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

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In the Matter of	)	
	)	
Misuse of Internet Protocol (IP) Relay Service	)	CG Docket No. 12-38
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)))	CG Docket No. 03-123

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FIRST REPORT AND ORDER

Adopted: June 28, 2012 **Released: June 29, 2012**

By the Commission:

I. INTRODUCTION

1. In this First Report and Order (Report and Order), the Commission takes an important step to curb the misuse of Internet Protocol Relay Service (IP Relay). Specifically, we prohibit IP Relay providers from handling non-emergency calls made by new IP Relay registrants prior to taking reasonable measures to verify their registration information. In taking this action, we underscore the Commission's ongoing commitment to ensuring that Internet-based telecommunications relay services (iTRS)[1] provide the communication access intended by Congress in section 225 of the Communications Act,[2] while eliminating fraud and abuse in this program.[3]

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[1] *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order, 26 FCC Rcd 10898, 10899 n.1 (defining iTRS to mean all forms of telecommunications relay service (TRS) in which an individual with a hearing or speech disability uses an Internet connection with a communications assistant (CA) to make calls, including Video Relay Service (VRS), IP Relay, and IP captioned telephone service (IP CTS)). VRS uses video over a broadband Internet connection to allow a person who uses sign language to communicate with another party through a CA.

[2] 47 U.S.C. § 225.

[3] Continuing concerns about possible fraudulent exploitation of the IP Relay program by illegitimate users are reflected in a complaint recently filed by the Department of Justice against AT&T. The complaint alleges that AT&T adopted a non-compliant registration system that did not verify whether the user was located within the United States, and that AT&T continued to employ this system even with the knowledge that it facilitated the use of IP Relay by fraudulent foreign callers, which accounted for up to 95 percent of AT&T's call volume. Complaint in Intervention of the United States, *U.S. ex rel. Lyttle v. AT&T Corp.*, Civil Action No. 10-1376 (W.D. Pa.) (filed Mar. 21, 2012).

II. BACKGROUND

2. IP Relay is a form of text-based telecommunications relay service (TRS)[4] that uses the Internet to allow individuals with hearing and/or speech disabilities to communicate with other individuals.[5] In 2006, the Commission initiated a rulemaking proceeding to address the misuse of IP Relay and VRS.[6] The Commission took that action in part because of concerns that individuals without a hearing or speech disability were using the anonymity of the IP Relay service[7] to call merchants and place orders using fake, stolen, or otherwise invalid credit cards. Such abuse not only drains the TRS Fund that supports these services, but also harms legitimate consumers whose calls are rejected by individuals and businesses that have been the victims of such misuse.[8] The *2006 FNPRM* sought comment on ways to curb fraudulent calls made via IP Relay, including requirements for user registration and rule changes that would permit relay providers to screen and terminate such calls.[9]

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[4] TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability. *See* 47 U.S.C. § 225(a)(3), as amended by the Twenty First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 § 103 (Oct. 8, 2010), *technical amendments*, Pub. L. No. 111-265, 124 Stat. 2795 (Oct. 8, 2010) (defining TRS). *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Dockets 90-571 and 98-67 and CG Docket 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479-80, ¶ 3 n.18 (2004) (*2004 TRS Report and Order & FNPRM*) (discussing how TRS works).

[5] *Provision of Improved TRS 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). In an IP Relay call, the communication between the person who is deaf, hard of hearing, or has a speech disability and the provider's communications assistant (CA) is conveyed in text via an Internet connection, and communication between the CA and the hearing party is conveyed verbally over the public switched telephone network (PSTN). Because a CA handling these calls receives only text-based communications over the Internet, the CA cannot readily determine whether the individual sending such messages is, in fact, someone who is deaf, hard of hearing, or has a speech disability. Depending on the circumstance, the CA may also not be able to determine whether the individual is calling from a location outside the United States. At present, the costs of providing IP Relay are reimbursed entirely from the Interstate TRS Fund (TRS Fund), which is overseen by the Commission. *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, 20162, ¶ 40 (2007).

[6] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478 (2006) (*2006 FNPRM*). The *2006 FNPRM* described a typical scenario involving fraudulent credit card purchases: "[A] person places an IP Relay call, usually from outside the United States, to a business located within the United States, places an order for goods (most often commodity items that can be quickly resold), pays with a stolen or fraudulent credit card, and arranges for the goods to be shipped to a location outside the United States." *Id.* at 5481, ¶ 6 (footnote omitted). Another form of IP Relay abuse, although not as prevalent, is prank calls.

[7] *See* note 5, *supra*.

[8] The frequent rejection of IP Relay calls by commercial retailers as a result of ongoing IP Relay abuse prompted the Commission, in 2005, to remind providers of their responsibility to process these calls to ensure functionally equivalent communications for people who are deaf, hard of hearing or speech disabled. *See Telecommunications Relay Service (TRS) Providers Must Make All Outbound Calls Requested by TRS Users and May Not "Block" Calls to Certain Numbers at the Request of Consumers*, Public Notice, 20 FCC Rcd 14717 (2005).

[9] *2006 FNPRM*, 21 FCC Rcd at 5483-84, ¶¶ 11-16.

3. Since the *2006 FNPRM*, the Commission has undertaken a number of measures to combat the misuse of iTRS. Most relevant to the instant proceeding, in June 2008, the Commission adopted a mandatory system requiring IP Relay and VRS users to be assigned ten-digit telephone numbers linked to the North American Numbering Plan and registered with their provider of choice (default provider).[10] The Commission explained that such registration and the requirement for each user to provide a "Registered Location" would reduce the misuse of IP Relay. The Commission also sought comment on whether additional steps were needed to curtail illegitimate calls made through this service.[11]

4. In December 2008, the Commission adopted a second iTRS numbering Order in which it directed IP Relay and VRS providers to "implement a reasonable means of verifying registration and eligibility information," including the consumer's name and mailing address, before issuing a ten-digit telephone number to new or existing users.[12] The Commission provided the following examples of what such verification could include: "(1) sending a postcard to the mailing address provided by the consumer, for return to the default Internet-based TRS provider; (2) in-person or on-camera ID checks during registration; or (3) other verification processes similar to those performed by voice telephone providers and other institutions (such as banks and credit card companies)."[13] The Commission further directed providers to include in their verification procedures a requirement for consumers to self-certify that they have a medically recognized hearing or speech disability necessitating their use of TRS.[14] The Commission expected that "these measures [would] reduce the misuse of Internet-based TRS by those who may take advantage of the anonymity currently afforded users, particularly IP Relay users, without unduly burdening legitimate Internet-based TRS consumers seeking to obtain ten-digit telephone numbers."[15] The Commission added, however, that "to the extent technically feasible, Internet-based TRS providers must allow newly registered users to place calls immediately," even before completing the verification of such individuals.[16] In permitting such temporary use of iTRS by new registrants, the Commission responded to comments by a coalition of consumer groups, who were concerned that legitimate IP Relay users would be cut off from service during the transition to the new ten-digit numbering and registration system.[17] In order to enable users to make calls under this "guest user"

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[10] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (2008) (*iTRS Numbering Order I*).

[11] *Id.* at 11626-27, ¶¶ 94-95.

[12] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-57, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 809-10, ¶¶ 37-38 (2008) (*iTRS Numbering Order II*). The Commission also directed IP Relay and VRS providers, after the effective date of the registration and certification rules, to verify the accuracy of any registration information that was obtained prior to the effective date. *Id.* at 810 n.156.

[13] *Id.* at 809, ¶ 38 (footnotes omitted).

[14] *Id.*, ¶ 37.

[15] *Id.* at 809-810, ¶ 38.

[16] *Id.* at 803, ¶ 25.

[17] *See* Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Association of Late-Deafened Adults, Inc. (ALDA), National Association of the Deaf (NAD), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and Hearing Loss Association of America (HLAA) (collectively, the Consumer Groups), CG Docket (continued....)

procedure, providers have been giving users temporary ten-digit numbers and provisioning these numbers to the iTRS Directory. These numbers have been allowed to remain valid for the purpose of making IP Relay calls until such time that the users' identifying information is authenticated or rejected.

5. In October 2009, the Commission issued a *Public Notice* reminding iTRS providers of their obligation to implement the measures discussed above by November 12, 2009.[18] Because these were new requirements that would have a direct impact on consumer use of the IP Relay program, the *iTRS Numbering Implementation Public Notice* again directed each provider to handle calls from newly registered users immediately, even if the provider had not fully completed the process of verifying the caller's information, assigning the caller a new ten-digit number, and provisioning that number to the iTRS database.[19] The *Public Notice* did not eliminate the requirement for providers to implement a reasonable process for verifying registration information provided by new users.

6. In April 2011, the Commission adopted several additional measures to combat IP Relay fraud and abuse,[20] including a requirement for all TRS providers to submit to Commission-directed audits,[21] a mandate for iTRS providers to retain, for five years, call detail records and other records supporting claims for payment,[22] whistleblower protection rules for provider employees and contractors,[23] and a requirement that a senior executive of a TRS provider certify, under penalty of perjury, to the validity of minutes and data submitted to the TRS Fund administrator.[24] The Commission followed these measures in July 2011 with the adoption of stricter certification rules for iTRS providers,[25] authorization for on-site visits to the premises of applicants for iTRS certification and certified iTRS providers,[26] revised notification requirements for providers to alert the Commission about substantive program changes,[27] and a mandate for providers to certify, under penalty of perjury, as to the accuracy of their certification applications and their annual compliance filings to the Commission.[28]

(Continued from previous page)
No. 03-123 at 7 (filed Aug. 8, 2008) (asking for temporary handling of calls while verification of registration is pending); *iTRS Numbering Order II*, 24 FCC Rcd at 803, ¶ 25.

[18] *Consumer & Governmental Affairs Bureau Reminds Video Relay Service (VRS) and Internet Protocol (IP) Relay Service Providers of their Outreach Obligations and Clarifies their Call Handling Obligations for Unregistered Users after the November 12, 2009, Ten-Digit Numbering Registration Deadline*, CG Docket No. 03-123, WC Docket No. 05-196, Public Notice, 24 FCC Rcd 12877 (CGB 2009) (*iTRS Numbering Implementation Public Notice*).

[19] *iTRS Numbering Implementation Public Notice*, 24 FCC Rcd at 12878-12879, *citing iTRS Numbering Order I*, 23 FCC Rcd at 11610, 11615-16, ¶¶ 44, 60-63; *iTRS Numbering Order II*, 24 FCC Rcd at 803, 808-10, ¶¶ 25, 36-38.

[20] *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 Fraud Order*).

[21] *Id.* at 5584, ¶ 84.

[22] *Id.* at 5585, ¶ 87.

[23] *Id.* at 5577-79, ¶¶ 67-71.

[24] *Id.* at 5586-87, ¶¶ 90-91.

[25] *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898 (2011) (*iTRS Certification Order*).

[26] *Id.* at 10914-15, ¶¶ 36-37.

[27] *Id.* at 10917-18, ¶¶ 44-47.

[28] *Id.* at 10923-25, ¶¶ 62-67. The provision governing certification under penalty of perjury was adopted as an interim rule.

7. Notwithstanding the various measures noted above, concerns about the continued abuse of the IP Relay system prompted the Consumer & Governmental Affairs Bureau (Bureau) to issue a *Refresh Public Notice* on February 13, 2012, seeking to refresh the record initiated by the *2006 FNPRM* on matters pertaining to IP Relay misuse.[29] Among other things, in the *Notice*, the Bureau expressed concern that current methods used by iTRS providers to verify registration and eligibility information submitted by IP Relay users may not be "reasonable" as required by the Commission's rules, and that the Commission "may need to impose additional and more specific requirements . . . to curb IP Relay misuse."[30]

III. PROHIBITION AGAINST GUEST USERS

8. Among the issues raised in the *Refresh Public Notice* was whether the Commission should continue its procedure adopted in *iTRS Numbering Order II* of requiring IP Relay providers to permit newly registered users to place calls prior to the completion of a provider's user verification process, given the potential for misuse of IP Relay by unverified registrants.[31] We now conclude that the record in this proceeding supports the elimination of that procedure. Further, given the record evidence, we now prohibit granting such temporary authorization for any IP Relay calls other than emergency calls to 911 services.

9. Parties responding to the *Refresh Public Notice* overwhelmingly agree that allowing new users to make IP Relay calls pending the provider's verification of the user information contributes significantly to the misuse of IP Relay.[32] Under this procedure, commenters report, large numbers of fraudulent users have easy access to the IP Relay system for extended periods of time before verification is complete and access can be denied.[33] As noted above,[34] this is because in order to make IP Relay calls as a guest user, the user is given a ten-digit number that remains a valid number in the iTRS database until such time that the user's identifying information is authenticated or rejected. Sorenson explains that fraudsters rely on temporary authorization to make calls, and after verification fails and their authorization is revoked, "they simply re-register under another assumed name."[35] Purple similarly reports that under the current procedure,

> illegitimate users can make unlimited calls from the time they provide registration

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[29] *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record Regarding Misuse of Internet Protocol Relay Service*, CG Docket Nos. 12-38 and 03-123, Public Notice, DA 12-208 (rel. Feb. 13, 2012) (*Refresh Public Notice*).

[30] *Refresh Public Notice* at 5. As noted above, *see* note 3, *supra*, after the Bureau released the *Refresh Public Notice*, the Department of Justice brought a lawsuit against AT&T alleging that "out of fears that fraudulent call volume would drop after the [Commission's November 12, 2009 user] registration deadline," the company facilitated the abuse of IP Relay by fraudulent foreign callers.

[31] *See Refresh Public Notice* at 6; *iTRS Numbering Order II*, 24 FCC Rcd at 803, ¶ 25. The guest user procedure was not codified in the Commission's rules.

[32] *See* Aequus Technologies Corporation (Aequus) Refresh Comments at 4; Hamilton Relay, Inc. (Hamilton) Refresh Comments at 4; Purple Communications, Inc. (Purple) Refresh Comments at 8-10; Sorenson Communications, Inc. (Sorenson) Refresh Comments at 4-6.

[33] *See* Hamilton Refresh Comments at 4; Purple Refresh Comments at 10; Sorenson Refresh Comments at 5 ("The requirement to enable IP Relay users to make calls before their verification is complete creates a loophole that enables virtually every fraudulent IP Relay call.").

[34] *See* ¶ 4, *supra*.

[35] *See* Sorenson Refresh Comments at 4.

> information until the time the provider detects the problem and deactivates the registration. The delay between registration and verification creates a window where unauthorized users have unfettered access to the system and they need only to fraudulently re-register once their service is deactivated to immediately place additional calls.[36]

According to Purple, for example, in 2011 over 80% of its newly-registered IP Relay users were eventually deactivated after they failed the verification process.[37] Pending such verification, these unverified or "guest" users were able to place IP Relay calls.

10. Sorenson urges the Commission to "close [this] loophole immediately"[38] and suggests that doing so "would eliminate IP Relay misuse almost immediately."[39] Other commenters likewise urge the Commission to prohibit all temporary user authorization except for emergency calls to 911 services.[40] The Consumer Groups do not oppose ending temporary authorization for unverified IP Relay non-emergency callers, but advocate that the verification process should be completed within 72 hours.[41]

11. *Discussion.* We conclude that a prohibition against temporary authorization of IP Relay users is now necessary in order to curb the fraud and abuse that has resulted from provider misuse of this procedure. Specifically, although there may have been some value in allowing unverified users to make calls for a short period of time during the Commission's transition to the IP Relay registration system, we are concerned that reliance on the guest user procedure has resulted in abuse of the IP Relay program by unauthorized IP Relay users. In addition, we are concerned that unverified users have remained in the iTRS numbering directory—and made repeated IP Relay calls—for extended periods of time, despite the obligation of IP Relay providers to institute procedures to verify the accuracy of registration information.[42] The action that we now take is intended to eliminate any such abuse.

12. Moreover, any rationale for initially permitting temporary user authorization—*i.e.*, to prevent the exclusion of users who were already using IP Relay service and were either unfamiliar with the Commission's new registration process or had not yet registered[43]—is greatly diminished because considerable time has passed since the transition period for registering ended on November 12, 2009.[44] As Hamilton notes, "the vast majority of legitimate users have already been registered,"[45] and we are less

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[36] Purple Refresh Comments at 10.

[37] *Id.* at 17.

[38] Sorenson Refresh Comments at 5.

[39] *Id.* at 4.

[40] *See* Aequus Refresh Comments at 4; Hamilton Refresh Comments at 4.

[41] *See* Consumer Groups Refresh Comments at 3.

[42] *See* note 3, *supra*. *See also iTRS Numbering Order II*, 24 FCC Rcd at 809, ¶ 37 (requiring providers to "institute procedures to verify the accuracy of registration"). Providers that have processed calls by unverified users with suspicious names, addresses or questionable calling practices over extended periods of time may be in violation of the Commission's mandate to take reasonable efforts to verify registration and eligibility information.

[43] *See* Comments of Consumer Groups, CG Docket No. 03-123 at 7 (filed Aug. 8, 2008) (asking for temporary handling of calls while verification of registration is pending); *iTRS Numbering Order II*, 24 FCC Rcd at 803, ¶ 25. *See also iTRS Numbering Implementation Public Notice*, 24 FCC Rcd at 12878-79.

[44] *See id.* at 12877.

[45] Hamilton Refresh Comments at 4.

concerned that legitimate users will be cut off from IP Relay service.[46] At the same time, we have significant concerns about the extent to which the IP Relay program has fallen prey to abuse.[47] As noted above, IP Relay abuse has placed unnecessary costs on the TRS Fund and has resulted in businesses rejecting IP Relay calls from legitimate users.[48] In weighing the Consumer Groups' interest in enabling legitimate new users to obtain reasonably prompt access to IP Relay Service[49] against the record evidence of significant problems of misuse caused by the guest user procedure, we believe that on balance, the clear and critical need to ensure the integrity of the IP Relay program by requiring that users are fully verified prior to receiving service outweighs any residual risk of harm from the temporary deferral of service to a small number of new legitimate users. With respect to the Consumer Groups' specific recommendation that the Commission eliminate the guest user procedure only if we require that the verification process be completed within 72 hours, we believe that on balance, ensuring that users are fully and effectively verified is more critical to restoring the integrity of the IP Relay program than is placing a time limit on the verification process. We also believe that without the option to register guest users, IP Relay providers will have a strong incentive to expeditiously complete their verification processes.[50] Nevertheless, we will continue to review the matter of timing as we consider the adoption of more specific IP Relay verification requirements.

13. The prohibition against temporary authorization of IP Relay users that we now adopt requires that until an IP Relay provider verifies a new IP Relay user in accordance with the Commission's standards as set forth in the Commission's rules and requirements,[51] it will not be permitted to deem such user as "registered" for purposes of section 64.611(b) of the Commission's rules,[52] and will be prohibited from: (1) handling the user's IP Relay calls other than 911 emergency calls;[53] (2) assigning the user a ten-digit number; or (3) provisioning such number to the iTRS Directory. We further expect default providers to periodically review the ten-digit numbers that they place in the iTRS numbering directory, for the purpose of deleting numbers that have been assigned to users that ultimately are not "registered"

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[46] Consumer Groups also acknowledge that "the majority of deaf or hard of hearing people who rely on IP Relay are already registered and do not need to be verified." Consumer Groups Refresh Comments at 3.

[47] *See* note 3, *supra.*

[48] *See* ¶ 2, *supra.*

[49] *See* Consumer Groups Refresh Comments at 3.

[50] In addition, some IP Relay users awaiting the completion of their verification may have the option of using several alternative forms of TRS, including traditional TRS or TTY (allowing users to make calls in text over the public switched telephone network), *see* 47 C.F.R. § 64.601(a)(22); VRS (allowing users to make calls in sign language through a remote communications assistant accessed over a broadband Internet connection via video equipment), *see* 47 C.F.R. § 64.601(a)(26); and captioned telephone relay services (allowing users to both read the text of what the other party is saying and listen with residual hearing), *see 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, 16122 at ¶ 3 (2003).

[51] *See* 47 C.F.R. § 64.611; *iTRS Numbering Order II,* 24 FCC Rcd at 809, ¶¶ 37-38.

[52] 47 C.F.R. § 64.611(b).

[53] Because this emergency use exception is intended only to allow the immediate processing of 911 calls in the event of an emergency, the exception is limited to the handling of these calls at the time they are made. Providers are not permitted to assign ten-digit numbers to callers who anticipate that they might experience an emergency at some point in the future. Such new users will have to go through the full verification process.

or that are otherwise associated with fraudulent calling practices.[54] Such actions will ensure that only verified users have active numbers and prevent ineligible users from using the services of other providers who are unaware of a default provider's ultimate decision to reject user authorization. Our objective is to ensure that the IP Relay program serves only legitimate users.[55] In addition, because there will be fewer calls from fraudulent callers, these actions will benefit legitimate users by reducing the incentive of recipients of IP Relay calls to reject these calls. We note that this is only one of a series of actions we intend to take in this docket to curb IP Relay fraud and abuse. Our overarching goal is to ensure that providers take the steps needed to curb IP Relay misuse, so that this service can remain a viable and valuable communication tool for Americans who need it.

IV. EFFECTIVE DATE

14. The Administrative Procedure Act (APA) provides that a substantive rule cannot become effective earlier than 30 days after the required publication or service of the rule, except "as otherwise provided by the agency for good cause found and published with the rule."[56] As discussed above, the record in this proceeding, including the comments filed by IP Relay providers, has demonstrated the prevalence of misuse of IP Relay and supports the immediate implementation of a measure—the elimination of temporary user authorization for non-emergency calls—that could substantially reduce such misuse. This measure should produce the immediate benefit of reducing payments for illegitimate minutes from the TRS Fund. We further expect that our action today will have a minimal adverse impact, if any, on the provision of IP Relay service to legitimate users, given the considerable time that has passed since the transition period for registering ended on November 12, 2009.[57] Rather, the measure we adopt will benefit such users by reducing the incentive of recipients of IP Relay calls to reject calls from legitimate users because there will be fewer calls from fraudulent callers. With respect to the technical feasibility of instituting this measure immediately, we note that at least one provider has stated from its perspective, that "a prohibition of "guest access" could be implemented on an immediate basis,[58] while another has urged the Commission to "close the loophole immediately."[59] Accordingly, we find that good cause exists for making these measures effective immediately upon publication in the *Federal Register*.

V. CONCLUSION

15. In this First Report and Order we take action intended to immediately curb the misuse of IP Relay by prohibiting providers of IP Relay from providing service (other than handling emergency calls to 911 services) to new registrants until a new user's registration information is verified. It is the Commission's intention to adopt additional measures addressing misuse of IP Relay in future orders.

VI. PROCEDURAL MATTERS

16. *Paperwork Reduction Act of 1995 Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for

[54] This would include, for example, ten-digit numbers that have been blocked from the default provider's network as well as numbers connected to IP addresses associated with locations outside of the United States.

[55] *See iTRS Numbering Order II*, 24 FCC Rcd at 809, ¶ 38.

[56] 5 U.S.C. § 553(d). *See also* 47 C.F.R. § 1.427(a).

[57] *See iTRS Numbering Implementation Public Notice*, 24 FCC Rcd at 12877.

[58] Hamilton *ex parte* letter dated April 11, 2012.

[59] Sorenson Refresh Comments at 5 (noting that the requirement allowing IP Relay users to make calls before their verification is complete "creates a loophole that enables virtually every fraudulent IP Relay call").

small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. *See* 44 U.S.C. § 3506(c)(4).

17. *Congressional Review Act.* The Commission will send a copy of this First Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[60]

18. *Final Regulatory Flexibility Analysis.* With respect to this First Report and Order, a Final Regulatory Flexibility Analysis (FRFA) is contained in Appendix B. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared a FRFA of the expected impact on small entities of the requirements adopted in this First Report and Order. The Commission will send a copy of the First Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

19. *Persons with Disabilities.* To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This First Report and Order can also be downloaded in Word and Portable Document Formats (PDF) at http://www.fcc.gov/cgb/dro/trs.html#orders.

VII. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 225, and 303(r), and section 1.427 of the Commission's rules, 47 C.F.R. § 1.427, this First Report and Order IS hereby ADOPTED.

21. IT IS FURTHER ORDERED that this First Report and Order shall be effective upon publication of a summary of it in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[60] *See* 5 U.S.C. § 801(a)(1)(A).

APPENDIX A

List of Commenters

Aequus Technologies Corporation (Aequus)

The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults, Inc. (ALDA), Hearing Loss Association of America (HLAA) and the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) (collectively, the Consumer Groups)

Hamilton Relay, Inc. (Hamilton)

Purple Communications, Inc. (Purple)

Sorenson Communications, Inc. (Sorenson)

Sprint Nextel Corporation (Sprint)

Commonwealth of Virginia Department for the Deaf and Hard of Hearing (VDDHH)

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking in this proceeding.[2] The Commission sought comment on the proposal in the *2006 FNPRM*, including comment on the IRFA, of the possible significant economic impact on small entities by the policies and rules proposed in the *2006 FNPRM*. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3] The First Report and Order and FRFA (or summaries thereof) will be published in the Federal Register.[4]

A. Need for, and Objectives of, the First Report and Order

2. Providers of telecommunications relay services (TRS), mandated by Title IV of the Americans with Disabilities Act of 1990,[5] relay telephone calls so that individuals who are deaf, hard of hearing, deaf-blind, or who have speech disabilities can engage in communication by wire or radio with other individuals in a manner that is functionally equivalent to the ability of hearing individuals who do not have speech disabilities to communicate using voice communication services by wire or radio.[6] Because Internet Protocol (IP) Relay Service offers consumers anonymity as the call is placed via the Internet, this service has become subject to abuse. Among other things, persons have been using IP Relay to purchase goods from merchants using stolen or fraudulent credit cards. Such misuse is harmful both to the merchant who is defrauded and to legitimate relay users who find that their relay calls are rejected by merchants. The Commission is also concerned that the rapid and steady increase in the size of the Interstate TRS Fund may in part be a result of such misuse of IP Relay.

3. The *2006 FNPRM* sought comment on ways to prevent the misuse of IP Relay, including among other things, a requirement to register IP Relay users. In June 2008, the Commission adopted a mandatory system in which users of Internet-based TRS (iTRS), including IP Relay, are assigned ten-digit telephone numbers linked to the North American Numbering Plan and iTRS users with disabilities are registered with their provider of choice (default provider).[7] The Commission also required IP Relay providers to handle calls from a newly registered user immediately, even if the provider had not completed the process of verifying the caller's information.[8]

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478, 5488-91, Appendix (2006) (*2006 FNPRM*).

[3] *See* 5 U.S.C. § 604.

[4] *See* 5 U.S.C. § 604(b).

[5] Codified at 47 U.S.C. § 225.

[6] *See* 47 U.S.C. § 225(a)(3).

[7] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (2008) (*iTRS Numbering Order I*).

[8] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-57, (continued....)

4. In the *Refresh Public Notice*, the Commission sought comment on whether it should prohibit temporary authorization for a user to place IP Relay calls while verification of the caller is taking place, other than for the handling of emergency calls.[9]

5. The First Report and Order curbs the misuse of IP Relay by prohibiting providers of IP Relay from handling non-emergency IP Relay calls for new registrants until their registration information is verified. Our decision today helps ensure that the iTRS program provides the communication services intended by Congress in section 225 of the Communications Act,[10] while eliminating fraud and abuse.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules.[11] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[12] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[13] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[14]

8. As noted above, the First Report and Order prohibits providers of IP Relay from providing service (other than handling emergency calls to 911) to new registrants until the registration information is verified. As a result, we believe that the entities that may be affected by the proposed rules

(Continued from previous page)
WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 803, 808-10 at ¶ 25 (2008) (*iTRS Numbering Order II*); *Consumer & Governmental Affairs Bureau Reminds Video Relay Service (VRS) and Internet Protocol (IP) Relay Service Providers of their Outreach Obligations and Clarifies their Call Handling Obligations for Unregistered Users after the November 12, 2009, Ten-Digit Numbering Registration Deadline*, CG Docket No. 03-123, WC Docket No. 05-196, Public Notice, 24 FCC Rcd 12877, 12878-79 (CGB 2009) (*iTRS Numbering Implementation Public Notice*), *citing iTRS Numbering Order I*, 23 FCC Rcd at 11610, 11615-16, ¶¶ 44, 60-63.

[9] *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record Regarding Misuse of Internet Protocol Relay Service*, CG Docket Nos. 12-38, 03-123, Public Notice, DA 12-208, rel. Feb. 13, 2008 (*Refresh Public Notice*) at 6.

[10] 47 U.S.C. § 225.

[11] 5 U.S.C. § 604(a)(3).

[12] 5 U.S.C. § 601(6).

[13] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[14] 15 U.S.C. § 632.

are only those TRS providers that offer IP Relay. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees.[15] Currently, there are five TRS providers that are authorized by the Commission to offer IP Relay. One or two of these entities may be small businesses under the SBA size standard.

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

9. The First Report and Order does not impose any new reporting or record keeping requirements. Although the First Report and Order requires IP Relay providers to refuse IP Relay service to individuals who are not deemed qualified to receive IP Relay service, IP Relay providers are already required to refuse IP Relay service to unqualified individuals. While the new requirements expand the circumstances under which individuals are to be denied IP Relay service, they do not impose new compliance requirements on small entities.

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

10. The RFA requires an agency to describe any significant, alternatives, specific to small businesses, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[16]

11. The Commission considers the requirements adopted in the First Report and Order as a means of achieving the public policy goals of ensuring that TRS can provide functionally equivalent communication access and preventing the misuse of IP Relay. As noted above, although the impact of the First Report and Order will be for IP Relay providers to refuse IP Relay service to new IP relay users who are not qualified to receive IP Relay service, IP Relay providers are already required to refuse this service to unqualified individuals. Since the new requirements change the application of existing compliance requirements, but do not impose new compliance requirements on small entities, we find that the Commission has minimized significant economic impact on small entities. The alternatives of either retaining the requirement that providers of IP Relay handle non-emergency IP Relay calls for new registrants prior to verification of registration information or permitting the handling of such calls at the election of the provider, would not curb the misuse of IP Relay by new registrants whose registration information—due to the preexisting guest user procedure—still requires verification.

[15] 13 C.F.R. § 121.201, NAICS Code 517110 (2007).

[16] 5 U.S.C. § 603(c)(1)-(4).

12. The Commission notes that by reducing the misuse of IP Relay, these new requirements will lessen an adverse economic impact on small businesses. Specifically, the new requirements will protect many small businesses that may be affected by illegitimate IP Relay calls. For instance, small businesses are more vulnerable to illegitimate calls involving fraudulent credit card purchases because they often are not equipped to verify the credit card numbers. Because these new requirements will prevent unqualified individuals from placing IP Relay calls, these requirements will have the additional effect of reducing the incidence of credit card fraud.

F. Federal rules that may duplicate, overlap, or conflict with the proposed rules

13. None.