

**FCC FACT SHEET**<sup>\*</sup>  
**Expansion of the TRS Fund Contribution Base for Support of  
Internet Protocol Captioned Telephone Service (IP CTS)**  
Report and Order – CG Docket Nos. 03-123 and 13-24

**Background:** The Commission authorized support of Internet Protocol Captioned Telephone Service (IP CTS) by the Interstate Telecommunications Relay Services Fund (TRS Fund) in 2007. At that time, the Commission decided as an interim measure that all the costs of providing IP CTS should be paid by contributors to the TRS Fund, based only on their interstate telecommunications revenues—even though IP CTS provides captioning for both interstate and intrastate telephone calls. The Communications Act generally provides that TRS costs will be recovered from both types of calls.

As current-year IP CTS costs are projected to be \$913 million, or 64.5% of all TRS Fund payments, the Report and Order would include intrastate revenues as a basis for contributions to cover the costs of providing IP CTS, and thereby remedy any pricing distortion caused by the interim approach. It would also strengthen the funding base for this form of TRS.

**What the Report and Order Would Do:**

- Amend the Commission’s rules to provide that TRS Fund contributions to support IP CTS shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and voice over Internet Protocol (VoIP) service provider.
- Require intrastate-only telecommunications carriers and VoIP service providers to contribute to the TRS Fund for support of IP CTS, based on their total end-user revenues.
- Require contributions to support IP CTS through the TRS Fund to be calculated by applying a single IP CTS contribution factor to contributors’ total end-user revenues. This contribution factor is computed by dividing the TRS Fund’s IP CTS revenue requirement by contributors’ total interstate and intrastate end-user revenues.
- Not affect the total contributions needed to support IP CTS.

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

In the Matter of )
)
Misuse of Internet Protocol (IP) Captioned ) CG Docket No. 13-24
Telephone Service )
)
Telecommunications Relay Services and Speech- ) CG Docket No. 03-123
to-Speech Services for Individuals with Hearing )
and Speech Disabilities )
)

REPORT AND ORDER\*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. Internet Protocol Captioned Telephone Service (IP CTS) is a form of Telecommunications Relay Service (TRS) "that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an IP-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying."1 When the Commission authorized the service, it decided as an interim measure that all the costs of providing IP CTS should be paid by contributors to the TRS Fund, based only on their interstate telecommunications revenues. A decade later, we now recognize that this "interim" funding mechanism unfairly burdens providers and users of interstate services and is no longer justifiable given the continued growth of IP CTS. Therefore, we modify the cost recovery rules for IP CTS so that providers of intrastate voice

\* This document has been circulated for tentative consideration by the Commission at its November 2019 open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 CFR §§ 1.1200(a), 1.1206. Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 47 CFR § 64.601(a)(19). In the most common configuration, IP CTS employs two network paths: a connection via the public switched telephone network (PSTN) or a voice over Internet Protocol (VoIP) service for the voice conversation between the parties to the call, and a separate Internet connection that transmits the other party's voice from the IP CTS user's phone to a communications assistant (CA) and transmits captions from the CA back to the IP CTS user. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 388, para. 22 (2007) (2007 IP CTS Declaratory Ruling). Other configurations are also used. Captions may be displayed on a specialized IP CTS device or an off-the-shelf computer, tablet, or smartphone. Id. at 385-86, paras. 14-15.

communications services must contribute to the TRS Fund for the support of IP CTS. By expanding the TRS Fund contribution base, we reduce the burden on providers of interstate service and ensure the long-term sustainability of this vital service.

## II. BACKGROUND

2. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that “interstate and intrastate” TRS are available “to the extent possible and in the most efficient manner.”<sup>2</sup> The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS,<sup>3</sup> including rules on cost separation, which “shall generally provide” that interstate TRS costs are recovered from interstate services and intrastate TRS costs are recovered from the intrastate jurisdiction.<sup>4</sup> Section 225 also authorizes, but does not require, the establishment of state-administered TRS programs, subject to approval by the Commission.<sup>5</sup>

3. To provide for the recovery of interstate TRS costs, the Commission established the interstate TRS Fund in 1993.<sup>6</sup> Interstate telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service, are required to contribute to the TRS Fund, on a quarterly basis, a specified percentage of their interstate end-user revenues for the prior year.<sup>7</sup>

4. Although initially limited to supporting interstate TRS, the scope of the TRS Fund changed beginning in 2000, as the Commission authorized Internet-based forms of TRS—video relay service (VRS), Internet Protocol Relay Service (IP Relay), and later IP CTS. To encourage the development of these nascent forms of TRS through nationwide competition among providers, the Commission (1) did not mandate that any of these services be included in state-funded TRS programs and (2) as an interim measure, authorized use of the TRS Fund to compensate TRS providers for all

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<sup>2</sup> 47 U.S.C. § 225(b)(1).

<sup>3</sup> 47 U.S.C. § 225(d); *see also id.* § 225(b)(2) (providing that, for the purposes of administering and enforcing TRS rules, “the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has . . . with respect to any common carrier engaged in interstate communication”).

<sup>4</sup> *Id.* § 225(d)(3)(B). Providers of international as well as interstate services are currently required to contribute to the TRS Fund. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 21 FCC Rcd 5247, 5250, para. 8 (CGB 2006), *recon.*, 21 FCC Rcd 5962, 5963, para. 2 (CGB 2006). For ease of reference, we use the term “interstate” to mean “interstate and international.”

<sup>5</sup> 47 U.S.C. § 225(f). Currently, all 50 states, the District of Columbia, and several United States territories have TRS programs approved by the Commission. *See Notice of Certification of State Telecommunications Relay Services (TRS) Programs*, CG Docket No. 03-123, Public Notice, 33 FCC Rcd 6741 (CGB 2018). For ease of reference, we refer to all state and territory TRS programs as state TRS programs. The Commission requires that state TRS programs include text-based TRS and speech-to-speech relay (STS). *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5149, para. 15 (2000) (*2000 TRS Order*) (determining that STS should be a mandatory form of TRS); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 98-67 and 03-123, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 12379, 12396, para. 26 (2003) (*2003 TRS Order*) (noting that the Commission’s TRS regulations require text-based TRS and STS).

<sup>6</sup> *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993); *see also* 47 CFR § 64.604(c)(5)(iii).

<sup>7</sup> 47 CFR § 64.604(c)(5)(iii)(A), (B).

compensable costs of VRS, IP Relay, and IP CTS calls, whether interstate or intrastate.<sup>8</sup> The Commission stressed that these interim funding arrangements would be revisited in the future.<sup>9</sup> Meanwhile, TRS Fund contributions, including those supporting Internet-based TRS, continued to be collected solely from providers of interstate telecommunications and VoIP services, based on a percentage of their interstate end-user revenues.

5. In 2015, IDT Telecom, Inc. (IDT) filed a petition for rulemaking requesting that the Commission expand the TRS Fund contribution base, for purposes of supporting Internet-based forms of TRS, to include intrastate revenues.<sup>10</sup> IDT argues that the inclusion of intrastate revenues is required by section 225 and that to recover the costs of Internet-based TRS solely from interstate revenues imposes an unfair burden on those TRS Fund contributors that offer primarily interstate services.<sup>11</sup> Most commenting parties supported IDT's petition, while a coalition of VoIP service providers opposed it.<sup>12</sup>

6. In 2018, as part of a Further Notice of Proposed Rulemaking addressing a broader spectrum of issues concerning IP CTS, the Commission proposed to expand the TRS Fund contribution base for the support of IP CTS to include a percentage of the annual intrastate revenues of telecommunications carriers and VoIP service providers.<sup>13</sup> In light of the "burgeoning growth" of IP CTS, which is now available nationwide from five competing providers, the Commission proposed that "the special arrangement of treating all IP CTS costs as interstate costs is no longer necessary as an 'interim' measure to spur the development of this service," and that expanding the TRS Fund contribution base "would reduce the inequitable TRS support burden borne by those voice providers whose traffic is

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<sup>8</sup> *2000 TRS Order*, 15 FCC Rcd at 5154-56, paras. 22-27; *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7784-87, paras. 15-26 (2002) (*2002 IP Relay Declaratory Ruling*); *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 390, para. 25.

<sup>9</sup> *2000 TRS Order*, 15 FCC Rcd at 5156, para. 27; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786-87, paras. 20-22; *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 390, para. 25.

<sup>10</sup> Petition of IDT for Rulemaking, CG Docket No. 03-123, at 1, 14 (filed Nov. 25, 2015), <https://ecfsapi.fcc.gov/file/60001345008.pdf> (IDT Petition).

<sup>11</sup> *Id.* at 6-7, 9.

<sup>12</sup> See Hancock, Jahn, Lee & Puckett, LLC Comments, CG Docket No. 03-123 (filed Feb. 3, 2016); Sprint Corporation Comments, CG Docket No. 03-123 (filed Feb. 4, 2016); Sorenson Communications, Inc. and Capital Call, LLC Comments, CG Docket No. 03-123 (filed Feb. 4, 2016); Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., Cerebral Palsy and Deaf Organization, Deaf Seniors of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing Comments, CG Docket No. 03-123 (filed Feb. 4, 2016) (all supporting IDT Petition). The Voice on the Net Coalition (VON Coalition) opposed the petition, arguing that the current funding scheme is within the Commission's statutory authority and that the Commission lacks authority to require TRS Fund contributions from intrastate revenue. VON Coalition Comments, CG Docket No. 03-123 (filed Feb. 4, 2016) (VON Coalition 2015 IDT Petition Comments). The United States Telecom Association (USTelecom) took no formal position on the petition. USTelecom Comments, CG Docket No. 03-123, at 2 (filed Feb. 4, 2016).

<sup>13</sup> *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 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5848, para. 102 (2018) (*2018 IP CTS Modernization FNPRM*). The Commission noted that, because the rulemaking proceeding was focused on IP CTS, its proposal to expand the TRS Fund contribution base addressed only IP CTS, and not other Internet-based forms of TRS. *Id.*

primarily interstate.”<sup>14</sup> The Commission also sought comment on whether, as a complete or partial alternative to that proposal, state TRS programs should be required or permitted to administer intrastate funding for IP CTS.<sup>15</sup> Sixteen parties filed comments on these IP CTS funding issues and seven parties filed reply comments.<sup>16</sup>

### III. DISCUSSION

7. We amend our rules to provide that TRS Fund contributions for the support of IP CTS shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and VoIP service provider. As a result, TRS Fund contributions will be required from providers of intrastate-only telecommunications and VoIP services. The total contributions needed to support the TRS Fund will not be affected, but the percentage of interstate end-user revenues on which TRS Fund contributions are based will decline substantially.

8. We make this change for several reasons. *First*, the current arrangement, whereby all IP CTS costs are compensated from the TRS Fund, with contributions limited to a percentage of contributors’ interstate revenues, was authorized only as an interim measure, to speed the development of IP CTS.<sup>17</sup> The Commission never suggested that this contributions approach would be appropriate on a permanent basis.<sup>18</sup>

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<sup>14</sup> *Id.* at 5848-49, paras. 103-04.

<sup>15</sup> *Id.* at 5852-54, paras. 111-16.

<sup>16</sup> Eleven comments and four reply comments addressed both TRS Fund contribution base expansion and state administration of IP CTS. *See* California Public Utilities Commission Comments at 5-10 (CPUC Comments); CaptionCall, LLC Comments at 16, n.45, 38-44 (CaptionCall Comments); ClearCaption, LLC Comments at 23-26 (ClearCaption Comment); Colorado Public Utilities Commission Comments at 3-8 (COPUC Comments); Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Association of Late-Deafened Adults (ALDA), Cerebral Palsy and Deaf Organization (CPADO), American Association of the Deaf-Blind (AADB), Deaf Seniors of America (DSA), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC), and Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) Comments at 16-24 (Consumer Groups and Academics Comments); IDT Telecom, Inc. Comments at *passim* (IDT Comments); Kansas Corporation Commission Comments at 2, 7-8, 11 (KCC Comments); National Association of Regulatory Utility Commissioners Comments at 8-17 (NARUC Comments); National Association for State Relay Administration Comments at 3-4 (NASRA Comments); Pennsylvania Public Utility Commission Comments at 6-18 (Pa. PUC Comments); Public Service Commission of Utah Comments at 2 (Utah PSC Comments); Consumer Groups and Academics Reply Comments 10-12, 13-14; IDT Reply Comments at 1-9; NARUC Reply Comments at 3-12; Pa. PUC Reply Comments at 3-13. Five comments and three reply comments addressed only state administration of IP CTS. Arizona Commission for the Deaf and the Hard of Hearing Comments at 2-4 (ACDHH Comments); The Illinois Telecommunications Access Corporation Comments at 10-11 (ITAC Comments); Missouri Assistive Technology Comments at 2-3 (MoAT Comments); Nebraska Public Service Commission Comments at 2-5 (NPSC Comments); New Mexico Commission for Deaf and Hard of Hearing Persons Comments at 3-6 (NMCDHH Comments); CaptionCall Reply Comments at 11-15; ClearCaption Reply Comments at 6-8; Connecticut Public Utilities Regulatory Authority Reply Comments at 1-2 (CT-PURA Reply Comments).

<sup>17</sup> 2007 IP CTS Declaratory Ruling, 22 FCC Rcd at 390, para. 25.

<sup>18</sup> *Id.* (stating that the Commission would revisit the matter of cost recovery in the future). To the extent that the purpose of the special funding arrangement was to provide an incubation period to allow the service to grow, that purpose has been achieved. Annual IP CTS demand has grown almost two-hundred-fold, from 2.4 million minutes in 2009 (the first full calendar year of service) to 456.6 million in 2018. 2018 IP CTS Modernization FNPRM, 33 FCC Rcd at 5848, para. 103. The number of TRS providers offering IP CTS has grown from two providers, both using a single vendor’s platform, to five providers, all offering nationwide service. *Id.*

9. *Second*, the inherent inequities and limitations of this contributions arrangement loom much larger today, given the current size of the IP CTS funding requirement.<sup>19</sup> Interstate-only contributions may have been justifiable when IP CTS costs represented a relatively small portion of total TRS costs. Today, however, IP CTS expenditures are projected to be \$913 million in Fund Year 2019-20—64.5% of TRS Fund payments to TRS providers.<sup>20</sup> As a result, the burden of supporting IP CTS has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. For example, with the overall TRS Fund contribution factor set at .02779,<sup>21</sup> or 2.779% of interstate end-user revenues, providers of interstate-only services must contribute some 1.47% (64.5% of 2.779%) of their end-user revenues to support IP CTS. By contrast, service providers for whom only 41% of end-user revenues are interstate (the industry average) contribute only 0.60% (41% of 1.47%) of total end-user revenues to support IP CTS.<sup>22</sup> And providers of intrastate-only services, of which there are at least 200, contribute nothing to support IP CTS.

10. *Third*, this asymmetric allocation of the IP CTS funding burden has not been shown to be justified by the jurisdictional characteristics of the telephone calls for which captions are provided via IP CTS. No party disputes that IP CTS, which is available to consumers in every state, provides captions for both intrastate and interstate phone calls.<sup>23</sup> Indeed, it appears likely that the percentage of IP CTS minutes that are interstate is actually lower than the percentage of TRS Fund contributor revenues that are interstate—after all, only 24% of calls using CTS, IP CTS’s predecessor, are interstate whereas approximately 41% of service providers’ end-user revenues on average are interstate.<sup>24</sup>

11. *Fourth*, the recovery of IP CTS costs based on interstate revenues alone tends to distort market signals regarding the relative costs of interstate and intrastate voice services. As the Commission has recognized in various contexts, applying artificial regulatory distinctions or other disparate treatment to providers of similar services may create unintended market distortions<sup>25</sup>—in this case, improperly increasing the price of, and reducing the demand for, interstate telephony services.

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<sup>19</sup> See CaptionCall Comments at 16, n.45; ClearCaption Comments at 23; Consumer Groups and Academics Comments at 23-24; IDT Comments at 2-4; see also ITTA -The Voice of America’s Broadband Providers Comments at 5-6 (ITTA Comments) (discussing the burden of the continued growth of IP CTS usage for TRS Fund contributors).

<sup>20</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, Order, 34 FCC Rcd 5171, 5181, para. 23 (CGB June 28, 2019) (*2019 TRS Rate Order*).

<sup>21</sup> *Id.* at 5182, para. 26.

<sup>22</sup> According to the 2018 USF Monitoring Report, approximately 41% of total end-user telecommunications revenues are interstate and 59% are intrastate. Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report – 2018*, CC Docket No. 96-45 et al., at 10, Table 1.2, <https://docs.fcc.gov/public/attachments/DOC-357769A1.pdf> (2018 USF Monitoring Report). Although compiled for purposes of a report on the universal service funds, this table shows the total end-user revenues reported by all telecommunications carriers and VoIP service providers currently required to contribute to the TRS Fund.

<sup>23</sup> See Consumer Groups and Academics Comments at 23 (noting that many eligible consumers use IP CTS phones to make intrastate calls); IDT Comments at 2 (“It is beyond question that IP CTS allows calls to be placed between a calling and called party physically located in the same state. It is equally beyond question that such calls are made and that relay service providers are compensated for such calls.”).

<sup>24</sup> See *2018 IP CTS Modernization FNPRM*, 33 FCC Rcd at 5848, para. 104.

<sup>25</sup> See, e.g., *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143, Report and Order on Remand and Memorandum Opinion and Order, FCC 19-66, 22-23, para. 46 (2019) (“[D]isparate forbearance treatment of carriers providing the same or similar services is not in the public interest, as it creates distortions in the marketplace that may harm consumers.”); *Implementation of Section 224 of the Act; A National*

(continued....)

12. *Fifth*, the total amount of interstate end-user revenues from which TRS Fund contributions can be drawn has been steadily decreasing over time, worsening the impact on interstate service providers and users.<sup>26</sup> Ensuring that contributions to support IP CTS are calculated based on intrastate as well as interstate revenues will not only address the asymmetry of the funding burden but also strengthen the funding base for this service.<sup>27</sup>

13. *Legal Authority.* We find that the Commission has statutory authority to include the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support IP CTS, as a measure to address the asymmetry and inequity of the current IP CTS funding scheme. In contrast to section 254's treatment of universal service programs,<sup>28</sup> section 225 expressly directs the Commission to ensure that both interstate *and intrastate* TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS,<sup>29</sup> including, explicitly, TRS cost recovery.<sup>30</sup> Indeed, Congress expressly carved section 225 out from the Act's general reservation of state authority over intrastate communications.<sup>31</sup>

14. We recognize that, where a state undertakes to offer intrastate TRS through a state program, section 225 allows the state to determine how its program is funded.<sup>32</sup> However, if a type of

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*Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5317-21, paras. 174-81 (2011) (recognizing competitive disparities that arise from telecommunications carriers paying higher pole attachment rates than their cable operator competitors); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5920, para. 53 (2007) (stating that disparate regulatory treatment of two classes of carriers offering the same information service would introduce competitive distortions into the marketplace); *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96-113, Report, 12 FCC Rcd 16802, 16805, para. 3 (1997) (noting that the Commission defined 'market entry barrier' in a manner that facilitates entry by small businesses yet avoids unwarranted regulatory intervention that could distort a competitive marketplace); *Universal Service Contribution Methodology; A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5359, para. 4 (2012) (explaining that some aspects of universal service contributions may cause competitive distortions by imposing different contribution obligations on similar services).

<sup>26</sup> See Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 10-11 (filed May 1, 2019), <https://ecfsapi.fcc.gov/file/10501392602495/2019%20TRS%20Fund%20Annual%20Report.pdf> (2019 TRS Rate Filing) (detailing the continued reduction of revenue in the contribution base); 2018 USF Monitoring Report at 10, Table 1.2; see also ITTA Comments at 5-6 (discussing the burden on TRS Fund contributors resulting from demand for IP CTS usage).

<sup>27</sup> According to the 2018 USF Monitoring Report, 41% of total end-user telecommunications revenues are interstate and 59% are intrastate; therefore, adding intrastate revenues will increase the TRS Fund contribution base by approximately 144% (59%/41%). See 2018 USF Monitoring Report at 10, Table 1.2.

<sup>28</sup> See 47 U.S.C. § 254(d) (requiring providers of *interstate* services to contribute to Commission-established funding mechanisms); *id.* § 254(f) (authorizing states to adopt universal service regulations and requiring providers of *intrastate* services to contribute to universal service in a manner determined by each *state*).

<sup>29</sup> See *id.* § 225(b)(1), (2). Responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such responsibility. See *id.* § 225(c), (f), (g).

<sup>30</sup> See *id.* § 225(d)(3)(B) (specifying what the Commission's regulations shall "generally" provide regarding interstate and intrastate cost recovery).

<sup>31</sup> See *id.* § 152(b) ("Except as provided in sections 223 through 227 of this title, inclusive . . .").

<sup>32</sup> See *id.* § 225(f)(3) (prohibiting the Commission from denying state program certification "based solely on the method such State will implement for funding intrastate [TRS]"). The state must, however, permit intrastate cost recovery "by a method consistent with the requirements of this section." *Id.* § 225(d)(3)(B).

TRS (such as IP CTS) is *not* made available through a state program, the Commission—which is mandated to ensure the availability of both interstate *and intrastate* TRS—necessarily retains authority to enable cost recovery, including TRS Fund contributions based on the intrastate revenues of telecommunications and VoIP service providers.<sup>33</sup> The fact that a state has undertaken to make *some* relay services available in a certified TRS program does not deprive the Commission of authority to ensure that other forms of TRS are available and adequately funded. Indeed, section 225 affords the Commission, without limitation, “the same authority, power, and functions with respect to *common carriers engaged in intrastate communication* as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.”<sup>34</sup> This includes the authority to collect contributions from intrastate carriers where necessary to ensure that the provision of TRS is adequately funded<sup>35</sup>—and Congress has elsewhere prescribed that VoIP service providers shall “participate in and contribute to the Telecommunications Relay Services Fund . . . in a manner prescribed by the Commission . . . consistent with and comparable to the obligations of other contributors to such Fund.”<sup>36</sup>

15. Therefore, we reject the CPUC’s argument that, where a state has established an FCC-certified program, the Commission is unable to require intrastate funding of other forms of TRS not offered through the state program.<sup>37</sup> A state’s decision to limit the scope of its TRS program cannot constrain the Commission’s ability to ensure that other forms of TRS, such as IP CTS, are available to eligible consumers. Contrary to the CPUC’s contention,<sup>38</sup> in the provision of section 225 that requires a state with a Commission-approved TRS program to “permit a common carrier to recover the costs incurred in providing intrastate TRS by a method consistent with the requirements of this section,” the Act does not limit the *Commission’s* authority over cost recovery for forms of TRS that are *excluded* from state programs. Rather, it explicitly limits *states’* authority to constrain carriers’ recovery of the cost of providing TRS *through* state programs. In the absence of a specific limitation, the Commission’s broad section 225 authority to ensure the availability of TRS must be construed to include the ability to require appropriate funding of those forms of TRS not covered by state programs.

16. Further, the CPUC’s reading of section 225(d)(3), if adopted, could hinder the Commission’s ability to continue ensuring the availability of technologically advanced versions of TRS, such as IP CTS, which are far more widely used and enable more effective communication than the older versions offered through state programs.<sup>39</sup> According to the CPUC, Internet-based TRS has not been added to state programs largely due to jurisdictional concerns regarding state agencies’ authority under state legislation,<sup>40</sup> and this leaves the TRS Fund as the only available means to ensure the availability of

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<sup>33</sup> See *id.* § 225(b), (d)(3); see also Consumer Groups and Academics Reply Comments at 13 (arguing that, because the Commission has explicit authority to facilitate intrastate IP CTS service when a state does not provide it, it reasonably follows that the Commission can include intrastate revenues when calculating carrier contributions).

<sup>34</sup> 47 U.S.C. § 225(b)(2) (emphasis added). For the reasons given in the text, we do not agree with the argument of the VON Coalition, made in opposition to the IDT Petition, that this broadly worded provision is limited to enforcement authority over intrastate common carriers that fail to comply with the Act and FCC regulations. See VON Coalition 2015 IDT Petition Comments at 2-3.

<sup>35</sup> 47 U.S.C. § 225(b)(1), (2), (d)(3).

<sup>36</sup> *Id.* § 616.

<sup>37</sup> See CPUC Comments at 6-7.

<sup>38</sup> See *id.*

<sup>39</sup> Section 225 expressly seeks to promote advanced forms of TRS, requiring the Commission to ensure that its regulations “encourage . . . the use of existing technology and do not discourage or impair the development of improved technology.” 47 U.S.C. § 225(d)(2).

<sup>40</sup> See CPUC Comments at 6.



advanced TRS. Yet, the interstate end-user revenue pool from which TRS Fund contributions are currently drawn has decreased over time. Given the apparent limits on state commissions' authority, the Commission's ability to structure appropriate funding for Internet-based TRS should not be artificially constrained by a distorted reading of the federal statute.

17. In sum, the Commission has previously ruled that Section 225 grants the Commission discretion to determine how, and by which entities, TRS are funded.<sup>41</sup> Where a form of TRS is not offered in state TRS programs, the Commission's discretion includes reasonable measures to ensure equitably distributed contributions from all interstate and intrastate service providers subject to the Commission's section 225 authority.<sup>42</sup>

18. *Arguments for Deferral.* We see no need to defer expansion of the contribution base, as urged by some commenters, in order to address the matter of how IP CTS is classified as a service.<sup>43</sup> Although the Commission has previously ruled that TRS are not "telecommunications services,"<sup>44</sup> the text of section 225 leaves no doubt that TRS—whatever the classification, and whether or not the Internet is involved—can be used for intrastate as well as interstate calling,<sup>45</sup> and that the resulting costs are recoverable from providers of intrastate as well as interstate telecommunications and VoIP services.<sup>46</sup> Further, the forms of TRS provided in state programs are not materially different from a service classification perspective.<sup>47</sup> IP CTS, like its state-program predecessor, CTS, always involves a two-way

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<sup>41</sup> See *2000 TRS Order*, 15 FCC Rcd at 5154, para. 26; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786, para. 21; *IP-Enabled Services et al.*, WC Docket No. 04-36 et al., Report and Order, 22 FCC Rcd 11275, 11294, para. 37 n.136 (2007) (*2007 VoIP Provider Contributions R&O*).

<sup>42</sup> We note that this Report and Order only addresses how TRS support obligations are calculated as a percentage of each contributor's end-user revenues. The rule we adopt does not dictate how a contributing service provider recovers its TRS Fund contributions in the service rates charged to end users or how a state may choose to regulate a carrier's or other service provider's recovery of its costs—including TRS Fund contributions to support the captioning of intrastate telephone calls—in the rates for communications services subject to its jurisdiction.

<sup>43</sup> See NARUC Comments at 14-17; NASRA Comments at 3; Pa. PUC Comments at 8.

<sup>44</sup> *2000 TRS Order*, 15 FCC Rcd at 5174-76, paras. 79-81. We note that Section 225, which defines TRS as "telephone transmission services . . ." (47 U.S.C. § 225(a)(3)), does not use either term—"telecommunications service" or "information service"—to define TRS. As the Commission has previously stated, the definition of TRS includes transmission using any technology, including IP, and is "constrained only by the requirement that such service provide a specific functionality." *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7783, para. 10; see also *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16124, para. 8 (2003) (*2003 CTS Declaratory Ruling*). The "specific functionality" referred to is "the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual." 47 U.S.C. § 225(a)(3).

<sup>45</sup> See 47 U.S.C. § 225(b)(1), (c), (d)(1)(3) (referring to "intrastate TRS" and "interstate TRS").

<sup>46</sup> See 47 U.S.C. § 225(b)(1), (2); *id.* § 225(d)(3)(B) (directing the Commission to regulate cost recovery for both interstate and intrastate TRS); *id.* § 616 (requiring VoIP service providers to participate in and contribute to the TRS Fund); *cf.* *2007 VoIP Provider Contributions R&O*, 22 FCC Rcd at 11291-97, paras. 32-43 (requiring interconnected VoIP service providers to comply with section 225 and contribute to the TRS Fund after attributing their revenues to the interstate and intrastate jurisdictions).

<sup>47</sup> Indeed, the argument that TRS cannot be supported by contributions based on intrastate revenues unless TRS is a "telecommunications service" applies equally to state-program TRS, and thereby leads to absurd results. The Commission previously determined that TRS in general are not "telecommunications services," reasoning that *all* relay services, by *definition*, involve a change in the form of the communicated information, and therefore, "cannot be considered 'telecommunications' . . . because [the statutory definition of 'telecommunications'] excludes transmissions that 'change the form or content of the information as sent or received.'" *2000 TRS Order*, 15 FCC

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voice channel, and in the most common configuration of the service, the voice component of the service is dialed, connected, rung, and answered in the same way, using the same telephone company services, as an ordinary phone call.<sup>48</sup> In both CTS and IP CTS, there is a voice connection over ordinary telephone service, and a captioning function that changes the form of the communication from voice to text; yet, CTS, like other forms of state-program TRS, nonetheless has been deemed to include both interstate and intrastate service. There is no valid reason to treat IP CTS differently in this respect.

19. We also decline to defer this matter pending referral to and completion of Joint Board proceedings.<sup>49</sup> Although section 225 requires that the Commission's rules governing *separation* of TRS costs must be consistent with section 410 of the Act,<sup>50</sup> we are not adopting any modification of the TRS cost separation rules.<sup>51</sup> The rules we adopt only change how telecommunications carrier and VoIP service provider revenues are treated for purposes of calculating TRS Fund contributions. Indeed, fund contributions will be implemented without cost separation, and will be unaffected by how many IP CTS minutes might be deemed intrastate or interstate, as contributions to support IP CTS costs will be based on a single factor applying an equal percentage to a contributor's interstate and intrastate revenues. In short, it is unnecessary and would be pointless to refer this matter to a Joint Board.

20. Finally, we decline calls from some state commenters to defer expansion of the IP CTS contribution base pending further measures to address waste, fraud, and abuse, which are based on the incorrect assumption that such expansion is needed solely due to the current level of program costs.<sup>52</sup> The unfair allocation of IP CTS funding obligations would warrant correction and would continue to impose a

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Rcd at 5176, para. 81 (quoting what is now 47 U.S.C. § 153(50)). This reasoning applies equally to traditional TTY-based TRS and other relay services offered in state programs as to IP CTS. Thus, if TRS could be supported by intrastate revenues only if classified as a "telecommunications service," then based on the *2000 TRS Order* even state program TRS—TTY-based TRS, STS, and CTS—cannot be subject to intrastate cost recovery. Yet, the statute clearly contemplates that there is such a thing as "intrastate TRS," and with respect to state-program TRS the Commission has continued to implement the provisions of section 225 providing for state funding and administration of intrastate TRS.

<sup>48</sup> See *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 385, para. 14 (explaining that, in the version of IP CTS described by the petitioner, "[t]he consumer would make a voice to voice call to the other party on a standard telephone and the PSTN"); *id.* at 389, para. 23 (noting that "presently with captioned telephone service the consumer does not communicate directly with a CA to set up the call; similarly, we expect that IP captioned telephone service should permit the consumer to directly dial the called party and then automatically connect the CA to the calling party to deliver the captions").

<sup>49</sup> See COPUC Comments at 4-5; NARUC Comments at 13-14; Pa. PUC Comments at 10-11; NARUC Reply Comments at 5-9.

<sup>50</sup> 47 U.S.C. § 225(d)(3)(A). Section 410, in turn, *permits* the Commission to refer to a Joint Board any matter "relating to common carrier communications of joint Federal-State concern," but only requires such referral in the case of a rulemaking proceeding "regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations." 47 U.S.C. § 410(c). In any event, IP CTS providers are not common carriers.

<sup>51</sup> In the initial 1993 decision establishing the TRS Fund, the Commission determined that its existing separations rules for common carrier investment and expenses were adequate for TRS purposes and that, accordingly, it would not be necessary to convene such a board. *1993 TRS Order*, 8 FCC Rcd at 5305, para. 30 & n.30. These rules remain applicable to those forms of TRS that are included in state TRS programs and that, accordingly, require jurisdictional separation of TRS costs.

<sup>52</sup> See COPUC Comments at 6; NARUC Comments at 12-13; NASRA Comments at 3; Pa. PUC Reply Comments at 8; Utah PSC Comments at 2. The Commission's efforts to eliminate waste, fraud, and abuse in IP CTS and other TRS programs are continuing.

substantial, undeserved burden on interstate-only service providers even if there were a marked decrease in total IP CTS costs.<sup>53</sup>

21. *Implementation.* To implement the inclusion of intrastate end-user revenues in the funding for IP CTS, we adopt a single contribution factor for IP CTS that is applied to all the end-user revenues of each TRS Fund contributor. As the first step in implementing this approach, the TRS Fund administrator shall determine an IP CTS revenue requirement, based on the applicable IP CTS compensation rate(s) and projected demand. This is the same exercise that the TRS Fund administrator already undertakes on an annual basis as part of its calculation of the total TRS Fund budget.<sup>54</sup> We clarify that this IP CTS revenue requirement shall also include the portion of the TRS Fund reserve that is attributable to IP CTS.<sup>55</sup> Next, based on the total intrastate and interstate end-user revenue data reported by TRS Fund contributors on Forms 499-A, the TRS Fund administrator shall compute a separate TRS Fund contribution factor for IP CTS, by dividing the IP CTS revenue requirement by contributors' total intrastate and interstate end-user revenues. This contribution factor shall then be used to determine the portion of each contributor's total end-user revenue that must be paid into the TRS Fund to support IP CTS.<sup>56</sup>

22. We adopt the single-factor method because it requires only minor modification of the current cost recovery system, is simple and feasible to administer, and distributes the funding obligation among TRS Fund contributors in a reasonably equitable manner. Specifically, the single-factor approach ensures that each contributor pays the same percentage of its total interstate and intrastate end-user revenues for support of IP CTS. This is far more equitable than the current system, which requires that 100% of the contributions be based on interstate revenues, even though it is likely that less than half of IP CTS minutes are interstate.<sup>57</sup>

23. An alternative approach, outlined in the *2018 IP CTS Modernization FNPRM*, would entail the calculation of separate contribution factors for interstate and intrastate IP CTS, based on estimates of the proportions of IP CTS minutes and provider costs that are interstate and intrastate.<sup>58</sup> We adopt the simpler single-factor approach at this time, for two reasons. First, the multiple-factor alternative is impracticable at this time. To date, the information submitted by IP CTS providers does not consistently identify the geographic location of both end-points of telephone calls for which captioning is provided. We thus conclude that the percentage of IP CTS minutes that are attributable to interstate and intrastate calling cannot be determined with reasonable accuracy at present.<sup>59</sup> Second, the multiple factor

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<sup>53</sup> We also note that, because we are not mandating the inclusion of IP CTS in state TRS programs, the responsibility to prevent waste, fraud, and abuse in the provision of IP CTS remains with the Commission and will not be imposed on any unwilling state. Cf. ACDHH Comments at 2; COPUC Comments at 2-3, 6; KCC Comments at 2; NASRA Comments at 3; Utah PSC Comments at 2; Pa. PUC Reply Comments at 3-4.

<sup>54</sup> See, e.g., 2019 TRS Rate Filing at 18-22 (discussing IP CTS revenue formula development).

<sup>55</sup> See 2019 TRS Rate Order, 34 FCC Rcd at 5182, para. 25 (approving a reserve comprising two months of estimated Fund payments); IDT Comments at 19 (seeking such clarification).

<sup>56</sup> See 2018 IP CTS Modernization FNPRM, 33 FCC Rcd at 5849, paras. 105-06. A contribution factor for the remaining TRS Fund revenue requirement will be calculated in the usual manner, by dividing the non-IP CTS revenue requirement by contributors' total interstate end-user revenues.

<sup>57</sup> Reported CTS conversation minutes (which are for an analogous service) are 24% interstate and 76% intrastate. See 2019 TRS Rate Filing, Exh. 1-2 (showing 2018 intrastate CTS minutes); *id.*, Exh. 1-3 (showing 2018 interstate CTS minutes); see also 2018 IP CTS Modernization FNPRM, 33 FCC Rcd at 5848, para. 104 (noting the same split in CTS minutes based on 2017 data).

<sup>58</sup> See 2018 IP CTS Modernization FNPRM, 33 FCC Rcd at 5849-51, paras. 107-08.

<sup>59</sup> See IDT Comments at 5; IDT Reply Comments at 5 (asserting the Commission should in the interest of equity for all contributors adopt the single-factor methodology as an interim measure, should it determine to pursue the more

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approach, even if feasible, would not necessarily allocate the TRS funding burden more equitably than the single-factor approach. Given that IP CTS is available nationwide for both intrastate and interstate calling, it is not obvious that the use of separate factors for interstate and intrastate contributions is required to ensure fairness to TRS Fund contributors. In response to the *2018 IP CTS Modernization FNPRM*, no commenting party has contended that the single-factor method would be unfair to any TRS Fund contributor.

24. As explained above, section 225 states that the Commission's TRS cost recovery regulations should "generally" provide for interstate and intrastate TRS costs to be recovered from subscribers for interstate services and from the intrastate jurisdiction, and the Commission has ruled that this provision allows the Commission discretion in determining how TRS are funded.<sup>60</sup> We conclude that such permitted discretion is especially broad where, as here, no state is either required to or even seeking to include IP CTS in a state TRS program.

25. We recognize this approach is an incremental step toward bringing our rules for funding IP CTS more in line with the Communications Act, and we plan to revisit this approach should circumstances change. For example, if improved information is developed regarding the geographic locations of the calling parties for IP CTS calls, further consideration of the multiple-factor approach may be appropriate.<sup>61</sup> Pending such developments, we find that the single-factor approach, which is more equitable and more consistent with federal law than the current interstate-only Fund contribution plan, best serves the American public and users of IP CTS at this time.

26. We direct the Wireline Competition Bureau to revise the instructions for Form 499-A as necessary to conform to this Report and Order. We also direct the Universal Service Administrative Company (USAC) and the TRS Fund administrator to take steps to ensure that providers of telecommunications services and VoIP services, including entities with only intrastate revenue, are able to register and remit payment to the TRS Fund. As telecommunications carriers and VoIP providers that have only intrastate revenue currently file FCC Form 499-A to comply with contribution requirements for the administration of the North American Numbering Plan (NANPA), and the shared costs of local number portability administration (LNPA), this Report and Order imposes no new reporting burden on such entities. Any changes to the instructions for Form 499-A and related information collection

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complicated alternative methodology). We note that a complete separations analysis would require not only a determination of the nationwide average split between IP CTS costs and minutes, but also a state-by-state determination of intrastate costs and minutes for each state. See COPUC Comments at 6-7 (seeking state specific data on IP CTS program costs and minute-usage to determine a program administration framework); CPUC Comments at 8-9 (emphasizing the need for state-specific cost data in order to administer IP CTS funding); NARUC Comments at 9-11; NASRA Comments at 3-4. As noted above, in the event that, at some point in the future, a state requests and receives approval to fund and administer intrastate IP CTS as part of the state's TRS program, appropriate steps can be taken at that time to identify or estimate intrastate IP CTS minutes and costs and determine by how much to reduce the TRS Fund contributions from telecommunications and VoIP service providers operating within the affected state.

<sup>60</sup> See 47 U.S.C. § 225(d)(3)(B); *2000 TRS Order*, 15 FCC Rcd at 5154, para. 26; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786, para. 21; *2007 VoIP Provider Contributions R&O*, 22 FCC Rcd at 11294, para. 37 n.136.

<sup>61</sup> The integration of IP CTS into the User Registration Database, which will enable the Commission to analyze aggregate information on the residential addresses of IP CTS users, could enable more accurate jurisdictional analysis of IP CTS calls. See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 691, 698, para. 16 (2019).

materials will be informational and not modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>62</sup>

27. *Compliance date.* Intrastate carriers and VoIP service providers shall be required to contribute revenue to fund intrastate IP CTS starting with TRS Fund Year 2020-21. This will allow a reasonable time (1) for the Commission to amend relevant forms, (2) for any carriers and VoIP service providers that have only intrastate revenue to register and prepare for submission of IP CTS contributions to the TRS Fund administrator, and (3) for the TRS Fund administrator and USAC to process such registrations in accordance with the rules adopted herein.<sup>63</sup>

28. *Economic Impact.* TRS Fund expenditures on IP CTS were approximately \$913 million for Fund Year 2019-20. If IP CTS expenditures were to continue at the 2019-20 level, then approximately 41% of this total, or \$374 million, would be contributed as a percentage of interstate end-user revenues.<sup>64</sup> The remaining share, approximately 59%, or \$539 million, would be the share contributed as a percentage of intrastate end-user revenues. This represents a \$539 million transfer in the incidence of TRS Fund contributions from the interstate to the intrastate jurisdiction, although the total funding requirement does not change.

29. Expanding the TRS Fund contribution base for IP CTS to include intrastate revenues will likely reduce the TRS funding costs that are passed on by contributing providers to users of interstate telecommunications and VoIP services, and concomitantly increase the costs included in rates paid by users of intrastate services.<sup>65</sup> To the extent it has such effects, broadening the base on which TRS Fund contributions are made will remove distortions in the relative prices of intrastate and interstate services, reducing such prices where they are high and raising such prices somewhat where they are low.

30. An illustration using currently available data highlights the impact of broadening the contribution base. For calendar year 2017, the most recent year for which public data are available, the total end-user telecommunications revenues of TRS Fund contributors were approximately \$135 billion.<sup>66</sup> Of this amount, \$56 billion (approximately 41%) were interstate revenues. Under the existing interstate-only contribution system, based on 2017 revenues, the TRS Fund contribution rate for IP CTS would be 1.6% (\$913 million / \$56 billion) of the total interstate end-user revenues. Under the expanded contribution base adopted in this Report and Order, the TRS Fund contribution rate for IP CTS would be approximately 0.7% (\$913 million / \$135 billion) of the total 2017 interstate and intrastate end-user revenues.

31. *The State Program Alternative.* In the *2018 IP CTS Modernization FNPRM*, as an alternative way to address the inequity in IP CTS cost recovery, the Commission sought comment on whether to require that IP CTS be included in all state-administered TRS programs.<sup>67</sup> Under this

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<sup>62</sup> Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

<sup>63</sup> See 47 CFR § 64.604(c)(5)(iii)(E).

<sup>64</sup> See 2018 USF Monitoring Report at 10, Table 1.2 (showing the most recent data for the percentage of reported end-user revenues that are reported as interstate and international revenues). While this percentage varies over time, it is projected to remain at 41% for the 2019-2020 Fund Year.

<sup>65</sup> We say “likely” because there will be economic incentives for service providers to raise or lower rates in a manner that reflects the jurisdictional nature of their services. However, the Commission does not generally control how carriers and VoIP service providers attribute their TRS contributions when setting rates for various services.

<sup>66</sup> 2018 USF Monitoring Report at 10, Table 1.2.

<sup>67</sup> See *2018 IP CTS Modernization FNPRM*, 33 FCC Rcd at 5852, 5853-54, paras. 111, 114 (seeking further comment on “whether certified state TRS programs should be allowed or *required* to take a more active role in the administration of IP CTS” and on “whether state TRS programs should be *required* or permitted to administer intrastate funding for the costs of IP CTS”) (emphasis added). Although section 225 does not compel any state to

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approach, contributions to the TRS Fund would continue to be based on interstate end-user revenues only. However, the Fund would support only interstate IP CTS costs, while the states themselves would determine how to fund intrastate IP CTS, just as they currently do for non-Internet-based forms of TRS. We conclude that this alternative would not be practicable or beneficial at this time. To date, no state has indicated any degree of readiness to take responsibility for administering and funding intrastate IP CTS,<sup>68</sup> and a number of states raise questions regarding their authority under state law to incorporate IP CTS into state programs.<sup>69</sup> In addition, given the disproportionate funding required for IP CTS compared to current state program offerings, mandating the inclusion of IP CTS could lead some states to terminate their TRS programs.<sup>70</sup> Further, given that current state TRS programs usually contract with only one TRS provider,<sup>71</sup> mandating state administration of IP CTS could lead to the elimination of competition among

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have a TRS program, it does require that state programs established “under this section” be submitted for Commission approval and that they comply with the Commission’s TRS regulations. 47 U.S.C. § 225(f). Currently, Commission-approved state TRS programs must offer TTY-based TRS and STS, but need not include other forms of TRS. *See 2018 IP CTS Modernization FNPRM*, 33 FCC Rcd at 5852, para. 111.

<sup>68</sup> *See* ADCHH Comments at 2-4 (suggesting the time is not right for state administration of IP CTS, detailing information and further changes needed to the program, and suggesting at least a four year transition); COPUC Comments at 6-7 (seeking state specific data and FCC action to address issues of eligibility, growth, and standards of service before transferring authority); CPUC Comments at 7-12 (detailing critical issues that would need to be addressed and suggesting a five-year transition for more active state role in IP CTS administration); KCC Comments at 7-8 (detailing changes that would need to be implemented and suggesting a four-year transition period to allow states to administer aspects of IP CTS); NASRA Comments at 3-4 (indicating states lack data and would need to undertake statutory changes before assuming authority over IP CTS); NMCDHH Comments at 6 (raising concerns about cost, compensation rates, infrastructure, device distribution, interoperability, contracting, and provider choice); NPSC Comments at 2-4 (citing cost and legislative authority concerns and proposing transition period of at least five years before state administration becomes mandatory); Pa. PUC Comments at 13-18 (explaining it is premature to have state assume responsibility for IP CTS); Utah PSC Comments at 2; CT-PURA Reply Comments at 2 (five-year transition period would allow Commission to determine and seek changes to legislative authority and obtain additional resources).

<sup>69</sup> CPUC Comments at 7-8 (indicating that statutory changes are “needed at the state level (in particular, in California)” to address state jurisdiction); NASRA Comments at 3-4 (noting that questions remain on “whether statutory changes would need to be implemented for individual states in order to assume IP CTS authority”); NPSC Comments at 2 (“Nebraska’s laws do not currently allow for Nebraska to administer IP CTS.”); Pa. PUC Comments at 14 (stating that if a state “role in the administration of the intrastate aspects of IP CTS includes functions beyond fee administration, then the Pa. PUC will need to examine its available statutory mandate in more detail in order to ascertain whether it can perform those additional functions”); Utah PSC Comments at 2 (Utah PSC would have to “inform our Legislature of the issue before adopting a position”); CT-PURA Reply Comments at 2.

<sup>70</sup> *See* Consumer Groups and Academics Comments at 17-18 (asserting that, because state TRS surcharges are capped, state programs “may not be able to reimburse all the IP CTS minutes that consumers need,” and states may be unwilling or unable to amend their statutes to raise surcharge caps); CPUC Comments at 8-9 (roughly estimating that “if California assumes administration of IP CTS, the amount of spending for CTS could increase twenty times, necessitating a need to raise the statutory cap on the surcharge that funds the DDTP”); IDT Comments at 14 (noting that, “if states conclude that the burden of regulating IP CTS is too great or is not permissible under state law, states could simply choose to exit the relay service space entirely”); NPSC Comments at 2-3 (Nebraska law does not currently allow the NPSC to administer IP CTS, and “it is likely that the NPSC would face significant challenges with state legislators in coming into compliance” with IP CTS funding requirements). Under section 225, states are permitted, but not required, to establish TRS programs. 47 U.S.C. § 225(f). In the event of the termination of state TRS programs, the Commission would still be responsible for ensuring the continued availability of all forms of TRS, including IP CTS, as well as the recovery of intrastate and interstate TRS costs. *Id.* § 225(b), (d)(3).

<sup>71</sup> *See, e.g.*, KCC Comments at 8 (supporting the provision of intrastate IP CTS by a single provider under contract through a competitive bidding process); NMCCHH Comments at 5 (discussing state contracting options for IP CTS).

multiple IP CTS providers, a result that would conflict with the Commission's prior support of such competition to encourage higher quality IP CTS offerings.<sup>72</sup> At a minimum, we would need to revisit our rules on IP CTS provider certification and other policies favoring competition among IP CTS providers.<sup>73</sup> We also would need to adopt methods for identifying or estimating interstate and intrastate IP CTS minutes and costs.<sup>74</sup> In light of the uncertainties regarding state legislative authority and the willingness of states to accept a substantial increase in funding and administration responsibilities, and the issues posed regarding competition policy, we conclude that the goals of section 225 would not be served by mandating the inclusion of IP CTS in state programs at this time.

32. Although we are not mandating states to incorporate IP CTS into their TRS programs, this Report and Order does not preclude a state from seeking Commission approval to add IP CTS to a state-funded TRS program.<sup>75</sup> If, at some future point, a state seeks authority to fund and administer IP CTS, we will address at that time the related issues of competition policy and program efficiency.<sup>76</sup> In the event that a state's request to fund and administer intrastate IP CTS is approved, appropriate steps can be taken at that time to identify or estimate intrastate IP CTS minutes and costs and determine by how much to reduce the TRS Fund contributions from telecommunications and VoIP service providers operating within the state.<sup>77</sup>

#### IV. PROCEDURAL MATTERS

33. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>78</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is set forth in Appendix C, where we have assessed the effects of expanding the TRS Fund contribution base to include intrastate revenue for IP CTS.

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<sup>72</sup> See *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 390, para. 25; see also CaptionCall Comments at 39-43 (asserting transferring authority over IP CTS to the states would lead to a fractured regulatory regime that could increase costs and inefficiencies and stifle competition); ClearCaption Comments at 23-24 (expressing concern that IP CTS providers could become subject to a patchwork of certification and registration requirements); Consumer Groups and Academics Comments at 20-22 (asserting that state administration of IP CTS could lead to inconsistent certification standards and reduce competition and innovation).

<sup>73</sup> See *2018 IP CTS Modernization FNPRM*, 33 FCC Rcd at 5854, paras. 115-16.

<sup>74</sup> See COPUC Comments at 6-7 (seeking state specific data on IP CTS program costs and minute-usage to determine a program administration framework); CPUC Comments at 8-9 (emphasizing the need for state-specific cost data in order to administer IP CTS funding); NARUC Comments at 9-11 (many states have the capacity and expertise to perform the administrative functions of IP CTS, but need detail and state specific information to provide better input on the viability of the Commission's proposals); NASRA Comments at 3-4 (indicating states lack data and would need to undertake statutory changes before assuming authority over IP CTS); NPSC Comments at 3 (urging referral to the Federal-State Joint Board of separation to determine issues related to separations between interstate and intrastate costs and minutes); PA PUC Reply Comments at 8 (Commission may allocate intrastate IP CTS costs to the states, but should do so only after a referral to the Joint Board on Separations); cf. *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7785-86, paras. 17-20 (discussing cost separation issues).

<sup>75</sup> The Commission has never ruled that states are prohibited from including IP CTS in a state TRS program. See 47 U.S.C. § 225(f); cf. *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7787, para. 25 (clarifying that the Commission's decision to allow IP Relay cost recovery from the TRS Fund "in no way precludes the states from establishing IP Relay in addition to their current PSTN-based TRS, or from providing cost recovery from state funds").

<sup>76</sup> See, e.g., CaptionCall Comments at 40-44.

<sup>77</sup> See *2018 IP CTS Modernization FNPRM*, 33 FCC Rcd at 5849-51, 5853-54, paras. 107-08, 114 (discussing issues concerning the relevant jurisdictional separations issues and seeking comment on how to address them).

<sup>78</sup> 5 U.S.C. § 601 *et seq.*

34. *Congressional Review Act.* The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>79</sup>

35. *Paperwork Reduction Act Analysis.* This document does not contain new or modified or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA).<sup>80</sup> Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.<sup>81</sup>

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

## V. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, the foregoing Report and Order IS ADOPTED, and the Commission's rules are hereby amended, as set forth in Appendix B.

38. IT IS FURTHER ORDERED that this Report and Order SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register.

39. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of the Report and Order, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

40. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>79</sup> *Id.* § 801(a)(1)(A).

<sup>80</sup> 44 U.S.C. §§ 3501-3520 (2016).

<sup>81</sup> *Id.* § 3506(c)(4).



**APPENDIX A****List of Commenting Parties****Comments**

Arizona Commission for the Deaf and the Hard of Hearing (ACDHH)

California Public Utilities Commission (CPUC)

CaptionCall, LLC (CaptionCall)

ClearCaption, LLC (ClearCaption)

Colorado Public Utilities Commission (COPUC)

Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Association of Late-Deafened Adults (ALDA), Cerebral Palsy and Deaf Organization (CPADO), American Association of the Deaf-Blind (AADB), Deaf Seniors of America (DSA), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC), and Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) (Consumer Groups and Academics)

IDT Telecom, Inc. (IDT)

The Illinois Telecommunications Access Corporation (ITAC)

Kansas Corporation Commission (KCC)

Missouri Assistive Technology (MoAT)

National Association of Regulatory Utility Commissioners (NARUC)

National Association for State Relay Administration (NASRA)

Nebraska Public Service Commission (NPSC)

New Mexico Commission for Deaf and Hard of Hearing Persons (NMCDHH)

Pennsylvania Public Utility Commission (Pa. PUC)

Public Service Commission of Utah (Utah PSC)

**Reply Comments**

CaptionCall

ClearCaptions

Connecticut Public Utilities Regulatory Authority (CT-PURA)

Consumer Groups and Academics

IDT

NARUC

Pa. PUC

**2015 IDT Petition Comments**

Hancock, Jahn, Lee & Puckett, LLC

Sprint Corporation

Sorenson Communications, Inc. and Capital Call, LLC

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., Cerebral Palsy and Deaf Organization, Deaf Seniors of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing

Voice on the Net Coalition (VON Coalition)

United States Telecom Association (USTelecom)

## APPENDIX B

## Final Rules

**Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Amend section 64.604 by revising paragraphs (c)(5)(ii), (c)(5)(iii)(A), (c)(5)(iii)(B), and (c)(5)(iii)(I), to read as follows:

**§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS and IP Relay shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Costs caused by the provision of interstate and intrastate IP CTS, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) \* \* \*

(A) *Contributions.* Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund, as described herein, (1) for the support of TRS other than IP CTS on the basis of interstate end-user revenues, and (2) for the support of IP CTS on the basis of interstate and intrastate revenues. Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contributions to the TRS fund shall be the product of their subject revenues for the prior calendar year and the applicable contribution factors determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least \$25 per year. Contributors whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions

shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the FEDERAL REGISTER). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer and Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

\* \* \* \* \*

(I) *Information filed with the administrator.* The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a provider submitting minutes to the Fund for compensation must, in each instance, certify, under penalty of perjury, that the minutes were handled in compliance with section 225 and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls. The CEO, CFO, or other senior executive of a provider submitting cost and demand data to the TRS Fund administrator shall certify under penalty of perjury that such information is true and correct. The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer and Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*see* § 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*see* § 52.16 of this chapter), and the long-term local number portability cost recovery (*see* § 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate and intrastate common carriers and VoIP service providers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

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## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980,<sup>1</sup> as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Further Notice of Proposed Rulemaking.<sup>2</sup> The Commission sought written public comment on the proposals in the *2018 IP CTS Modernization FNPRM*, including comment on the IRFA.<sup>3</sup> No comments were received in response to the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>4</sup> A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>5</sup>

**A. Need For, and Objectives of, the Rules**

2. The Report and Order modifies the cost recovery rules for Internet Protocol Captioned Telephone Service (IP CTS) to provide a fair and reasonable allocation of the funding burden for telecommunications relay services (TRS). Specifically, providers of intrastate as well as interstate telecommunications and Voice over Internet Protocol (VoIP) services must contribute to the TRS Fund for the support of IP CTS, based on a percentage of their total annual end-user revenues from intrastate, interstate, and international services. The TRS Fund administrator will compute a separate TRS Fund contribution factor for IP CTS, by dividing the IP CTS revenue requirement by contributors' total intrastate and interstate end-user revenues. This contribution factor shall then be used to determine the portion of each contributor's total end-user revenue that must be paid into the TRS Fund to support IP CTS.<sup>6</sup> Requiring contributions to include intrastate revenue to support IP CTS removes contribution asymmetry and ensures intrastate revenue is available to support intrastate IP CTS. This action both reduces the inequitable burden on providers of interstate telecommunications and VoIP services and strengthens the funding base for this critical service.

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

3. No comments were filed in response to the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the

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

<sup>2</sup> *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 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5875, para. 183 (2018) (*2018 IP CTS Modernization FNPRM*).

<sup>3</sup> *Id.* at 5875, 5890-94, para. 183, Appx. E.

<sup>4</sup> See 5 U.S.C. § 604.

<sup>5</sup> See *id.* § 604(b).

<sup>6</sup> For example, the IP CTS revenue requirement was approximately \$913 million for Fund Year 2019-20 and for calendar year 2017 (the most recent year for which public data are available) the total end-user telecommunications revenues of TRS Fund contributors were approximately \$135 billion. Under the expanded contribution base, the TRS Fund contribution rate for IP CTS would be approximately 0.7% (\$913 million / \$135 billion) of the total 2017 interstate and intrastate end-user revenues.

proposed rules as a result of those comments.<sup>7</sup> The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to which the Rules will Apply**

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rule changes.<sup>8</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>9</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>10</sup> A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>11</sup>

6. The rules adopted in this Report and Order will affect the obligations of intrastate and interstate telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service.

7. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>12</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>13</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>14</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

8. *Telecommunications Resellers.* The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except

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<sup>7</sup> 5 U.S.C. § 604(a)(3).

<sup>8</sup> *Id.* § 603(b)(3).

<sup>9</sup> *Id.* § 601(6).

<sup>10</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). The statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” *Id.*

<sup>11</sup> 15 U.S.C. § 632.

<sup>12</sup> U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017).

<sup>13</sup> 13 CFR § 121.201 (NAICS Code 517110).

<sup>14</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>15</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>16</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>17</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>18</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>19</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>20</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

9. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>21</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>22</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>23</sup> Of this total, 955 firms had employment of 999 or fewer employees.<sup>24</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

10. *All Other Telecommunications*. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.

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<sup>15</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017) (NAICS 517911 Telecommunications Resellers).

<sup>16</sup> 13 CFR § 121.201 (NAICS code 517911).

<sup>17</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>18</sup> *Id.*

<sup>19</sup> Fed. Comm’n’s Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>20</sup> *Id.*

<sup>21</sup> See U.S. Census Bureau, *American Fact Finder—About the Data*, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210> (NAICS Code 517210).

<sup>22</sup> 13 CFR § 121.201 (NAICS code 517210).

<sup>23</sup> U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table) (NAICS 51720, “Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012”).

<sup>24</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry.<sup>25</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>26</sup> For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>27</sup> Thus, a majority of “All Other Telecommunications” firms potentially affected by the rules adopted can be considered small.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

11. Expanding the TRS Fund contribution base to include intrastate revenue for IP CTS will require providers of intrastate telecommunications and VoIP services that are not currently registered with the TRS Fund administrator to register with the administrator and submit contribution payments to the TRS Fund. Contributors to the TRS Fund will see two contribution rates, one for IP CTS and another for all other forms of TRS, but there will not be a change to how entities report their revenues on the FCC Form 499-A for purposes of contributing to the TRS Fund.

**F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>28</sup>

13. Expanding the TRS Fund contribution base to include intrastate revenue for IP CTS requires small entities that provide only intrastate telecommunications and VoIP services to register with and submit payment to the TRS Fund administrator. However, such burdens would be offset by the public benefits of appropriately funding the provision of IP CTS from a broader contribution base. Expanding the contribution base to include intrastate revenue will also reduce the contribution burden of providers of interstate telecommunications and VoIP service by increasing the number of overall contributors to include providers of intrastate-only telecommunications and VoIP services, and by expanding the total revenue from which providers make contributions, thereby decreasing each individual provider’s total annual contribution from interstate end-user revenues. In addition, expanding the contribution base ensures a more equitable distribution of costs that better aligns with use of interstate and intrastate IP CTS. Specifically, the adopted contribution approach ensures that each contributor pays the same percentage of its total interstate and intrastate end-user revenues for support of IP CTS. The prior approach, by contrast required that 100% of the contributions be based on interstate revenues, even though it is likely that less than half of IP CTS minutes are interstate.

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<sup>25</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>26</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>27</sup>

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodT ype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodT ype=table).

<sup>28</sup> 5 U.S.C. § 603(b).



**G. Report to Congress**

14. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>29</sup> In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**H. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals**

15. None.

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<sup>29</sup> *See id.* § 801(a)(1)(A).