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

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
	)	

**FURTHER NOTICE OF PROPOSED RULEMAKING**

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By the Commission:

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## I. INTRODUCTION

1. Video relay service (VRS) allows persons with hearing or speech disabilities or who are deaf-blind to use American Sign Language (ASL) to communicate in near real time through a communications assistant (CA), via video over a broadband Internet connection.<sup>1</sup> In this Further Notice of Proposed Rulemaking (*Further Notice*), we continue the process of reexamining the fundamentals of the Commission's VRS rules to ensure the VRS program fulfills the goals set for the Commission in section 225 of the Communications Act ("the Act").<sup>2</sup> Specifically, we set forth a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence – particularly given advances in commercially-available technology – and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates. We solicit comment on these options and proposals to ensure that this vital program is effective, efficient, and sustainable for the future.

## II. BACKGROUND

### A. Purpose of the TRS Program and VRS

2. Title IV of the ADA requires the Commission to ensure that TRS is available to persons in the United States who are deaf, hard of hearing, deaf-blind or have a speech disability.<sup>3</sup> In adopting Title IV of the ADA, Congress recognized that persons with hearing or speech disabilities have long experienced barriers to their ability to access, use, and benefit from telecommunications services.<sup>4</sup> The intent of Title IV is, therefore, to further the Communications Act's goal of universal service by ensuring that these individuals have access to the nation's communications system.<sup>5</sup>

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<sup>1</sup> *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 98-67, 15 FCC Rcd 5140, 5152-54, paras. 21-27 (2000) (*2000 TRS Order*). VRS is one form of telecommunications relay service (TRS). TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability or who is deaf-blind to communicate by telephone or other device through the telephone system. See 47 U.S.C. § 225(a)(3) (defining TRS); see also § 103 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 (2010), as codified in various sections of 47 U.S.C., and amended by Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010 (making technical corrections to the CVAA). TRS is provided in a variety of ways. We note that some deaf-blind individuals have residual vision, and thus may use VRS.

<sup>2</sup> See 47 U.S.C. § 225.

<sup>3</sup> Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Act), as amended, 47 U.S.C. § 225; implementing regulations at 47 C.F.R. § 64.601 *et seq.*

<sup>4</sup> See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479-12480, para. 3 (2004) (*2004 TRS Report & Order*) (discussing legislative history of Title IV of the ADA).

<sup>5</sup> See, e.g., 47 U.S.C. § 225(a)(3). The legislative history of Title IV reflects that the "goal of universal service has governed the development of the nation's telephone system for over fifty years," and that "the inability of over 26 million Americans to access fully the Nation's telephone system poses a serious threat to the full attainment of [this goal]." See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129 (1990) (House Report).

3. Section 225 sets forth several overarching principles governing the provision and regulation of TRS.<sup>6</sup> First, section 225 requires the Commission to ensure that TRS is “available, to the extent possible and in the most efficient manner” to persons with hearing or speech disabilities in the United States.<sup>7</sup> Second, section 225 requires that TRS provide “functionally equivalent” telephone service for persons with hearing or speech disabilities.<sup>8</sup> Third, the statute requires that the Commission’s regulations encourage the use of existing technology and not discourage the development of new technology.<sup>9</sup> Finally, the regulatory scheme distinguishes between *intrastate* and *interstate* TRS services, which is reflected, in part, by the arrangement whereby states are responsible for the reimbursement of the costs of PSTN-based intrastate TRS and the TRS Fund is responsible for the reimbursement of the costs of interstate TRS and the costs associated with IP-based TRS.<sup>10</sup>

4. Over the past twenty years, the Commission has issued numerous orders designed to advance the TRS program and ensure that it reflects the intent of Congress.<sup>11</sup> For example, the Commission has improved the availability and effectiveness of TRS by recognizing new and innovative

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<sup>6</sup> We note that section 103 of the CVAA amended section 225 to (i) require providers of VoIP-based services to contribute to the Interstate TRS Fund (“TRS Fund” or “Fund”) and (ii) clarify that in addition to defining TRS as the ability of a person who is deaf, hard of hearing, deaf-blind or has a speech disability to use relay services for the purpose of communicating with hearing individuals, these services may be used where individuals with disabilities need to communicate with other relay users with disabilities, where necessary to achieve functionally equivalent communication. See CVAA § 103; 47 U.S.C. §§ 225(a)(3), 616; S. Rep. No. 111-386, 111<sup>th</sup> Cong., 2d Sess. at 7 (2010) (CVAA Senate Report).

<sup>7</sup> 47 U.S.C. § 225(b)(1); see also House Report at 129.

<sup>8</sup> 47 U.S.C. § 225(a)(3).

<sup>9</sup> 47 U.S.C. § 225(d)(2).

<sup>10</sup> 47 U.S.C. § 225(d)(3). The costs of TRS are not directly recovered from TRS users. Section 225(d)(1)(D) provides that our regulations “require that users of [TRS] pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination.” 47 U.S.C. § 225(d)(1)(D). In enacting such a regulation, the Commission explained that the functional equivalence mandate requires us to ensure that carriers’ charges for TRS “not exceed charges of functionally equivalent voice service between the same end points, without regard to how the call is routed.” *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals*, Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 90-376, 5 FCC Rcd 7187 para. 14 (1990) (*TRS I NPRM*); see 47 C.F.R. § 64.604(c)(4); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, FCC 11-104, para. 1, n.1 (rel. June 30, 2011) (*2011 TRS Rate Order*). In practice, VRS is free for end users, and any custom equipment or software used to access VRS is also generally provided at no cost to users, except for the cost of the required Internet connection. Providers are compensated for their reasonable costs of providing service by the TRS Fund. See 47 C.F.R. § 64.604(c)(5)(iii)(E). The Fund is supported via contributions collected from the common carriers providing interstate telecommunications services and other providers of communications services. See 47 C.F.R. §§ 64.604(c)(5)(iii)(A), 64.601(b). The Commission adopted a carrier contribution factor of 0.01058 and funding requirement of \$740,399,393.56 for the 2011-12 Fund year. See *2011 TRS Rate Order*. Pursuant to section 715 of the CVAA, interconnected VoIP providers and providers of non-interconnected VoIP service were required to start contributing by October 8, 2011. CVAA § 715; 47 U.S.C. § 616; see also *Contributions to the Telecommunications Relay Service Fund*, CG Docket No. 11-47, Notice of Proposed Rulemaking, 26 FCC Rcd 3285 (2011) (seeking comment on implementation of CVAA § 715).

<sup>11</sup> The Commission has described the history of the VRS program in detail in prior orders. See, e.g., *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 at 8598-8600, paras. 2-8 (2010) (*2010 VRS Reform NOI*).

forms of TRS, including VRS.<sup>12</sup> The Commission created a shared funding mechanism – the TRS Fund – to ensure that providers can recover the reasonable costs of providing TRS and to incent TRS providers “to offer high quality, innovative services at reasonable cost,” and refined its funding mechanisms to reduce the possibility of waste, fraud, and abuse.<sup>13</sup> The Commission has improved the functional equivalence of TRS by strengthening its mandatory minimum standards.<sup>14</sup> And the Commission has taken steps to encourage the use of up-to-date technology and ensure that the development and use of new technology by, for example, ensuring that Internet-based TRS (iTRS)<sup>15</sup> supports ten-digit dialing and functionally-equivalent access to emergency services.<sup>16</sup> The Commission remains committed to fulfilling the intent of Congress to ensure the provision of TRS that is functionally equivalent to conventional voice telephone services. To this end, throughout this proceeding, the Commission has carefully considered the principles and recommendations contained in the Consumer Groups’ TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act, a blueprint submitted to the Commission in April 2011, whose stated purpose is to assist the Commission in “developing policies for relay services to fulfill the functional equivalency mandate of

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<sup>12</sup> See, e.g., *2000 TRS Order*, 15 FCC Rcd at 5152-54, paras. 21-27 (recognizing VRS as a form of TRS); *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121 (2003) (*2003 Captioned Telephone Declaratory Ruling*) (recognizing Captioned Telephone Service (CTS) as a form of TRS); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (2002) (*IP Relay Declaratory Ruling*) (recognizing IP Relay as a form of TRS).

<sup>13</sup> See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, 8 FCC Rcd 1802, 1806, para. 24 (1993) (*TRS II*) (creating shared funding mechanism); see generally *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (*VRS Call Practices R&O and Certification FNPRM*) (adopting rules to detect and prevent fraud and abuse in the provision of VRS).

<sup>14</sup> See, e.g., *2000 TRS Order*, 15 FCC Rcd at 5144-46 (summarizing numerous improvements to the TRS mandatory minimum standards, including more stringent speed to answer requirements and minimum typing speeds for CAs).

<sup>15</sup> Internet-based TRS is “[a] telecommunications relay service . . . in which an individual with a hearing or a speech disability connects to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network. Internet-based TRS does not include the use of a text telephone (TTY) over an interconnected voice over Internet Protocol service.” 47 C.F.R. § 64.601(a)(11). There currently are three forms of Internet-based TRS recognized by the Commission: VRS, IP Relay, and IP captioned telephone service (IP CTS), and any combination of these services or use of these services with other forms of relay, such as voice carryover (allowing a user to speak directly to the other party while having the conversation relayed back) or hearing carryover (allowing a user to hear the other party directly while using relay to convey messages). See *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, CG Docket No. 10-51, FCC 11-118 at n.1 (rel. Jul. 28, 2011) (*2011 VRS Certification Order*).

<sup>16</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11615, para. 60 (2008) (*Internet-based TRS Numbering Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, CC Docket No. 98-67, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 818-20, paras. 60-64 (2008) (*Second Internet-based TRS Numbering Order*, and together with the *Internet-Based TRS Numbering Order*, the *Internet-based TRS Numbering Orders*).

the ADA . . . [and to] foster a positive, empowering climate in communication access for all Americans who use relay services.”<sup>17</sup>

## B. Recent Actions by the Commission

5. As described in greater detail below, over the last two years the Commission has made a concerted effort to improve the efficiency and performance of the VRS program by: (1) implementing targeted actions to reduce waste, fraud, and abuse; (2) revisiting the rates at which VRS providers are compensated under the existing per-minute compensation methodology; and (3) initiating a fresh look at the structure and practices of the VRS program.

6. *Targeted actions to reduce waste, fraud, and abuse.* An unintended consequence of the current structure of the VRS program has been vulnerability to waste, fraud, and abuse. Although the program has been a great success in terms of providing functionally equivalent communications services to some people with hearing and speech disabilities, structural problems with the current program threaten its long-term sustainability.<sup>18</sup> In addition to extensive (and ongoing) actions taken by the Commission’s Inspector General in collaboration with the Department of Justice, which have resulted in several criminal convictions,<sup>19</sup> the Commission recently issued Orders (a) taking significant, targeted actions to protect the

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<sup>17</sup> See Letter from Tamar E. Finn and Brett P. Ferencak, counsel to Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, attach. (filed Apr. 12, 2011) (Consumer Groups’ TRS Policy Statement). The Consumer Groups consist of the following organizations: Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Association of Late-Deafened Adults, Hearing Loss Association of the Deaf, California Coalition of Agencies Serving the Deaf and Hard of Hearing, American Association of the Deaf-Blind, Speech Communication Assistance by Telephone, Communication Service for the Deaf, and Deaf Seniors of America.

<sup>18</sup> See *VRS Call Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5545, para. 1.

<sup>19</sup> See *Twenty-six Charged in Nationwide Scheme to Defraud the FCC’s Video Relay Service Program*, United States Department of Justice (DOJ) (Nov. 19, 2009) at <http://www.justice.gov/opa/pr/2009/November/09-crm-1258.html>; see also *Two Former Executives of Indicted Relay Services Company Plead Guilty to Defrauding FCC Program*, DOJ (Jan. 13, 2010) at <http://www.justice.gov/opa/pr/2010/January/10-crm-031.html>; *Two Former Executives of Video Relay Services Company Plead Guilty to Defrauding FCC Program*, DOJ (Feb. 18, 2010) at <http://www.justice.gov/opa/pr/2010/February/10-crm-157.html>; *Four Former Owners and Employees of Three Video Relay Service Companies Plead Guilty to Defrauding FCC Program*, DOJ (March 5, 2010) at <http://www.justice.gov/opa/pr/2010/March/10-crm-229.html>; *Three Former Owners and Employees of Two Video Relay Service Companies Plead Guilty to Defrauding FCC Program*, DOJ (March 9, 2010) at <http://www.justice.gov/opa/pr/2010/March/10-crm-237.html>; *Owner and a Former Executive of Indicted Video Relay Services Company Plead Guilty to Defrauding FCC Program*, DOJ (Oct. 28, 2010) at <http://www.justice.gov/opa/pr/2010/October/10-crm-1223.html>; *Individual Pleads Guilty to Defrauding FCC Video Relay Service Program*, DOJ (Jan. 6, 2011) at <http://www.justice.gov/opa/pr/2011/January/11-crm-018.html>; *Two Individuals Plead Guilty to Defrauding FCC Video Relay Service Program*, DOJ (Jan. 24, 2011) at <http://www.justice.gov/opa/pr/2011/January/11-crm-100.html>. As we noted in the *VRS Call Practices NPRM*, among the many individuals indicted for illegal VRS activities were call center managers, paid callers, and VRS CAs. Fraud uncovered by the investigations associated with these indictments revealed tens of millions of dollars of payments that were illegitimately collected from the Fund. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012, 6016, para. 6, n.22 (2010) (*VRS Call Practices NPRM*). Two primary sources of fraud uncovered through these investigations were illegitimate calls made to taped programs and calls ostensibly made for the purpose of marketing and outreach.

TRS Fund from obviously fraudulent and abusive practices,<sup>20</sup> and (b) revising the provider certification process to ensure that iTRS providers, including VRS providers, receiving certification are qualified to provide services in compliance with the Commission's rules, and enhancing the Commission's ongoing oversight of such providers.<sup>21</sup> The *VRS Call Practices R&O and Certification FNPRM* and the *2011 VRS Certification Order* were important tactical actions taken to complement the structural improvements to the VRS program proposed in this *Further Notice*, and were designed to reduce both the occurrence of and the incentives for waste, fraud, and abuse.<sup>22</sup> Further, the Commission recently conducted a competitive procurement to select the TRS Fund Administrator, which included requirements that the Administrator take steps to mitigate waste, fraud and abuse.<sup>23</sup>

7. *Revisiting per-minute compensation rates.* The TRS Fund is meant to compensate providers of VRS (and other eligible interstate TRS services) for their "reasonable costs of providing interstate TRS."<sup>24</sup> Establishing the actual compensation rate has, however, been a matter of particular controversy, resulting in a suboptimal level of transparency and predictability in the process and the outcome.<sup>25</sup> The initial VRS compensation rate, adopted in 2000, was \$5.143 per minute.<sup>26</sup> The rate subsequently peaked at \$17.04 per minute in 2002, before settling in the \$6-8 per minute range between 2003 and 2006.<sup>27</sup>

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<sup>20</sup> See generally *VRS Call Practices R&O and Certification FNPRM*, 25 FCC Rcd 5545; see also, *In the Matter of Hands On Video Relay Services, Inc., Go America, Inc., and Purple Communications, Inc.*, Order and Consent Decree, 25 FCC Rcd 13090 (2010) (*Purple Consent Decree*).

<sup>21</sup> See generally *2011 VRS Certification Order*.

<sup>22</sup> *VRS Call Practices R&O and Certification FNPRM*, 25 FCC Rcd at 5552, para. 7; *2011 VRS Certification Order* at paras. 1-2. The Consumer and Governmental Affairs Bureau (CGB) subsequently temporarily extended, until November 4, 2011, the certification period for providers of VRS and IP Relay Service that have current certifications that are scheduled to expire on or before that date. See *Consumer And Governmental Affairs Bureau Announces Extension Of Expiring Certifications For Providers Of Internet-Based Telecommunications Relay Services*, CG Docket Nos. 03-123, 10-51, Public Notice, 26 FCC Rcd 6737 (2011). CGB also released guidance on filing requests for temporary waiver of a rule adopted in the *VRS Call Practices R&O and Certification FNPRM* prohibiting revenue sharing arrangements for CA and call center functions between entities eligible for compensation from the Fund and non-eligible entities (subcontractors). See *Consumer And Governmental Affairs Bureau Provides Guidance On Filing Requests For Waiver Of New Requirements Adopted In The Video Relay Services Fraud Order*, CG Docket No. 10-51, Public Notice, 26 FCC Rcd 6863 (2011).

<sup>23</sup> See TRS Fund Administration Services Agreement, CON 11000003, Performance Work Statement (March 7, 2011).

<sup>24</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(E); *2004 TRS Report & Order*, 19 FCC Rcd at 12512-13, para. 90.

<sup>25</sup> 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, 20145, para. 6 (2007) (*2007 TRS Rate Methodology Order*).

<sup>26</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 18 FCC Rcd 12823 (2003) 18 FCC Rcd 12823, 12830, para. 18 n.52 (*2003 Bureau TRS Rate Order*).

<sup>27</sup> *2004 TRS Report and Order*, 19 FCC Rcd at 12569, para. 247; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Order, 20 FCC Rcd 12237, 12246-48, paras. 23-28 (2005) (*2005 TRS Rate Order*) (adopting 2005-2006 VRS rate based on median rate of the providers because record reflected that the average rate would unfairly penalize most providers and providers' cost projections may have been based on various levels of service quality); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 21 FCC Rcd 7018, 7027, paras. 28-29 (2006) (*2006 Bureau TRS Rate*

(continued....)

8. The current compensation mechanism for VRS was adopted in 2007 and modified in 2010.<sup>28</sup> It provides compensation on a per-minute basis, with the compensation rates calculated as the average of (i) per-minute rates calculated by the TRS Fund Administrator as a measure of actual, historical provider costs and (ii) the rates adopted for the 2009-2010 fund year, which were based on providers' projected costs.<sup>29</sup> It also employs a 3-tier methodology based on volume, which generally results in smaller providers receiving a higher average per-minute rate than larger providers.<sup>30</sup> In its Order setting compensation rates for TRS providers from the Fund for the 2010-11 Fund year, the Commission adopted reduced interim rates for VRS of \$6.2390 for Tier I, \$6.2335 for Tier II, and \$5.0668 for Tier III.<sup>31</sup> The Commission stated that these rates were adopted on an interim basis to ensure that VRS providers recover their reasonable costs from the Fund and continue to provide quality service while the Commission considers reform of the practices and structure of VRS.<sup>32</sup>

9. Most recently, in anticipation of the proposals set forth in this *Further Notice*, CGB waived the May 1, 2011 Fund Administrator filing requirement for VRS payment formulas and revenue requirements for the 2011-12 TRS Fund year,<sup>33</sup> and subsequently concluded that it would be more efficient and less disruptive to extend the existing interim rates while the Commission concluded its evaluation of the issues and the substantial record developed in response to this proceeding.<sup>34</sup>

(Continued from previous page)

*Order*) (freezing the 2005-2006 VRS rate for the 2006-2007 Fund year because, in part, of the providers' difficulty in accurately predicting minutes of use); *2004 TRS Report & Order*, 19 FCC Rcd at 12537-52, paras. 163-200 (addressing challenges to the 2003-2004 compensation rates, including disallowances for profit, engineering costs, and labor costs); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket 03-123, Order on Reconsideration, 21 FCC Rcd 8050 (2006) (addressing challenge to Fund Year 2003-2004 VRS rate) (*2006 Order on Reconsideration*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Memorandum Opinion and Order*, 21 FCC Rcd 8063 (July 12, 2006) (*2006 MO&O*) (addressing challenge to Fund Year 2004-2005 TRS rates).

<sup>28</sup> See generally *2007 TRS Rate Methodology Order*, 22 FCC Rcd 20140; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, 25 FCC Rcd 8689, 8691, para. 6 (*2010 TRS Rate Methodology Order*) (changing the basis for per-minute compensation from provider projected costs to an average of the Fund Administrator's proposed per-minute rates, calculated as a measure of actual, historical provider costs, and the rates from the 2010-2011 Fund year which were based on providers' projected costs).

<sup>29</sup> See *2010 TRS Rate Methodology Order*, 25 FCC Rcd 8691, para. 6.

<sup>30</sup> See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20167-68, paras. 47-56, 67-71; *2010 TRS Rate Methodology Order*, 25 FCC Rcd at 8697-98, paras. 16-17. Tier I rates apply to the first 50,000 monthly VRS minutes; Tier II rates apply to volumes between 50,001 and 500,000 minutes per month; and Tier III rates apply to volumes above 500,000 minutes per month. *Id.* at 8697, para. 16. As discussed below, it is not obvious that such a tiering scheme reflects the actual reduction in the cost of providing VRS at different minute volumes or, indeed, does much more than reduce the efficiency of the Fund by providing ongoing support for numerous high-cost, subscale providers.

<sup>31</sup> *2010 TRS Rate Methodology Order*, 25 FCC Rcd at 8692, para. 6.

<sup>32</sup> *Id.* at 8690, para. 2.

<sup>33</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Order, 26 FCC Rcd 5231 (CGB 2011) (*VRS Rate Filing Waiver Order*).

<sup>34</sup> See *2011 TRS Rate Order*; see also Video Relay Service Reform, Paul de Sa, Chief, Office of Strategic Planning and Karen Peltz Strauss, Deputy Bureau Chief, Consumer and Governmental Affairs (May 5, 2011) available at <http://www.fcc.gov/blog/video-relay-service-reform>.

10. *Structural reform of the VRS program.* In addition to the actions described above, the Commission also launched an overarching inquiry as to whether structural reform of the Commission's VRS rules is required to ensure that the program is effective, efficient, and sustainable. Despite the initial significant uptake in usage, the lessons learned in administering the program, and the advances in communications technology that have occurred since VRS was recognized as a form of TRS over a decade ago,<sup>35</sup> the *2010 VRS Reform NOI* marked the Commission's first effort to take a fresh look at the VRS program.<sup>36</sup> In that NOI, the Commission sought comment on a number of issues at the heart of VRS as a service and a business, including: What are the functional components of VRS?<sup>37</sup> What are the current and potential levels of legitimate demand for the service?<sup>38</sup> What are the economic and business issues that VRS providers must consider to provide the service adequately?<sup>39</sup> What incentives do the Commission's rules give providers and users of VRS?<sup>40</sup> Can contributors to the Fund be assured that their dollars are being spent efficiently and responsibly?<sup>41</sup> To help develop the record in a particularly important area, CGB subsequently issued a Public Notice seeking additional information regarding new and emerging technologies that may be used to access VRS.<sup>42</sup>

### III. STRUCTURAL ISSUES WITH THE CURRENT VRS PROGRAM

11. Our overarching goal in this proceeding is to improve the VRS program so that it better promotes the goals Congress established in section 225 of the Act. Specifically, we seek to ensure that VRS is available to all eligible users, is provided efficiently, offers functional equivalence, and is as immune as possible to the waste, fraud, and abuse that threaten its long-term viability. We note that this is largely consistent with the goals outlined in the recent Consumer Groups' TRS Policy Statement, and that we seek to reform VRS in accordance with these goals to the extent possible.<sup>43</sup> In developing the records of the VRS-related proceedings discussed above, and in particular based on the submissions to the VRS program structure and practices proceeding (CG Docket No. 10-51), we have identified a number of structural issues with the current program that have not only detracted from its historical success in providing communications services to individuals who are deaf, hard of hearing, deaf-blind, or have a speech disability, but may also threaten its future success. These issues – which we seek to address with the proposals set forth and the questions raised in this *Further Notice* – include the following: (i) broadband affordability may be restricting the availability of VRS, (ii) VRS access technology standards may be insufficiently developed,<sup>44</sup> frustrating the program's technology goals, and potentially resulting in

<sup>35</sup> *2000 TRS Order*, 15 FCC Rcd at 5152-54, paras. 21-27 (recognizing VRS as a form of TRS).

<sup>36</sup> *See 2010 VRS Reform NOI*, 25 FCC Rcd at 8598, para. 1.

<sup>37</sup> *Id.*, 25 FCC Rcd at 8608-10, paras. 32-40.

<sup>38</sup> *Id.*, 25 FCC Rcd at 8610-12, paras. 41-47.

<sup>39</sup> *Id.*, 25 FCC Rcd at 8612-13, paras. 48-52.

<sup>40</sup> *Id.*, 25 FCC Rcd at 8613-15, 8619, paras. 53-62, 77-80.

<sup>41</sup> *Id.*, 25 FCC Rcd at 8598, 8618, paras. 1, 59.

<sup>42</sup> *Consumer And Governmental Affairs Bureau Seeks Comment On Application Of New And Emerging Technologies For Video Relay Service Use*, Public Notice, 26 FCC Rcd 1950 (2011) (*VRS Technology Public Notice*) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-11-317A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-317A1.pdf).

<sup>43</sup> *See* Consumer Groups' TRS Policy Statement.

<sup>44</sup> As discussed in section IV.B.1 below, we propose to eliminate confusion that has been caused by our use of the term "CPE" in the context of iTRS by defining "iTRS access technology" as "any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an

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inappropriate lock in of VRS users,<sup>45</sup> (iii) the current VRS compensation mechanism is unpredictable and potentially inefficient, (iv) the structure of the VRS industry is potentially suboptimal and inconsistent with the goals of the Act, and (v) the current VRS compensation mechanism has proven vulnerable to waste, fraud, and abuse. We discuss and seek comment on each in turn below.

#### A. Broadband Affordability May Be Restricting the Availability of VRS

12. The National Broadband Plan identified broadband affordability as a major barrier to broadband adoption.<sup>46</sup> Although the Commission unfortunately lacks systematic data, we have anecdotal and other evidence to suggest that this broadband affordability barrier may be particularly acute for the deaf and hard of hearing community, such that some people who would benefit from VRS are unable to afford the required broadband Internet access service. For example, as one commenter observed, a disproportionate number of deaf American adults are unemployed, receive Social Security, live in poverty, or have household income below \$20,000; broadband penetration among this community is therefore likely to be lower than the national average of approximately 65%.<sup>47</sup> Thus, we find it

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Internet-based TRS call,” and “VRS access technology” as iTRS access technology that can be used to place or receive VRS calls.

<sup>45</sup> We recognize that a VRS call involves two parties and, thus, every person potentially is a “VRS user.” For purposes of this *Further Notice*, however, we use the term “VRS user” to refer to an individual who is deaf, hard of hearing, deaf-blind, or has a speech disability that has registered with a VRS provider as described in section 64.611 of our rules. See 47 C.F.R. § 64.611; see also 47 C.F.R. § 64.601(a)(26) (defining VRS as “a telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment.”).

<sup>46</sup> See OMNIBUS BROADBAND INITIATIVE (OBI), FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, GN Docket No. 09-51 at 165-171 (2010) (NATIONAL BROADBAND PLAN).

<sup>47</sup> Sorenson May 14, 2010 Comments, CG Docket No. 03-123 at 12-13, citing Erika Steinmetz, U.S. Census Bureau, *Americans With Disabilities: 2002* at 3, Table A (issued May 2006), available at <http://www.census.gov/prod/2006pubs/p70-107.pdf> (2002 Household Economic Studies) (estimating that one million Americans aged 15 years and older are unable to hear a conversation at all); Cornell University, *2008 Disability Status Report*, Rehabilitation Research and Training Center on Disability Demographics and Statistics, p. II, available at [http://www.iilcornell.edu/edilDisabilityStatistics/statusreports/2008-pdf/2008-StatusReport\\_US.ppt](http://www.iilcornell.edu/edilDisabilityStatistics/statusreports/2008-pdf/2008-StatusReport_US.ppt) (2008 Disability Status Report) (over 10 million Americans report having a hearing disability); *id.*, Table 5 (about 30% of working-age individuals with severe difficulty hearing a conversation were unemployed, versus about 12% of the U.S. working-age population with no reported disability); *id.* at 32, 39 (working-age people without a disability have an employment rate that is 40.4 percentage points higher than those with a disability, and earn about \$5,100 more per year); *2002 Household Economic Studies*, Table 4 (almost 30% of those identified as having a “severe disability,” including deafness, receive Social Security, compared to 2.5% of those who report no disability); *id.* (25.9% of workers who report having a “severe disability” live in poverty, compared to roughly 8% of those without a disability); *2008 Disability Status Report* at 42 (the poverty rate of working-age people with a disability was 25.3 percent, versus only 9.6 percent for people without a disability); Peiyun She & Gina A. Livermore, *Long Term Poverty and Disability Among Working-Age Adults: Research Brief*, Cornell Univ. Rehabilitation Research and Training Center on Employment Policy for Persons with Disabilities (June 2006), available at <http://digitalcommons.iilcornell.edu/edicollect/I226/> (disability is an extremely important, and frequently overlooked, risk factor for long-term poverty among working-age adults); *2002 Household Economic Studies*, Table 4 (37.8% of workers who report having a “severe disability” earn a household income of less than \$20,000, versus 12.3% of workers with no disability). These findings are consistent with the broader finding of the National Broadband Plan that “[a]mong people with disabilities, only 42% have adopted broadband – well below the national average of 65 percent. See John Horrigan, *Broadband Adoption and Use in America 2* (OBI Working Paper No. 1, 2010) (Horrigan, *Broadband Adoption and Use in America*), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296442A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf); see also United States Department of Commerce, National Telecommunications and Information Administration, DIGITAL NATION: EXPANDING

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reasonable to presume that some of those deaf Americans who have low incomes live in areas where broadband is available, yet they do not subscribe due to the expense. Further, though there is no definitive estimate of the number of Americans with hearing or speech disabilities who are fluent enough in ASL to use VRS,<sup>48</sup> there are likely to be such individuals who would benefit from VRS but cannot afford the necessary broadband Internet access service.

13. The Consumer Groups' TRS Policy Statement urges the Commission to give consideration to regulatory initiatives that can "meet the broadband access needs of people with hearing and speech disabilities."<sup>49</sup> Indeed, any gap between the number of individuals who subscribe to VRS and the number of individuals who would subscribe but for the expense of broadband Internet access may represent a potential failure of our statutory obligation to make TRS "available . . . to the extent possible,"<sup>50</sup> as we believe VRS is effectively unavailable to those who cannot afford broadband Internet access. Now that the base of VRS users has grown significantly, we are concerned that the broadband-penetration ceiling may have become a constraint on the availability of the program.<sup>51</sup> We seek information and data from commenters that would help us better analyze whether there is a gap between potential VRS demand and actual VRS subscribership attributable to the expense of broadband Internet access.<sup>52</sup>

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INTERNET USAGE 28 (Feb. 2011) (DIGITAL NATION 2011), available at [http://www.ntia.doc.gov/files/ntia/publications/ntia\\_internet\\_use\\_report\\_february\\_2011.pdf](http://www.ntia.doc.gov/files/ntia/publications/ntia_internet_use_report_february_2011.pdf).

<sup>48</sup> Ross E. Mitchell, Can You Tell Me How Many Deaf People There Are In The United States?, <http://research.gallaudet.edu/Demographics/deaf-US.php> (last visited Sept. 1, 2011) (noting that the only study that helps to answer this question was conducted in 1972, and that there is no way to know if the proportion of deaf signers in the United States has stayed the same since that time); Ross E. Mitchell *et al.*, *How Many People Use ASL in the United States?*, 6 Sign Language Studies 306 (2006) available at [www.ncdhhs.gov/mhddsas/deafservices/ASL\\_Users.pdf](http://www.ncdhhs.gov/mhddsas/deafservices/ASL_Users.pdf) (stating that estimates of the number of ASL speakers in the United States, ranging from 100,000 to 15 million, are unreliable because there is no systematic and routine collection of data on sign language or ASL use in the general population.); FAQ: American Sign Language: Ranking & Number of "Speakers", [http://www.gallaudet.edu/Library/Deaf\\_Research\\_Help/Frequently\\_Asked\\_Questions\\_%28FAQs%29/Sign\\_Language/ASL\\_Ranking\\_and\\_Number\\_of\\_Speakers.html](http://www.gallaudet.edu/Library/Deaf_Research_Help/Frequently_Asked_Questions_%28FAQs%29/Sign_Language/ASL_Ranking_and_Number_of_Speakers.html) (last visited Sept. 1, 2011) (stating "there simply is no firm basis for" any estimate of the number of ASL speakers in the United States); Consumer Groups' TRS Policy Statement at 3-4.

<sup>49</sup> Consumer Groups' TRS Policy Statement at 8 (Objective 3.4).

<sup>50</sup> 47 U.S.C. § 225(b)(1).

<sup>51</sup> Transcript, Roundtable on Ten-Digit Numbering, Oct. 15, 2009 (Jeff Rosen: "There is a saturation in the market in the residence space."); Letter from William Banks, General Counsel, CSDVRS, LLC (CSDVRS) to Marlene H. Dortch, Secretary, FCC, WC Docket 10-51, attach. at 3 (filed Apr. 29, 2011) ("Due to a saturated market, future growth rates will be flat.").

<sup>52</sup> As the Commission noted in the *Seventh Broadband Progress Report*, "[t]here are several prominent barriers to infrastructure investment and obstacles to competition, including some that increase the costs of deploying and operating networks, and some that reduce potential revenues by limiting demand for broadband. These include: . . . lack of affordable broadband Internet access services [and] consumers' lack of access to computers and other broadband-capable equipment . . ." *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, *Seventh Broadband Progress Report and Order on Reconsideration*, 26 FCC Rcd 8008, 8011-12, para. 5 (2011) (*Seventh Broadband Progress Report*). The Commission has committed to continue to act on the National Broadband Plan's proposals to overcome these obstacles. *Id.* Although the physical availability of broadband, especially in rural communities, is also a concern, we seek comment in this Further Notice

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## B. VRS Access Technology Standards May Be Insufficiently Developed

14. Under the present VRS model, multiple providers offer substantially similar services with no opportunity for price competition, as end users receive the service at no cost.<sup>53</sup> Despite this, however, the program supports more than one provider to allow VRS users choice between providers who compete on factors such as quality of service, customer service, and technological development.<sup>54</sup> This is consistent with the goal expressed by the Consumer Groups to ensure “intense competition among a number of qualified vendors in the telecommunications relay services market to give the TRS user population a range of choices in features and services . . . .”<sup>55</sup>

15. Although the Commission has adopted general rules to facilitate this non-price competition, such as requiring that VRS providers ensure interoperability with competing providers<sup>56</sup> and that the technologies used to access VRS services be portable between providers,<sup>57</sup> the record indicates that these rules, in practice, have met with limited success in two particular areas: ensuring that VRS providers have a real opportunity to compete for other providers’ VRS users, and facilitating VRS users’ access to off-the-shelf VRS access technology. We question whether it makes sense to spend Fund resources supporting multiple providers to ensure that such choice is available *in principle* if most VRS users cannot *in practice* take advantage of such choice (*e.g.*, because of a lack of interoperability and/or portability of VRS access technology), and explore below new approaches to making consumer choice and effective competition a reality.

### 1. VRS Users May Be “Locked In”

16. The Commission has adopted interoperability and portability rules to facilitate competition among providers. Every VRS provider is required to provide its users with the capability to register with that VRS provider as a “default provider.”<sup>58</sup> Such registration is required: (1) to allow the VRS provider to take steps to associate the VRS user’s telephone number with their IP address to allow for the routing and completion of calls; (2) to facilitate the provision of 911 service; and (3) to facilitate the implementation of appropriate network security measures.<sup>59</sup> On the other hand, our interoperability and portability rules are intended to (i) allow VRS users to make and receive calls through any VRS provider, and to choose a different default provider, without changing the VRS access technology they

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only on aspects related to affordability. The Commission remains committed to increasing broadband deployment; indeed, increasing demand contributes to broadband deployment. It is important to note, however, that the cost of broadband is not the only reason for low adoption rates – digital literacy and relevancy are top reasons as well. See Broadband Adoption Taskforce, Presentation to the Federal Communications Commission at 17 (Nov. 30, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-311281A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311281A1.pdf).

<sup>53</sup> 2010 VRS Reform NOI, 25 FCC Rcd at 8612, para. 48.

<sup>54</sup> 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 Order on Reconsideration, 20 FCC Rcd 20577, 20588, 20590, paras. 21, 26 (2005) (*2005 TRS Certification Order*); *2004 TRS Report and Order*, 19 FCC Rcd at 12523, para. 121. We note that all VRS providers must comply with the mandatory minimum standards, including those related to quality of service, set forth in the TRS rules.

<sup>55</sup> Consumer Groups’ TRS Policy Statement at 9.

<sup>56</sup> See generally *VRS Interoperability Declaratory Ruling*, 21 FCC Rcd 5442.

<sup>57</sup> See generally *Internet-based TRS Numbering Orders*.

<sup>58</sup> *Internet-based TRS Numbering Order*, 23 FCC Rcd at 11609, para. 42.

<sup>59</sup> *Id.*

use to place calls, and (ii) ensure that VRS users can make point-to-point calls to all other VRS users, irrespective of the default provider of the calling and called party.<sup>60</sup>

17. Under the Commission's *Internet-based TRS Numbering Orders*, providers must ensure that videophone equipment that they distribute retain certain, but not all, features when a user ports his number to a new default provider.<sup>61</sup> Specifically, a default provider that furnishes videophone equipment to a consumer need not ensure that the videophone equipment's "enhanced features" (e.g., address book, speed dial list) can be used when the consumer ports the number to and uses the videophone equipment with the new provider.<sup>62</sup> Further, those enhanced features are, in most cases, impossible to port to new equipment obtained from the new default provider.<sup>63</sup> Indeed, notwithstanding some level of industry effort, there is no set of common technical standards that will ensure such enhanced feature functionality remains after a customer ports to a new provider.<sup>64</sup> Consequently, we are concerned that VRS users may be effectively "locked in" to their existing providers by their wish to continue to use these non-standardized enhanced features.<sup>65</sup> Indeed, many VRS users appear to be reluctant to switch to a new default provider because alternative default providers find it difficult to support many of the enhanced features of users' existing videophones, posing an unacceptably high switching cost.<sup>66</sup> We note that the Consumer Groups' TRS Policy Statement emphasizes the importance of "[t]otal interoperability . . . for equipment software and services from all vendors (for any forms of TRS) with no loss of core

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<sup>60</sup> 47 C.F.R. 64.611(e); *Second Internet-based TRS Numbering Order*, 24 FCC Rcd at 818-20, paras. 60-64; *see generally VRS Interoperability Declaratory Ruling*, 21 FCC Rcd 5442. A point-to-point call is one where TRS equipment is used by individuals with speech or hearing disabilities to communicate directly with each other, without the assistance of an interpreter.

<sup>61</sup> *See Internet-based TRS Numbering Order*, 23 FCC Rcd at 11615, para. 60; *Second Internet-based TRS Numbering Order*, 24 FCC Rcd at 822, para. 68; 47 C.F.R. § 64.611(c)(1). We note that this requirement was waived until July 1, 2010. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, WC Docket No. 05-196, Order, 25 FCC Rcd 3331 (2010).

<sup>62</sup> We note that the Commission previously rejected a request that the Commission require "a default provider that furnishes CPE to a consumer must ensure that the CPE's enhanced features (e.g., missed call list, speed dial list) can be used by the consumer if the consumer ports his or her number to a new default provider and uses the CPE with the new default provider," on the grounds that "[p]roviders may offer such features on a competitive basis, which will encourage innovation and competition." *See Second Internet-based TRS Numbering Order*, 24 FCC Rcd at 819-20, para 63. As discussed in greater detail below, our proposal to revisit our interoperability and portability requirements does not disturb this prior decision. *See infra* section IV.B.

<sup>63</sup> *See, e.g., Purple Communications, Inc. (Purple) Sept. 2, 2010 Reply Comments*, WC Docket No. 10-51 at n. 17.

<sup>64</sup> *See infra* Appendix B, section II.

<sup>65</sup> *See, e.g., Purple Sept. 2, 2010 Reply Comments in WC Docket No. 10-51, n. 17; see also Eastman Kodak Co. v. Image Technical Servs.*, 504 U.S. 451, 474-76 (1992) (recognizing "lock-in" effect created when customers encounter high costs to switch suppliers).

<sup>66</sup> *See, e.g., CSDVRS Mar. 7 Comments and Petition for Clarification and Rulemaking*, CG Docket No. 10-51 at 7 ("A recurring problem in equipment porting is the de-features of videophones"); Letter from Kelby Brick, Vice President, Regulatory and Strategic Policy, Purple, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-51, attach. at 2-3 (filed Feb. 15, 2011) (asserting that there are "significant negative consequences for switching providers while trying to use current equipment," including loss of address book and speed dialing lists, limited video mail functionality, and difficult dial-around procedures).

functionality.”<sup>67</sup> As consumers note, full interoperability, including the ability to make point to point calls, “ensures greater protection for TRS users’ safety, life, health, and property.”<sup>68</sup>

18. We seek comment on the effectiveness of our current interoperability and portability requirements, and the role that existing VRS access technology standards – or the lack thereof – may play in frustrating the effectiveness of those requirements. Consumers further seek “a conducive climate for healthy market competition” in all forms of TRS.”<sup>69</sup> We are concerned that VRS users may not be able to enjoy the benefits of non-price competition between multiple providers if, in fact, switching costs are so high that there is little prospect that consumers will actually switch default providers? Is the rationale for structuring the VRS program to afford competitive alternatives to VRS users drawn into question in the absence of technical standards that will reduce or eliminate such switching costs, including non-monetary costs such as those associated with the loss of enhanced features? If it is not possible to reduce switching costs to a level that does not frustrate the effectiveness of our current interoperability and portability requirements, should the Commission simply bid contracts for one or a limited number of VRS providers to offer VRS service, as smaller providers may have little hope of gaining market share by winning customers from larger providers? We note that such contracts would likely result in efficiency gains for the Fund by inducing price competition for the contract and/or eliminating the need to perpetually support sub-scale providers at higher rates. We seek comment on the impact such an approach would have on users. Given that the vast majority of users currently choose to obtain service from one provider, would it be correct to conclude that the impact would be minimal, or would the loss of additional competition – even by providers with small market shares – risk harmful consequences in terms of loss of innovation and consumer choice?<sup>70</sup> If yes, we ask commenters to provide specific details supporting this conclusion.

## 2. VRS Users May Not Have Appropriate Access to Off-The-Shelf Technology

19. When VRS was first launched a decade ago, videotelephony was a specialized, niche market requiring customized hardware and software, as well as frequently unavailable broadband Internet access service. It has now become a mainstream, mass-market offering. Indeed, currently available commercial video technology can provide closer functional equivalence, may be less costly, and is likely to improve at a faster pace than the custom devices supplied exclusively by VRS providers, so that the installed base of VRS access technology may be (or may soon become) inferior to “off-the-shelf” offerings.<sup>71</sup>

20. As described in greater detail in Appendix B, in 2006 the industry migrated to a standard for transmitting real-time voice and video over packet-based networks called H.323, but has failed to make progress on the standardization needed to transition to the Session Initiation Protocol (SIP) family of standards, which has subsequently become the default for mass market Internet-based voice and video devices.<sup>72</sup> In addition, as discussed in para. 17 above, there are no standards in place to facilitate

<sup>67</sup> See Consumer Groups’ TRS Policy Statement at 7. In Objective 1.5, Consumer Groups also state that “[f]ull interoperability ensures greater protection for TRS users’ safety, life, health, and property.” *Id.*

<sup>68</sup> *Id.* at 7 (Objectives 1.4 and 1.5).

<sup>69</sup> *Id.* at 9 (Objective 4.4).

<sup>70</sup> See *infra* para. 24.

<sup>71</sup> See generally *VRS Technology Public Notice*, 26 FCC Rcd 1950; CSDVRS Apr. 1, 2011 Comments, CG Docket No. 10-51 at 8 (“With an ever growing number of models incorporating front-facing cameras and high performance semiconductors as well as faster and more robust wireless networks (*i.e.*, 4G) gaining wider acceptance and availability, the ability for a deaf/hard-of-hearing user to make video calls from more places is increasing dramatically . . .”).

<sup>72</sup> See *infra* Appendix B, section II.

transferring videophone equipment's enhanced features (*e.g.*, address book, speed dial list) when the consumer ports their number to and uses the videophone equipment with a new provider.

21. We note that the Consumer Groups' TRS Policy Statement emphasizes the need for the Commission to support technological innovation that will contribute to the quality and efficiency of TRS.<sup>73</sup> In particular, the Consumer Groups request that we engage in "[a]n ongoing effort . . . to 'raise the bar' in technological design and operations efficiency."<sup>74</sup> We seek comment on whether the lack of progress on standards development in the VRS industry is serving as a barrier to the introduction of potentially superior, and less expensive, off-the-shelf technology into the VRS market. What other barriers limit introduction of off-the shelf technology into the VRS market? Are there other mechanisms that can be used to encourage the introduction of off-the-shelf technology in the VRS market? How would advances for off the shelf technology be impacted if the Commission were to bid contracts for one or a limited number of VRS providers to offer VRS service?<sup>75</sup>

### **C. The Current VRS Compensation Mechanism is Unpredictable and Potentially Inefficient**

22. As discussed above, the per-minute rate for compensating VRS providers has fluctuated significantly over time, resulting in uncertainty and controversy.<sup>76</sup> Indeed, providers have frequently complained about uncertainty in the rate setting process due to the frequency with which rates have been recalculated and disagreements regarding the nature of the costs for which compensation may be provided. They explain that such uncertainty has impeded their ability to make long term plans.<sup>77</sup> The current rate setting mechanism has also negatively affected the telecommunications carriers that are required to contribute to the TRS Fund.<sup>78</sup> The Commission would like to create stability and long-term

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<sup>73</sup> Consumer Groups' TRS Policy Statement at 8.

<sup>74</sup> *Id.* (Objective 3.2).

<sup>75</sup> *See supra* para. 18.

<sup>76</sup> *See supra* paras. 7-9.

<sup>77</sup> Sorenson May 16, 2011 Comments, CG Docket Nos. 03-123, 10-51 at 4-5 ("historical uncertainty and year-to-year volatility of compensation rates has made it difficult to raise capital."); letter from Sean Belanger, Chief Executive Officer, CSDVRS, Daniel Luis, Chief Executive Officer, Purple, Eileen A. Hansen, Executive Director, AT&T Services, Inc., Thomas W. Kielty, President and Chief Executive Officer, Snap Telecommunications, Inc., Robin Horwitz, Chief Executive Officer, Convo Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket 10-51 at 4 ("A predictable rate allows providers to plan on undertaking measures to better realize the functional equivalency mandate such as research and development, new hiring, and outreach. Barring a multi-year rate, providers will operate in an environment of uncertainty, not knowing whether the funding will exist in subsequent years to bring a new product to market, open a new call center, or educate the public on the availability and utility of VRS."); letter from William Banks, General Counsel, CSDVRS, Wesley N. Waite, Sr., Chief Operating Officer, LifeLinks, LLC, Jeff Rosen, General Counsel, Snap Telecommunications, Inc. (Snap), Michael J. Ellis, Director, Sprint Relay, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-51 Joint VRS Providers in CG Docket No. 03-123 2 (filed Jan 21, 2010) (VRS providers need "to be able to rely on a stable funding mechanism to guide their investment in the service and make long term business decisions to promote innovation and provide enhanced functional equivalent offerings to consumers"); CSDVRS June 4, 2009 Comments, CG Docket No. 03-123 at 4 ("nearly all of the rate proceedings that took place prior to the 2007 TRS Rate Methodology Order left open a plethora of questions as to what constitutes these permissible costs").

<sup>78</sup> Letter from Genie Barton, Vice President and General Counsel, USTelecom, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 10-51 at 2 (filed June 2, 2011) ("The significant uncertainty regarding the size of next year's TRS fund and the contribution factor could lead to a situation where carriers would have to adjust their filings less than a month after submission.").

predictability in the compensation mechanism, to the benefit of the providers, contributing carriers, and all consumers.

23. In addition to the problems related to the rate fluctuations described above, several features of the VRS program make it difficult to manage costs and reimbursements. First, although there are many VRS users and multiple VRS providers, the users neither receive nor send price signals because the service is provided at no charge to them. Thus, there is no opportunity for the market to set prices, enable price competition, determine industry structure, or influence demand. Second, the TRS Fund is effectively the sole purchaser of VRS services but, unlike a normal market participant, the Fund cannot “choose” the volume (*i.e.*, number of VRS minutes) to purchase, and so has no control over total expenditures once rates are set. Third, costs incurred by VRS providers are not necessarily aligned with the reimbursements the Fund provides on a per-minute basis. That is, many of a VRS provider’s costs do not vary directly with the number of minutes of service provided (*e.g.*, equipment, call center infrastructure, CA supervision, marketing/outreach, general and administrative (G&A) expenses). Further, to the extent that that providers’ other sources of revenue are *de minimis* and all VRS provider’s costs are explicitly or implicitly supported by the Fund, there is frequent controversy over whether activities such as those related to customer acquisition and retention, equipment subsidies, and financing (*e.g.*, interest payments) are legitimate or not.<sup>79</sup> For these reasons – as well as those related to waste, fraud, and abuse described below – we are concerned with the efficiency of the current per-minute compensation scheme.<sup>80</sup> We seek comment on this assessment of the efficiency of our per-minute compensation mechanism, and whether there are other factors that we should consider in restructuring the VRS compensation mechanism to improve its predictability and efficiency.

#### **D. The Current Structure of the VRS Industry is Inefficient**

24. At present, there are twelve companies eligible for reimbursement from the Fund for VRS.<sup>81</sup> In addition, until recent rule changes, approximately fifty additional “white label” companies marketed or offered VRS under their own names and received compensation from the Fund indirectly.<sup>82</sup> At present,

<sup>79</sup> We note, at the least, that none of these specific costs are variable with VRS minutes.

<sup>80</sup> Indeed, the Commission long has questioned whether a per-minute compensation methodology is appropriate for VRS, due in no small part to the significant difficulty of determining a “reasonable” per-minute compensation rate for VRS due to issues concerning CA staffing, labor costs, and engineering costs particular to VRS. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948, 22956-57, para. 23 (2001) (*2001 TRS Cost Recovery MO&O*); *2004 TRS Report and Order*, 19 FCC Rcd at 12490, 12565-67, paras. 23, 234-40.

<sup>81</sup> *See Rolka Loube Saltzer Associates, TRS Fund Performance Status Report, Funding Year July 2010 – June 2011, Fund Status as of July 31, 2011, available at <http://www.r-l-s-a.com/TRS/reports/FundPerformanceAsof7-31-11.pdf> (RLSA July 31, 2011 Fund Status Report); *Notice of Conditional Grant of Application of Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axxess Ability Group for Certification as a Provider of Video Relay Service Eligible for Compensation from Interstate Telecommunications Relay Service Fund*, CG Docket No. 10-51, Public Notice, DA 11-1903 (rel. Nov. 15, 2011); *Notice of Conditional Grant of Application of ASL Services Holdings, LLC for Certification as a Provider of Video Relay Service Eligible for Compensation from Interstate Telecommunications Relay Service Fund*, CG Docket No. 10-51, Public Notice, DA 11-1902 (rel. Nov. 15, 2011); *Notice of Conditional Grant of Application of Convo Communications, LLC for Certification as a Provider of Video Relay Service Eligible for Compensation from Interstate Telecommunications Relay Service Fund*, CG Docket No. 10-51, Public Notice, DA 11-1901 (rel. Nov. 15, 2011). We note that the certifications granted on November 15, 2011 are subject to conditions.*

<sup>82</sup> *VRS Call Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5572, para. 54. We note that this practice of a non-eligible entity holding itself out as a VRS provider has been prohibited since June 1, 2011. *See id.*; 47 C.F.R. (continued....)

however, a single provider is handling the vast majority of VRS minutes.<sup>83</sup> As a result, while this provider enjoys significant economies of scale, the remaining providers are able to cover their costs only because of the Commission's adoption of a tiered rate structure, which compensates providers with fewer minutes of use at a higher rate per minute.<sup>84</sup> As a result, as Table 1 shows, a disproportionate amount of the monthly compensation for VRS is paid at the subscale Tier I and Tier II rates.<sup>85</sup> Indeed, if all minutes handled were compensated at the Tier III "at scale" rate, the Fund would immediately save over \$2 million per month – a reduction in the size of the Fund of approximately 5%.

Tier	Tier Structure	Minutes Compensated	Compensation Rate	Reimbursement	% Reimbursement	% Minutes	\$/minute (ratio)
I	≤ 50,000 minutes	315,157	\$6.24	\$2 million	4.19%	3.56%	1.18
II	50,001-500,000 minutes	1,491,340	\$6.23	\$9.3 million	19.77%	16.84%	1.17
III	> 500,000 minutes	7,047,330	\$5.07	\$35.7 million	76.04%	79.6%	0.96
	Totals:	8,853,827	n/a	\$47 million	100%	100%	n/a

Table 1<sup>86</sup>

25. Recognizing that the industry structure going forward may be influenced by factors including the desire and ability of existing VRS users to switch providers, the number of new VRS users who enter the market, and the rate structure (*e.g.*, the willingness of the Fund to support subscale players for a definite or indefinite period of time and the absolute level(s) of compensation), we seek comment on whether the current market structure – namely, a single large provider with numerous subscale providers – represents an appropriate balance between consumer choice and efficiency.

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§ 64.604(c)(5)(iii)(N)(1)(i). The Commission also recently adopted rules amending the process for certifying Internet-based TRS (iTRS) providers as eligible for payment from the Fund. *See 2011 VRS Certification Order*.

<sup>83</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order Denying Stay Motion, 24 FCC Rcd 9115, 9120-21, para. 19 ("lion's share of all users"); *see also* Purple May 21, 2010 Reply To Comments On NECA's Proposed Payment Formulae And Fund Size Estimates For The Interstate TRS Fund For The 2010-11 Fund Year, CG Docket No. 03-123 at 5 (asserting that Fund Administrator data have shown repeatedly that Sorenson has approximately 80 percent market share as measured by compensable minutes of use). Providers also have alleged that Sorenson has maintained its market share by, among other things, frustrating the Commission's efforts to ensure interoperability between VRS providers. *See, e.g.*, Purple Oct. 5, 2009 Opposition To Petition For Clarification And Declaratory Ruling, CG Docket No. 03-123, WC Docket No. 05-196 at 9. We discuss these concerns in section IV.B below.

<sup>84</sup> *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20163, para. 53 ("We therefore believe that using three tiers is appropriate to ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger and more established providers are not overcompensated due to economies of scale."); *2010 TRS Rate Methodology Order*, 25 FCC Rcd at 8697, para. 16.

<sup>85</sup> Note that the situation is exacerbated by the fact that, notwithstanding that a provider's cost structure is determined by the total number of minutes handled, providers who, for example, qualify for Tier II rates get their initial 50,000 minutes compensated at Tier I rates, and similarly providers that qualify for Tier III rates get their initial 500,000 minutes compensated at Tier I and Tier II rates.

<sup>86</sup> Derived from RLSA July 31, 2011 Fund Status Report. Figures are rounded.

**E. The Current VRS Compensation Mechanism Has Proven Vulnerable to Waste, Fraud, and Abuse**

26. The compensation of VRS providers on a per-minute basis creates an inherent incentive for providers to seek ways to generate minutes of use solely for the purpose of generating “compensable minutes,” rather than to provide legitimate services to VRS users.<sup>87</sup> Illegitimate minutes are difficult to detect on an *ex post* basis, particularly when comingled with legitimate minutes or submitted by eligible providers on behalf of non-eligible “white label” providers.<sup>88</sup> The U.S. Department of Justice, working in cooperation with the FCC’s Office of Inspector General (OIG), has actively pursued individuals alleged to have manufactured and billed the TRS Fund for illegitimate minutes of use,<sup>89</sup> and the Commission has adopted rules to bolster the certification process and discourage fraud and abuse.<sup>90</sup> Even the best auditing mechanisms are imperfect, however, and so it is preferable to change the structural incentives of providers to discourage such abuse in the first place and increase our ability to detect it if it does occur along with strong oversight and auditing.

**IV. PROPOSED REFORMS TO THE VRS PROGRAM TO ADDRESS STRUCTURAL ISSUES**

27. We set forth below detailed proposals to address the structural issues identified in section III, above. We seek comment on these proposals, and emphasize the importance of comments being detailed, specific, and supported by data wherever appropriate.

**A. Ensuring That VRS is “Available”**

28. To the extent that the record shows that there is unaddressed demand for VRS, we propose to (i) promote residential broadband adoption via a pilot program to provide discounted

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<sup>87</sup> 2010 VRS Reform NOI, 25 FCC Rcd at 8614, para. 57 (“...VRS providers’ primary incentive is to increase the number of minutes of VRS used while maintaining control of their costs.”); Convo Aug. 16, 2010 Comments, CG Docket No. 10-51 at 37 (“This is where the incentive for fraud and Fund abuse comes about: from a “limited” source of customers, one must create artificial forms of growth through minute pumping, staff conference calls using VRSCAs when all the call participants are ASL users, etc., or risk further cost cutting measures that will detract from VRSCA service quality, increase connectivity times, and decrease VRSCA availability that harms its customers base, all just to keep a remuneratively profitable difference between the marginal cost and marginal revenue contributed by each new VRSCA.”). This incentive is only increased if the compensation rates greatly exceed provider costs.

<sup>88</sup> We note that Section 225 and the Commission’s rules: (1) require that the content of TRS calls be kept confidential and (2) prohibit the recording of TRS calls. See 47 U.S.C. § 225(d)(1)(F), 47 C.F.R. §64.604(a)(2). These restrictions, while necessary to protect a consumer’s privacy, make it almost impossible to determine, on a call-by-call basis, whether all or part of a call is legitimate or fraudulent. We further note that when directed not to engage in certain calling activities, some providers have merely shifted to other arrangements that are not specifically prohibited and have engaged in attempts to make non-compliant calls in ways that have made them more difficult to detect. See *VRS Call Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5563, para. 30, citing *United States v. Yosbel Buscaron et al.*, Criminal No. 09-810, D.N.J. (Nov. 18, 2009) in which individuals who were indicted for VRS fraud allegedly employed schemes to disguise activities that they knew were prohibited by the Commission: “Defendants Buscaron, Fernandez, and Valle would restart ICSD’s internet router every hour to disguise from NECA and the FCC the fact that the deaf and hard of hearing ICSD employees were making so many run calls. Restarting the router would have the effect of changing the IP address used by the callers and would disguise the source of the calls in the call detail records that would be submitted to NECA in support of reimbursement for VRS services.” The recent prohibition on white label providers should help to reduce instances of this type of fraud, but does not address the underlying incentives. See *supra* para. 24.

<sup>89</sup> See *supra* n. 19.

<sup>90</sup> See generally 2011 VRS Certification Order.

broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication, and (ii) provide an incentive payment to providers for adding new-to-category customers.<sup>91</sup>

### 1. Promoting Residential Broadband Adoption by Low-Income Americans with Disabilities

29. Commenters in this docket have advocated for the creation of a program to subsidize or otherwise make available broadband Internet access to Americans who are unable to access VRS because they cannot afford broadband Internet access.<sup>92</sup> Such a program would be consistent with the recommendations of the National Broadband Plan,<sup>93</sup> the Commission's broader efforts to meet the 21st century communications needs of low-income consumers,<sup>94</sup> and the Act.<sup>95</sup>

30. We therefore seek comment on establishing a "TRS Broadband Pilot Program" (TRSBPP) to utilize the TRS Fund to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication. We aim to ensure that any such program is both effective, by expanding the potential base of VRS users to include those who could not otherwise afford broadband, and efficient in its structure and operation.<sup>96</sup> A detailed proposal to implement a TRSBPP is set forth in Appendix A. We seek comment on our legal authority to implement such a program in section VII.

### 2. Providing Incentives to Providers for Adding New-To-Category Customers

31. A VRS provider's legitimate marketing and outreach costs are currently compensable from the Fund as part of the per-minute rate.<sup>97</sup> Providers argue that marketing and outreach is a critical component of the service they provide.<sup>98</sup> However, the appropriateness of certain marketing and outreach

<sup>91</sup> In addition, our proposal provides an incentive for VRS providers to work with employers to increase the availability of VRS in the workplace. See section IV.C and Appendix C, section III.B, *infra*.

<sup>92</sup> See, e.g., Consumer Groups' TRS Policy Statement at 8 (Objective 3.4); letter from David J. Bahar, Director of Government and Regulatory Affairs, Convo, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-51, attach. at 13-14 (filed Feb. 23, 2011); letter from Kelby Brick, Vice President, Regulatory and Strategic Policy, Purple, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-51, attach. at 7; TDI, Association of Late-Deafened Adults, Inc. (ALDA), National Association of the Deaf (NAD), Deaf and Hard of Hearing Consumer Advocacy Network, and American Association of the Deaf-Blind Aug. 18, 2010 Comments, CG Docket No. 10-51 at 27; letter from Todd Elliott to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-51 at 4 (filed Aug. 17, 2010).

<sup>93</sup> See NATIONAL BROADBAND PLAN at 172.

<sup>94</sup> See *Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 at 2849-62, paras. 255-302 (2011) (*Lifeline and Link Up Reform and Modernization NPRM*).

<sup>95</sup> See 47 U.S.C. § 225(b)(1) ("...shall ensure that [TRS is] available . . . to hearing-impaired and speech-impaired individuals in the United States").

<sup>96</sup> *Id.* ("... to the extent possible and in the most efficient manner").

<sup>97</sup> Specifically, legitimate marketing and outreach costs should be included in section I.E of the Relay Services Data Request submitted annually by each provider to the Fund Administrator for purposes of setting VRS compensation rates. See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, 25 FCC Rcd 1868, 1869-70, paras. 4-5 (2010) (*2010 VRS Declaratory Ruling*). As noted above in para. 23, the costs for marketing and outreach are not incurred on a per minute basis, so it likely is inefficient to reimburse them as part of a per minute compensation mechanism.

<sup>98</sup> Sorenson Sept. 2, 2010 Comments, Declaration of Michael D. Pelcovits, CG Docket Nos. 03-123, 10-51, Appendix 1 at i ("Because there is no price competition in the market for VRS services, we hypothesize that firms in

(continued....)

costs claimed by providers has been the source of controversy,<sup>99</sup> as have provider marketing practices.<sup>100</sup> Moreover, under the existing per-minute compensation system, providers have had a greater incentive to target existing VRS users than to focus outreach either on “new-to-category users,” *i.e.*, potential VRS users that are not yet registered with any provider as a VRS user or members of the general public.

32. The Consumer Groups’ TRS Policy Statement asks the Commission to address deficiencies in outreach and research and development. They express the concern that countless Americans on fixed incomes may not be aware of resources for accessing TRS, or the capabilities and features that TRS has to offer.<sup>101</sup> They also note that “[r]elay services are equal access programs that are just as useful and critically important for those with or without hearing and speech disabilities,” and advocate for TRS promotional activities to acquaint the public and private sectors, including employers, educational institutions, and businesses, about TRS to “build familiarity and acceptance of TRS nationwide.”<sup>102</sup> Accordingly, we seek comment on ways to ensure that providers are making potential users aware of VRS in a manner consistent with the goals of section 225. In particular, we seek comment on ways to provide incentives for providers to (i) be more efficient in their marketing and outreach efforts, (ii) ensure that VRS is available to more potential users by focusing their efforts on new-to-category users instead of existing VRS users, (iii) determine whether such efforts are effective in reaching potential users, and (iv) ensure that their outreach efforts build familiarity about VRS within the general public. We also seek comment on how governmental and non-governmental entities, such as the FCC, the United States Department of Health and Human Services, state and local governments, and nonprofit organizations, can help make potential users aware of VRS.<sup>103</sup>

33. One proposal would be to cease reimbursing providers for marketing and outreach based on their individual expenses for these activities, and instead implement a one-time, fixed incentive payment to VRS providers from the TRS Fund for each new-to-category VRS user they sign up, starting some time after the effective date of a final order in this proceeding.<sup>104</sup> Such a system would align compensation with actual results and encourage VRS providers to focus their marketing and outreach efforts primarily on finding and signing-up new-to-category customers instead of merely trying to persuade existing VRS users to switch providers, which – while a valid commercial goal – is not a reasonable and legitimate expense for the Fund. By providing a fixed payment for each successful user sign-up, it would encourage providers to find the most efficient means of recruiting new users and focus Fund expenditures on fulfilling the goals set forth in section 225 of the Act.<sup>105</sup> Further, to the extent that

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\_\_\_\_\_ this industry compete mainly through marketing, outreach, and offering high-quality services, referred to collectively as “customer acquisition activity”).

<sup>99</sup> See, e.g., *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20175-76, paras. 92-96; *VRS Call Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5575-76, paras. 61-63; *2010 VRS Declaratory Ruling*, 25 FCC Rcd at 1869-70, paras. 3-5.

<sup>100</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd 1466 (2005) (*2005 Financial Incentives Declaratory Ruling*).

<sup>101</sup> Consumer Groups’ TRS Policy Statement at 4. (“The Consumer Groups believe that there are countless Americans who are on fixed incomes and unaware of available resources for access to TRS services . . .”).

<sup>102</sup> *Id.* at 4, 8 (Objective 2.2).

<sup>103</sup> This would support the Consumer Groups’ Objective 2.6: “[c]ollaborations with agencies and entities such as with the Department of Commerce build [to] trust and confidence for all businesses to use relay service for transactions.” Consumer Groups’ TRS Policy Statement at 8.

<sup>104</sup> See *infra* section V.B.15.

<sup>105</sup> 47 U.S.C. § 225.

the marginal cost of adding a new customer is rising, for example, because providers are approaching the broadband-penetration ceiling, a fixed incentive payment could better compensate providers for the cost of adding a new-to-category customer. We seek comment on whether such an incentive payment will better align Fund expenses and providers' incentives with the goals of efficiency and availability by replacing the un-measurable effects of "marketing and outreach" with a concrete, transparent, and success-based mechanism.

34. If a new-to-category incentive payment were to be adopted, how could we ensure that the payment is made only for signing up VRS users that were not previously registered for iTRS, or were not previously able to access VRS because, for example, they could not afford broadband Internet access? One proposal would be to define, for purposes of marketing and outreach compensation, the terms "VRS user" and "new-to-category VRS user." For example, a "VRS user" could be defined as "as an individual that has registered with a VRS provider as described in section 64.611 of our rules." This definition is consistent with our definition of "Registered Internet-based TRS User,"<sup>106</sup> but distinguishes "VRS users" from the larger universe of Registered Internet-based TRS Users to reflect the changes we propose to make to the VRS program in this *Further Notice*.<sup>107</sup> "New-to-category VRS user" could be defined as "a VRS user that has never previously registered with any provider of Internet-based TRS." We seek comment on whether these definitions would appropriately limit new-to-category incentive payments, or whether different and/or additional definitions would better achieve the stated purpose of the new-to-category incentive payment.<sup>108</sup> Should these definitions explicitly state that VRS users and new-to-category VRS users must be "deaf, hard of hearing, deaf-blind, or [have] a speech disability?"<sup>109</sup> Should the new-to-category incentive payment be limited to one-per-household or one-per-residence?<sup>110</sup> Should other factors be considered? For example, should there be a minimum age requirement for VRS users, so as to ensure that infants or small children are not registered prior to their being able to actually use the service? Should incentive payments be limited to one-per-household or one-per-residence as is contemplated for the TRSBPP?<sup>111</sup> We seek comment on whether a consumer's decision to obtain services supported by the TRSBPP, if adopted, should affect eligibility for the Lifeline or Link Up programs, or vice versa.

35. If a new-to-category incentive payment were to be adopted, how should providers prove eligibility for payments from the TRS Fund? What type of information should providers obtain to ensure that an individual that claims to be or appears to be a new-to-category VRS user is actually a new-to-category VRS user. Given that hearing individuals should not be Registered Internet-based TRS users,<sup>112</sup> should proof that new-to-category VRS users are "deaf, hard of hearing, deaf-blind, or [have] a speech

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<sup>106</sup> 47 C.F.R. § 64.601(a)(18).

<sup>107</sup> We propose additional definitions to delineate categories of VRS users in Appendix E, *supra*.

<sup>108</sup> We propose an additional definition for those who use VRS in the course of their employment in Appendix E, *supra*. We do not propose to make an incentive payment available if an individual is added to the category of enterprise users. Instead, we propose to compensate providers for enterprise VRS users at a higher rate, which may help increase the availability of VRS in the workplace. *See supra* section IV.C.

<sup>109</sup> 47 U.S.C. § 225(b)(1).

<sup>110</sup> *See* letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-15 (filed Aug. 10, 2011).

<sup>111</sup> *See* Appendix A, para. 20

<sup>112</sup> *See Second Internet-based TRS Numbering Order*, 24 FCC Rcd at 809, para. 37 (Stating that "verification procedures [for iTRS user registrations] must include a self certification component requiring consumers to verify that they have a medically recognized hearing or speech disability necessitating their use of TRS.")

disability” be required?<sup>113</sup> What method or methods should a provider use to verify or validate the information provided by a potential new-to-category VRS user? Should the Commission establish a standard certification form? Should providers establish a validation or verification process? Should the Commission establish guidelines or detailed rules governing what constitutes an acceptable verification or validation process? Should there be only one acceptable process, or should providers be entitled to use one of several methods to validate or verify information provided to support categorization as a new-to-category VRS user?

36. If a new-to-category incentive payment is adopted, how should we calculate the amount of such payment? One methodology would be to use as a basis the average or median cost per gross addition (CPGA) of certified VRS providers over the most recent one year period.<sup>114</sup> We therefore request that all commenting parties submit their CPGA for their most recent fiscal year, including a description of how the CPGA was calculated and the cost, revenue, and subscriber data used to calculate the figure. Another methodology would be to set the incentive payment as the sum of the reasonable costs of adding a new customer, which would include marketing, equipment, setup, and other reasonable costs. To the extent commenters support such a methodology, we request that they submit a proposed list of costs and fully justified estimates for those costs. To the extent commenters wish to propose another method for setting the incentive payment, they should provide a detailed explanation and justification for their proposed dollar amount per new-to-category user. We invite comment on all aspects of this new-to-category incentive payment proposal.

37. If a new-to-category incentive payment is adopted, what impact would such adoption have on the Fund contribution factor? Would the reduction in reimbursements for individual provider marketing and outreach expenses offset claims for incentive payments? Is it necessary to ensure that there is not a sudden increase in the Fund contribution factor? One proposal would be to cap the number of incentive payments at a fixed number per year. For example, if incentive payments were limited to 50,000 per year, and there is a pool of 200,000 potential new-to-category VRS users who could register, it would spread the cost over at least four years. We seek comment on whether an annual cap on the number of payments is appropriate and, if so, at what level the cap should be set. We also seek comment on whether the duration of the incentive payment should be limited. Should the incentive payment continue to be available in perpetuity, or is it sufficient to make the payment available only during the transition period discussed in section V.B.15?

38. We seek comment on whether a new-to-category incentive payment program could help address the market structure issue addressed in section III.D above. Could those certified VRS providers that are currently subscale increase their growth prospects if the new-to-category incentive payment is limited to providers that have less than the number of users we estimate is necessary to achieve minimum efficient scale?<sup>115</sup> As we explain in greater detail below, we believe that having all providers of VRS operating at minimum efficient scale will improve the efficiency of the VRS program by ensuring that the Fund does not indefinitely subsidize providers that have less efficient cost structures. We propose that new users would not be prohibited from registering with providers that already have more than the number of users it takes to achieve scale – but such providers would not be eligible for the incentive payment because they already have achieved minimum efficient scale and presumably have less need for an additional financial incentive to promote awareness of their brand (as well as greater financial resources for marketing and outreach). We seek comment on this proposal.

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<sup>113</sup> 47 U.S.C. § 225(b)(1).

<sup>114</sup> CPGA for a period is defined as: (cost of equipment + installation/marketing/sales/outreach expenses)-equipment revenue)/gross number of new subscribers for the period.

<sup>115</sup> See *infra* section IV.D.

39. We seek comment on whether there are additional specific steps the Commission should take to incent providers to refocus their efforts away from merely churning users between providers and toward finding and adding new-to-category VRS users who have not been able to benefit from VRS to date. We also seek comment on steps that the Commission should take to reduce the increasing incidence of relay hang-ups by businesses and others who not acquainted with TRS, as well as general measures needed to familiarize the general public about the existence and purpose of TRS. Finally, we seek comment on whether there are specific actions the Commission should take to supplement provider outreach efforts to expand the availability of VRS to more users and build acceptance of VRS in the greater community.

40. If a new-to-category incentive payment is adopted, what impact would such adoption have on research and development relating to VRS and, more broadly, TRS? Would providers have sufficient incentive and means to invest in research and development on VRS access technology, improving their call platforms, and/or other aspects of the provision of VRS? Would the introduction of standards for iTRS access technology facilitate research and development by VRS providers?<sup>116</sup> Would such standards incent equipment manufacturers that have not traditionally invested in VRS and other TRS technologies to do so going forward? What other steps could the Commission take to promote research and development in VRS and other forms of TRS?

## **B. Addressing VRS User Lock In and Access to Advanced Technology**

### **1. Defining VRS Access Technologies**

41. The Commission in the *First Numbering Order* used the defined term “CPE” to describe “TRS customer premises equipment,” or the technology used to access Internet-based TRS.<sup>117</sup> Because the use of this term has created some confusion among providers as new access technologies have been brought to market,<sup>118</sup> and to distinguish the equipment, software and other technologies used to access VRS from “customer premises equipment” as that term is defined in section 3 of the Act,<sup>119</sup> we propose to amend sections 64.605 and 64.611 of our rules by replacing the term “CPE” where it appears with the term “iTRS access technology.” We propose to define “iTRS access technology” as “any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call.” Thus, any software, hardware, or other technology issued, leased, or otherwise provided to VRS or IP Relay users by Internet-based TRS providers, including “provider distributed equipment” and “provider based software,” whether used alone or in conjunction with “off-the-shelf software and hardware,” would qualify as “iTRS access technology.”<sup>120</sup>

<sup>116</sup> See *infra* section IV.B.2.

<sup>117</sup> *Internet-based TRS Numbering Order*, 23 FCC Rcd at 11614, para. 55.

<sup>118</sup> See Letter from Kelby Brick, Vice President, Regulatory and Strategic Policy, Purple Communications, to Gregory Hlibok, Senior Staff Attorney, FCC, dated October 21, 2010 (identifying “three general categories of [VRS and IP-relay] end-point access methods: provider distributed equipment, provider based software, and current and future off-the-shelf software and hardware,” and seeking clarification with respect to the applicability of the Commission’s rules to these “end-point access methods.”) (*Purple Oct. 21 Letter*).

<sup>119</sup> 47 U.S.C. § 153(14) (“The term “customer premises equipment” means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.”).

<sup>120</sup> See *Purple Oct. 21 Letter*. By extension, under our existing rules, Internet-based TRS providers would be required to ensure that all “browser-based end-points,” integrated “third party end-point[s], such as FaceTime on various Apple products,” and other technologies issued, leased, or provided by Internet-based TRS providers and used to access Internet-based TRS must, inter alia, “deliver[] routing information or other information only to the user’s default provider, except as is necessary to complete or receive ‘dial around’ calls on a case-by-case basis” and facilitate an Internet-based TRS providers ability to “route and deliver all of [a registered] user’s inbound and  
(continued....)

Given the differential treatment of VRS and IP Relay proposed by this *Further Notice*, we further propose to refer separately to iTRS access technology as "VRS access technology" and "IP Relay access technology" where appropriate. We seek comment on this proposal.

## 2. Establishing Standards for iTRS Access Technology

42. Prior to the Commission's establishment of its Part 68 rules in 1975, terminal equipment was manufactured almost exclusively by Western Electric, which was part of the Bell System of companies that included the monopoly local exchange and long distance providers in most parts of the country.<sup>121</sup> This ensured that no harmful terminal equipment was connected to the public switched telephone network, but also created a monopoly in the development and manufacture of terminal equipment.<sup>122</sup> The Part 68 rules are premised on a compromise whereby providers are required to allow terminal equipment manufactured by anyone to be connected to their networks, provided that the terminal equipment has been shown to meet the technical criteria for preventing network harm that are established in the Part 68 rules.<sup>123</sup> Our Part 68 rules have facilitated a vibrant, competitive market for terminal equipment, reducing prices and resulting in a proliferation of new equipment and capabilities available to consumers.<sup>124</sup>

43. We seek comment on whether the effectiveness of our interoperability requirements and functional equivalence could be improved by the creation of VRS access technology standards that are conceptually similar to the Part 68 standards for traditional CPE.<sup>125</sup> Development of such standards may help to resolve the issue of VRS user lock in described in section III.B.1 by giving VRS users assurance that they will be able to continue to use their existing VRS access technology even if they choose to register with a new VRS provider, and that they will not lose access to enhanced features that have proven to be of particular importance to end users.<sup>126</sup> We also expect that a properly developed set of standards, and a properly developed, consensus driven process for maintaining and updating those standards, is consistent with, and could serve as a step towards, the accessibility of interoperable video conferencing

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outbound calls unless the user chooses to place a call with, or receives a call from, an alternate provider." 47 C.F.R. § 64.611(e)(1).

<sup>121</sup> See *Proposals For New or Revised Classes Of Interstate And Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS)*, Docket No. 19528, First Report and Order, 56 FCC 2d 593 (1975) (1975 Part 68 Order).

<sup>122</sup> *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, 15 FCC Rcd 24944, 24947, para. 7 (2000) (2000 Part 68 Order).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> We note that the Commission previously rejected a request that the Commission require "a default provider that furnishes CPE to a consumer must ensure that the CPE's enhanced features (e.g., missed call list, speed dial list) can be used by the consumer if the consumer ports his or her number to a new default provider and uses the CPE with the new default provider," on the grounds that "[p]roviders may offer such features on a competitive basis, which will encourage innovation and competition." See *Second Internet-based TRS Numbering Order*, 24 FCC Rcd at 819-20, para 63. As discussed in greater detail in Appendix B, we continue to believe that a provider should not be responsible for actively supporting CPE that is being used to access another VRS provider's service. See *infra* Appendix B. The record indicates, however, that in the absence of uniform standards for VRS access technologies, VRS providers cannot effectively support VRS access technologies developed by other providers, and our goal of effective portability is frustrated.

<sup>126</sup> See *infra* Appendix B, para. 30.

services under the CVAA, and ultimately could result in widespread use of off-the-shelf technology both for VRS and for point-to-point calls.<sup>127</sup>

44. Appendix B of this *Further Notice* sets forth a detailed proposal for developing and maintaining VRS access technology standards based primarily on SIP. We seek comment on this proposal. The process described in that appendix is intended to develop an open, competitive VRS market, and is designed to facilitate interoperability, portability, affordability, supportability and compatibility goals that the Commission has long pursued and consumers have requested.<sup>128</sup> Establishing VRS access technology standards may give providers a fair chance to compete and grow and could resolve the problem of users being locked in to their existing providers because of iTRS access technology constraints.

45. To ensure all VRS access technologies that VRS providers issue, lease, or otherwise provide to VRS users are compliant with any standards that we establish in this proceeding, we propose to adopt, or to incorporate by reference into our rules, any such standards. Non-compliance would then constitute an enforceable violation of Commission rules. We seek comment on this proposal. What effect would such a proposal have on existing VRS access technology currently in use? Should VRS providers that issued, leased, or otherwise provided VRS access technology to VRS users be required to ensure that such legacy VRS access technology is fully compliant with any standards adopted or, alternatively, removed from use within some discrete period of time (e.g., 12-18 months)? We note that the burden of making the existing base compliant may be reduced to the extent that legacy devices are reaching the end of their natural lives.<sup>129</sup> If our interoperability and portability rules are not effectively enforced with respect to the existing base of VRS users and new-to-category users, will this prevent smaller providers from growing, and hence prevent a more efficient industry structure from being attained? In practice, no provider has an incentive to make its customers more contestable, even if this benefits VRS users, and so we seek comment on how to ensure that any standards adopted are actually implemented. For example, should VRS minutes generated using equipment that does not meet any standards adopted be non-compensable?

46. We note that the Commission has previously sought comment on whether to “mandate specific Internet protocols that VRS providers must use to receive and place VRS calls.”<sup>130</sup> Our intent in this *Further Notice* is not to lock providers into a particular set of protocols, which could have the effect

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<sup>127</sup> See 47 U.S.C. § 617(a), (b) (requiring that advanced communications services – which include interoperable video services – and equipment for such services be accessible to and useable by individuals with disabilities); see *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision; Notice of Proposed Rulemaking*, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198, 26 FCC Rcd 3133 at 3147 - 52, paras. 35-47 (2011).

<sup>128</sup> Consumer Groups’ TRS Policy Statement at 7 (asking the Commission to promote a “climate where interoperability and quality standards are fully observed with respect to equipment (hardware, software, and/or firmware), telecommunications network infrastructures, platform and service”).

<sup>129</sup> For example, the most widely used VRS access technology, the Sorenson VP-200, was introduced almost 5 years ago. See Sorenson, Company Timeline, [http://www.sorenson.com/company\\_timeline](http://www.sorenson.com/company_timeline) (last visited Sept. 8, 2011). To the extent the VP-200 is replaced by updated VRS access technology, it would be beneficial for the replacement access technology to meet any standards adopted as a result of this proceeding to facilitate the interoperability goals discussed herein.

<sup>130</sup> *VRS Interoperability Declaratory Ruling*, 21 FCC Rcd at 5462, para. 56.

of discouraging or impairing the development of improved technology.<sup>131</sup> Rather, our goal is to establish functional requirements, guidelines, and operations procedures for VRS that will encourage the use of existing and new technologies,<sup>132</sup> and allow the industry to expand and evolve in a way that the lack of standards to date has inhibited, in particular by facilitating the use of off-the-shelf equipment and preventing the use of equipment and lock in as a tool for limiting consumers' choice of providers.<sup>133</sup>

47. Given the focus of this *Further Notice on the VRS program*, we do not propose to establish standards for iTRS access technology used to access IP Relay or other forms of iTRS at this time. We expect, however, that to the extent such standards are warranted, the establishment of standards for the VRS program may serve as a model for other Internet-based TRS programs.

### 3. Off-The-Shelf iTRS Access Technology

48. Commenters responding to the *VRS Technology Public Notice* generally state that off-the-shelf VRS access technology hardware (*i.e.*, commercially available computing and communications equipment such as laptops, mobile phones, and tablet computers with broadband Internet access and a front facing camera such as the Apple iPad2) is becoming increasingly available and popular among both VRS providers and VRS users – a dramatic change since VRS was first introduced.<sup>134</sup> Commenters also note the benefits of developing VRS applications that run on off-the-shelf hardware, including that it is based on common commercial protocols and that “competing VRS providers can all design for any open platforms.”<sup>135</sup> Conversely, commenters have argued that proprietary videophones developed by providers are a source of VRS user lock in.<sup>136</sup> We therefore seek comment on whether the effort to develop and maintain VRS access technology standards discussed in the preceding section would be furthered by phasing in a requirement that all VRS access technology hardware used to make compensable VRS calls be “off-the-shelf.” Would limiting providers to making modifications to or developing software for existing commercial platforms help or hinder the effort to ensure portability and interoperability? Is such a rule consistent with the Commission’s obligation to “encourage . . . the use of existing technology and . . . not discourage or impair the development of improved technology?”<sup>137</sup> How should “off-the-shelf” be defined for the purpose of such a rule? Should special purpose videophones be treated differently than other hardware, such as laptops, tablets, or smartphones? What other factors must be considered if VRS providers are allowed to provide users only off-the-shelf VRS access technology hardware?

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<sup>131</sup> 47 U.S.C. § 225(d)(2).

<sup>132</sup> 47 U.S.C. §§ 225(d)(1)(A), (d)(2)

<sup>133</sup> See *VRS Interoperability Declaratory Ruling*, 21 FCC Rcd at 5461-62, para. 55 (noting that the development and use of videophones that use new Internet protocols that are incompatible with existing videophone protocols creates a barrier to realizing the goal of ensuring that all VRS providers can receive calls from, and make calls to, any VRS consumer).

<sup>134</sup> See, *e.g.*, Convo Aug. 16, 2010 Comments, CG Docket No. 10-51 at 20-21; Sorenson Apr. 1, 2011 Comments, CG Docket 10-51 at 2; see generally TDI, NAD, ALDA, and California Coalition of Agencies Serving Deaf and Hard of Hearing, Inc. Apr. 1, 2011 Comments, CG Docket No. 10-51.

<sup>135</sup> Sorenson Apr. 1, 2011 Comments, CG Docket 10-51 at 3.

<sup>136</sup> CSDVRS Aug. 18, 2010 Comments, CG Docket No. 10-51 at 22 (“The dominant provider has systematically used proprietary and non-standard products and methods to thwart competition.”).

<sup>137</sup> 47 U.S.C. § 225(d)(2).