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

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In the Matter of	)	
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123

NOTICE OF PROPOSED RULEMAKING

Adopted: April 14, 2011 **Released: April 15, 2011**

Comment Date: (14 days after date of publication in the Federal Register)
Reply Comment Date: (21 days after date of publication in the Federal Register)

By the Commission:

1. In this Notice of Proposed Rulemaking (*NPRM*), we seek comment on the rates and compensation for video relay service (VRS) for the 2011-12 Interstate Telecommunications Relay Services (TRS) Fund (Fund) year.[1] Specifically, we seek further comment on VRS market structure and compensation method proposals initially raised in a 2010 Notice of Inquiry related to the structure and practices of the VRS program.[2] In addition, in the event we are unable to fully resolve these issues prior to the beginning of the 2011-12 Fund year, we tentatively conclude that extending the current interim rates and compensation structure provides the best means to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to this proceeding.

I. BACKGROUND

2. In its Order setting compensation rates for TRS providers from the Fund for the 2010-11 Fund year, the Commission adopted interim rates for VRS of $6.2390 for Tier I, $6.2335 for Tier II, and $5.0668 for Tier III.[3] The Commission stated that these rates were adopted on an interim basis to reflect a

[1] VRS is a form of TRS that enables the VRS user to access the nation's telephone system and communicate in American Sign Language by using a video-to-video link with a communications assistant (CA); the CA relays the call between a voice telephone user and the VRS user. See 47 C.F.R. § 64.601(26) (defining VRS).

[2] *Structure and Practices of the Video Relay Service Program,* CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 (2010) (*2010 VRS NOI*). In the *2010 VRS NOI,* the Commission sought comment on VRS market structure and compensation method proposals for the long term.

[3] *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8692, para. 6 (2010) (*2010 TRS Rate Order*). The Commission retained the tiered rate methodology based on call volume, to address differences in provider size, that it had been using for VRS compensation rates since 2007. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20160-65, paras. 47-56 (2007). Tier I includes the first 50,000

(continued…)

balance between the goals of ensuring that VRS providers recover their reasonable costs from the Fund and ensuring quality and sufficient service while the Commission considers reform of the practices and structure of VRS.[4] The Commission also stated its intent to further examine VRS rates as part of upcoming proceedings, including the *2010 VRS NOI*, and audits of providers.[5] The *2010 VRS NOI*, in turn, specifically sought comment on, among other things, various compensation methods and potential market structures for VRS for the long term.[6] We now seek to develop the record further on some of the proposals raised in the *2010 VRS NOI*, in an effort to establish a VRS compensation structure for the 2011-12 Fund year.

II. NOTICE OF PROPOSED RULEMAKING

3. The record in our *2010 VRS NOI* proceeding raises many issues and includes several proposed changes to the current structure and methodologies for compensating VRS providers. Some of the issues raised by commenters may have a significant impact on our consideration of the ultimate structure for VRS. For example, several parties noted that they had difficulties with our general application of the Part 32 Uniform System of Accounts[7] to relay providers.[8] Others suggest that even if providers are required to comply with the applied accounting requirements, the data submitted may not be enough to enable the Fund administrator to conduct a meaningful analysis.[9] We therefore seek additional comments with specific proposals for VRS accounting, including recommended accounts and sub-accounts.

4. We also seek additional comment on how to treat certain costs and expenses. For example, we recognize that several commenters to the *2010 VRS NOI* addressed how the cost of capital should be considered in determining VRS rates and in compensating individual providers. Some of these commenters focused on the extent to which compensation for interest expenses and debt repayment should be allowed.[10] We seek comment on how best to address such compensation issues. Specifically, commenters should address whether we should limit or exclude the expenses of raising capital from VRS rates in general, or whether individual providers should not receive some or all compensation for the costs involved in various methods of raising capital. Similarly we invite comment on the proper regulatory treatment of various methods used by providers to raise capital, including appropriate disclosure and approval requirements that may be implemented. What other changes, if any, should we make to our treatment of costs and expenses?

5. In the event that we are unable to finalize the compensation structure for VRS in time to calculate a new rate for the Fund year beginning July 1, 2011, we tentatively conclude that extending the

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monthly VRS minutes; Tier II includes monthly minutes between 50,001 and 500,000; and Tier III includes monthly minutes above 500,000.

[4] *2010 TRS Rate Order*, 25 FCC Rcd at 8690, para. 2.

[5] *Id.*

[6] *See 2010 VRS NOI*, 25 FCC Rcd at 8602-05, paras. 13-23.

[7] *See* 47 C.F.R. § 32.1 *et seq.*

[8] *See, e.g.*, Convo Comments at 8 ("Part 32 accounts are designed to be used by . . . network operators . . . whose biggest costs to provide service are equipment and communication facilities. In contrast, VRS service is a labor intensive service. . . . The chart of accounts for a VRS service provider would ideally be different than the complex Part 32 account structure"); CSDVRS Comments at 4-6 (Part 32 "is clearly designed for more traditional capital intensive telecommunications companies that rely on significant physical assets to foster communication. . . . [In contrast,] VRS companies are labor intensive," with the primary conduit for communication being the CA.).

[9] *See, e.g.*, Sorenson Comments at 27-28.

[10] *See* Convo Comments at 9; PAH! Comments at 6; Sprint Comments at 10-11.

current interim rates and compensation structure for VRS to the 2011-12 Fund year would be appropriate. The current interim rates have resulted in significant savings for the Fund,[11] demand for VRS has remained stable during the 2010-11 Fund year,[12] and data submitted to the Fund administrator demonstrate that no VRS provider has failed to meet speed of answer requirements under the interim rates.[13] We also recognize the certainty and stability that the current compensation structure can offer until final rules in the *2010 VRS NOI* proceeding are implemented. We seek comment on this tentative conclusion.

III. PROCEDURAL REQUIREMENTS

6. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[14] 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.[15] Other requirements pertaining to oral and written *ex parte* presentations are set forth in section 1.1206(b) of the Commission's rules.[16]

7. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,[17] interested parties may file comments and reply comments regarding the *NPRM* on or before the dates indicated on the first page of this document. **All filings must reference CG Docket Nos. 10-51 and 03-123.**

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): http://www.fcc.gov/cgb/ecfs/. Filers should follow the instructions provided on the appropriate website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers, which in this instance are CG Docket No. 10-51 and CG Docket No. 03-123.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because two docket numbers appear in the caption of this proceeding, filers must submit two additional copies for the second docket number. 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.

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[11] *See* News Release, Federal Communications Commission, "FCC Takes Action to Protect and Sustain Vital Service for the Deaf: Commission Votes Unanimously on Immediate and Long-Term Approaches" (June 28, 2010) (stating that the interim rates, together with steps taken to reduce fraud in the VRS program, would "save the Fund about $275 million" over the previous year's costs).

[12] *See* NECA, VRS MINUTES JANUARY 2002 – OCTOBER 2010 (2010), *available at* https://www.neca.org/cms400min/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4976&libID=4996; *see also* NECA, VRS GROWTH CHART JANUARY 2002-JULY 2011 (2011), *available at* https://www.neca.org/cms400min/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4976&libID=4996.

[13] *See* 47 C.F.R. § 64.604(b)(2)(iii) (speed of answer requirements for VRS providers); *see generally* 47 C.F.R. § 64.604(b) (mandatory minimum TRS technical standards).

[14] *See* 47 C.F.R. §§ 1.1200 *et seq.*

[15] 47 C.F.R. § 1.1206(b)(2).

[16] 47 C.F.R. § 1.1206(b).

[17] 47 C.F.R. §§ 1.415, 1.419.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

8. 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, DC 20554, or via e-mail to fcc@bcpiweb.com.

9. Documents in CG Docket Nos. 10-51 and 03-123 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, DC 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.

10. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This Order and 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.

11. *Paperwork Reduction Act.* This *NPRM* seeks comment on a potential new or revised information collection requirement or may result in a new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the *Federal Register* inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995.[18] In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[19] the Commission will seek specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

12. *Initial Regulatory Flexibility Certification.* With respect to this *NPRM*, an Initial Regulatory Flexibility Certification (IRFC) is contained in the Appendix. 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 *NPRM*. 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 *NPRM*. The Commission will send a copy of the *NPRM*, including the IRFC, to the Chief Counsel for Advocacy of the Small Business Administration.[20]

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to sections 4(i)–(j), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 225, and 303(r), this Notice of Proposed Rulemaking IS ADOPTED.

14. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed

[18] Public Law 104-13 (44 U.S.C. § 3501 *et seq.*).

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

[20] *See* 5 U.S.C. § 603(a). In addition, the *FNPRM* and IRFC (or summaries thereof) will be published in the *Federal Register*.

Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Certification

CG Docket No. 10-51
CG Docket No. 03-123

1. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

2. In this *NPRM*, the Commission seeks comment on the rates and compensation for video relay service (VRS) for the 2011-12 Interstate Telecommunications Relay Services (TRS) Fund (Fund) year.[6] Specifically, the Commission seeks further comment on VRS market structure and compensation method proposals initially raised in a 2010 Notice of Inquiry related to the structure and practices of the VRS program.[7] In addition, in the event we are unable to fully resolve the issues raised in the *2010 VRS NOI* prior to the beginning of the 2011-12 Fund year, the Commission seeks comment on its tentative conclusion that extending the current interim rates and compensation structure provides the best means to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to this proceeding.

3. The Commission's proposed action is to extend the current 2010-2011 rates for VRS for the upcoming 2011-2012 Fund year. The Commission concludes that this proposal will not impose a financial burden on entities, including small businesses, because these entities will continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently reimbursed.

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

[2] 5 U.S.C. § 605(b).

[3] 5 U.S.C. § 601(6).

[4] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

[5] 15 U.S.C. § 632.

[6] VRS is a form of TRS that enables the VRS user to access the nation's telephone system and communicate in American Sign Language by using a video-to-video link with a communications assistant (CA); the CA relays the call between a voice telephone user and the VRS user. See 47 C.F.R. § 64.601(26) (defining VRS).

[7] *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 (2010) (*2010 VRS NOI*). In the *2010 VRS NOI*, the Commission sought comment on VRS market structure and compensation method proposals for the long term.

4. Therefore, we certify that the proposal in this *NPRM*, if adopted, would not have a significant economic impact on a substantial number of small entities.

5. The Commission will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[8] This initial certification will also be published in the Federal Register.[9]

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

[8] 5 U.S.C. § 605(b).

[9] 5 U.S.C. § 605(b).