by the Commission that such applicant has adequately demonstrated its ability to comply with all of the Commission's rules, including those adopted in the accompanying *Order*. We propose that mere attestations be inadequate to satisfy this standard. Instead, we propose requiring evidence of an applicant's ability to comply with our rules governing the qualifications of CAs, including speed of answer, facility redundancy to ensure continuance of the service, and other operational and technical standards designed to assure provision of a service that is functionally equivalent to voice telephone service.<sup>267</sup> Specifically, we propose that applicants provide documentary and other evidence demonstrating that the applicant owns and operates facilities associated with TRS call centers, and employs interpreters, on a full or part-time basis, to staff such call centers at the date of the application.<sup>268</sup> Such evidence shall include, but is not limited to:

- a copy of each deed or lease for each call center operated by the applicant;
- a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational

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<sup>265</sup> The rationales for allowing interstate TRS providers to become eligible to provide compensable TRS through a state contract do not apply to Internet-based TRS providers. In fact, when the Commission first adopted rules in 1991 allowing TRS providers to obtain eligibility to receive compensation from the TRS Fund through a state contract, there were no Internet-based relay services. At that time, it was determined that TRS providers, all of whom provided TRS over the public switched telephone network (PSTN), should be permitted to receive direct compensation from the TRS Fund for the services they provided under contract with a state, so that the state could select a single provider to offer both intrastate and interstate TRS for that state and pay the provider for the intrastate portion of the provider's TRS minutes. Under these arrangements, which still exist for the traditional forms of TRS, a provider is selected by a state to handle PSTN-based relay services for the state, and is then subject to the direct supervision of that state for both the intra- and interstate relay services that it provides. This is not the case for Internet-based relay, where the provider is reimbursed directly by the TRS Fund for *all* services provided, and the state has no real connection to the provider. Indeed it is somewhat of a fiction that an Internet-based relay provider is "operating under contract" with the state (even when it otherwise also has a relay contract with a state for non-Internet-based relay services) because the state conducts no monitoring of the provider's Internet-based relay activities, and is generally not even aware of the extent to which the provider is handling Internet-based relay calls for its residents.

<sup>266</sup> Currently, certified providers must renew their certifications once every five years. 47 C.F.R. §64.606(c)(2).

<sup>267</sup> 47 C.F.R. §§64.604(a); (b).

<sup>268</sup> See ¶56, *supra*, requiring a provider to be responsible for providing the core components of Internet-based TRS, rather than subcontracting out these responsibilities to a third party.

structure, and the names of its executives, officers, partners, and members of its board of directors;<sup>269</sup>

- a list of all of the names of applicant's full-time and part-time employees;
- proofs of purchase or license agreements for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, ACD, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;
- copies of employment agreements for all of the provider's executives and CAs;
- copies of any subcontracting agreements for services not directly essential for the provision of Internet-based relay (such as maintenance and transportation services);
- a list of all financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;
- copies of all other agreements associated with the provision of Internet-based relay service; and
- a list of all sponsorship arrangements (*e.g.*, those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated agreements.<sup>270</sup>

98. In addition, we propose that the certification process include, at the Commission's discretion, other measures, including on-site visits to the premises of applicants, to assess the merits of certification applications; we seek comment on this proposal as well as what those measures may be. We believe that these requirements will enable the Commission to determine applicants' qualifications and enable the Commission and the Fund administrator to oversee the providers' operations and activities so as to ensure that they are in compliance with the new TRS rules adopted in the accompanying *Order*. We seek comment on the extent to which the detailed information set forth above is necessary to achieve our objectives. We further seek input on what other types of documentation we should require, including the level of detail we should require, to ensure that we are able to assess whether an applicant is fully qualified to provide Internet-based relay service in compliance with our rules and requirements.

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<sup>269</sup> We believe that individuals or entities with a smaller ownership or voting interest would not have sufficient control or influence over the applicant to warrant reporting unless they exercise *de jure* or *de facto* control by other means. This 10 percent threshold has been applied in other contexts. See, e.g., 47 C.F.R. §52.12(a)(1)(i)(A)&(B) (defines when the North American Numbering Plan Administrator and its agent would be considered an "affiliate" of a telecommunications service provider or interconnected VoIP provider because these entities are supposed to be impartial and not aligned with telecommunications industry segments); 47 C.F.R §63.04(a)(4) (requires a carrier seeking approval of a transfer of control under section 214 of the Act to report the name of any entity with 10 percent or more equity in such carrier). *Cf.* 47 C.F.R. § 73.3555 note 2 (broadcast attribution standards).

<sup>270</sup> Providers could request confidential treatment of information submitted that they believe should not be made routinely available for public inspection under our rules. See 47 C.F.R. §§ 0.457, 0.459.

99. We also note that our rules require providers to file annual reports containing evidence that they are in continued compliance with section 64.604 of our rules.<sup>271</sup> We propose that providers be required to submit updates to the information listed above with these annual reports, and seek comment on this proposal. We also seek comment on whether the provision of this information on an annual basis would eliminate the need for renewal of certification every five years, as is now required by our rules.<sup>272</sup>

100. At present, our rules require providers to notify the Commission of substantive changes in their TRS programs within 60 days of when these changes occur, and to further certify that their service continues to meet mandatory minimum standards after implementing such changes.<sup>273</sup> However, our rules do not specify what constitutes a “substantive change.” For example, would the use of new equipment and/or technologies to facilitate the manner in which relay services are provided constitute a substantive change? Should providing relay services from a facility that we have not specifically authorized trigger this requirement to notify the Commission? Should a change in a provider’s management, name branding of its product, or marketing and outreach activities be considered a substantive change that warrants notification? We seek comment on what types of changes should trigger this requirement to notify the Commission.

101. In order to be entitled to compensation from the TRS Fund for providing Internet-based TRS, the TRS provider’s facilities must have redundancy features in the event of call center or network outages, as well comply with the other minimum standards that apply to all TRS.<sup>274</sup> At present, however, our rules do not explicitly address the obligations associated with a provider’s decision to temporarily cease its operations. Such interruptions of service are of concern to the Commission, given the impact that these might have on relay users. To avoid future interruptions in service that may hamper the ability of relay customers to place Internet-based TRS calls, we propose requiring that each certified provider seek prior Commission authorization of any voluntary interruption in the provision of Internet-based TRS. In order to comply with this requirement, we propose that a provider be directed to submit a written request to the Commission’s CGB at least 60 days prior to any planned interruption, with detailed information of (1) its justification for such service interruption; (2) its plan to notify customers about the impending interruption; and (3) its plans for resuming service, so as to minimize the impact of such interruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption.<sup>275</sup> We further propose

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<sup>271</sup> 47 C.F.R. § 64.606(g).

<sup>272</sup> Currently, providers must re-apply for a renewal of their certification after five years by filing documentation with the Commission at least 90 days prior to the expiration of such certification. 47 C.F.R. § 64.606(c)(2).

<sup>273</sup> 47 C.F.R. § 64.606(f)(2).

<sup>274</sup> See 47 C.F.R. § 64.604(b)(4)(i),(ii). See *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, at 7789, 7790, ¶¶29, 33 (2002) (“In order to be certified and eligible for reimbursement, IP Relay must meet these minimum standards, or request and receive waivers of the standards.”); See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, Declaratory Ruling, 22 FCC Rcd 379, at 391, ¶29 (2007) (“We do not mandate the provision of IP captioned telephone service at this time. Nevertheless, to be eligible for compensation from the Fund, providers must offer service in compliance with all applicable TRS mandatory minimum standards.”).

<sup>275</sup> This proposed rule is comparable to the section 214(a) process that domestic telecommunications service providers must follow with respect to having to apply for and obtain permission for a planned discontinuance or reduction in its service. Section 214(a) requires that a domestic interstate common carrier apply for service discontinuance, as well as notify its customers of such planned discontinuance to ensure minimal or no service

(continued....)

delegating authority to CGB to grant or deny such requests for service interruption, and to provide a response to the provider within 30 days of the proposed interruption, in order to afford an adequate period of notification to consumers. We propose to direct that CGB, in deciding whether to grant or deny such requests, consider, among other things, the length of time for the proposed interruption, the reason for such interruption, the frequency with which such requests have been made by the same provider in the past, the potential impact of the interruption on consumers, and the provider's plans for a smooth service restoration. We seek comment on these criteria and whether any others should be considered in making such determinations. Finally, we propose that providers be subject to revocation of their certifications by the Commission.

102. With respect to brief, unforeseen service interruptions due to circumstances beyond a provider's control, we propose that the affected provider submit a written notification to CGB within two business days of when the service disruption first occurred, with an explanation of how the provision of its service had been restored or will be restored imminently. Finally, we propose taking enforcement action against certified providers, including, but not limited to, the revocation of certification and/or suspension of payment, in the event that a voluntary interruption of service occurs without obtaining authority from the CGB or in the event that the requested cessation proceeds notwithstanding CGB's denial of the provider's request. We seek comment on these proposals.

103. In order to ensure the seamless delivery of Internet-based TRS during any transition period following Commission establishment of new eligibility requirements and certification procedures, we propose that any provider currently eligible to receive compensation from the TRS Fund via a means other than FCC certification,<sup>276</sup> be permitted, concurrently with the submission of its application for Commission certification, to seek temporary waiver of any new requirements to obtain certification from the Commission prior to offering Internet-enabled TRS, while its application is pending.<sup>277</sup> This will enable the provider to continue to receive compensation from the Fund and to continue providing Internet-based TRS during this interim period.<sup>278</sup> We request comment on these proposals generally, as well as a time frame for these providers to seek Commission certification and a temporary waiver. In addition, we seek feedback on what an applicant seeking such a waiver should have to demonstrate in order to establish that a temporary waiver of the certification requirement would serve the public interest? Further, in the event that an applicant's request for temporary waiver and/or application for certification is denied, we propose that the applicant be given at least 30 days to discontinue its service in order to allow its affected consumers sufficient time for transition to another eligible provider's service.

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disruption for its customers. *See* 47 U.S.C. §214; 47 C.F.R. §63.71. The Commission applied those rules to interconnected VoIP in 2009. *See IP-Enabled Services*, Report and Order, 24 FCC Rcd 2039 (2009).

<sup>276</sup> As noted above, this will include Internet-based TRS providers that are presently [eligible] because they are operating relay facilities under contract with a certified state TRS program, own or operate relay facilities under contract with a common carrier providing interstate services, or are an interstate common carrier

<sup>277</sup> Persons seeking waiver of a Commission rule must show good cause, and that waiver would be in the public interest. 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>278</sup> This proposed application and waiver process would also pertain to those providers whose Commission certifications are due to expire before the new certification requirements go into effect.

## V. PROCEDURAL MATTERS

### A. Congressional Review Act

104. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 279 See 5 U.S.C. § 801(a)(1)(A).

### B. Regulatory Flexibility

105. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>280</sup> the Commission has prepared a Final Regulatory Flexibility Certification in which it concludes that, under the terms of the RFA, there is no significant economic impact on small entities as a result of the policies and rules addressed in this document. The certification is set forth in Appendix C.

106. *Initial Regulatory Flexibility Certification.* With respect to this *FNPRM*, an Initial Regulatory Flexibility Certification (IRFC) is contained in Appendix B. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFC of the expected impact on small entities of the proposals contained in the *FNPRM*. Written public comments are requested on the IRFC. Comments must be identified as responses to the IRFC and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including the IRFC, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>281</sup>

### C. Paperwork Reduction Act

107. *Final Paperwork Reduction Act of 1995 Analysis.* The *Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>282</sup> we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

108. In this present document, we have assessed the effects of imposing various requirements on VRS providers as well as providers of other forms of TRS. We recognize that these requirements are necessary to detect and prevent fraud, abuse and waste in the VRS program. We take these actions to ensure the sustainability of the program upon which individuals of hearing and speech disabilities have come to rely for their daily communication needs. In doing so, we have balanced preserving the integrity of the VRS program and minimizing the information collection burden for small business concerns, including those with fewer than 25 employees. For example, in adopting procedures for the

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<sup>279</sup> See 5 U.S.C. § 801 (a)(1)(A).

<sup>280</sup> The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>281</sup> See 5 U.S.C. § 603(a). In addition, the *FNPRM* and IRFC (or summaries thereof) will be published in the *Federal Register*.

<sup>282</sup> See 44 U.S.C. § 3506(c)(4).

resolution of disputed provider payment claims when payment has been suspended, the Order allows providers, including small businesses, to submit claims for payment in a process that is uniform, predictable and equitable for all providers, thereby reducing burdens associated with disputed payments. The Commission also requires automated recordkeeping of TRS minutes submitted to the Fund. The Commission believes that providers automatically receiving records of TRS minutes and submitting them in an electronic format should entail minimal burden and will prove critical to ensuring that submitted data for compensation is accurate. The Commission also finds that requiring providers to provide reports and retain records in an electronic format that is retrievable will provide a seamless transaction for the purpose of compensation from the TRS Fund, which will alleviate burdens on providers, including small businesses. Further, the Commission believes that the whistleblower protection rule adopted in this *Order* will benefit all providers, including small businesses, because it provides their employees with guidance that will reduce uncertainty associated with employee's rights. Finally, the Commission concludes that all TRS providers, including small entities, will be eligible to receive compensation from the Interstate TRS Fund for their reasonable costs of complying with the requirements adopted in this Order. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

109. *Initial Paperwork Reduction Act of 1995 Analysis.* The *NPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and 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. Public and agency comments are due 60 days after date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>283</sup> we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### D. Ex Parte Presentations

110. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>284</sup> 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.<sup>285</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.<sup>286</sup>

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<sup>283</sup> See 44 U.S.C. 3506(c)(4).

<sup>284</sup> 47 C.F.R. §§ 1.1200-1.1216.

<sup>285</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>286</sup> 47 C.F.R. § 1.1206(b).

## E. Comment Filing Procedures

111. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>287</sup> interested parties may file comments and reply comments regarding the *FNPRM* on or before the dates indicated on the first page of this document.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, which in this instance is CG Docket No. 10-51.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. 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.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> 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 12<sup>th</sup> Street, SW, Washington DC 20554.

112. In addition, parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

113. Documents in CG Docket No. 10-51 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, 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](mailto:fcc@bcpiweb.com).

114. **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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) (202) 418-0432 (TTY). This *Report and Order and Further Notice of Proposed Rulemaking* can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

## VI. ORDERING CLAUSES

115. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), (j) and (o), 225, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j) and (o), 225, and 303(r), this *Report and Order and Further Notice of Proposed Rulemaking* IS ADOPTED.

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<sup>287</sup> 47 C.F.R. §§ 1.415, 1.419.