

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

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

ORDER

Adopted: June 30, 2014

Released: June 30, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. This order adopts per-minute compensation rates to be paid from the Interstate Telecommunications Relay Services Fund (TRS Fund, or Fund) for the Fund Year beginning July 1, 2014, for all forms of telecommunications relay services (TRS). This order also determines the total size of the TRS Fund for the coming year and the percentage factor used to calculate how much interstate and international revenue telecommunications carriers and other service providers must contribute to the TRS Fund.

2. Effective July 1, 2014, the per-minute compensation rates for TRS,1 other than video relay service (VRS), shall be: (1) for interstate traditional TRS, \$2.1170; (2) for interstate Speech-to-Speech relay service (STS), \$3.2480; (3) for interstate captioned telephone service (CTS) and Internet Protocol captioned telephone service (IP CTS), \$1.8205. These rates are based on recommendations of the current Fund administrator, Rolka Loube Saltzer Associates (RLSA).2 For IP Relay, on reconsideration of the Bureau's 2013 TRS Rate Order, we set a compensation rate of \$1.0309 per minute.3

1 TRS enables an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to communicate by telephone or other device through the telephone system. See 47 U.S.C. § 225(a)(3) (defining TRS). TRS is provided in a variety of ways. Currently, interstate TRS calls and all Internet Protocol (IP) based TRS calls, both intrastate and interstate, are compensated from the Fund. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 380, ¶ 3, 381, ¶¶ 5-6, 390, ¶ 25 (2007).

2 See RLSA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51 (filed May 1, 2014) (2014 TRS Rate Filing). Under section 64.604(c)(5)(iii)(E) and (H) of the Commission's rules, the Fund administrator is required to file TRS payment formulas and revenue requirements with the Commission on May 1 of each year, to be effective the following July 1. 47 C.F.R. §§ 64.604(c)(5)(iii)(E), (H).

3 Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program, CG Docket Nos. 03-123, 10-51, 28 FCC Rcd 9219 (CGB 2013) (2013 TRS Rate Order).

This rate, which reflects a recalculation of average costs, is effective retroactively to September 1, 2013, and prospectively until June 30, 2015. The IP Relay compensation rate for the period from July 1, 2013, to August 31, 2013, is retroactively adjusted to \$1.0607 per minute.

3. VRS compensation rates for the 2014-15 Fund Year were established in the *VRS Reform Order* as part of a “glide path” toward cost-based levels, which will continue during the Commission’s implementation of the structural reforms directed in that order.⁴ The applicable per-minute VRS compensation rates for the period from July 1, 2014, through December 31, 2014, are: Tier I (0 – 500,000 minutes/month), \$5.52; Tier II (500,000.1 – 1 million minutes/month), \$4.82; and Tier III (over 1 million minutes/month), \$4.44. The applicable per-minute VRS compensation rates for the period from January 1, 2015, through June 30, 2015, are: Tier I (0 – 500,000 minutes/month), \$5.29; Tier II (500,000.1 – 1 million minutes/month), \$4.82; Tier III (over 1 million minutes/month), \$4.25.⁵

4. Based on RLSA’s proposed compensation rates for TRS, STS, CTS, IP CTS, and IP Relay, the *VRS Reform Order* compensation rates, and the projected Fund administration expenses, RLSA’s *2014 Rate Filing* proposed a funding requirement of \$789.85 million and a carrier contribution factor of 0.01174.⁶ We accept RLSA’s recommended demand projections for all services except IP CTS. In light of the uncertainties arising from recent fluctuations in IP CTS minutes, recent rule changes, and recent court action, we adopt RLSA’s alternative projection of 130,883,347 IP CTS minutes in order to help minimize any risk of Fund exhaustion. In addition, we have adjusted the estimated fund requirement for IP Relay to take account of the modified compensation rate for that service adopted in this Order. These changes result in a modified Fund requirement of \$793,241,342 for the 2014-15 Fund Year and a modified contribution factor of 0.01219. The funding requirement and carrier contribution factor established in this order may be subject to revision in the event that the Commission modifies the compensation rate IP CTS before the end of the 2014-15 Fund Year⁷ or takes other steps that may affect the funding requirement.

II. BACKGROUND

5. On May 9, 2014, the Bureau released the *2014 TRS Rate PN*, seeking comment on RLSA’s *2014 TRS Rate Filing*, in which the Fund administrator proposed revised compensation rates for 2014-15 and recommended a revenue requirement and contribution factor for 2014-15.⁸ In response to

⁴ *Structure and Practices of the Video Relay Services Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8696, ¶ 192 (2013) (*VRS Reform Order*), *pet. for review pending sub nom. Sorenson Communications, Inc. v. FCC* (D.C. Cir., No. 13-1215, filed July 11, 2013); 47 C.F.R. §§ 64.604(b)(2)(iii)(A).

⁵ *VRS Reform Order*, 28 FCC Rcd at 8696, ¶ 192.

⁶ *2014 TRS Rate Filing* at 32.

⁷ We note that the Commission is currently considering whether to revise the methodology for setting IP CTS compensation rates. *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420, 13472-79, ¶¶ 111-27 (2013) (*IP CTS Reform Order*), *vacated in part Sorenson Communications, Inc. and CaptionCall, LLC v. FCC*, No. 13-1122 (D.C. Cir., June 20, 2014).

⁸ See *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2014-2015 Fund Year*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 14-627 (May 9, 2014) (*2014 TRS Rate PN*).

the *2014 TRS Rate PN*, the Commission received five comments and one reply comment. Comments were filed by TRS providers and related companies, telecommunications industry contributors to the Fund, and consumer organizations.⁹

6. Also of relevance to this Order, on July 31, 2013, Sprint Corporation filed a petition for reconsideration of the *2013 TRS Rate Order* with respect to the compensation rate set for IP Relay, urging the Bureau to revisit both the base compensation rate and the efficiency factor established in that order.¹⁰ Sprint argued that the resulting rates do not adequately compensate providers, are at least partly responsible for the recent exit of three IP Relay providers, and, if not modified, will cause Sprint itself to end its provision of IP Relay.¹¹ In addition, noting that the three providers who terminated their provision of IP Relay did so after reporting their 2014 costs to RLSA,¹² Sprint contends that their exit renders the cost computations underlying the base rate obsolete and has caused the two remaining providers to incur additional exogenous costs in order to handle the traffic formerly carried by the other providers.¹³ Further, according to Sprint, the reduction in the IP Relay rate is having an adverse effect on service quality.¹⁴ On December 5, 2013, the Bureau sought comment on Sprint's petition for reconsideration.¹⁵ Two parties submitted comments in response.¹⁶

III. DISCUSSION

A. Compensation Rates for TRS, STS, CTS, and IP CTS

7. We adopt RLSA's proposed per-minute rates of \$2.1170 for interstate traditional TRS, \$3.2480 for interstate STS, and \$1.8205 for interstate CTS and for intrastate and interstate IP CTS for the 2014-15 Fund Year.¹⁷ These rates represent, respectively, a decrease of approximately two percent for traditional TRS, a decrease of approximately one percent for STS, and an increase of approximately two percent for CTS and IP CTS, from the 2013-14 Fund Year rates for those services. RLSA formulated

⁹ The following entities submitted comments and/or reply comments: Ad Hoc Coalition of International Telecommunications Companies to the Imposition of the Proposed TRS Fund Contribution Factor on International Telecommunications Services (Ad Hoc Coalition); National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, and American Association of the Deaf-Blind (Consumer Groups); Hamilton Relay, Inc. (Hamilton); Miracom USA, Inc. (Miracom); Sprint Corporation (Sprint); and Ultratec, Inc. (Ultratec).

¹⁰ Sprint, Petition for Reconsideration, CG Docket Nos. 03-123, 10-51 (filed July 31, 2013) (Sprint Petition).

¹¹ *Id.* at 2-6.

¹² *Id.* at 3.

¹³ *Id.* at 3-6.

¹⁴ *Id.* at 8-9.

¹⁵ *Request for Comment on Petition filed by Sprint Corporation for Reconsideration of the Commission's Internet Protocol Relay Rate Order*, CG Docket Nos. 03-123, 10-51, Public Notice, 28 FCC Rcd 16063 (2013).

¹⁶ *See* Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, and California Coalition of Agencies Serving the Deaf and Hard of Hearing (IP Relay Consumer Groups), Comments, CG Docket Nos. 03-123, 10-51 (filed Dec. 5, 2013) (IP Relay Consumer Groups Reconsideration Comments); Purple Communications Inc., Comments, CG Docket Nos. 03-123, 10-51 (filed Dec. 5, 2013) (Purple Reconsideration Comments).

¹⁷ Consistent with past years, the STS rate includes an additional per-minute amount of \$1.1310 to be used for STS outreach. *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, 20170, ¶ 57 (2007) (*2007 TRS Rate Methodology Order*).

each of these rates by applying the MARS analysis adopted in the *2007 TRS Rate Methodology Order*. The MARS rate is calculated by collecting each state's *intrastate* TRS, STS, and CTS rates and minutes of use data and averaging the state data to determine the appropriate interstate rates for these services.¹⁸

8. Hamilton contends that RLSA's proposed rates for these services do not properly apply the MARS methodology. Noting that Maine, Virginia, and the U.S. Virgin Islands, which were included in the MARS calculations for 2013-14, were excluded from the administrator's calculations this year, Hamilton argues that to be consistent with prior practice, the rates from those states should be included.¹⁹

9. Since the adoption of the *2007 Rate Methodology Order*, the Fund administrator, with the Commission's concurrence, has excluded from the MARS calculations rates states with anomalies in their funding mechanisms for TRS and STS.²⁰ For example, the MARS rate calculation does not include data for states that reimburse providers at a flat (versus a per-minute) rate.²¹ In Maine and Virginia, intrastate compensation rates are currently paid on a flat-rate basis.²² Hamilton offers no evidence that RLSA's exclusion of rates and data from these states has resulted in a rate that is not fair and reasonable. Given the "explicit direction from the Commission" to exclude certain rates from MARS calculations, these flat-rate states were appropriately excluded.²³ Therefore, we find that the proposed rates correctly apply the MARS methodology and adopt the rates as proposed.

10. We note that the Commission is currently considering whether to revise the methodology for setting IP CTS compensation rates.²⁴ Thus, the IP CTS rate established in this order for the 2014-15 Fund Year may be revised in the event that the Commission adopts a modified IP CTS rate methodology before the end of the Fund Year.

¹⁸ Because the states set rates for intrastate CTS but not IP CTS, the compensation rate for IP CTS is set equal to the rate for interstate CTS. *See id.*, 22 FCC Rcd at 20161, ¶ 38.

¹⁹ Hamilton Comments at 2-4. Hamilton also contends that American Samoa, or Saipan, should be included in MARS calculations. Hamilton Comments at 4 n. 11.

²⁰ *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20155, ¶ 29, 20165, ¶ 58.

²¹ *Id.* at 20165, ¶ 58 (excluding the one state that used a flat rate methodology at the time, *i.e.*, Michigan).

²² *2014 TRS Rate Filing* at 11, 13. Michigan also pays flat-rate compensation and has been consistently excluded from the MARS calculation since the method was adopted. *See, e.g., 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20165, ¶ 58; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, Order, 26 FCC Rcd 9972, 9976, ¶ 10 n. 29 (2011) (*2011 TRS Rate Order*). The U.S. Virgin Islands and American Samoa were not considered for inclusion in the MARS calculation for 2014-15 because no data from those jurisdictions were submitted to RLSA.

²³ *Id.* at 9973, ¶ 13 (excluding flat-rate states is reasonable and consistent with Commission precedent); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, Order, 27 FCC Rcd 7150, 7153, ¶ 8 n. 28 (CGB 2012) (noting that the Commission has consistently excluded data from states using alternative rate methodologies). *See also 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20155, ¶ 25 ("The MARS plan uses an average of *competitively bid state rates* as a measure of [providers'] reasonable costs.") (emphasis added), 20156, ¶ 28 (referring to a state's "the contractual per-minute rate" as a component of the MARS average), 20170, ¶ 58 (excluding Michigan from the MARS calculation because it "do[es] not compensate the providers based on a per-minute rate").

²⁴ *IP CTS Reform Order*, 28 FCC Rcd at 13472-79, ¶¶ 111-27.

B. Compensation Rate for IP Relay and Reconsideration of the 2013 TRS Rate Order

11. The 2014-15 Fund Year is the second year of a three-year period during which the IP Relay compensation rate is determined pursuant to a price cap methodology.²⁵ In the *2013 TRS Rate Order*, the Bureau set the per-minute compensation rate for the 2013-14 Fund Year, the first year of this period, at an initial level of \$1.0391, which was then reduced to \$1.0147, effective September 2013, to reflect the removal of outreach costs from recoverable costs pursuant to the *VRS Reform Order*.²⁶ The \$1.0147 rate thus became the base rate for the current price cap period.²⁷ In the *2013 TRS Rate Order*, the Bureau also adopted RLSA's proposed inflation and efficiency factors, to be used in determining adjustments to the IP Relay rate for subsequent years of the three-year price cap cycle.²⁸ These factors net to a 6.0 percent annual rate decrease. The Bureau found that these factors, while causing a much larger adjustment than the 0.5 percent annual adjustment applied during the previous rate cycle, are "justified because of the need to take account of the rapid cost declines characteristic of this industry segment and because, given the excess of the base rate over average costs, it is appropriate for rates to be adjusted downward in subsequent years so that they reach levels close to average provider costs before the end of the three-year cycle."²⁹ Applying the inflation and efficiency factors adopted last year to determine the rate for the 2014-15 Fund Year would cause the IP Relay compensation rate to decline 6.0 percent from the current level of \$1.0147, or to \$0.9538 per minute.³⁰

12. Before setting a compensation rate for IP Relay for the 2014-15 Fund Year, we must first address Sprint's petition for reconsideration of the *2013 TRS Rate Order's* decisions regarding the IP Relay compensation rate. We discuss each of those determinations in turn.

13. With respect to the initial base compensation rate of \$1.0391 per minute, which applied to the first two months of the 2013-14 Fund Year, Sprint contends that the rate inappropriately reflects the costs of providers who no longer provide service. We note that the costs were correctly averaged based on the information reported and that it was reasonable for RLSA to include in its calculations the costs reported by the five providers who were offering service at the time.³¹ Shortly thereafter, however, three of those providers terminated their provision of IP Relay. In light of the substantial change in the composition of this service industry in 2013, we find that it is appropriate to revisit the calculation of the

²⁵ In the *2007 TRS Rate Methodology Order*, the Commission adopted a price cap methodology for IP Relay, setting a base rate for a three-year period ending June 30, 2010. *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20159-60, ¶¶ 43-46. In the *2010 TRS Rate Order*, the Commission approved continued use of the price cap methodology and three-year rate cycle, setting a new base rate for a new rate period ending June 30, 2013. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8700, ¶¶ 25-26 (2010) (*2010 TRS Rate Order*).

²⁶ *2013 TRS Rate Order*, 28 FCC Rcd at 9224, ¶ 17; *VRS Reform Order*, 28 FCC Rcd at 8696, ¶ 192.

²⁷ *2013 TRS Rate Order*, 28 FCC Rcd at 9222, ¶ 11.

²⁸ *Id.* The price cap plan for IP Relay applies three factors to a base rate – an inflation factor, an efficiency (or "X") factor, and exogenous costs. *2014 Rate Filing* at 14. The formula takes a base rate and multiplies it by an adjustment percentage that reflects an increase due to inflation, offset by a decrease due to efficiencies. *Id.* at 14-15. The inflation factor is Gross Domestic Product – Price Index (GDP-PI). The efficiency factor has been described as a figure equal to the Inflation Factor, less a designated amount to account for productivity gains. *Id.* at 15. *See also 2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20163, ¶¶ 43-44.

²⁹ *2013 TRS Rate Order*, 28 FCC Rcd at 9225, ¶ 20.

³⁰ *2014 TRS Rate Filing* at 17.

³¹ Further, contrary to Sprint's suggestion (Comments of Sprint at 8), the costs as calculated by RLSA in 2013 already included the authorized rate of return. *See* RLSA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 1-3 (filed May 1, 2013).

base rate to ensure that the rate accurately reflects the costs as reported by the two providers that were offering IP Relay during 11 out of the 12 months of the 2013-14 Fund Year³² and that are currently authorized to provide Fund-compensated IP Relay in 2014-15. In the *2014 TRS Rate Filing*, RLSA submitted an analysis of the actual IP Relay costs reported by these two current providers in 2014 for the years 2012 and 2013 and the projected costs reported by those providers for the years 2014 and 2015.³³ Based on the weighted averaging in that analysis, we modify the initial base rate for IP Relay by increasing it approximately two cents, to \$1.0607 per minute.³⁴

14. We decline, however, to reconsider the Bureau's decision in the *2013 TRS Rate Order* to adjust the base rate in September 2013 to reflect the Commission-directed removal of outreach costs from recoverable costs and the transfer of outreach responsibilities to a national program.³⁵ In the *2014 TRS Rate Filing*, RLSA points out that the national outreach program is not yet operational.³⁶ However, the Commission's decision to cease relying on individual provider outreach followed directly from its finding that the shortcomings of Internet-based TRS providers in this regard rendered them ill-suited to advancing the Commission's outreach goals.³⁷ Thus, our conclusion in the *2013 TRS Rate Order* that support for IP Relay outreach should terminate on the effective date of the *VRS Reform Order*³⁸ is supported by the Commission's finding regarding the shortcomings of provider outreach activities. Conversely stated, the Commission's conclusion in the *VRS Reform Order* that IP Relay outreach efforts have not been effective when conducted by individual IP Relay providers does not support restoration of compensation for individual provider outreach costs. Accordingly, we reaffirm our determination that the IP Relay compensation rate should be adjusted downward as of September 2013 by subtracting an amount equal to average outreach costs. As of September 2013, therefore, the modified compensation rate of \$1.0607 per minute will be decreased by the average outreach cost, \$0.0298,³⁹ leaving an adjusted base rate of \$1.0309 per minute.

15. Sprint's arguments for more radical modification of the base compensation rate are also unpersuasive. Sprint argues, for example, that the rate fails to take account of the similarities between IP Relay and traditional TRS, for which the MARS-based interstate compensation rate for 2013-14 was \$2.1647 per minute, and that the IP Relay rate should be set equal to the traditional TRS rate.⁴⁰ This

³² For the month of July 2013, there were three providers, as Sorenson did not terminate its provision of IP Relay until July 31, 2013.

³³ *2014 TRS Rate Filing* at 16-17 (cost information redacted).

³⁴ In the *2013 TRS Rate Order*, the Bureau accepted RLSA's recommendation to set the initial IP Relay compensation rate higher than providers' average projected costs for that year, thereby allowing a margin of error between the compensation rate and average provider costs, in order to take account of cost differentials among providers, allow efficient providers to earn positive profits on a prospective basis, and give inefficient providers an incentive to reduce their costs. *2013 TRS Rate Order* at 9222, ¶ 12, 9225, ¶ 20. In modifying the compensation rate, we preserve a comparable margin between the modified rate and recalculated provider costs.

³⁵ *VRS Reform Order*, 28 FCC Rcd at 8634-39, ¶¶ 31-39, 8696, ¶ 192.

³⁶ *2014 TRS Rate Filing* at 17. See also Sprint Comments at 8.

³⁷ *VRS Reform Order*, 28 FCC Rcd at 8635, ¶ 31 (vast majority of providers' fund-supported outreach expenditures go to individual branded marketing campaigns to induce users to switch from competitors and consequently are ineffective in educating the general public about TRS).

³⁸ *2013 TRS Rate Order*, 28 FCC Rcd at 9224, ¶ 17.

³⁹ Outreach costs were recalculated based on the costs as reported by current providers in 2014 and averaged in the *2014 TRS Rate Filing*.

⁴⁰ Sprint Petition at 6-8; Sprint Comments at 4-6.

argument is effectively a request for the adoption of a new rate methodology for IP Relay, a matter beyond the scope of this rate proceeding.⁴¹ In addition, Sprint contends that, due to the exit of other providers from the IP Relay arena, the remaining providers are bound to incur exogenous costs in order to increase capacity to handle customers migrating from other providers.⁴² Despite Sprint's prediction, however, IP Relay providers have not submitted any claims for recovery of exogenous costs incurred in 2013-14.⁴³ In fact, it appears that there has been no sustained increase in the traffic handled by the two remaining providers as a result of the exit of other IP Relay providers.⁴⁴ Sprint argues further that the IP Relay rate does not adequately address the additional costs incurred when compensation is denied due to a provider's noncompliance with the TRS rules.⁴⁵ Costs incurred due to failure to comply, however, are not reasonable costs for which providers are entitled to recovery.⁴⁶

16. Finally, Sprint contends that the reduction in the IP Relay compensation rate has led to reduced competition in the provision of IP Relay and has forced the remaining providers to cut costs, adversely affecting service quality.⁴⁷ We recognize the importance of ensuring a high quality of IP Relay service. However, the analysis cited by Sprint is disputed by Purple and in any event predates the *2013 TRS Rate Order*. In light of those shortcomings, we are not persuaded to further modify the compensation rate for IP Relay service based on that analysis. Moreover, regarding the alleged nexus between the rate reduction and the exit of providers, we are not persuaded that the self-serving statement

⁴¹ See *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20161-64, ¶¶ 39-46 (determining, by rulemaking, the compensation methodology for IP Relay). In any event, while the total volume of IP Relay minutes has declined, it remains substantially higher than the total volume handled by traditional TRS providers. See Purple Reconsideration Comments at 2 n. 7, 3 (stating that in July 2013, IP Relay minutes totaled 1.823 million while traditional TRS minutes totaled 308,427). This difference in scale may be a significant factor in the disparity between the rates for IP Relay and traditional TRS.

⁴² Sprint Petition at 4-6.

⁴³ *2014 TRS Rate Filing* at 15.

⁴⁴ Information provided by RLSA based on historical data submitted by providers.

⁴⁵ Sprint Petition at 12.

⁴⁶ See 47 C.F.R. § 64.604(c)(5)(iii)(E)(4) (administrator "shall make payments only to TRS providers operating pursuant to the mandatory minimum standards as required in this section"). The Commission has made clear that TRS providers must comply with all applicable Commission rules and orders to be eligible for compensation and that only the reasonable costs associated with such compliance are recoverable. See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers*, CG Docket Nos. 03-123, 98-67, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11626, ¶ 96 (2008) (observing that "[s]ection 225 creates a cost recovery regime whereby TRS providers are compensated for their reasonable costs of providing service in compliance with the TRS regulations"); *Structure and Practices of Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 25 FCC Rcd 6012, 6021, ¶ 16, 6041, Appx. B (2010) (given the Commission's "expectation that providers seeking compensation from the Fund are doing so in compliance with our rules" and "to make providers more accountable" in that regard, adopting an interim rule requiring TRS providers' senior executives to certify under penalty of perjury "that the minutes were handled in compliance with section 225 and the Commission's rules and orders"); *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, 5585-87, ¶¶ 88-91 (2011) (adopting the interim certification requirement as a permanent rule with specific certification language).

⁴⁷ Sprint Petition at 2, 8-11. Sprint also states that the rate reductions, if not modified, will cause Sprint itself to end its provision of IP Relay. *Id.* at 2-6.

of an ex-provider is objective evidence of the motivation of those providers that we should rely on here.⁴⁸ There have been a number of significant recent events affecting the IP Relay market, including the Commission's investigations into providers' practices⁴⁹ and the precipitous drop in IP Relay minutes,⁵⁰ which we find at least equally if not more likely to have led certain providers to exit the IP Relay market. In sum, while we share Sprint's concerns about maintaining service quality and preserving competition to the extent practicable, we are not convinced that the base compensation rate for IP Relay, as modified, is insufficient to allow providers to recover legitimate service costs and to provide service that meets or exceeds the Commission's minimum TRS standards.

17. We now turn to Sprint's request for reconsideration of the efficiency/inflation adjustment factor determined in the *2013 TRS Rate Order*. Sprint challenges the Bureau's basis for setting the value of this factor, which has the effect of decreasing the compensation rate by 6.0 percent in each of the second and third years of the price cap periods (*i.e.*, the 2014-15 and 2015-16 Fund Years). Sprint contends that there was insufficient basis for predicting that IP Relay costs would decrease at all, "much less by a factor as high as 6%," and predicts that its own costs will actually increase due to capital expenditures needed to meet increased demand resulting from the exit of other providers.⁵¹

18. The 6.0 percent adjustment factor was set at a level that reflected the average annual decrease in the cost of providing IP Relay from 2007 to 2012.⁵² In other words, it was set based on the expectation that productivity gains, as reflected in declining per-minute costs, would continue to occur in the future at the same pace as in the past. In the *2014 TRS Rate Filing*, however, RLSA notes that the costs reported in 2014 do not demonstrate that providers have realized any of the further productivity gains contemplated by the efficiency factor.⁵³ Further, while IP Relay usage has been declining since 2006, the last two years have seen especially dramatic declines, averaging some 40 percent annually.⁵⁴ As the Commission has recognized in other contexts, at some point on the demand axis, loss of scale efficiencies may prevent providers from achieving lower per-minute costs.⁵⁵ On reconsideration, therefore, we conclude that the information we used in the *2013 TRS Rate Order* to establish the 6.0 adjustment factor – the average rate of decline in per-minute IP Relay costs between 2007 and 2012 – is not necessarily an accurate predictor of future changes in IP Relay costs. Because the record does not indicate that there has been a significant change in average per-minute costs since the *2013 TRS Rate Order*, and because we do not have sufficient information at this time to determine some other reliably

⁴⁸ Letter from John T. Nakahata, Sorenson Communications, Inc., to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123 (July 8, 2013).

⁴⁹ See 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); AT&T Inc., File No. EB-TCD-12-00000337, Order, 28 FCC Rcd 5994 (EB 2013); Sorenson Communications, Inc., File No.: EB-TCD-12-00000370, Order, 28 FCC Rcd 7841 (EB 2013); *Purple Communications, Inc.*, File No. EB-TCD-12-00000376, Notice of Apparent Liability for Forfeiture, FCC 14-57 (rel. May 2, 2014).

⁵⁰ Purple Reconsideration Comments at 2 (IP Relay minute volumes dropped about 60 percent from 2011 levels).

⁵¹ Sprint Petition at 13. As noted above, however, IP Relay providers have not submitted any claims for recovery of exogenous costs incurred in 2013-14. *2014 TRS Rate Filing* at 15.

⁵² *2013 TRS Rate Order*, 28 FCC Rcd at 9222, ¶ 12.

⁵³ *2014 TRS Rate Filing* at 17.

⁵⁴ Information provided by RLSA based on call data submitted by providers. See also Purple Reconsideration Comments at 2-4 (pointing out that IP Relay minute volumes have "declined steeply" since 2012 and that "when demand is in decline, but service standards remain unchanged, per-minute costs naturally increase due to diminishing operating leverage and fewer dollars to cover fixed costs required to deliver the service").

⁵⁵ See, e.g., *VRS Reform Order*, 28 FCC Rcd at 8698-02, ¶¶ 197-208 (discussing efficiencies of scale in VRS).

accurate predictor of future cost changes in the provision of IP Relay, we will reset the adjustment factor at 0 percent for the remainder of the current price cap period.⁵⁶

19. In summary, on reconsideration, we increase the initial IP Relay compensation rate of \$1.0391 per minute to \$1.0607 per minute, and increase the post-outreach adjusted compensation rate from \$1.0147 per minute to \$1.0309 per minute. We also reconsider the 6.0 percent efficiency/inflation adjustment factor set in the *2013 TRS Rate Order*, resetting that factor to 0 percent. As a result of these changes, the IP Relay compensation rate is reset to \$1.0607 per minute, effective from July 1, 2013, through August 31, 2013, and \$1.0309 per minute, effective September 1, 2013, through June 30, 2014. We direct RLSA to apply these rates retroactively.

C. Compensation Rates for VRS

20. In the *VRS Reform Order* the Commission adopted a step-by-step transition toward cost-based VRS compensation rates, in accordance with the implementation of structural reforms. VRS compensation rates were thus established for up to four years as a “glide path” by which the rates move toward cost-based levels during the Commission’s implementation of the structural reforms directed in that order.⁵⁷ The applicable VRS compensation rates for the period from July 1, 2014, through December 31, 2014, are: Tier I (0 – 500,000 minutes/month), \$5.52; Tier II (500,000.1 – 1 million minutes/month), \$4.82; and Tier III (over 1 million minutes/month), \$4.44. The applicable rates for the period from January 1, 2015, through June 30, 2015, are: Tier I (0 – 500,000 minutes/month), \$5.29; Tier II (500,000.1 – 1 million minutes/month), \$4.82; Tier III (over 1 million minutes/month), \$4.25.⁵⁸ Because these specific rates were adopted by the Commission, we do not modify them in this order.

D. Additional Funding Requirements

21. In addition to the per-minute costs of service noted above for TRS, RLSA includes in its proposed funding requirement a \$10,000,000 funding allocation for the National Deaf-Blind Equipment Distribution Program (NDBEDP), which is mandated by the CVAA.⁵⁹ RLSA also includes the following in its proposed funding requirement: TRS numbering directory administration expenses of \$415,000; TRS Fund administrator compensation of \$1,240,100; revenue data collection agent expenses of \$60,000, the Interstate TRS Advisory Council expenses of \$45,000; investment management expenses of \$215,000, service provider audits expenses of \$2,000,000; implementation of Office of Management and Budget Circular A-123 expenses of \$100,000; bankruptcy representation expenses of \$50,000, and independent TRS Fund audit expenses of \$60,000.⁶⁰ No comments were received regarding the recommended inclusion of these costs. We find the recommended amounts to be reasonable and appropriate for inclusion in the TRS Fund.⁶¹

22. In addition, we add a funding allocation for implementation of initiatives and procurements mandated by the *VRS Reform Order*. Among other things, the *VRS Reform Order*, along with the subsequent *Technology Transitions Order*, directed the Managing Director, in consultation with

⁵⁶ As an additional factor supporting this adjustment, maintaining the rate at the 2013-14 levels will make it more likely that all qualified providers continue to offer the service, which is of particular importance to deaf-blind individuals. See Consumer Groups Comments at 2-3.

⁵⁷ *VRS Reform Order*, 28 FCC Rcd at 8703-06, ¶¶ 212-16.

⁵⁸ *Id.* at 8705-06, Table 2.

⁵⁹ *2014 TRS Rate Filing* at 27-28.

⁶⁰ *Id.* at 27-30.

⁶¹ We accept RLSA’s recommendation that the 2014 – 2015 fund year expenses include an allowance to conduct an independent audit of the TRS Fund separate from the independent audit of the FCC. *Id.* at 30.

other Bureaus and Offices, to: (1) enter into an agreement with the National Science Foundation (NSF) and/or other federal agencies to conduct TRS market research (for which the Commission adopted an initial budget of \$3,000,000); (2) establish a pilot iTRS National Outreach Program (for which the Commission estimated approximately \$2,000,000 in costs); (3) contract for the development and deployment of a VRS access technology reference platform; (4) contract for a neutral party to build, operate, and maintain a neutral video communication service platform; and (5) contract for a central TRS user registration database.⁶² In order to conduct procurements for the items for which the *VRS Reform Order* did not explicitly identify cost estimates, the Bureau designates \$15,000,000 in addition to the \$2,000,000 and \$3,000,000 funding amounts listed above, for a total of \$20,000,000, for implementation of all contracts and agreements mandated to accomplish VRS reform.

23. We also find it reasonable to increase the monthly payment reserve from one month to two months, as proposed by RLSA, in order to more appropriately reflect the practice of budgeting demand. This proposal, which was supported by the Consumer Groups,⁶³ takes into consideration that distributions in the Fund Year include payments for service provided in May and June of the prior year and only ten months of the service provided during the upcoming Fund year.⁶⁴ Adoption of this proposal results in a budgetary reserve of \$134.3 million.

E. The Carrier Contribution Factor and Funding Requirement

24. We adopt a funding requirement of \$793,241,342 and a carrier contribution factor of 0.01219 for the 2014-15 Fund Year.

25. The Fund administrator calculates the total annual funding requirement by adding together the projected payments to TRS providers for each form of TRS, based on the proposed rates and projected minutes of use, plus administrative expenses and other funding requirements noted above, less surplus amounts from the previous Fund Year that can be used to offset the 2014-15 Fund Year requirement. The contribution factor is based on the ratio between total expected TRS Fund expenses and interstate end-user telecommunications revenues. RLSA proposed a funding requirement of \$789.85 million and a carrier contribution factor of 0.01174,⁶⁵ representing decreases of more than 20 percent from the 2013-14 funding requirement of \$995.53 million and carrier contribution factor of 0.01484.⁶⁶

26. The two largest components of Fund payments are the compensation payments for VRS and IP CTS. In estimating the amounts to be paid for these services in the 2014-15 Fund Year, RLSA utilized the forecasts submitted by the providers. For IP CTS, RLSA states that it considers the compilation of the industry demand forecast, which totals 119,679,289 minutes, to be reasonably valid,

⁶² *VRS Reform Order*, 28 FCC Rcd at 8624, ¶ 8, 8638, ¶ 37, 8711, ¶ 241; *Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Connect America Fund; Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Numbering Policies for Modern Communications*, GN Docket Nos. 13-5, 12-353, WC Docket Nos. 10-90, 13-97, CG Docket Nos. 10-51, 03-123, Order, Report and Order, and Further Notice of Proposed Rulemaking, Report and Order, Order, and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1480-83, ¶¶ 141-50 (2014) (*Technology Transitions Order*).

⁶³ Comments of Consumer Groups in Response to Public Notice, CG Docket Nos. 03-123, 10-51, at 6 (filed May 23, 2014). The Consumer Groups include the National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, and American Association of the Deaf-Blind.

⁶⁴ *2014 TRS Rate Filing* at 31.

⁶⁵ *Id.* at 32.

⁶⁶ *2013 TRS Rate Order*, 28 FCC Rcd at 9220, ¶ 4.

despite the recent failure of the industry forecast to reflect the corresponding period's historical result.⁶⁷ RLSA notes, however, that recent fluctuations in the total minutes submitted for compensation, as well as rule changes and court action, have made it difficult to forecast IP CTS demand. Therefore, RLSA also provides an alternative demand forecast of 130,883,347 minutes, which is based on extrapolation from the trend of total monthly minutes for the period from June 2013 through February 2014.⁶⁸ In light of the uncertainties arising from recent fluctuations in minutes, along with recent rule changes and court action,⁶⁹ we adopt RLSA's alternative projection of 130,883,347 minutes in order to help minimize any risk of Fund exhaustion.

27. In addition, we make one other adjustment to RLSA's proposed funding requirement. As noted above, we have reconsidered our 2013 decision regarding the IP Relay base compensation rate and adjustment factor and have set an IP Relay compensation rate of \$1.0309 per minute for 2014-15. This results in a somewhat higher funding requirement for IP Relay.

28. With these adjustments, and additional minor adjustments to the Fund requirement and carrier contribution factor to reflect revised data, we adopt a total Fund requirement of \$793,241,342 and a carrier contribution factor of 0.01219 for the 2014-15 Fund Year.⁷⁰ As noted above, we may reassess the Fund requirement before the end of Fund Year 2014-15 in the event that the Commission adopts modified IP CTS rates that take effect before the end of the Fund Year or takes other steps that may affect the funding requirement.⁷¹

IV. PROCEDURAL MATTERS

29. 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 Order can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html>.

⁶⁷ 2014 TRS Rate Filing at 22.

⁶⁸ *Id.* at 23-26.

⁶⁹ See *Sorenson Communications, Inc. and CaptionCall, LLC v. FCC*, No. 13-1122 (D.C. Cir., June 20, 2014).

⁷⁰ The Ad Hoc Coalition of International Telecommunications Companies (Ad Hoc) requests that the Commission direct RLSA to suspend the imposition of the TRS Fund factor on international telecommunications revenues and to open a rulemaking proceeding or otherwise undertake a study to determine and remedy what it claims are fundamental inequities in the current system of calculating and assessing contributions on international services. Opposition of the Ad Hoc Coalition of International Telecommunications Companies to the Imposition of the Proposed TRS Fund Contribution Factor on International Telecommunications Services at 1 (filed May 23, 2014). The request to initiate a rulemaking is beyond the scope of the instant proceeding. We further find that Ad Hoc has not met its burden of showing good cause to suspend contribution requirements for international telecommunications revenues as to this fund year in advance of any Commission decision regarding its request to initiate a rulemaking proceeding. Therefore, Ad Hoc's request to suspend contribution requirements for international telecommunications revenues as to this fund year is denied, but its request that the Commission establish a rulemaking remains pending.

⁷¹ We note that the need to closely monitor events that affect Fund expenditures and to make corresponding adjustments to the Fund size as needed is reflected in the recent *VRS Reform Order*, in which the Commission proposed to amend its rules to provide for a regular quarterly reassessment of the contribution factor in response to changes in Fund requirements. *VRS Reform Order*, 28 FCC Rcd at 8711, ¶ 242.

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and section 64.604(c)(5)(iii) of the Commission's rules, 47 C.F.R. § 64.604(c)(5)(iii), that this ORDER IS hereby ADOPTED.

31. IT IS FURTHER ORDERED that Sprint Corporation's Petition for Reconsideration, CG Docket Nos. 03-123, 10-51 (filed July 31, 2013) (Sprint Petition) is GRANTED IN PART to the extent described above and otherwise IS DENIED.

32. IT IS FURTHER ORDERED that the Opposition of the Ad Hoc Coalition of International Telecommunications Companies to the Imposition of the Proposed TRS Fund Contribution Factor on International Telecommunications Services, CG Docket Nos. 03-123, 10-51 (filed May 23, 2014) is DENIED IN PART to the extent described above, and otherwise remains pending.

33. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate traditional TRS, for the period from July 1, 2014, through June 30, 2015, at the rate of \$2.1170 per completed interstate conversation minute.

34. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate STS, for the period from July 1, 2014, through June 30, 2015, at the rate of \$3.2480 per completed interstate conversation minute.

35. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate CTS and IP CTS, for the period from July 1, 2014, through June 30, 2015, at the rate of \$1.8205 per completed conversation minute.

36. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP Relay service for the period from July 1, 2013, through August 31, 2013, at the rate of \$1.0607 per completed conversation minute, and from September 1, 2013, through June 30, 2015, at the rate of \$1.0309 per completed conversation minute.

37. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of intrastate and interstate video relay service: (1) for the period from July 1, 2014, through December 31, 2014, at the rates of \$5.52 per completed conversation minute for a provider's first 500,000 monthly minutes (Tier I), \$4.82 per completed conversation minute for monthly minutes between 500,001 and 1 million (Tier II), and \$4.44 per completed conversation minute for monthly minutes above 1 million (Tier III); and (2) for the period from January 1, 2015, through June 30, 2015, at the rates of \$5.29 per completed conversation minute for a provider's first 500,000 monthly minutes (Tier I), \$4.82 per completed conversation minute for monthly minutes between 500,001 and 1 million (Tier II), and \$4.25 per completed conversation minute for minutes above 1 million (Tier III).

38. IT IS FURTHER ORDERED that the Interstate TRS funding requirement shall be \$793,241,342, and the Interstate TRS carrier contribution factor shall be 0.01219.

39. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau