

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

In the matter of
Telecommunications Relay Services
and Speech-to-Speech Services for
Individuals with Hearing and Speech
Disabilities
CC Docket No. 98-67

ORDER

Adopted: June 27, 2003

Released: June 30, 2003

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. On May 1, 2003, the National Exchange Carrier Association, Inc. (NECA), the Interstate Telecommunications Relay Services (TRS) Fund Administrator, filed its annual Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for the period of July 1, 2003, to June 30, 2004. As subsequently amended, NECA proposes TRS provider compensation rates of \$1.368 per-minute for interstate traditional TRS and interstate and intrastate Internet Protocol (IP) Relay, \$2.445 per-minute for interstate Speech-to-Speech Service (STS), and

1 NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, filed May 1, 2003.

2 On May 6, 2003, NECA filed an Errata to its initial filing, revising the fund size requirement and the carrier contribution factor. NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Errata, filed May 6, 2003. NECA again amended its filing on June 19, 2003, revising its proposed TRS and VRS per-minute compensation rates, as well as the total fund size and carrier contribution factor. NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Supplemental Filing, filed June 19, 2003. Unless otherwise indicated, we refer to NECA's filings, as subsequently amended, as the NECA Filing, which therefore includes Exhibits 1A, 1C, 1E, and 4 as submitted on June 19, 2003.

3 TRS is defined as "telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice services by wire or radio." 47 U.S.C. § 225(a)(3).

4 Traditional TRS is accomplished via text-to-voice or voice-to-text, with the text provided via a text telephone (TTY). See 47 C.F.R. § 64.601(9). IP Relay functions similarly with the text provided to, and received from, the communications assistant (CA) via the TRS consumer's computer or other web-enabled device.

5 Speech-to-Speech Service (STS) is a telecommunications relay service "that allows people with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with disabilities and can repeat the words spoken by that person." 47 C.F.R. § 64.601(11).

\$14.023 per-minute for Video Relay Service (VRS).⁶ Based on these figures, NECA also proposes a carrier contribution factor of 0.00169 and a total fund size requirement of \$130,686,169. As set forth below, this Order approves, on an interim basis, the proposed TRS provider compensation rates for traditional TRS and IP Relay, as well as for STS. This Order modifies, however, the proposed TRS compensation rate for VRS by establishing an interim cost recovery rate of \$7.751 per-minute. As a result, this Order also modifies the proposed carrier contribution factor and the proposed fund size, which shall be 0.00149 and \$115,455,570, respectively. The interim compensation rates adopted in this Order are subject to revision pending further analysis of the relevant underlying data, including the TRS providers' cost data.

II. BACKGROUND

2. *Telecommunications Relay Services.* Title IV of the Americans with Disabilities Act of 1990 (ADA) amended the Communications Act of 1934 to add a new section 225.⁷ 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.⁸ To that end, Section 225 requires common carriers providing telephone voice transmission services to provide TRS throughout the areas they serve.⁹ TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a hearing individual, thereby “bridg[ing] the gap between the communications-impaired telephone user and the community at large” and ensuring that individuals with hearing and speech disabilities are “incorporate[d] ... into the telecommunications mainstream.”¹⁰

3. TRS facilities have special equipment and are staffed by communications assistants (CAs) who relay conversations between people who use text telecommunications devices, or other assistive communication devices, and people who communicate by voice. The caller can use a text telephone (TTY) to dial the telephone number of the local TRS center.¹¹ For the TTY user, the first step – the inbound call to the TRS center – is functionally equivalent to receiving a dial tone. The CA, in turn, places an outbound voice call from the TRS center to the called party. The CA serves as the link in the conversation, converting all typed TTY messages from the TTY caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates the call to a TTY user.¹²

⁶ Video Relay Service (VRS) is 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. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.” 47 C.F.R. § 64.601(12).

⁷ 47 U.S.C. § 225.

⁸ 47 U.S.C. § 225(b)(1).

⁹ 47 U.S.C. § 225(c).

¹⁰ H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. At 129-130 (1990) (also emphasizing that TRS must be functionally equivalent to the telephone service provided to hearing individuals).

¹¹ Individual states have their own TRS access numbers (usually toll-free numbers). In addition, some state TRS programs have separate numbers for voice and TTY access. Effective October 1, 2001, TRS centers can be accessed through an abbreviated dialing arrangement by dialing 711. See 47 C.F.R. § 64.603. In addition to dialing their state TRS access numbers for both interstate and intrastate calls, TRS users may also dial a toll-free number to reach other providers of interstate service.

¹² See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 at ¶ 2 (2000) (*Improved TRS Order & FNPRM*) (describing a TRS call).

4. The Commission issued its first order pursuant to Title IV of the ADA implementing TRS on July 26, 1991.¹³ TRS became available on a uniform, nationwide basis pursuant to Commission regulations in July 1993.¹⁴ In March 2000, the Commission issued the *Improved TRS Order & FNPRM*, which, in part, added STS as a required form of TRS.¹⁵ That order further concluded that VRS was a form of TRS, but also concluded that the provision of VRS should not be mandatory given its “technological infancy.”¹⁶ On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & FNPRM*, which further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS.¹⁷ IP Relay, like VRS, was not made a mandatory form of TRS.

5. *Cost Recovery.* The Interstate TRS Fund is intended to compensate eligible providers for the cost of furnishing interstate TRS. These services include traditional voice-to-text and text-to-voice TRS, STS, IP Relay, VRS, and Spanish language interpreting.¹⁸ Fund distributions are made on the basis of a payment formula initially computed by NECA in accordance with the Commission’s rules, and then approved or modified by the Commission.¹⁹ The reimbursement rate calculations are based on the cumulative average cost per interstate minute for each service.²⁰ There are currently three different compensation rates for different forms of TRS: a rate for traditional TRS and IP Relay, a rate for STS, and a rate for VRS.²¹ The Commission determined that the compensation rate for IP Relay would be at the same rate as for traditional TRS because there is little difference in the costs of providing these services.²²

6. The compensation rates for STS and VRS are distinct, however, because of the unique costs of providing those services.²³ In determining that a separate compensation rate was appropriate for VRS, the Commission noted the “unique characteristics” of VRS and data indicating the “higher costs for providing VRS.”²⁴ Specifically, the Commission stated that:

[t]he data provided to NECA by VRS providers demonstrate that VRS costs and

¹³ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, CC Docket No. 90-571, FCC 91-213, 6 FCC Rcd 4657 (1991) (*First TRS Report & Order*).

¹⁴ The statute mandated an implementation date of no later than July 26, 1993. 47 U.S.C. § 225(c).

¹⁵ *Improved TRS Order & FNPRM* at ¶¶ 14-20.

¹⁶ *Id.* at ¶ 22.

¹⁷ *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket 98-67, FCC 02-121, 17 FCC Rcd 7779 at ¶¶ 10-11 (2002) (*IP Relay Declaratory Ruling & FNPRM*).

¹⁸ *See generally Improved TRS Order & FNPRM*.

¹⁹ 47 C.F.R. § 64.604(c)(5)(iii).

²⁰ *See generally Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 02-1166, 17 FCC Rcd 8840 at ¶ 2 (2002).

²¹ Eligible non-English language relay service minutes fall within the traditional TRS rate. *See generally Improved TRS Order & FNPRM* at ¶¶ 28-31; *Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket 98-67, FCC 01-371, 16 FCC Rcd 22948 at ¶ 13 (2001) (*2001 MO & O*).

²² *See IP Relay Declaratory Ruling & FNPRM* at ¶ 22.

²³ *See 2001 MO & O* at ¶¶ 17, 22.

²⁴ *Id.* at ¶ 22.

payment requirements are materially different from those for traditional TRS. ... Consequently, the compensation rate calculated and approved for VRS is currently \$5.539 per completed conversation minute, while that for traditional TRS is \$1.328 per minute and for STS is \$4.623 per minute. In light of the differences in technology and the reportedly higher cost associated with providing VRS, we will require NECA to expand the TRS Data Request to include data that are specific to VRS. Doing so will ensure that expenses relevant to VRS are being used to compute the VRS compensation rate.^[25]

The Commission also emphasized that, in permitting VRS to be compensated on an interim basis using the same average per-minute methodology used for traditional TRS, VRS providers must be able “to recover their *fair costs* related to providing VRS.”²⁶

7. Although the Interstate TRS Fund was intended to compensate providers for the costs of providing interstate TRS services, in the *Improved TRS Order & FNPRM* the Commission concluded that, as a temporary measure, VRS providers could be compensated from the Interstate TRS Fund for the costs associated with providing both interstate and intrastate VRS.²⁷ And in the *IP Relay Declaratory Ruling & FNPRM*, the Commission similarly concluded that, on an interim basis, providers of IP Relay may seek compensation from the Interstate TRS Fund for providing both interstate and intrastate IP Relay.²⁸

8. In order for the TRS administrator to make the necessary calculations to determine the per-minute compensation rates, TRS providers are required to submit to the administrator “true and adequate data necessary to determine TRS fund revenue requirements and payments.”²⁹ Specifically, TRS providers must provide the administrator with “total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment,” as well as “other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements.”³⁰ The regulations further provide that this information shall be provided “in general accordance with Part 32 of the [Commission’s rules].”³¹ Part 32 of the Commission’s rules establishes the revised Uniform System of Accounts (USOA) as the standard for accounting for telecommunications companies under the Commission’s authority.³² Finally, the rules give “[t]he administrator and the Commission ... the authority to examine, verify and audit data received from TRS

²⁵ *Id.*

²⁶ *Id.* at ¶ 34 (emphasis added).

²⁷ *Improved TRS Order & FNPRM* at ¶ 26; see also 47 C.F.R. § 64.604(c)(5)(iii)(E) (noting that providers should also be compensated for providing VRS, “whether intrastate or interstate”).

²⁸ *IP Relay Declaratory Ruling & FNPRM* at ¶ 20.

²⁹ 47 C.F.R. § 64.604(c)(5)(iii)(C).

³⁰ *Id.*

³¹ *Id.*

³² See 47 C.F.R. Part 32. The USOA “is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. The USOA also provides the financial community and others with financial performance results. In order for an accounting system to fulfill these purposes, it must exhibit consistency and stability in financial reporting (including the results published for regulatory purposes). Accordingly, the USOA has been designed to reflect stable, recurring financial data based to the extent regulatory considerations permit upon the consistency of the well established body of accounting theories and principles commonly referred to as generally accepted accounting principles.” 47 C.F.R. § 32.1.

providers as necessary to assure the accuracy and integrity of fund payments.”³³

9. Using the projected cost and projected minutes of use information it receives from the TRS providers, the TRS administrator determines the per-minute compensation rate for the various forms of TRS.³⁴ In these calculations, the projected minutes of use are the providers’ own estimates of the number of minutes of demand there will be for each of the various forms of TRS for a two-year period that encompasses the July through June period for which the new compensation rates will be in effect (e.g., in this case, for all of 2003 and 2004).³⁵ The providers’ own demand estimates are used (instead of projected demand extrapolated from prior actual use data, as is used in determining the fund size and carrier contribution factor) because the providers’ projected costs are based on their projected demand.³⁶

10. Using this data, the regulations provide that “TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. . . . Such formulas shall be designed to compensate TRS providers for *reasonable* costs of providing interstate TRS, and shall be subject to Commission approval.”³⁷ The regulations further provide that the “administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. . . . The Commission shall have authority to audit providers and have access to all data, including specific carrier data, collected by the fund administrator.”³⁸

11. *NECA’s May 1, 2003, Filing.* The rules require that the fund administrator file “with the Commission on May 1 of each year, to be effective for a one-year period beginning the following July 1,” its “TRS payment formulas and revenue requirements.”³⁹ Pursuant to this rule, on May 1, 2003, NECA filed the Interstate TRS Fund payment formulae and fund size estimate for the period July 1, 2003, through June 30, 2004.⁴⁰

12. NECA’s filing describes in some detail its development of the 2003-2004 payment formulae and fund size estimates.⁴¹ In November 2002, NECA sent a request for data to all interstate TRS providers, seeking cost and demand data on traditional TRS, IP Relay, STS, and VRS. The cost data reported consisted of actual costs for 2001, annualized actual costs for 2002, and estimated costs for 2003

³³ 47 C.F.R. § 64.604(c)(5)(iii)(C).

³⁴ See *NECA Filing* at Exs. 1A-2, 4.

³⁵ See, e.g., *id.* at Exs. 1B, 1D, 1E.

³⁶ As NECA has explained, “[t]o determine the reimbursement rate for each type of relay service . . . NECA uses projected costs and minutes submitted by providers in the annual relay center data collection.” NECA’s June 19, 2003, *Supplemental Filing* at 2. NECA further explains that it uses this approach in this context because the “providers’ costs are directly related to their demand forecasts.” *Id.* By contrast, in determining the fund size estimate and carrier contribution rate, NECA uses its own projection of minutes of use based on recent actual minutes of use modified by a growth factor, which is based on historical data and trends analysis. This typically produces a larger number of projected minutes than the providers’ projections, and helps to guarantee that the Interstate TRS Fund has sufficient monies to cover the compensation of all providers for all of their services in the covered year. Any excess monies are carried over into the next fund year.

³⁷ 47 C.F.R. § 64.604(c)(5)(iii)(E) (emphasis added). As we have noted above, the costs of providing intrastate VRS and IP Relay are also recoverable from the Interstate TRS Fund.

³⁸ *Id.*

³⁹ 47 C.F.R. § 64.604(c)(5)(iii)(H).

⁴⁰ As noted above (note 2), NECA twice amended this filing.

⁴¹ *NECA Filing* at 3-11.

and 2004. The demand data reported by providers similarly consisted of actual demand data for 2001, annualized demand data for 2002, and estimated demand data for 2003 and 2004. From this data, NECA developed the relevant projections for the costs, demand, and fund requirements for these forms of TRS for the July, 2003, through June, 2004, period.

13. *Traditional TRS and IP Relay.* The compensation rate for providers of eligible traditional TRS and IP Relay services is determined by dividing the providers' total projected costs of providing these services by the providers' total projected minutes of use.⁴² Based on the data provided, NECA's calculations have resulted in a proposed per-minute compensation rate of \$1.368; that figure was arrived at by dividing the total projected costs of \$76,033,911 by the total projected minutes of 55,594,238.⁴³ That rate represents an approximately 10 % decrease from the current rate of \$1.528.⁴⁴

⁴² *Id.* at 7-8 & Exs. 1A-1C. As we have noted, the total projected minutes of use is determined by adding the providers' projected total minutes for 2003 and projected total minutes for 2004, and dividing by two. *See id.* For traditional TRS, only the costs of providing interstate service are considered. *Id.* at 7.

⁴³ *Id.* at Ex. 1C.

⁴⁴ Since its inception, the per-minute compensation rate for traditional TRS has ranged from \$1.168 to \$1.705 per-minute. The history of TRS payment rates follows:

\$1.705 per-minute, July 26, 1993, through December, 1994. *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Second Order on Reconsideration and Fourth Report and Order, CC Docket No. 90-571, FCC 93-463, 9 FCC Rcd 1637 at ¶ 8 (1993).

\$1.304 per-minute, 1995. *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 94-1610, 10 FCC Rcd 1191 at ¶ 7 (1994).

\$1.379 per-minute, 1996. *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 95-2475, 11 FCC Rcd 5191 at ¶ 11 (1995).

\$1.217 per-minute, 1997. *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 96-2158, 12 FCC Rcd 14120 at ¶ 11 (1996).

\$1.168 per-minute, 1998. *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Order, DA 97-2676, 12 FCC Rcd 22046 at ¶ 9 (1997).

\$1.179 per-minute, January, 1999, through June, 2000. *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 98-2481, 13 FCC Rcd 23520 at ¶ 14 (1998); *1998 Biennial Regulatory Review*, Memorandum Opinion and Order, CC Docket No. 98-171, DA 99-2027, 1999 WL 777545 at ¶ 9 (Sept. 30, 1999).

\$1.282 per-minute, July, 2000, through December, 2000. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 00-1433, 15 FCC Rcd 11384 at ¶ 7 (2000) (*2000 TRS Payment Rate Order*).

\$1.328 per-minute, January, 2001, through June, 2001. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 01-490, 16 FCC Rcd 4651 at ¶ 7 (2001) (*February 2001 TRS Payment Rate Order*).

\$1.309 per-minute, July, 2001. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, CC Docket No. 90-571, DA 01-1502, 16 FCC Rcd 12895 at ¶¶ 5-6 (2001) (*June 2001 TRS Payment Rate Order*).

(continued....)

14. For purposes of determining the fund size requirement and carrier contribution rate, NECA has projected demand (based on prior actual usage, as modified by a growth rate) for these services for the period of July, 2003, through June, 2004, to be 57.5 million minutes, an increase of 40% from the previous year. By multiplying the new, proposed per-minute rate (\$1.368) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need \$78.7 million to compensate TRS providers for providing these services.⁴⁵

15. STS. The compensation rate for providers of interstate STS is determined the same way, using the providers' total projected interstate costs of providing this service and the providers' total projected minutes of use. Based on the data provided, NECA calculations have resulted in a proposed per-minute compensation rate for STS of \$2.445; that figure was arrived at by dividing the total projected interstate costs of \$211,342 by the providers' total projected minutes of 86,429.⁴⁶ That rate represents a 40% decrease from the current rate of \$4.045.⁴⁷

16. Although the compensation rate for STS remains higher than that for traditional TRS, NECA notes that "[w]ith two years experience in the provision of STS, providers are able to submit more comprehensive cost and demand data. STS appears to be moving toward the traditional TRS structure but NECA believes that the costs and demand are still different enough to warrant a separate rate structure for STS, particularly in light of the differing nature of the service provided by the communications assistant, i.e., communication of a speech conversation versus communication of a text conversation."⁴⁸ The Commission has similarly noted that "STS relies less on technology than traditional TRS and more on skilled CAs who may need to be paid more. The reimbursement rates for STS, therefore, are significantly higher than for traditional TRS."⁴⁹ This difference accounts for the higher costs in the underlying data.

17. For purposes of determining the fund size requirement and carrier contribution rate, NECA has projected demand (based on prior actual usage, as modified by a growth rate) for these

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\$1.395 per-minute, August, 2001, through June, 2002. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Order, CC Docket No. 90-571, DA 02-1166, 17 FCC Rcd 8840 at ¶ 8 (2002) (2002 TRS Payment Rate Order).*

\$1.528 per-minute, July, 2002 through June, 2003. *See Proposed Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services (TRS) Fund for July 2002 Through June 2003, Public Notice, CC Docket No. 90-571, DA 02-1422, 17 FCC Rcd 11242 at ¶ 3 (2002) (2002 Payment Formula PN).*

⁴⁵ NECA Filing at Ex. 4. The \$78.7 million, added to the funding requirements for the projected use of STS and VRS, as noted below, plus certain administrative costs, determines the total projected Interstate TRS Fund size estimate. *See id.*

⁴⁶ *See id.* at 8 & Ex. 4.

⁴⁷ Since its inception, the per-minute compensation rate for STS has ranged from \$2.62 to \$4.263 per-minute. The history of STS payment rates follows:

\$4.623 per-minute, July, 2000, through June, 2001. *See 2000 TRS Payment Rate Order at ¶ 7 & Table 1.*

\$2.620 per-minute, July, 2001. *See June 2001 TRS Payment Rate Order at ¶ 9.*

\$2.469 per-minute, August, 2001, through June, 2002. *See 2002 TRS Payment Rate Order at ¶ 8.*

\$4.045 per-minute, July, 2002, through June, 2003. *See 2002 Payment Formula PN.*

⁴⁸ NECA Filing at 5.

⁴⁹ 2001 MO & O at ¶ 17.

services for the period of July, 2003, through June, 2004, to be 138,135 minutes, a reduction in projected demand of approximately 35% from the previous year. By multiplying the new, proposed per-minute rate (\$2.445) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need \$337,862 to compensate TRS providers for providing STS.⁵⁰

18. *VRS*. The compensation rate for providers of VRS is also determined the same way, using the providers' total projected costs of providing this service and the providers' total projected minutes of use. Based on the data provided, NECA calculations have resulted in a proposed per-minute compensation rate for VRS of \$14.023; that figure was arrived at by dividing the total projected interstate costs of \$52,659,750 by the providers' total projected minutes of 3,755,323.⁵¹ That rate represents an 18% decrease from the current rate of \$17.044.⁵²

19. With regard to the relatively high reimbursement rate for VRS, NECA explains that “[u]nlike traditional TRS, the Commission is providing funding from the interstate fund for VRS on an interim basis for calls that are jurisdictionally intrastate as well as interstate. ... This interim arrangement appears to have an impact on the level of per-minute compensation. Providers of VRS have informed NECA that, because there is no ‘guarantee’ that funding for the service will continue, equipment costs have not been amortized over a period of time. As a result, the per-minute compensation rate fully reflects the cost of new equipment added to provide this service.”⁵³ NECA further notes that “providers have included levels of profit that they believe are compensatory with the associated risk of providing a service that may not be funded ... in the future.”⁵⁴ In addition, because VRS uses highly trained American Sign Language interpreters instead of CAs, the labor costs for VRS are considerably higher than for TRS.⁵⁵ Finally, VRS requires the use of special equipment, including cameras and Internet servers, as well as broadband connections. These factors increase the costs of providing VRS above those for traditional TRS, IP Relay, or STS.

20. For purposes of determining the fund size requirement and carrier contribution rate, NECA has projected demand (based on prior actual usage, as modified by a growth rate) for these

⁵⁰ *NECA Filing* at Ex. 4.

⁵¹ *See id.* at 8 & Ex. 4.

⁵² Since its inception, the per-minute compensation rate for VRS has ranged from \$5.143 to \$17.044 per-minute. The history of VRS payment rates follows:

\$5.143 per-minute, July, 2000, through September, 2000. *See 2000 TRS Payment Rate Order* at ¶ 7 & Table 1.

\$5.539 per-minute, October, 2000, through June, 2001. *See February 2001 TRS Payment Rate Order* at ¶ 14.

\$7.449 per-minute, July, 2001. *See June 2001 TRS Payment Rate Order* at ¶ 10.

\$9.614 per-minute, August, 2001, through June, 2002. *See 2002 TRS Payment Rate Order* at ¶ 8.

\$17.044 per-minute, July, 2002, through June, 2003. *See 2002 Payment Formula PN*.

We note that the most recent rate of \$17.044 per-minute was set pursuant to a June 14, 2002, Public Notice noting that NECA had submitted a proposed VRS compensation rate of \$17.044 per-minute, and that that rate would become effective for the July, 2002, through June, 2003, fund year if the Commission took no further action before June 30, 2002. *See 2002 Payment Formula PN*. The Commission took no further action, and therefore this rate became effective on July 1, 2002.

⁵³ *NECA Filing* at 5.

⁵⁴ *Id.*

⁵⁵ *Sprint/Communications Services for the Deaf (CSD), Ex Parte*, December 4, 2002.

services for the period of July, 2003, through June, 2004, to be 2,428,348 minutes, an increase of 70% from the previous year. By multiplying the new, proposed per-minute rate (\$14.023) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need \$34,052,724 to compensate TRS providers for providing VRS.⁵⁶

21. *Interstate TRS Fund Size and Carrier Contribution Rate.* Once NECA has calculated its proposed compensation rates for traditional TRS and IP Relay, STS, and VRS, NECA calculates the proposed fund size and carrier contribution rate.⁵⁷ As we have noted, the total annual Interstate TRS Fund requirement is determined by adding together the projected payments to TRS providers for the various forms of TRS, plus certain administrative expenses. The contribution factor is then based on the "ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues."⁵⁸

22. Making these calculations, NECA determined that the total fund size requirement – *i.e.*, the amount that would be necessary to compensate providers for providing all eligible TRS services for the period of July, 2003, through June, 2004 – would be \$130,686,169 million (which includes certain costs and other relevant expenses).⁵⁹ NECA then divided that number by the total 2002 common carrier end user revenues (\$77.5 billion) to arrive at a contribution factor of 0.00169.⁶⁰ NECA submits all of its data to the Commission, which has the authority to approve or modify NECA's proposed carrier contribution factor, fund size, and per-minute compensation rates.⁶¹

23. *Commenters.* On May 2, 2003, the Commission released a Public Notice requesting comment from interested parties on NECA's filing.⁶² Two comments and four reply comments were filed. Hamilton Relay, Inc. (Hamilton) supports NECA's proposed payment formulae and fund size estimate,⁶³ and specifically urges the Commission to approve NECA's proposed VRS cost recovery rate.⁶⁴ AT&T states that NECA should not decrease the cost recovery rate for VRS from \$17.044 per-minute to \$14.023 per-minute, as proposed, because this would provide no incentive for VRS providers to invest in

⁵⁶ *NECA Filing* at Ex. 4.

⁵⁷ *NECA Filing* at 10 & Ex. 4. Under the Commission's rules, "[e]very carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues." 47 C.F.R. 64.604(c)(5)(iii)(A).

⁵⁸ *Id.*

⁵⁹ *Id.* Costs include the actual costs of providing TRS, NECA's administrative costs, and allowances for uncollectible contributions. This amount is reduced by interest income on retained funds. See *NECA Filing* at Ex. 4.

⁶⁰ *Id.* The carrier contribution "shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues." 47 C.F.R. § 64.604(c)(5)(iii)(B).

⁶¹ See 47 C.F.R. § 64.604(c)(5)(iii)(E), (H).

⁶² *National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2003 through June 2004*, Public Notice, CC Docket No. 98-67, DA 03-1491, released May 2, 2003. NECA filed an Errata to its submission on May 6, 2003. See note 2, *supra*. The Commission released a second Public Notice responding to the Errata on May 7, 2003. *NECA Amends the Payment Formula and Fund Size Estimate for Interstate TRS Fund for July 2003 through June 2004*, Public Notice, CC Docket No. 98-67, DA 03-1527, released May 7, 2003.

⁶³ Hamilton Comments at 2.

⁶⁴ *Id.* at 3-4.

research and development.⁶⁵ Hamilton's and AT&T's comments were also directed at other issues. Hamilton also asserts that the Interstate TRS Fund should not compensate those providers of IP Relay that were not in compliance with non-waived TRS mandatory minimum standards at the time the service was rendered.⁶⁶ AT&T's comments also raise matters concerning the reimbursement of international TRS calls made via IP Relay, the extension of waivers for VRS of certain TRS mandatory minimum standards, and local exchange carriers' contributions to the Interstate TRS Fund.⁶⁷ WorldCom, Inc. (MCI), NECA, SBC Communications, Inc. (SBC), and Verizon filed reply comments addressing many of these issues.⁶⁸

III. DISCUSSION

24. NECA has submitted proposed TRS per-minute compensation rates, Interstate TRS Fund size requirements, and a proposed carrier contribution factor for the period of July, 2003, through June, 2004, based on the providers' projected costs and various demand projections. Under the Commission's rules, the Commission has the authority and responsibility to review NECA's filing, and to approve or modify the proposed rates and figures.⁶⁹ It is the Commission's duty to ensure the integrity of the Interstate TRS Fund and the payments made from the Fund. To this end, the rules make clear that these rates and figures are intended to compensate TRS providers for the "reasonable" and "fair" costs of providing eligible TRS.⁷⁰ As set forth below, we have reviewed the *NECA Filing*, as well as the underlying cost data. Based on this review, we approve, on an interim basis, NECA's compensation rate of \$1.368 per-minute for traditional TRS and IP Relay, and its compensation rate of \$2.445 per-minute for STS. We modify, however, the proposed TRS compensation rate for VRS, and establish an interim cost recovery rate of \$7.751 per-minute. As a result, this Order also modifies the proposed carrier contribution factor and the proposed fund size, which shall be 0.00149 and \$115,455,570, respectively. The interim compensation rates adopted in this Order are subject to revision pending further analysis of the relevant underlying data, including the TRS providers' cost data.

A. Compensation Rate for Traditional TRS and IP Relay

25. NECA proposes a compensation rate of \$1.368 per-minute for eligible traditional TRS and IP Relay. As we have noted above, this rate was determined by dividing the providers' total projected costs of \$76,033,911 by the providers' total projected minutes of 55,594,238. We have a significant amount of historical data to assist us in reviewing the providers' submitted projected traditional TRS demand and cost recovery data.⁷¹ Since IP Relay is a more recent service, we have less historical data on which to rely in reviewing the projected data for that service. Nevertheless, we tentatively find that NECA's calculations with respect to these services are reasonable. As we have noted, the commenter that addressed this issue, Hamilton, recommends approval of the traditional TRS cost recovery rate.⁷²

26. For these reasons, we approve, on an interim basis, the recommended cost compensation rate for traditional TRS and IP Relay. The Interstate TRS Fund will pay \$1.368 per-minute for eligible

⁶⁵ AT & T Comments at 4.

⁶⁶ Hamilton Comments at 4-5.

⁶⁷ AT&T Comments at 1-7.

⁶⁸ See generally MCI Reply, NECA Reply, SBC Reply, Verizon Reply.

⁶⁹ See 47 C.F.R. § 64.604(c)(5)(iii)(E).

⁷⁰ *Id.*; see also 2001 MO & O at ¶ 34.

⁷¹ See note 44, *supra*; see also NECA's June 19, 2003, *Supplemental Filing* at 2 (noting historical data).

⁷² See Hamilton Comments at 2.

traditional TRS and IP Relay calls⁷³ for the period of July, 2003, through June, 2004. Because we have also determined, however, that we do not have in hand complete information to fully analyze TRS and IP Relay provider costs, this rate may be modified prior to the end of this period. We intend to gather more data on provider costs, and thoroughly examine this data to ensure that traditional TRS and IP Relay are provided to the public in an efficient fashion, and that the included costs are fair and reasonable as our rules require.

B. Compensation Rate for Speech-to-Speech

27. NECA proposes a compensation rate of \$2.445 per-minute for interstate STS relay calls. As we have noted above, this rate was determined by dividing the providers' total projected interstate costs of \$211,342 by the providers' total projected minutes of 86,429. Although STS was not authorized as part of TRS until 2000, and therefore there is relatively little historical data available,⁷⁴ we tentatively find that NECA's calculations with respect to STS are reasonable. Again, the only commenter that addressed this issue, Hamilton, recommends approval of this cost recovery rate.⁷⁵

28. We therefore approve, on an interim basis, the recommended cost compensation rate for interstate STS. The Interstate TRS Fund will pay \$2.445 per-minute for eligible interstate STS for the period of July, 2003, through June, 2004. As with traditional TRS and IP Relay, because we have also determined that we do not have currently available complete information to fully analyze STS provider costs, this rate may be modified prior to the end of this period. We intend to gather more data on provider costs, and thoroughly examine this data to ensure that STS is provided to the public in an efficient fashion, and that the included costs are fair and reasonable as our rules require.

C. Compensation Rate for Video Relay Service

29. Although we have approved, on an interim basis, the per-minute compensation rates for traditional TRS and IP Relay, as well as STS, as proposed by NECA, we do not reach the same conclusion with respect to VRS. As we have noted, the compensation rate for VRS jumped from approximately \$5 per-minute to over \$17 per-minute in a two-year period.⁷⁶ In its current filing, NECA recommends a VRS rate of \$14.023.⁷⁷ Based on our initial review of the data underlying this rate, however, we have concluded that adjustments to the rate are appropriate.

30. As an initial matter, we note that the cost of providing Video Relay Interpreting (VRI)⁷⁸ is substantially less than the cost of providing VRS, even though the two services are essentially the same. As the Commission has explained in distinguishing between VRI and VRS, VRI is used "to conduct in-person communications through sign language interpreters that are located in remote locations."⁷⁹ For example, at a business meeting, VRI can be used to enable a hearing person to communicate with a deaf person when they are in the same room. In this instance, the hearing person would call a remote VRI service and communicate with the deaf person through an interpreter who is at a remote location. The

⁷³ The Interstate TRS Fund does not currently reimburse providers for the costs of providing international calls via IP Relay.

⁷⁴ See note 47, *supra*.

⁷⁵ See Hamilton Comments at 2.

⁷⁶ See note 52, *supra*.

⁷⁷ See *NECA Filing* at 8 & Ex. 1E.

⁷⁸ In its more recent usage, "VRI" is more accurately understood to stand for Video Remote Interpreting.

⁷⁹ *Telecommunications Relay Services and Speech-to-Speech Services for Persons with Hearing and Speech Disabilities*, Order on Reconsideration, CC Docket No. 98-67, FCC 00-200, 16 FCC Rcd 4054 at ¶ 10 (2000).

deaf person and the interpreter would then see each other and communicate in sign language through the video connection.⁸⁰ The Commission made clear that “while the provision of telephone relay service utilizing sign language interpreters is reimbursable through TRS funds, ...charges associated with [VRI] for in-person communications are not recoverable.”⁸¹ Nevertheless, because VRI uses essentially the same video equipment⁸² and resources as VRS, we believe that it is instructive to compare the costs of providing the two services. We have evidence indicating that it currently costs \$1.75 to \$3.00 per-minute for the use of VRI service.⁸³ As we have noted, the current per-minute compensation rate for providing VRS, based on cost data submitted by the providers, is \$17.044. Although the Commission recognizes that there may be several factors that justify a VRS compensation rate that is higher than that for VRI, we have no information suggesting why VRS should cost at least five times more.

31. We also note that when the Commission first authorized cost recovery for VRS, it established what it characterized as a “special funding arrangement” for VRS “to speed its development.”⁸⁴ Under this arrangement, the Commission authorized “recovery of costs associated with both intrastate and interstate [VRS] calls from the interstate TRS Fund” in order to “reduce costs and spur industry and consumer investment in the equipment and technologies necessary to use [VRS], without burdening state relay programs or engendering any of the risks associated with mandating the use of equipment that has not been fully tested in the marketplace.”⁸⁵ In addition, in December 2001 the Commission waived for VRS several of the mandatory minimum standards applicable to the provision of TRS.⁸⁶ The Commission explained that by granting these waivers, it intended “to give providers time to refine their VRS technology before incurring significant costs to provide fully compliant service.”⁸⁷ It appears, however, that both of these cost-saving measures have not been effective in preventing the VRS compensation rate from more than tripling in the span of two years. Moreover, although we know from prior experience that the labor cost for VRS interpreters is higher than that for TRS communications assistants, this difference alone does not seem to account fully for the difference in the rates charged for each service.

32. Because we are concerned that NECA’s proposed rate of \$14.023 remains relatively high by comparison to the initial compensation rates for VRS and the rate proposed for traditional TRS and IP Relay Service (more than 10 times as high), as well as the rates generally charged for VRI services (\$1.75 to \$3.00 per-minute), and also seems to be at odds with the cost savings intent behind our special funding

⁸⁰ See *id.* (also giving an example of the use of VRI).

⁸¹ *Id.*

⁸² As a general matter, both VRS and VRI use video cameras and a high-speed internet connection.

⁸³ Sprint’s VRS PowerPoint presentation, “How to use Federal VRS (video relay) & VRI (video remote) in your workplace?,” National Training Conference on Employment of Deaf and Hard of Hearing Government Employees, Bethesda, Maryland (March 17, 2003). Other anecdotal evidence we have received suggests VRI per-minute rates ranging from \$2.50 to \$3.25.

⁸⁴ *Improved TRS Order & FNPRM* at ¶ 24.

⁸⁵ *Id.*

⁸⁶ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 01-3029, 17 FCC Rcd 157 at ¶¶ 9-20 (2001) (*VRS Waiver Order*) (waiving, for a two-year period, the requirements to provide operator assisted calls, to provide pay-per-call services (900 number calls), to bill certain types of long distance calls to the end user, to provide a system for incoming emergency calls that automatically and immediately transfers the caller to the nearest public safety answering point, to answer 85 percent of relay calls within 10 seconds by any method which results in the caller's call being placed, not to be put in queue or on hold, and to provide TRS users access to their chosen interexchange carrier through TRS, and to all other operator services, to the same extent that such access is provided to voice users).

⁸⁷ *Id.* at ¶ 7.

treatment and waivers for VRS, we have examined the providers' cost data underlying NECA's proposed rate. As set forth below, we conclude that the providers' cost data cannot support the proposed compensation rate of \$14.023 per-minute. We therefore revise that rate for the July, 2003 through June, 2004 period. As an interim matter, for the reasons set forth below, and pending further review of the relevant data, we authorize a per-minute compensation rate for VRS of \$7.751 per-minute.

33. The level of detail contained in the providers' initial cost data filed with NECA did not enable us to account for the relatively high compensation rate for VRS and the cost differences between the various services. Therefore, we directed the fund administrator to request supplementary information from each VRS provider.⁸⁸ In response to our request, VRS providers submitted supplementary information regarding the basis for their cost projections. Several providers requested confidential treatment of their filed documents under the Commission's rules.⁸⁹ Because of these requests for confidential treatment, we make our findings in the aggregate,⁹⁰ thereby ensuring that no provider's confidential materials are disclosed, while at the same time allowing us to analyze, and rely upon, the data submitted.⁹¹

34. Upon reviewing the supplementary information, we have identified a variety of areas that warrant adjustment to the proposed costs. Some of these areas raise complex issues, and will require more time than that currently available to research fully. We will therefore defer action on these issues pending further examination of VRS cost data.⁹² Nevertheless, we find that adjustments made in a number of areas – most significantly, profit calculations, taxes, and labor costs – taken in the aggregate, warrant our adjustment to the VRS compensation rate.

35. First, we find in our analysis of VRS provider data that the profits and tax allowances claimed by all VRS providers equal a markup of 27.2% of the total underlying VRS expenses.⁹³ The basis for these profit claims is a percentage of total estimated VRS costs. This basis is neither described nor authorized under our rules. Moreover, we note that the Commission has established a rate of return of 11.25% for return on investment only.⁹⁴ We therefore adjusted the filings to allow an 11.25% rate of return on investment, plus applicable tax allowances, as the relevant benchmark in analyzing and adjusting the providers' profit data.

36. In addition, some providers appear to overstate their interpreter salaries due to estimates that incorporate labor inefficiencies and excess capacity, or that are based upon inconsistent reimbursable minutes and labor cost behavior. Further, the data filed by three providers either contains various errors

⁸⁸ On May 15 and June 5, 2003, by e-mail, Commission staff requested NECA to collect more specific data from the providers.

⁸⁹ See 47 C.F.R. § 0.459 (Requests that materials or information submitted to the Commission be withheld from public inspection).

⁹⁰ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, GC Docket No. 96-55, FCC 98-184, 13 FCC Rcd 24816 at ¶¶ 63-65 (1998) (suggesting this approach).

⁹¹ The providers are encouraged to contact the Consumer & Governmental Affairs Bureau's Disability Rights Office to discuss the cost adjustments made to their individual submissions.

⁹² Eight companies provide VRS or intend to provide it during the July, 2003, through June, 2004, fund year.

⁹³ See ¶ 19, *supra*, and *NECA Filing* at 5 (discussing levels of profit providers included in their cost projections).

⁹⁴ See *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers*, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking, CC Docket No. 98-166, FCC 98-222, 13 FCC Rcd 20561 at n.2 (1998) (citing *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, CC Docket 89-624, FCC 90-315, 5 FCC Rcd 7507 at ¶ 1 (1990)).

or is predicated on incorrect assumptions and therefore is not reliable; for this reason, we have eliminated them from our consideration in their entirety.

37. In sum, we have carefully evaluated the data submitted by VRS providers and have made various exclusions, most significantly in the areas of profit calculations, tax allowances, and labor costs. The total of VRS costs that we have excluded from our calculation is \$25,920,402. Subtracting this figure from the \$52,659,750 projected cost of providing VRS for 2003 and 2004 as submitted by NECA,⁹⁵ we arrive at a VRS projected cost total, for the purposes of calculating the VRS rate, of \$26,739,348 for the July, 2003, through June, 2004, fund year. In addition, we have excluded 305,385 minutes of projected VRS from our calculation, leaving a total of 3,449,938 minutes.⁹⁶ Dividing the total allowable projected costs (\$26,739,348) by the total allowable projected of minutes (3,449,938) gives us a VRS cost recovery rate of \$7.751 per-minute, which we establish as the interim VRS cost recovery rate, effective July 1, 2003. This rate will remain in force until we complete our examination of actual and projected cost data submitted by VRS providers,⁹⁷ after which time we will produce the final VRS cost recovery rate for the July 1, 2003, through June 30, 2004, TRS fund year.

38. We note that AT&T asserts in its comments that the VRS compensation rate should remain at its current rate of \$17.044 per-minute.⁹⁸ AT&T asserts that reducing the compensation rate would not provide an appropriate incentive for VRS providers to invest in research and development of new features for VRS.⁹⁹ NECA responds that its proposed compensation rate is based on cost and demand projections from VRS providers, and that AT&T provides no data to support its objection to the proposed rate of \$14.023, and therefore no basis for continuing the \$17.044 rate.¹⁰⁰ We agree with NECA. The Commission's rules provide that payment formulae "shall be designed to compensate TRS providers for the reasonable costs of providing interstate TRS" and "shall be based on total monthly interstate TRS minutes of use."¹⁰¹ These were the factors that went into NECA's proposed \$14.023 rate, which we have found to be based on incorrect cost data, and these are the factors that led us to establish the interim VRS rate of \$7.751. Nothing in the rules authorizes NECA to allow excessive sums as "incentives" to VRS providers, and we do not intend to do so.

D. Interstate TRS Fund Size and Carrier Contribution Rate

39. NECA proposed an Interstate TRS Fund size of \$130,686,169 for the fund year July, 2003, through June, 2004, and uses that number to determine the carrier contribution factor. Because, however, we have reduced the per-minute compensation rate for VRS from NECA's proposed \$14.023 to \$7.751, the VRS component of the Interstate TRS Fund size requirement will be considerably less. Multiplying NECA's projected minutes of use for VRS of 2,428,348 by the compensation rate of \$7.751 per-minute (and not \$14.023) results in a fund requirement for VRS of \$18,822,125, which is a reduction of \$15,230,599 from the total fund size requirement.

⁹⁵ *NECA Filing* at Ex. 1E.

⁹⁶ *See* ¶ 36, *supra* (noting our exclusion of certain providers' data from consideration in setting interim VRS compensation rate).

⁹⁷ We note that we may continue to conduct audits of provider representations, and may revisit rates previously approved in prior years that may have been improperly predicated on unauthorized or unreasonable costs.

⁹⁸ AT&T Comments at 3.

⁹⁹ *Id.*

¹⁰⁰ *See* NECA Reply at 2-3.

¹⁰¹ 47 C.F.R. § 64.604(c)(5)(iii)(E).

40. Therefore, we approve a total fund requirement for the fund year July, 2003, through June, 2004, of \$115,455,570. That figure reflects NECA's proposed figure of \$130,686,169, less the \$15,230,599 based on a recalculation of the funds needed to compensate VRS providers. Calculating the carrier contribution factor based on this approved fund size of \$115,455,570, and dividing this by the 2002 total carrier end-user interstate revenues of \$77,514,120,092, we arrive at a carrier contribution factor of 0.00149. We approve this figure as the carrier contribution factor for the fund year July, 2003, through June, 2004.

E. Other Matters.

41. AT&T notes that NECA suspended payment to TRS providers for reimbursement of international calls made via IP Relay, and asserts that there was no basis for NECA to do so.¹⁰² AT&T also requests that it be reimbursed for international IP Relay minutes made prior to the time it was advised that such calls would no longer be reimbursed. Finally, AT&T requests that the Commission clarify that, absent compensation, IP Relay providers should not be required to serve international calls.¹⁰³ MCI supports this position.¹⁰⁴ NECA "agrees with AT&T that the Commission should clarify service requirements and reimbursement policies for international IP Relay Services."¹⁰⁵

42. As NECA has noted, on March 28, 2003, Commission staff directed NECA to suspend payment to TRS providers for reimbursement of international IP Relay service minutes.¹⁰⁶ Commission staff did so pending carrier efforts to ensure that one end of an international IP Relay call is within the United States. We note that providers are not required to provide international IP Relay because IP Relay itself is not a mandatory service. With regard to the compensation for international IP Relay calls made prior to the March 28, 2003 directive, but not reimbursed, we tentatively agree with AT&T that such calls, made by providers who had certified that they were in compliance with the TRS rules at the time those international IP Relay service minutes were completed, should be compensated. We defer final consideration of this matter, however, until a later proceeding.

43. AT&T also requests that the Commission extend all existing waivers of TRS mandatory minimum standards for VRS providers for a period of five years.¹⁰⁷ Further, AT&T asserts that the Commission should eliminate local exchange carriers' (LECs) ability to recover their Interstate TRS Fund contributions through carrier access charges.¹⁰⁸ NECA responds that this proceeding is not the proper forum to address contribution mechanisms, and that AT&T should file a petition if it wishes to request that the Commission change the contribution mechanism.¹⁰⁹ SBC and Verizon support NECA's position on this issue, and also argue that AT&T's position is both incorrect and filed in the wrong proceeding.¹¹⁰ We find that this Order is not the appropriate vehicle for addressing these issues. The only subject of this Order is the Interstate TRS Fund size, carrier contribution rate, and provider compensation rates for the July, 2003 through June, 2004 fund year, as proposed by NECA pursuant to our rules.

¹⁰² AT&T Comments at 1.

¹⁰³ *Id.*

¹⁰⁴ MCI Comments at 1-2.

¹⁰⁵ NECA Reply at 1-2.

¹⁰⁶ *See* NECA Reply at 2 & note 2. The Commission staff's instructions were confirmed by e-mail from NECA to the staff, dated March 28, 2003.

¹⁰⁷ AT&T Comments at 4.

¹⁰⁸ *Id.* at 7.

¹⁰⁹ NECA Reply at 3.

¹¹⁰ SBC Reply at 1-2; Verizon Reply at 1-4.

44. Finally, Hamilton opposes NECA including the \$6.4 million “potential funding requirement” in the fund size.¹¹¹ That amount, as NECA has explained,¹¹² has been included “to cover a pending petition for limited reconsideration filed with the Commission by one of the relay providers,” which requests that the Commission reconsider its earlier denial of retroactive compensation for IP Relay providers that provided service during the period between the authorization of compensation for IP Relay (April 22, 2002)¹¹³ and the grant of waivers of certain mandatory minimums standards for IP Relay (March 14, 2003).¹¹⁴ Hamilton asserts that it opposes paying retroactive compensation to IP Relay providers.¹¹⁵ MCI filed reply comments on this issue.¹¹⁶ We believe the best course is to permit NECA to set aside this money pending a determination, by the Commission, on the merits of the pending reconsideration of the denial of retroactive compensation for the provision of IP Relay. Further, because the sole purpose of this Order is to approve or modify the Interstate TRS Fund size and payment formulae for the July, 2003, through June, 2004, fund year, we do not address the merits of that issue here. We emphasize that the decision to permit NECA to include this money in the fund size at this time will in no way affect the Commission’s decision of the merits of this issue.

45. We note that we are currently considering issues relating to the appropriate cost recovery methodology for VRS. In the Further Notice of Proposed Rulemaking section of the *2001 MO & O*, the Commission sought comment on the appropriate cost recovery mechanism for VRS, declining to adopt on a permanent basis “the same methodology for rate development in place today for traditional TRS interstate cost recovery” or a “VRS reimbursement rate based on completed conversation minutes of use at a national average reimbursement rate.”¹¹⁷ We emphasize that nothing we have stated or concluded in this Order prejudices the outcome of that proceeding. At the same time, we will include all of the filings made in this proceeding in the cost recovery proceeding so that the Commission will have a complete record of relevant data in the cost recovery proceeding.

IV. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED, pursuant to the authority contained in 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and sections 0.141, 0.361 and 64.604(c)(5)(iii) of the Commission’s rules, that this ORDER is hereby ADOPTED.

¹¹¹ Hamilton Comments at 4; *see NECA Filing* at Ex. 4.

¹¹² *NECA Filing* at 10.

¹¹³ *See IP Relay Declaratory Ruling & FNPRM*.

¹¹⁴ *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, CC Docket No. 98-67, FCC 03-46, 18 FCC Rcd 4761 at ¶ 25 (2003) (*IP Relay Recon Order*) (also denying retroactive compensation for the provision of certain IP Relay minutes).

¹¹⁵ Hamilton Comments at 4.

¹¹⁶ *See MCI Reply* at 2.

¹¹⁷ *2001 MO & O* at ¶ 34.

47. IT IS FURTHER ORDERED that NECA compensate traditional telecommunications relay service (TRS) providers and IP Relay providers at the rate of \$1.368 per completed interstate conversation minute (and, for IP Relay, per completed intrastate conversation minute) for the period July 1, 2003, through June 30, 2004; Speech-to-Speech relay service (STS) providers at the rate of \$2.445 per completed interstate conversation minute for the period July 1, 2003, through June 30, 2004; and Video Relay Service (VRS) providers at the rate of \$7.751 per completed interstate or intrastate conversation minute for the period July 1, 2003, through June 30, 2004.

FEDERAL COMMUNICATIONS COMMISSION

K. Dane Snowden, Chief
Consumer & Governmental Affairs Bureau