

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

In the Matter of
Telecommunication Relay Services and
Speech-to-Speech Services for
Individuals with Hearing and Speech
Disabilities
Americans With Disabilities Act of 1990
CC Docket No. 98-67
CG Docket No. 03-123

SECOND REPORT AND ORDER, ORDER ON RECONSIDERATION,
AND NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Powell and Commissioner Adelstein issuing separate statements;
Commissioner Copps approving in part, concurring in part and issuing a statement.

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I. INTRODUCTION

1. In this *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking (Order)*¹ the Commission promulgates new rules and amends existing rules² (set forth in Appendix D) further implementing Title IV (Title IV) of the Americans with Disabilities Act of 1990 (ADA),³ relating to telecommunications relay services (TRS).⁴ In this

¹ Proceedings that involve notices of proposed rulemakings, requests for comment, and petitions for reconsideration to which this action responds are: (1) *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 (2000) (*Improved TRS Order & FNPRM*); (2) *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 02-121, 17 FCC Rcd 7779 (2002) (*IP Relay Declaratory Ruling & FNPRM*); and (3) *Pleading Cycle Established for Comment on Clarification of Procedures for Emergency Calls at Telecommunications Relay Services (TRS) Centers*, Public Notice, CC Docket No. 98-67, DA 02-1826, 17 FCC Rcd 14,539 (*rel’d July 29, 2002*)(*PSAP Public Notice*).

² 47 C.F.R. § 64.601 *et seq.*

³ Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Act), as amended, 47 U.S.C. § 225; implementing regulations at 47 C.F.R. § 64.601 *et seq.* In Title IV, Congress announced that “[i]n order to carry out the purposes established under section 1 [of the Communications Act of 1934], to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are

(continued...)

Order, we conclude that it is in the interest of administrative efficiency to consolidate various pending rulemaking proceedings.⁵ This *Order* contains a *Report and Order* addressing issues arising from the *Improved TRS Order & FNPRM*, and comments received in response thereto.⁶ This *Order* also includes an *Order on Reconsideration*, addressing several petitions for reconsideration and/or clarification (*Petitions*)⁷ of the *Improved TRS Order*. Further, this *Order* contains a *Notice of Proposed Rulemaking (NPRM)* seeking comment on various matters,

(...continued from previous page)

available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” 47 U.S.C. § 225(b)(1). As the legislative history makes clear, the enactment of Title IV was intended to further the universal service mandate of Section 1 of the Communications Act. For example, the House Report accompanying passage of the ADA noted that “[t]he inability of over 26 million [hearing-impaired and speech-impaired] Americans to access fully the Nation’s telephone system poses a serious threat to the full attainment of the goal of universal service.” H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 129 (1990) (House Report); *see also* S. Rep. No. 116, 101st Cong., 1st Sess. 77-78 (1969) (Senate Report).

⁴ The term *telecommunications relay service* means “telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio.” 47 U.S.C. § 225(a)(3). TRS “includes services that enable two-way communication between an individual who uses a [TTY] or other nonvoice terminal device, and an individual who does not use such a device,” *id.*, as well as speech-to-speech services (STS), video relay services (VRS), and non-English relay services, *see* 47 C.F.R. § 64.601(11), (12), & (13), respectively. A TRS user may also connect to a TRS facility via a computer (or other similar device) through the Internet (known as IP Relay). *See IP Relay Declaratory Ruling*, 17 FCC Rcd 7779 (2002) at ¶¶ 15-35.

⁵ In deciding this matter, the comments and replies of all parties filed in the *Improved TRS Order & FNPRM*, *IP Relay Declaratory Ruling & FNPRM*, and the *PSAP Public Notice* proceedings, including petitions and comments in response to petitions for reconsideration and/or clarification, have been reviewed and considered. We have determined that these proceedings raise many of the same issues, cover the same statutory authority (47 U.S.C. § 225), and involve comments by or on behalf of the same industries, consumers, TRS programs, and TRS providers. Many of the same parties submitted filings in each proceeding. A list of the commenters to the various notices (*Improved TRS FNPRM*, *IP Relay Declaratory Ruling FNPRM*, *PSAP Public Notice*), as well as the abbreviations used in this *Order* to refer to such parties, are contained in Appendix A. Comments to which we cite in this *Order* refer to comments received in response to the *Improved TRS FNPRM*, unless otherwise indicated.

⁶ Generally, commenters represent the interests of one of the following groups: (1) consumers of TRS; (2) organizations representative of consumers of TRS; (3) state TRS programs and state TRS program administrators; (4) national and state emergency service providers’ associations; and (5) common carriers and TRS providers. Some of the common carriers that provided comments in this proceeding are also TRS providers. Over seventy TRS consumers provided comments in this proceeding. Many of the consumer commenters identified themselves as “STS Consumers,” and presented comment only on issues relating to the provision of and access to STS relay services. These STS Consumers all agreed on issues raised in their comments. For administrative efficiency, we will identify this group as STS Consumers when referencing comments from that collective group.

⁷ Petitions were filed by Florida Public Service Commission (Florida PSC); National Association of State Relay Administrators (NASRA); VISTA Information Technologies, Inc. (VISTA); Public Utility Commission of Texas (Texas PUC); SBC Communications Inc. (SBC); and WorldCom, Inc. (collectively, Petitioners).

including the applicability of certain technological advances to TRS, to further the goal of functional equivalency of TRS for persons with hearing and speech disabilities.⁸

2. The purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,⁹ and to ensure that federal entities such as the Commission play a central role in enforcing the requirements of the ADA to this end. In adopting Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.¹⁰ As a result, Title IV mandates that the Commission ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to individuals in the United States with hearing and speech disabilities. The intent of Title IV is to further the Communications Act's goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are functionally equivalent to those available to individuals without such disabilities.¹¹

3. Over the past decade, the Commission has undertaken a number of initiatives to enable persons with disabilities to better access the broad range of telecommunications and information services available today.¹² For persons with hearing and speech disabilities, these initiatives mean being able to “get connected,” so that they may participate fully in the economic and social fabric of American life, now shaped by the telecommunications revolution and information age.

4. Central to these efforts has been the adoption of TRS, designed to give persons with hearing or speech disabilities “functionally equivalent” access to our nation’s telecommunications network. In this *Order*, we take another significant step toward fulfilling the goals of Title IV of the ADA by requiring additional TRS features and services to facilitate and expand the use of TRS by persons with hearing and speech disabilities.¹³ With increased competition in the local exchange carrier marketplace, more people are accessing

⁸ The *NPRM* is being issued under a new docket number, different from CC Docket No. 98-67. CC Docket No. 98-67 will remain open for ongoing filings of recurring items, such as cost recovery proceedings and annual reports or complaint logs from TRS providers and certified state TRS programs. The new rulemaking docket is established to further administrative efficiency and reflect the new organizational structure of the Commission.

⁹ See Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), Americans With Disabilities Act of 1990 (ADA). The preamble to the ADA states that the Act is “[a]n Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability.” See Purpose and Summary, 1990 U.S.C.C.A.N. 512.

¹⁰ See, e.g., House Report at 129; see also Senate Report at 77-78.

¹¹ See, e.g., House Report at 129.

¹² See, e.g., *Improved TRS Order* at ¶ 88. The Commission determined that TRS is not limited to telecommunications services but also reaches “enhanced or information services.”

¹³ We note that the Commission has responsibility in other areas that affect access to telecommunications services by persons with disabilities, including implementation of Section 255 of the Act (which requires telecommunications services and equipment to be accessible and usable by persons with disabilities when readily achievable), hearing aid compatibility, and E911-TTY compatibility.

telecommunications services of every kind, including TRS. Also, TRS fosters greater access to and use of broadband. For example, many TRS users have upgraded their Internet access to a high-speed, broadband connection through a cable modem or DSL subscription in order to use video relay service (VRS)¹⁴ and IP Relay more efficiently and effectively.

II. BACKGROUND

5. Title IV of the ADA requires the Commission to ensure that TRS is available to the extent possible and in the most efficient manner to persons with hearing or speech disabilities in the United States.¹⁵ TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a hearing individual. This is accomplished through TRS facilities¹⁶ that are staffed by specially trained communications assistants (CAs)¹⁷ using special technology. The CA relays conversations between persons using various types of assistive communication devices¹⁸ and persons who do not require such assistive devices. When a person with a hearing or speech disability makes a traditional TRS call,¹⁹ the user dials a telephone number for a TRS facility using a text-telephone (TTY). In this context, the first step for the TRS user,²⁰ the completion of the outbound call to the TRS facility, is functionally equivalent to receiving a "dial tone."²¹ The caller then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party.²² The CA serves as the "link" in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user.

6. The Commission issued its first order pursuant to Title IV of the ADA

¹⁴ Video relay service (VRS) is a telecommunications relay service that allows individuals with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller. 47 C.F.R. § 64.601(12).

¹⁵ 47 U.S.C. § 225(b)(1). *See also* House Report at 129.

¹⁶ 47 C.F.R. § 64.604(b)(4) (setting forth requirements of TRS facilities). The term "TRS center" is sometimes used interchangeably with "TRS facility." In this action, we use the term "TRS facility." *See* 47 C.F.R. § 64.604(b)(4), as amended, set forth in Appendix D.

¹⁷ 47 C.F.R. § 64.601(6).

¹⁸ An assistive communication device is a type of assistive technology, such as a TTY, personal computer, amplifier, or video camera.

¹⁹ Traditional TRS is that accomplished via text-to-voice or voice-to-text, with the text provided via TTY. IP Relay functions similarly with the text provided to, and received from, the CA via the TRS consumer's computer or other web-enabled device.

²⁰ This step of the call to the TRS facility is also referred to as the first leg of a TRS call.

²¹ *See, e.g., Improved TRS Order* at ¶ 2.

²² This step, the CA making the outgoing call, is also referred to as the second leg of a TRS call.

implementing TRS on July 26, 1991.²³ TRS became available on a uniform, nationwide basis pursuant to Commission regulations in July 1993.²⁴ Since 1991, the Commission has revisited the regulations governing TRS on numerous occasions, in part, to make available to consumers new forms of TRS, and to amend the mandatory minimum standards²⁵ to improve the quality of TRS, consistent with the goal of functional equivalency set forth in section 225.²⁶ Through these actions the Commission has broadly defined TRS to include any service that enables persons with hearing or speech disabilities to use the telecommunications network to communicate by wire or radio, and not be limited to either telecommunications services²⁷ or services that require a TTY.²⁸

²³ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991) (*First TRS Report and Order*).

²⁴ 47 U.S.C. § 225(b)(1). Section 225 requires common carriers providing telephone voice transmission services to provide TRS throughout the areas they serve. The statute mandated an implementation date of no later than July 26, 1993. *See* 47 U.S.C. § 225(c). Prior to the enactment of Title IV, some states offered relay services, but the services offered differed from state to state, were subject to many limitations, and were generally limited to intrastate calls. *See* Strauss, Title IV – Telecommunications, Implementing The Americans With Disabilities Act at 156-158 (Gostin & Beyer ed. 1993).

²⁵ 47 C.F.R. § 64.604. The purpose of the mandatory minimum standards is to ensure that TRS is offered in an efficient and consistent manner throughout the United States. The Commission, as directed by Section 225, established mandatory minimum operational, technical, and functional standards. *See* 47 C.F.R. § 64.604(a)-(c); *see also First TRS Report and Order*, 6 FCC Rcd 4657 at ¶ 1.

²⁶ *See, e.g., Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, Notice of Proposed Rulemaking, CC Docket No. 90-571, FCC 90-376, 5 FCC Rcd 7187 (1990); Report and Order and Request for Comments, FCC 91-213, 6 FCC Rcd 4657 (1991) (*First TRS Report & Order*); Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 93-104, 8 FCC Rcd 1802 (1993); Third Report and Order, FCC 93-357, 8 FCC Rcd 5300 (1993); Memorandum Opinion and Order, DA 93-1001, 8 FCC Rcd 6160 (1993); Second Order on Reconsideration and Fourth Report and Order, FCC 93-463, 9 FCC Rcd 1637 (1993); Order, DA 93-1317, 8 FCC Rcd 8385 (1993); Notice of Inquiry, FCC 97-07, 12 FCC Rcd 1152 (1997); Notice of Proposed Rulemaking, FCC 98-90, 13 FCC Rcd 14,187 (1998) (*1998 TRS Notice of Proposed Rulemaking*); Waiver Order, DA 02-1166, 17 FCC Rcd 8840 (2002); Fifth Report and Order, FCC 02-269, 17 FCC Rcd 21,233 (2002) (*Fifth Coin Sent-Paid Report & Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 (2000) (*Improved TRS Order & FNPRM*), Order on Reconsideration, FCC 00-200, 16 FCC Rcd 4054 (2000) (*Improved TRS Order on Reconsideration*); Order, CC Docket No. 98-67, DA 01-492, 16 FCC Rcd 4662 (2001); Waiver Order, DA 01-492 (2001); Report and Order & FNPRM, FCC 01-371, 16 FCC Rcd 22,948 (2001) (*STS/VRS Order & FNPRM*); Order, DA 01-3029, 17 FCC Rcd 157 (2001); Waiver Order, DA 01-3029 17 FCC Rcd 157 (2001); Declaratory Ruling and Second Further Notice of Proposed Rule Making, FCC 02-121, 17 FCC Rcd 7779 (2002) (*IP Relay Declaratory Ruling & FNPRM*), Order on Reconsideration, FCC 03-46, (*rel'd* March 14, 2003), 68 FR 18825 (published April 16, 2003) (*IP Relay Order on Reconsideration*).

²⁷ *See Improved TRS Order* at ¶ 88 (“We find that section 225 does not limit relay services to telecommunications services, but...reaches enhanced or information services.”).

²⁸ *See, e.g., Improved TRS Order* at ¶ 13.

7. In March 2000, the Commission issued the *Improved TRS Order*, which changed many of the definitions and standards for traditional TRS.²⁹ The Commission also added speech-to-speech (STS)³⁰ and interstate Spanish relay services³¹ as required forms of TRS. The Commission further concluded that VRS was a form of TRS, but tentatively concluded that the provision of VRS should not be mandatory given its technological infancy. The Commission nevertheless encouraged the use and development of VRS,³² and to this end stated that, on an interim basis, all VRS calls would be eligible for cost recovery through the interstate TRS funding mechanism (Interstate TRS Fund).³³ Several petitions for reconsideration were subsequently filed, challenging several aspects of the *Improved TRS Order*.³⁴

8. In the *Improved TRS FNPRM*, we sought comment on whether the Commission should require that TRS provide a number of additional features that reflect advancements in technologies and telecommunication offerings currently available to nondisabled persons throughout the United States.³⁵ The Commission noted that section 225, consistent with section 7(a) of the Act,³⁶ requires us to ensure that the rules we prescribe to implement section 225 encourage “the use of existing technology and do not discourage or impair the development of improved technology.”³⁷ The Commission concluded that the functional equivalency standard requires that those technological services currently offered to nondisabled persons should also be

²⁹ *Improved TRS Order passim*.

³⁰ *Improved TRS Order* at ¶¶ 15-21; 47 C.F.R. § 64.601(11).

³¹ 47 C.F.R. § 64.601(13).

³² *Improved TRS Order* at ¶¶ 23-27.

³³ *Improved TRS Order* at ¶ 26. The Interstate TRS Fund is a fund into which common carriers “providing interstate telecommunications services . . . [based on those carriers’] interstate end-user telecommunications revenues” pay. The Interstate TRS Fund, in turn, compensates eligible TRS providers for their reasonable costs of providing TRS. 47 C.F.R. § 64.604(c)(5)(iii). 47 U.S.C. § 225(d)(3) requires that “costs from interstate telecommunications relay service shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay service shall be recovered from the intrastate jurisdiction.” The Interstate TRS Fund was established to administer the recovery of costs for interstate TRS. See *Telecommunications Relay Service, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5300 n.34 (1993). In 2001, the Commission addressed cost recovery methods for traditional TRS, Speech-to-Speech relay (STS), and Video Relay Service (VRS), and sought additional comments on the appropriate cost recovery mechanisms for VRS. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities – Recommended TRS Cost Recovery Guidelines/Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22948, (2001)(*STS/VRS Order*).

³⁴ We address these *Petitions* below in the *Order on Reconsideration*.

³⁵ *Improved TRS FNPRM* at ¶¶ 137-146.

³⁶ 47 U.S.C. § 7(a), providing, in part, that “it shall be the policy of the United States to encourage the provision of new technologies and services to the public.”

³⁷ *Improved TRS FNPRM* at ¶ 137; see also 47 U.S.C. § 225(d)(2).

available to persons with disabilities, if it is technologically³⁸ feasible to do so.³⁹

9. On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & FNPRM*, which further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS. Although the Commission did not require that TRS providers offer IP Relay, the Commission authorized, on an interim basis, recovery of the costs of providing both intrastate and interstate IP Relay from the Interstate TRS Fund.⁴⁰ That declaratory ruling also temporarily or permanently waived the applicability of certain mandatory minimum standards because they either do not apply to IP Relay or IP Relay's technology required further development to meet the standards.⁴¹ Several parties subsequently filed Petitions for Reconsideration and/or Clarification,⁴² urging us to extend certain one-year waivers granted in that order and to grant additional waivers of the requirements to provide hearing carry over (HCO)⁴³ and 900-number services⁴⁴ over IP Relay. On March 14, 2003, the Commission extended or granted waivers of mandatory minimum standards requiring the provision of voice carry over (VCO),⁴⁵ HCO, emergency call handling, and 900-number services over IP Relay until January 01, 2008.⁴⁶

³⁸ Although in the past we have generally used the phrase "technically feasible" to describe the level of feasibility that triggers the obligation to provide a certain TRS service or feature, we find that the phrase "technologically feasible" is more accurate in this context. We note that we have used the phrase "technologically feasible" in related contexts. See, e.g., *Section 68.4(a) of the Commission's Rules Governing Hearing Aid- Compatible Telephones, Notice of Proposed Rulemaking*, WT Docket No. 01-309, 16 FCC Rcd 20,558 (2001); *Implementation of 911 Act, Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Fifth Report and Order, CC Docket No. 92-105, First Report and Order, WT Docket No. 00-110 (2001).

³⁹ *Improved TRS FNPRM* at ¶¶ 137-138.

⁴⁰ See generally *IP Relay Declaratory Ruling* at ¶¶ 15-26.

⁴¹ *IP Relay Declaratory Ruling* at ¶¶ 33-35.

⁴² See, e.g., *Petition for Reconsideration WorldCom, Inc., Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, filed by WorldCom Inc., on May 22, 2002 (*WorldCom IP Relay Recon Petition*); *Petition for Limited Reconsideration, Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, filed by Sprint Corporation July 11, 2002 (*Sprint IP Relay Recon Petition*).

⁴³ Hearing Carry Over (HCO) service is a form of TRS used by persons with speech disabilities who are able to listen to the other end user. The communications assistant speaks the text as typed by the person with the speech disability, but does not type any conversation. See 47 C.F.R. § 64.601(7).

⁴⁴ 900-number service is a type of pay-per-call service. See 47 C.F.R. § 64.1501.

⁴⁵ Voice Carry Over (VCO) service is a form of TRS used by persons with hearing disabilities who are able to speak directly to the other end user. The communications assistant types the response back to the person with the hearing disability, but does not voice the conversation. See 47 C.F.R. § 64.601(10).

⁴⁶ See *IP Relay Order on Reconsideration*, CC Docket No. 98-67, FCC 03-46, 68 FR 18828 (published April 16, 2003). Should technology advance in the interim to make the provision of these services technologically or practically feasible over IP Relay, we will revisit these waivers at that time.

III. EXECUTIVE SUMMARY

10. In this *Report and Order*, the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225. First, we require that TRS providers offer certain LEC-based improved services and features where technologically feasible,⁴⁷ several additional types of TRS calls,⁴⁸ and other services and features⁴⁹ through which consumers with varying needs, abilities, and preferences may access and use TRS. In addition, we require that all TRS providers successfully implement 711 dialing access for STS users. This *Report and Order* also revises the requirements for handling emergency calls. Finally, we provide guidance for public access to TRS-related information to improve the usability of TRS for all Americans. These amended and new rules will improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.

11. In the *Order on Reconsideration*, we address petitions filed in response to the *Improved TRS Order* by the Florida Public Service Commission (Florida PSC), the National Association of State Relay Administrators (NASRA), VISTA Technologies (VISTA), the Public Utility Commission of Texas (Texas PUC), and WorldCom, Inc. (WorldCom) (collectively, Petitioners).⁵⁰ Petitioners seek reconsideration of certain aspects of the *Improved TRS Order*. We address the issues raised, and grant in part and deny in part these Petitions for Reconsideration.

12. The Commission is also issuing a *Notice of Proposed Rulemaking (NPRM)* seeking public comment on additional TRS issues, including the applicability of certain technological advances to TRS. In doing so, the Commission seeks to further explore ways to improve the quality of TRS and broaden the potential universe of TRS users consistent with the Congressional mandate that our regulations encourage the use of existing technology and not discourage or impair the development of new technology.⁵¹ The *NPRM* proposes to require new mandatory minimum standards specific to the operational, technical, and functional mandatory minimum standards currently set forth in 47 C.F.R. § 64.604. The *NPRM* also seeks comment

⁴⁷ For example, new features that may be LEC-based include Caller ID and three-way calling.

⁴⁸ New mandatory types of TRS calls are: (1) two-line VCO; (2) two-line HCO; (3) VCO-to-TTY; (4) VCO-to-VCO; (5) HCO-to-TTY; and (6) HCO-to-HCO.

⁴⁹ Other such services and features that may involve new technologies or require new tasks to be preformed by a CA include: (1) answering machine retrieval; (2) call release; and (3) three-way or conference calling.

⁵⁰ See Florida PSC *Petition for Reconsideration and Clarification of Improved TRS Order*, filed April 12, 2000 and Request for Waiver for Extension of Time to Implement Improved TRS Order filed Oct. 24, 2000 (*Florida PSC Petition*); NASRA *ex parte* Comments and Request for Reconsideration of Effective Date of Amended Rules filed May 5, 2000 (*NASRA Petition*); SBC *Petition for Reconsideration or Clarification* filed July 21, 2000, *withdrawn* August 10, 2001 (*SBC Petition*); Texas PUC *Petition for Reconsideration* filed March 24, 2000 (*Texas PUC Petition*); Vista *Petition for Reconsideration* filed June 13, 2000 (*Vista Petition*); WorldCom *Petition for Reconsideration* filed July 21, 2000, one issue withdrawn per *ex parte* meeting and letter dated June 6, 2001 (*WorldCom Petition*).

⁵¹ See 47 U.S.C. § 225(d)(2).

on whether TRS and TRS facilities should be included among those services and facilities eligible for priority restoration in the event of a disaster or breakdown of the infrastructure supporting a TRS facility's telecommunications.⁵² We also seek comment on the obligations of TRS providers to engage in outreach activities.

IV. REPORT AND ORDER IN CC DOCKET NO. 98-67

13. In the *Improved TRS FNPRM*, the Commission tentatively concluded that all telecommunications services and features provided to the general public should be available to TRS users.⁵³ The Commission therefore proposed requiring TRS to provide a number of features that the Commission categorized as: (1) TRS features already provided by some states; (2) features available to users of voice telecommunication services; or (3) new types of technologies.⁵⁴ The Commission also sought comment on whether various technologies and TTY protocol standards can and should be integrated within, or available to, the TRS infrastructure.⁵⁵ The Commission addresses these and related matters below, as they apply to the operational, technical, and functional standards set forth in section 64.604 of our TRS rules.⁵⁶

A. Availability of SS7 Technology to TRS Facilities

14. Background. In the *Improved TRS FNPRM*, the Commission sought comment on whether 47 C.F.R. § 64.1600 should be amended to include TRS providers as lawful recipients and users of signaling system 7 (SS7) data. Although in the *Improved TRS FNPRM* the Commission tentatively concluded that SS7 technology could improve TRS, the Commission also tentatively concluded that "our rules do not allow entities other than common carriers to purchase SS7 service" because the Commission has adopted a definition of SS7 as a "carrier to carrier out-of-band network that is used for call routing, billing and management."⁵⁷ The Commission therefore sought comment on whether our regulations should be amended to permit TRS providers to have access to SS7 technology as a tool by which TRS providers could improve TRS and further the goal of functional equivalency.⁵⁸ The Commission further sought comment whether, even if our tentative conclusion was correct, the Commission has jurisdiction

⁵² See, e.g., *Federal Communications Commission Strategic Plan FY 2003-2008* at 18-20, <http://www.fcc.gov/omd/strategicplan/>.

⁵³ *Improved TRS FNPRM* at ¶ 138.

⁵⁴ *Improved TRS FNPRM* at ¶¶ 137-38. The Commission also requested comment on the use of the World Wide Web for voice communications, internet telephony, and whether other technologies might improve TRS or should be available via TRS. The Commission will address these issues in a subsequent proceeding.

⁵⁵ *Improved TRS FNPRM* at ¶¶ 138-146. TTY protocol standards include V.18, Baudot, and ASCII. See generally 47 C.F.R. § 64.601.

⁵⁶ 47 C.F.R. § 64.604.

⁵⁷ See *Improved TRS FNPRM* at ¶ 127, referencing 47 C.F.R. § 64.1600(f). The Commission suggested that this definition did not allow entities other than common carriers to have access to SS7 technology. See also *See generally Rules and Policies Regarding Calling Number Identification Service—Caller ID*, CC Docket No. 91-281, Report and Order and FNPRM, 9 FCC Rcd 1764 (1994) (*1994 Caller ID Order*).

⁵⁸ *Improved TRS FNPRM* at ¶¶ 127-133.

to allow TRS facilities access to SS7 technology.⁵⁹

15. The Commission concluded, first, that SS7 and similar technologies allow for the transmission of certain call-related information necessary for Caller ID, such as a caller's originating number, from one carrier to another carrier.⁶⁰ These technologies also permit the Caller ID blocking and unblocking feature required by the Commission's rules where Caller ID information is passed through the network.⁶¹ Without SS7 or a similar technology, TRS facilities cannot receive or transmit Caller ID information and associated blocking or unblocking requests.⁶² Second, the Commission concluded that access to SS7 and similar technologies could enable TRS facilities to improve caller access to 911 services.⁶³ Third, the Commission noted that transferring an emergency call automatically to a PSAP could eliminate the need for TRS providers to manually collect some of the information that is compiled in caller profiles that normally resides in the public switched telephone network.⁶⁴

16. Discussion. We conclude that no amendment to our rules is necessary to permit TRS facilities to use SS7 and similar technologies. The relevant issue, then, is whether TRS providers should have access to SS7 or similar technologies and, in turn, whether they can use such technology in compliance with our rules. We find nothing in the record that precludes us from concluding that if TRS facilities have access to SS7 technology, they will be able to fully utilize the potential for both passing on the CPN information and honoring a consumer's Caller ID blocking request. We therefore conclude that TRS providers should have access to SS7 or similar technology to make Caller ID and other benefits available to their customers and otherwise facilitate their provision of TRS.

⁵⁹ *Improved TRS FNPRM* at ¶ 127.

⁶⁰ *Improved TRS FNPRM* at ¶¶ 127-129; *see also* TDI Comments at 7-11.

⁶¹ *See generally* 1994 Caller ID Order.

⁶² *See, e.g.*, TDI Comments at 8. TDI states that use of SS7 data would alleviate frustrating difficulties faced by a TTY user in receiving and sending Caller ID data. TDI explains, for example, that where a called party "blocks" calls that are not identifiable, that called party's telephone refuses a TRS call where the TRS facility is unable to send Caller ID data. Such a call results in a "Not Available" message, and the called party's blocking set-up "blocks" the unidentified incoming TRS call. This may occur when an outgoing leg of a TRS call does not send signaling information through the TRS facility's LEC network. *See also* NAD/TAN/CAN Comments at 15-16; Maryland Dept. of Budget and Mgt. Comments at 1-2; SHHH Comments at 5-6.

⁶³ *Improved TRS FNPRM* at ¶ 132.

⁶⁴ A caller, or consumer, profile is a collection of information provided by the TRS consumer to the TRS provider. The information collected typically includes, but is not limited to: the consumer's name, address, CA gender preference, carrier of choice, frequently dialed numbers for speed dialing, language preference, preferred CA typing speed, and communication preferences. Maintaining this database of information allows the TRS provider to offer more efficient and streamlined services. TRS providers call their consumer profile a variety of names. For example, AT&T calls theirs "Relay Choice Profile," Sprint refers to theirs as "Customer Database," Hamilton Relay uses "Customer Profile," and WorldCom uses the term "Caller Profile." *See, e.g.*, California PUC Comments at 4; Maryland Dept. of Budget and Mgt. Comments at 1-2; NAD/TAN/CAN Comments at 15; Sprint Comments at 5; TDI Comments at 8-9; *see also* *Improved TRS FNPRM* at ¶ 128.

1. TRS Providers' Access to SS7 Technology

17. Cellular Telecommunications Industry Association (CTIA) contends that TRS providers may not have access to SS7 technology. CTIA asserts that Congress distinguished the terms “common carrier” and “telecommunications relay services,” and that these categories are mutually exclusive. CTIA asserts that if SS7 technology is available only to common carriers, it is not available to TRS providers and TRS facilities.⁶⁵ It appears that CTIA made this argument, in part, in reliance on statements made in the *Improved TRS FNPRM*, which we now recognize were a misstatement of our rules. Our statement that SS7 technology is restricted for common carriers’ use only⁶⁶ is not correct and misinterprets the definition of SS7 technology in our rules. The phrase “carrier to carrier” merely explains the functional aspect of SS7 technology relative to that section of our rules;⁶⁷ it does not define this technology as a service that is totally owned and/or controlled only by common carriers.⁶⁸ Therefore, we find that our definition of SS7 technology does not support the conclusion that use of SS7 technology is restricted to common carriers. In fact, a number of non-common carriers, including Illuminet and Telecommunication Services, Inc. (ITS), use and provide SS7 technology to common carriers and others.⁶⁹

18. CTIA also asserts that allowing non-network providers (such as TRS facilities) access to information transmitted via SS7 could create risks to network integrity and the security of the SS7 data, particularly data associated with fraud detection technologies.⁷⁰ We do not find these objections persuasive. We recognize the sensitive nature of handling confidential CPN data. Our Caller ID rules set forth the confidentiality requirements required of common carriers handling CPN information.⁷¹ Also, as TDI notes, TRS CAs are required to keep all caller information confidential.⁷² TRS providers have a long history of observing confidentiality of information that passes through their systems. In any event, in order to adequately address concerns about confidentiality, we will require TRS providers, whether they are common carriers or not, that use SS7 technology to abide by our Caller ID/blocking rules.⁷³ We find that our

⁶⁵ CTIA Comments at 3-4.

⁶⁶ *Improved TRS FNPRM* at ¶ 127.

⁶⁷ See 47 C.F.R. § 64.1600.

⁶⁸ In any event, see 47 U.S.C. § 225, requiring common carriers to provide TRS. Indeed, the whole purpose of section 225 is to require common carriers offering telephone voice transmission services to provide TRS. See also U.S.C. § 225(d)(1)(E) (prohibiting TRS providers from “failing to fulfill the obligations of common carriers by refusing calls”).

⁶⁹ See, e.g., <http://kansascity.bizjournals.com/kansascity/stories/2001/08/27/story2.html>; http://www.tsiconnections.com/print_email/print/display.cfm?ID=71&MarketID=2.

⁷⁰ CTIA Comments at 6.

⁷¹ 47 C.F.R. § 64.1600 *et seq.*

⁷² See TDI Comments at 8 (noting that CAs are bound to high standards of code of ethics and confidentiality as delineated in our previous TRS rulemaking proceedings). See 47 C.F.R. § 64.604(a)(2) (*Confidentiality and Conversation Content (i)*).

⁷³ 47 C.F.R. § 64.1600 *et seq.* A majority of states have enacted state-specific legislation concerning the Caller ID privacy issues as well.

Caller ID rules as well as the TRS confidentiality rules⁷⁴ adequately address CTIA's concerns.

19. Finally, CTIA asserts that nothing in the legislative history of Title IV of ADA indicates that Congress intended to define TRS as a common carrier service or impose common carrier obligations on TRS facilities.⁷⁵ Sprint similarly contends that there is no statutory provision that allows non-common carriers access to SS7 technology.⁷⁶ WorldCom counters, however, that there is nothing in the statute that precludes the Commission from granting TRS providers access to SS7 technology.⁷⁷ Because we have concluded that the Commission misinterpreted our rule in stating, in the *Improved TRS FNPRM*, that only common carriers can have access to SS7 technology, and that that misinterpretation created this issue, we need not address these arguments.

20. *Benefits of SS7 Technology.* As we have noted, SS7 or similar technology facilitates the provision of Caller ID and call blocking, facilitates the transfer of caller information to a PSAP in the event of an emergency, and reduces the need to manually collect certain caller data and information used for caller profiles.⁷⁸ For these reasons, we conclude that TRS providers should have access to SS7 or similar technologies.

21. First, the Commission has found that the availability of Caller ID information promotes technological innovation.⁷⁹ For this reason, it is an important service that should be available to all. At the same time, we have recognized that the calling public has an interest in exercising a measure of control over the dissemination of their telephone numbers, and that this privacy interest must be reflected in our policies governing provision of Caller ID service.⁸⁰ Accordingly, the Commission's Caller ID rules require that "[c]arriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party."⁸¹ Since SS7 or similar technology allow for the transmission of the information necessary for Caller ID, and also for call blocking, we conclude that TRS providers should have access to this technology. In addition, it is important that caller information can be seamlessly transferred to a PSAP in the

⁷⁴ 47 C.F.R. § 64.604(a)(2)(i), providing, in part, that "[e]xcept as authorized by Section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law." An exception to this prohibition is at 47 C.F.R. § 64.604(a)(2), requiring that "[a] CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services."

⁷⁵ CTIA Comments at 4.

⁷⁶ Sprint Comments at 3.

⁷⁷ WorldCom Comments at 2-3.

⁷⁸ *Improved TRS FNPRM* at ¶¶ 127-128.

⁷⁹ *1994 Caller ID Order* at ¶ 8.

⁸⁰ *1994 Caller ID Order* at ¶ 34.

⁸¹ 47 C.F.R. § 64.1601(b).

event of an emergency during a TRS call,⁸² and SS7 or similar technology will facilitate this transfer. In this regard, we also note that section 225 encourages TRS providers and the Commission to be innovative in improving TRS consistently with the functional equivalency mandate.⁸³ Finally, some commenters⁸⁴ agree with the Commission's tentative conclusion in the *Improved TRS FNPRM*⁸⁵ that allowing TRS providers access to SS7 (and other technologies) may obviate or reduce the TRS providers' need to manually collect some of the CPN information⁸⁶ that is necessary information to meet certain of the TRS mandatory minimum standards.⁸⁷

22. *TRS Providers and Facilities May Use Best Technologies and Processes.* The California PUC asserts that TRS providers should have their choice of technology, including SS7 technology, and should not be required to utilize any one technology (including SS7) to comply with the mandatory minimum standards.⁸⁸ Other commenters similarly assert that it is not necessary to specify a particular technology that TRS providers must use to offer the improved services and features we require. For example, Bell Atlantic and Sprint suggest that Feature Group D⁸⁹ trunking and integrated service digital network (ISDN)⁹⁰ together provide an alternative to SS7 technology that obviates the need for TRS access to SS7 technology.⁹¹ Sprint also explains that their TRS facilities use the Feature Group D trunks and ISDN to provide Caller ID functionality in several states.⁹² It is not the Commission's practice to require specific technologies, but instead to require that TRS facilities and carriers provide certain services⁹³ and meet the mandatory minimum standards.⁹⁴ TRS providers therefore have the discretion to use any preferred technology that allows them to provide TRS and the services and features required

⁸² See, e.g., AT&T Comments at 9; California PUC Comments at 4; NAD/TAN/CAN Comments at 14-17; SHHH Comments at 5-6; TDI Comments at 7.

⁸³ 47 U.S.C. § 225(a)(3).

⁸⁴ See, e.g., California PUC Comments at 4; TDI Comments at 8-9.

⁸⁵ *Improved TRS FNPRM* at ¶ 128.

⁸⁶ See, e.g., TDI Comments at 8-9 (automatically transferring information would be much faster than manually typing the same information into a database).

⁸⁷ See n.64, *supra*.

⁸⁸ See, e.g., California PUC Comments at 4.

⁸⁹ Feature Group D is a switching arrangement available from a local exchange carrier (LEC) end central office to interexchange (IXC or long distance) carriers. See Newton, Newton's Telecom Dictionary 292 (14th ed., Flatiron Publishing) (1998) (*Newton's Telecom Dictionary*).

⁹⁰ Integrated Services Digital Network (ISDN) is a unified end-to-end digital network, in which data originating from all types of communication (e.g., voice, text, data, still and moving pictures) are transmitted from one port (terminal) in the exchange (switch) over one access line to and from the subscriber. 15 C.F.R. Pt. 774, Supp. 1.

⁹¹ See, e.g., Bell Atlantic Comments at 2; Sprint Comments at 5.

⁹² See, e.g., Sprint Caller ID *ex parte* (August 2001); Technologies/Features *ex parte* meetings with Sprint, AT&T, WorldCom and Gallaudet's TAN (Sept & Oct 2001).

⁹³ See, e.g., *Federal State Joint Board on Universal Service*, 12 FCC Rcd 8776 (1997) at ¶ 49.

⁹⁴ See 47 C.F.R. § 64.604(a)-(c).

by the mandatory minimum standards.⁹⁵ Because of our actions taken in this *Report and Order*, however, TRS providers are required to observe the Commission's rules pertaining to Caller ID and call blocking services.⁹⁶

2. Transmittal of Calling Party Information

23. In the *Improved TRS FNPRM*, the Commission tentatively concluded that access to SS7 would resolve problems identified between TRS and Caller ID service.⁹⁷ Such problems include that for TRS calls, when the called party is a Caller ID subscriber, the displayed caller identification information is sometimes the number of the TRS facility or the number of the calling party, but more often is blocked or unavailable.⁹⁸ TRS consumers report that when the called party does not recognize the incoming telephone number, or no number is displayed, the called party often declines to answer the call.⁹⁹ The Commission reasoned that if the called party knew the identity of the calling party, or knew that the call was from a TRS facility, he or she may be more likely to answer the call.¹⁰⁰ The Commission asked whether a signal could be devised that would indicate that an incoming call is either from a TRS user or from the TRS facility, and the Commission tentatively concluded that delivery of either the TRS facility's number or a standard TRS number, such as 711, for Caller ID on incoming TRS calls is technologically feasible.¹⁰¹

24. Based on the record in this proceeding,¹⁰² we find that it is technologically possible for the TRS facility to transmit at least one of the following alternate identifying

⁹⁵ See, e.g., Sprint Comments at 6 (other technologies are being developed that permit Caller ID services through the relay center without the need for relay providers to spend millions of dollars to modify the system to use SS7).

⁹⁶ See 47 C.F.R. § 64.1600 *et seq.*

⁹⁷ *Improved TRS FNPRM* at ¶ 129, referencing NAD Comments to *1998 TRS Notice of Proposed Rulemaking* at 26-27; TDI Comments to *1998 TRS Notice of Proposed Rulemaking* at 21-22.

⁹⁸ See *Improved TRS FNPRM* at ¶ 129; see also, e.g., AT&T Comments at 10- 11; NAD/TAN/CAN Comments at 20; TDI Comments at 9.

⁹⁹ See, e.g., NAD Comments to *1998 TRS Notice of Proposed Rulemaking* at 26-27; TDI Comments to *1998 TRS Notice of Proposed Rulemaking* at 21-22; see also NAD/TAN/CAN Comments at 20.

¹⁰⁰ *Improved TRS FNPRM* at ¶ 129.

¹⁰¹ *Improved TRS FNPRM* at ¶ 130. See also, TDI Comments at 9 (concur with the Commission's tentative conclusion that the Caller ID device of a customer who receives a TRS call should display either the TRS facility's telephone number or a standard TRS number, such as 711).

¹⁰² See, e.g., AT&T Comments at 5-6 (a 10-digit TRS facility number, but it does not fully replicate the Caller ID functions available); GTE Comments at 7 (TRS's 10-digit number); WorldCom Comments at 3-4 (it is technologically feasible and may resolve the Caller ID problems with not answering the call because of misreading the Caller ID information as a telemarketing call); SBC Comments at 5 (TRS facility's 10-digit number and recommends sending a text message on the Caller ID screen that reads, *i.e.*, "KANSAS RELAY CENTER") TDI Comments at 9 (supports tentative conclusion. . . . that the Caller ID [device] of a customer who receives a TRS call should display either the TRS facility's telephone number or a standard TRS number, such as 711).

telephone numbers:¹⁰³ 711; the TRS facility's telephone number; or the 10-digit telephone number of the originating caller. There has been some discussion of the benefits of a Caller ID subscriber being able to identify both that a call is from a certain party and that the call is coming via TRS. The record reflects that currently neither SS7 technology, nor other technology such as the Feature Group D trunking system, is capable of providing information other than one number as Caller ID, be it 711 or the standard 10-digit telephone number.¹⁰⁴ We note that currently some TRS facilities do provide the calling party's telephone number, and some states require Caller ID functionality in their contracts with TRS providers.¹⁰⁵ AT&T reports that AT&T TRS facilities pass a surrogate number (800-555-0000) to TRS customers to identify AT&T Relay on Caller ID devices.¹⁰⁶ WorldCom, however, suggests that the use of a surrogate number is not a desired alternative to providing the identity of the calling party and should be rejected.¹⁰⁷ NAD/CAN/TAN concurs with our tentative conclusion that delivery of either the TRS facility's telephone number or a standard TRS number, such as 711, for Caller ID on incoming calls is technologically feasible, should be required of all TRS providers, and that some solution is necessary to prevent TRS calls from being rejected when a calling or called party utilizes reveal and anonymous call rejection.¹⁰⁸

25. Based on the record in this proceeding, we adopt our tentative conclusion that delivery of either the TRS facility's number or a standard TRS access number, such as 711, for Caller ID on incoming TRS calls is technologically feasible. We therefore conclude that when a TRS facility is able to transmit any identifying information, the TRS facility must pass through, to the called party, the number of the TRS facility, 711, or, if possible, the 10-digit number of the calling party.¹⁰⁹ The record also demonstrates a recognized benefit to TRS users when the calling party's number is made available to Caller ID subscribers.¹¹⁰ We will allow the TRS provider to determine what identifying information is passed through the TRS facility so that a called party subscribing to Caller ID will, at a minimum, be able to identify the incoming call as being from a TRS facility or the calling party.

¹⁰³ *Id.* Currently, some TRS providers pass through the Caller ID information, *see, e.g.*, AT&T Comments at 5-6; WorldCom *ex parte* meeting October 1, 2001; Sprint *ex parte* meeting October 5, 2001.

¹⁰⁴ It is not technologically feasible, however, to pass on *both* the originating caller's number and an indicator that the call is through a TRS facility. WorldCom *ex parte* meeting on October 1, 2001; Sprint *ex parte* meeting on October 5, 2001.

¹⁰⁵ Maryland Relay now requires the Caller ID functionality. *See* www.mdrelay.org. Caller ID is now available through Hamilton Relay. *See* www.hamilton.net/relay/callerid.html.

¹⁰⁶ AT&T Comments at 5-6.

¹⁰⁷ WorldCom Comments at 3-4. WorldCom asserts that just knowing that a call was placed from a TRS facility does nothing to help the called party distinguish calls from a TRS facility that they desire to receive from those that they do not, explaining that this would not be a solution to provide functional equivalency.

¹⁰⁸ NAD/TAN/CAN Comments at 20-22.

¹⁰⁹ We note that our Caller ID rules will be applicable to TRS providers only to the extent that the TRS facilities operated by that TRS provider utilizes SS7 technology. *See* 47 C.F.R. § 64.1600 *et seq.*

¹¹⁰ *See, e.g.*, AT&T Comments at 5-6; WorldCom Comments at 3-4; NAD/TAN/CAN Comments at 20-22.

B. Operational Standards

1. Types of Calls

26. Consistent with the mandatory minimum standard obligations of common carriers,¹¹¹ TRS facilities must be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. TRS providers have the burden of proving the infeasibility of handling any particular type of call.¹¹² Presently, our TRS regulations require several forms of TRS, *e.g.*, traditional text-based TRS,¹¹³ STS, and interstate Spanish relay services.¹¹⁴ Further, we have required several types of traditional text-based TRS to support the preferences of users who want to use their own hearing or voice, *e.g.*, HCO¹¹⁵ and VCO.¹¹⁶ As technology has further developed, new variations of traditional TRS are now available to support the preferences and needs of persons with hearing and speech disabilities, *e.g.*, two-line VCO, two-line HCO, HCO-to-TTY, VCO-to-TTY, VCO-to-VCO, and HCO-to-HCO.¹¹⁷

27. In the *Improved TRS Order*, we tentatively concluded that these various new types of HCO and VCO calls were capable of being provided to TRS users in order for TRS to remain functionally equivalent.¹¹⁸ As discussed below, we find that these additional types of TRS calls are being provided by TRS providers, are technologically feasible, and are desired by TRS users. We therefore adopt rules to require that these types of TRS calls be provided on an interstate and intrastate basis within six months of publication of this *Order* in the *Federal Register*. Requiring TRS providers to provide these additional types of TRS calls is consistent with our mandate to seek to make available to persons with disabilities new telecommunications technologies.¹¹⁹

a. Two-line VCO and Two-line HCO

28. Background. In the *Improved TRS FNPRM*, we sought comment on whether we should require two-line VCO and two-line HCO.¹²⁰ Two-line VCO, which is typically used by

¹¹¹ 47 C.F.R. § 64.604(a)(3).

¹¹² See 47 C.F.R. § 64.604(a)(3), as amended by the *Fifth Coin Sent-Paid Report and Order*, FCC 02-269, 17 FCC Rcd 21,233 (Oct. 2002).

¹¹³ The text leg in a text-to-voice or voice-to-text call may be provided via TTY or by using IP Relay through the TRS user's computer or other web-enabled device. See, *e.g.*, *IP Relay Declaratory Ruling* at ¶ 1.

¹¹⁴ See 47 C.F.R. § 64.603.

¹¹⁵ See 47 C.F.R. §§ 64.601(7), 64.604(b)(5).

¹¹⁶ See 47 C.F.R. §§ 64.601(10), 64.604(b)(5).

¹¹⁷ Commenters were unable to elaborate on how some other types of TRS calls about which we sought comment, such as reverse VCO and reverse HCO, may be provided. We are, therefore, discontinuing our inquiry into these types of calls.

¹¹⁸ *Improved TRS Order* at ¶ 138.

¹¹⁹ See, *e.g.*, 47 U.S.C. § 225(b)(1), (d)(2); 47 C.F.R. § 64.604(b)(5).

¹²⁰ *Improved TRS FNPRM* at ¶ 138.

persons who are hard of hearing or late-deafened but have clear speech abilities, enables the person with a disability to speak directly to the other party on one line, without the assistance of a CA, and read what the other party is saying via a second line connected to the two-line VCO user's TTY. The CA hears and types the other party's words for the two-line VCO user to read. TRS users report that two-line VCO calls are more natural and efficient because the conversation moves more quickly than a one-line VCO call and allows for interruptions.¹²¹ Two-line HCO, most commonly used by persons who are able to hear but have impaired speech,¹²² works similarly to two-line VCO, except that one line is being used for hearing (the CA does not type the words of the other party) and the other line is used by the two-line HCO user to transmit text on the TTY, which is then read to the other party by the CA.¹²³

29. Discussion. The record demonstrates that many TRS providers are currently offering two-line VCO and two-line HCO, demonstrating that it is technologically feasible to do so, and that these types of calls are desired by TRS users.¹²⁴ The record also does not contain any comments against requiring these types of calls. As a result, and because the record reflects that these types of calls offer distinct benefits to TRS users, we adopt rules to require that these types of TRS calls be provided on an interstate and intrastate basis.

30. We recognize that additional set-up time may be necessary for two-line VCO and two-line HCO calls compared to the set-up time required for a traditional TTY-to-voice call. However, we believe that a reasonable amount of time to set up a two-line VCO or a two-line HCO is acceptable given the benefit to the TRS user.¹²⁵ We decline at this time to define what a reasonable set-up time is for these types of calls. The Commission has not received sufficient comment on what might be a reasonable set-up time for two-line VCO and two-line HCO. We will include this matter in the attached *NPRM*, where we will seek comment on set-up times for

¹²¹ See, e.g., NAD/TAN/CAN Comments at 29; SHHH Comments at 4. Two-line VCO performs similarly to one-line VCO. However, because one-line VCO is performed on one line, there is no interrupt capability and each party to the call must take turns speaking.

¹²² Depending on the consumer, his or her disability, and personal preferences, STS relay may be an option for two-line HCO users because individuals with speech disabilities may also have mobility disabilities that can impair the ability to type on a TTY.

¹²³ Two-line HCO performs similarly to one-line HCO. However, because one-line HCO is performed on one line, there is no interrupt capability. We note that to make both two-line HCO and two-line VCO calls through traditional TRS the TRS user must have a three-way conference calling feature on at least one of his or her two lines. A three-way conference-calling feature is not required to make a two-line VCO or two-line HCO call through IP Relay if the TRS user has an available telephone line not used for the computer modem.

¹²⁴ See, e.g., NAD-TAN Comments at 29; WorldCom Comments at 18-19; see also www.hamilton.net/relay/VCO.html; www.deafhh.org/relay.pdf; www.sprintbiz.com/government/sprint.relay/features.

¹²⁵ See, e.g., NAD/TAN/CAN Comments at 28-29. NAD/TAN/CAN notes that its members who have utilized two-line VCO strongly endorse its capability; however, they note that the quality of the experience as a "real-time" conversation is highly dependent on the quality of the CA and the CA's familiarity with two-line VCO. NAD/TAN/CAN reports, for example, that when one of its members attempted a conference call with a two-line VCO, set-up was extremely time-consuming due to lack of CA experience, and then the CA was unable to keep up with the call. *Id.* at n.32.

various types of TRS.¹²⁶

b. HCO-to-TTY and HCO-to-HCO

31. Background. In the *Improved TRS FNPRM*, we sought comment on whether we should require HCO-to-TTY and HCO-to-HCO calling.¹²⁷ An HCO-to-TTY call allows a TRS conversation to take place between an HCO user and a TTY user, with a CA transliterating or interpreting as required by the parties to the call. An HCO-to-HCO call allows a TRS conversation to take place between two HCO users, with a CA transliterating or interpreting as required by the parties to the call.

32. Discussion. The record demonstrates that HCO-to-TTY and HCO-to-HCO calls are being provided by TRS providers, are technologically feasible and are desired by TRS users.¹²⁸ There were no comments against requiring these types of calls. We therefore adopt rules to require that these types of HCO calls be provided on an interstate and intrastate basis.¹²⁹

c. VCO-to-TTY and VCO-to-VCO

33. Background. In the *Improved TRS FNPRM*, we sought comment on whether we should require VCO-to-TTY and VCO-to-VCO calling.¹³⁰ A VCO-to-TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user, with a CA transliterating or interpreting as required by the parties to the call. A VCO-to-VCO call allows a conversation to take place between two VCO users, with the conversation being relayed by the CA transliterating or interpreting as required by the parties to the call.

34. Discussion. The record again demonstrates that VCO-to-TTY and VCO-to-VCO calls are being provided by TRS providers, are desired by and provide distinct benefits to TRS users, and are technologically feasible.¹³¹ There were no comments against requiring these types of calls.¹³² We therefore require that these VCO calls be provided on an interstate and intrastate

¹²⁶ See discussion at section VI.B.2.a of this *Order*.

¹²⁷ *Improved TRS FNPRM* at ¶ 138.

¹²⁸ See, e.g., WorldCom Comments at 18; see also www.hamilton.net/relay/VCO.html; www.deafhh.org/relay.pdf; www.sprintbiz.com/government/sprint.relay/features.

¹²⁹ A related type of TRS call is HCO-to-VCO, which allows an HCO TRS user to call a VCO TRS user, with the conversation being relayed by a CA transliterating or interpreting as required by the parties to the call. We did not seek comment on whether to require HCO-to-VCO and therefore will not make it a part of our mandatory minimum standards. Currently, several TRS providers voluntarily offer HCO-to-VCO calling.

¹³⁰ *Improved TRS FNPRM* at ¶ 138.

¹³¹ See, e.g., NAD-TAN Comments at 30; SHHH Comments at 3-4.

¹³² We note that TRS is defined as a telephone transmission service that provides the ability for an “individual who has a hearing impairment or speech impairment” to communicate by wire or radio with “a hearing individual,” 47 U.S.C. § 225(a)(3), and that TRS calls such as VCO-to-TTY and VCO-to-VCO do not necessarily involve a “hearing person.” Nevertheless, because they require the use of a CA to facilitate the conversation, and can be considered a type of a VCO call, they are a type of TRS. This conclusion is also compelled by the anomalous situation that would otherwise result by comparing HCO-to-TTY and HCO-to-HCO calls to VCO-to-TTY and VCO-to-VCO calls. Since HCO-to-TTY and HCO-to-HCO calls,

(continued....)

basis.¹³³

d. Waivers for IP Relay and VRS

35. Background. In the *IP Relay Declaratory Ruling*, we waived for one year the requirement that IP Relay providers be accessible by voice, *i.e.*, that IP Relay providers offer VCO and STS, because of the technological limitations of providing these services at that time.¹³⁴ The record demonstrated that voice calls were possible if the customer has a microphone, a sound card, and Internet telephony software.¹³⁵ The record further indicated, however, that the quality of voice calls via a computer and the Internet is poor and dependent on the quality of the user's customer's premise equipment (CPE), frequently resulting in the CA being unable to accurately relay conversations.¹³⁶ Several parties filed petitions for reconsideration of the *IP Relay Declaratory Ruling*, asserting that HCO calls confront similar technological limitations as VCO calls, and therefore HCO calling over IP Relay should also be waived. We granted limited waivers for IP Relay providers in the *IP Relay Reconsideration Order*, and recently extended the one-year waivers granted in the *IP Relay Declaratory Ruling* to five-years.¹³⁷ In the *STS/VRS Waiver Order*, we temporarily waived requirements for VRS providers to include video-based STS and Spanish relay and other text-to-speech related mandatory minimum standards.¹³⁸

36. Discussion. Consistent with the *IP Relay Reconsideration Order*,¹³⁹ and the *STS/VRS Waiver Order*,¹⁴⁰ we will waive the requirement that IP Relay and VRS providers provide the VCO-to-TTY, HCO-to-TTY, VCO-to-VCO, and HCO-to-HCO types of TRS calls that we otherwise mandate in this *Report and Order*. This waiver shall apply to all other current and potential IP Relay and VRS providers beginning on the release date of this *Order*. As set

(...continued from previous page)

see ¶¶ 29-30, *supra*, involve persons with speech disabilities (*i.e.*, the HCO user), such calls fall within the definition of TRS requiring that a party be a "hearing individual." We do not believe that Congress could have intended to favor persons with speech disabilities over persons with hearing disabilities in their access to TRS. In other words, we do not believe that only HCO-TTY and HCO-HCO calls, and not VCO-TTY and VCO-to VCO calls, should be considered TRS merely because the former calls involve a hearing individual (but with a speech disability) whereas the latter calls involve persons with hearing disabilities.

¹³³ A related type of TRS call is VCO-to-HCO, which allows a VCO TRS user to call an HCO TRS user, with the conversation being relayed by a CA transliterating or interpreting as required by the parties to the call. We did not seek comment on whether to require VCO-to-HCO and therefore will not make it a part of our mandatory minimum standards. Currently, several TRS providers voluntarily offer VCO-to-HCO calling.

¹³⁴ *IP Relay Declaratory Ruling* at ¶ 57.

¹³⁵ *See IP Relay Declaratory Ruling* at ¶ 32.

¹³⁶ *Id.*

¹³⁷ *See, e.g., IP Relay Order on Reconsideration*, FCC 03-46 at ¶ 1.

¹³⁸ *See STS/VRS Waiver Order*, FCC 01-371, 16 FCC Rcd 22,948 at ¶¶ 26-27.

¹³⁹ *See, e.g., IP Relay Order on Reconsideration*, FCC 03-46 at ¶ 1.

¹⁴⁰ *See STS/VRS Waiver Order*, FCC 01-371, 16 FCC Rcd 22,948 at ¶¶ 26-27.

forth in the *IP Relay Reconsideration Order*, for administrative convenience all waivers granted will expire on January 1, 2008. These waivers will be contingent on IP Relay and VRS providers filing an annual report with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technological problems that prevent IP Relay and VRS providers from offering these types of TRS calls. For administrative efficiency, the first annual report on all waivers will be due twelve months from the date of publication of the *IP Relay Reconsideration Order* in the *Federal Register*.¹⁴¹

2. Handling of Emergency Calls

37. **Background.** Dialing 911 is the most familiar and effective way Americans have of finding help in an emergency.¹⁴² The Americans with Disabilities Act (ADA)¹⁴³ requires that all Public Safety Answering Points (PSAPs) reached via a 911 call provide direct, equal access to their services for people with disabilities who use TTYs.¹⁴⁴ Persons with hearing disabilities may call 911 using their TTY, and this is the recommended method for reaching assistance; however, when an emergency wireless call is made via a TRS facility, made by dialing 711 or another direct dialing TRS access number, there are additional technological challenges to routing that wireless emergency call from the TRS facility to the appropriate PSAP.¹⁴⁵

38. In the *Improved TRS Order*, we concluded that emergency TRS calls should be routed to the *appropriate* Public Safety Answering Point (PSAP),¹⁴⁶ however, the mandatory minimum standards rule in section 64.604(a)(4) of our rules was amended to state that emergency TRS calls should be routed to the *nearest* PSAP.¹⁴⁷ As a result, in the *Public Safety Answering Point Public Notice*, the Commission sought comment on whether to amend the regulations to require TRS facilities to use a system for routing emergency TRS calls that would automatically and immediately route a caller to the *appropriate* PSAP, as we had originally

¹⁴¹ The *IP Relay Order on Reconsideration* was published April 16, 2003, at 68 FR 18825.

¹⁴² See <http://www.fcc.gov/cgb/dro/doj911es.htm>.

¹⁴³ The Department of Justice's ADA regulations are published at 28 C.F.R. Part 35.

¹⁴⁴ Title II of the ADA covers "public entities." "Public entities" include any State or local government and any of its departments, agencies, or other instrumentalities. Title II public entities include telephone emergency service providers. All activities, services, and programs of public entities are covered, including activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment. To obtain a copy of the ADA or its implementing regulations, or if you have questions about the ADA, contact the Department of Justice ADA Information Line at (800) 514-0301 (voice), or (800) 514-0383 (TTY), or access the Department's ADA Home Page at <http://www.usdoj.gov/crt/ada/adahom1.htm>.

¹⁴⁵ We address routing of wireless emergency calls through a TRS facility in more detail later in this section.

¹⁴⁶ *Improved TRS Order* at ¶¶ 99-102.

¹⁴⁷ 47 C.F.R. § 64.604(a)(4); see also *Improved TRS Order on Reconsideration*, FCC 00-200, 16 FCC Rcd 4054 (2000) at ¶ 6 (similarly concluding that emergency TRS calls should be routed to the appropriate PSAP, but text of rule nevertheless remained unchanged).

concluded in the *Improved TRS Order*.¹⁴⁸ This distinction is important because, in some cases, routing a call to the PSAP that is nearest in proximity to the caller may delay emergency assistance.¹⁴⁹

39. We note that, currently, for emergency voice calls, service providers do not use geographic proximity as the sole criterion for determining the appropriate PSAP to which an emergency call should be routed.¹⁵⁰ Instead, service providers automatically route emergency voice calls to the appropriate PSAP based on a combination of caller location information stored in Automatic Location Identification (ALI) databases and PSAP location information stored in locally and regionally managed databases.¹⁵¹

40. Discussion. We conclude that, consistent with the functional equivalency mandate, emergency calls made through TRS must be routed to an “appropriate” PSAP.¹⁵² We therefore reject proximity as the primary criterion for determining to which PSAP an emergency TRS call should be routed. As we have noted, we reached this same conclusion in the *Improved TRS Order*.¹⁵³ The conclusion that emergency TRS calls must be routed to the “appropriate,” and not necessarily the “nearest,” PSAP leaves open the question of how to define

¹⁴⁸ See *Pleading Cycle Established for Comment on Clarification of Procedures for Emergency Calls at Telecommunications Relay Services (TRS) Centers*, DA 02-1826, Public Notice, July 29, 2002 (*PSAP Public Notice*) (emphasis added).

¹⁴⁹ Intrado *PSAP Public Notice* Comments at 2; MD-TAM *PSAP Public Notice* Comments at 1; TDI *PSAP Public Notice* Comment at 5; Verizon *PSAP Public Notice* Comments at 2.

¹⁵⁰ Some caution must be exercised, however, when TRS calls involve a party on a wireless telephone. The mobile switch may be able to determine a non-TRS caller’s location well enough to direct a 911 call to the appropriate PSAP. However, with a TRS call, the mobile switch is not handling a 911 call, but rather a 711 call (*i.e.*, a call to a TRS facility). In order for the TRS facility to route a subsequent emergency call appropriately, it would need to receive both Caller ID and caller location information from the mobile switch that received the initial TRS call (not such information from the TRS facility that has called 911 for the TRS user). See, *e.g.*, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Further Notice of Proposed Rulemaking, FCC 02-326, 17 FCC Rcd 25,576 (2002); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, Order to Stay, FCC 02-210, 17 FCC Rcd 14,841 (2002); *Carrier Transition Reports for Implementation of the 911 Abbreviated Dialing Code Pursuant to the Wireless Communications and Public Safety Act of 1999*, CC Docket No. 92-105, WT Docket No. 00-110, Public Notice, DA 02-507 (*rel’d* March 01, 2002).

¹⁵¹ See NENA/APCO/NASNA *PSAP Public Notice* Comments at 2; Sprint *PSAP Public Notice* Comments at 2, Reply Comments at 2; Verizon *PSAP Public Notice* Comments at 2; *PSAP Public Notice* Reply Comments at 2.

¹⁵² Many commenters support this conclusion. See, *e.g.*, AT&T *PSAP Public Notice* Comments at 4; DSA *PSAP Public Notice* Comments at 1; Intrado *PSAP Public Notice* Comments at 3; MD-TAM *PSAP Public Notice* Comments at 2; NENA/APCO/NASNA *PSAP Public Notice* Comments at 3; Sprint *PSAP Public Notice* Comments at 3.

¹⁵³ *Improved TRS Order* at ¶¶ 99-102.

“appropriate.”¹⁵⁴

a. Appropriate PSAP - Wireline

41. In the wireline context, when a voice caller dials 911, the LEC uses the caller’s NPA-NXX-XXXX¹⁵⁵ to search a database and find the “appropriate” PSAP.¹⁵⁶ Some commenters therefore request that the Commission define the “appropriate” PSAP as “the PSAP to which a direct call from a NPA-NXX-XXXX would be delivered.”¹⁵⁷ We agree. Based on the record, and our responsibility to ensure that TRS users receive functional equivalent service, we define “*appropriate*” PSAP as the designated PSAP to which a direct call from the particular number would be delivered.¹⁵⁸

42. In order to ensure that an emergency TRS call will be routed to the appropriate PSAP, TRS providers must have a reliable and accurate PSAP database. Several TRS providers note that having complied with the requirement to route emergency calls to the nearest PSAP, they may now have to develop a new system to ensure that emergency calls will be routed to the appropriate PSAP.¹⁵⁹ Commenters report, however, that PSAP databases are available from a variety of resources so that TRS facilities may expeditiously take the steps necessary to implement a system to route emergency calls to the appropriate PSAP.¹⁶⁰ Because the record does not reflect that a longer time period is necessary for providers to make this change, we require that all TRS facilities be able to pass emergency callers to the appropriate PSAP within twelve months of publication of this *Order* in the *Federal Register*.¹⁶¹ We require, under our functional equivalency mandate, that TRS facilities ensure that any database used to route a TRS

¹⁵⁴ Numerous parties filed comments asking for the Commission to define “appropriate.” See, e.g., Maryland Dept. Of Budget and Mgt *PSAP Public Notice* Comments at 1; Sprint *PSAP Public Notice* Comments at 2; Sprint *PSAP Public Notice* Reply Comments at 2; TDI *PSAP Public Notice* Comments at 2-3; Verizon *PSAP Public Notice* Comments at 2.

¹⁵⁵ Ten-digit telephone numbers are generically expressed as “NPA-NXX-XXXX.” See TDI *PSAP Public Notice* Comments at 6.

¹⁵⁶ Cf. e.g., Deaf Seniors of America *PSAP Public Notice* Comments at 1; NENA/APCO/NASNA *PSAP Public Notice* Comments at 2; Intrado *PSAP Public Notice* Comments at 1-3; Maryland Dept. Of Budget and Mgt *PSAP Public Notice* Comments 1; TDI *PSAP Public Notice* Comments at 2-6, with, e.g., AT&T *PSAP Public Notice* Comments at 2; Sprint *PSAP Public Notice* Comments at 2-3.

¹⁵⁷ See, e.g., Maryland Dept. Of Budget and Mgt *PSAP Public Notice* Comments 1; TDI *PSAP Public Notice* Comments at 6.

¹⁵⁸ See 47 C.F.R. § 64.3000(c) (defining the Public Safety Answering Point (PSAP) as a facility that has been designated to receive 911 calls and route them to emergency services personnel). See also 47 C.F.R. § 20.3 (defining “designated PSAP” to be the PSAP designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.”).

¹⁵⁹ See, e.g., AT&T *PSAP Public Notice* Comments at 3-4; Intrado *PSAP Public Notice* Comments at 3-4; NENA/APCO/NASNA *PSAP Public Notice* Comments at 3; Sprint *PSAP Public Notice* Comments at 2.

¹⁶⁰ See, e.g., AT&T *PSAP Public Notice* Comments at 2-3; NENA/APCO/NASNA *PSAP Public Notice* Comments at 3; Sprint *PSAP Public Notice* Reply Comments at 2.

¹⁶¹ We note that many TRS facilities have been relaying TTY calls to the appropriate PSAP since the publication of the *Improved TRS Order*.

emergency call to a PSAP will be updated on the same schedule that PSAP routing databases are updated for 911 calls placed by voice telephone users.

b. Appropriate PSAP - Wireless

43. In the wireless context, when a caller dials 911, the call is routed to the PSAP associated with the location of the caller.¹⁶² This location is determined based on the location information of the cell site transmitting the call or other information on the caller's location, depending on the technological capabilities of the wireless carrier carrying the call. In other words, the appropriate PSAP is the PSAP designated by the local or state authority to receive wireless 911 calls based on the location of the caller.

44. When an emergency wireless call is a TRS call, however, and is made by dialing 711 or another direct dialing TRS access number, there are additional technological challenges to routing that call from the TRS facility to the appropriate PSAP. When a wireless caller dials a TRS facility with an emergency call, the TRS facility cannot use the same method to determine the appropriate PSAP as is done in wireline context. The TRS facility's equipment cannot query a database of exchanges to find the PSAP associated with a caller's NPA-NXX-XXXX because there is no correlation between a wireless telephone number and location of a person making a call with wireless equipment. Further, although many TRS providers maintain caller profiles that may provide the name, address, emergency contact, and other identifying information about the TRS caller which can be accessed in case of an emergency, this information does not necessarily assist in locating a wireless caller's location at the time of the emergency.

45. Accordingly, in the wireless context, in order to route an emergency call to the appropriate PSAP, the TRS provider must find an alternative way to identify the location of the caller and the phone number of the designated PSAP for that location.¹⁶³ If a call is being transmitted to the TRS facility by a wireless carrier that has deployed Enhanced 911 Phase I or Phase II¹⁶⁴ capabilities in the caller's area,¹⁶⁵ then the wireless carrier may be able to forward the location information of the cell site transmitting the call or other information on the caller's

¹⁶² See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Further Notice of Proposed Rulemaking, FCC 02-326, 17 FCC Rcd 25,576 (2002); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, Order to Stay, FCC 02-210, 17 FCC Rcd 14,841 (2002); *Carrier Transition Reports for Implementation of the 911 Abbreviated Dialing Code Pursuant to the Wireless Communications and Public Safety Act of 1999*, CC Docket No. 92-105, WT Docket No. 00-110, Public Notice, DA 02-507 (*rel'd* March 01, 2002).

¹⁶³ Cf. e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Further Notice of Proposed Rulemaking, FCC 02-326, 17 FCC Rcd 25,576 (2002); *Carrier Transition Reports for Implementation of the 911 Abbreviated Dialing Code Pursuant to the Wireless Communications and Public Safety Act of 1999*, CC Docket No. 92-105, WT Docket No. 00-110, Public Notice, DA 02-507 (*rel'd* March 01, 2002).

¹⁶⁴ Phase I Enhanced 911 (E911) calls automatically report the telephone number and location of the antenna that received the call. Phase II requires wireless carriers to provide for more precise location information (within 50-300 meters).

¹⁶⁵ See 47 C.F.R. § 20.18(d).

location to the TRS facility. The TRS facility, in turn, would need to have software and a database in place so the PSAP telephone number associated with the location of the caller, or the cell site transmitting the call, can be obtained and dialed. Wireless carriers that are not Phase I or Phase II E911 capable likely will not be able to share any location information with the TRS facility, in which case the TRS facility will not have a means to identify the PSAP to which the call would have been sent if the caller dialed 911 (instead of 711) on a wireless telephone.

46. It is in the public interest to ensure that TTY users receive functionally equivalent service if they dial 711 or another direct dialing TRS access number in lieu of 911 in case of an emergency.¹⁶⁶ Providing TRS facilities with the ability to determine the appropriate PSAP not only furthers the objectives of Title IV of the ADA, but may also save lives. This ability is critical to appropriately respond to any call, including calls that may not initially involve emergency situations, but turn into emergency calls while the caller is still on the TRS network. Accordingly, in the *NPRM*, we will seek comment on options that a TRS facility may use to determine the location of the wireless caller so that the TRS facility can route an emergency call to the same PSAP that would have received the call if the wireless caller first dialed 911.¹⁶⁷

3. Access to Speech-to-Speech Relay Services

a. Separate STS Nationwide Number

47. Background. In the *Improved TRS FNPRM*, the Commission sought comment on whether it should adopt a separate STS-specific nationwide dialing access number, different than 711, or whether access through 711¹⁶⁸ was sufficient to meet the needs of persons with speech disabilities.¹⁶⁹ The comments reflect that persons with speech disabilities often find that they are unsuccessful, or unreasonably delayed, in their attempts to access STS relay services when dialing 711.¹⁷⁰ For example, some commenters assert that TRS CAs who first receive incoming STS calls often are not adequately trained to understand persons with speech disabilities, and therefore do not adequately handle the TRS call for such persons.¹⁷¹

48. The comments reflect that STS consumers prefer to be able to call a number and

¹⁶⁶ Because of the limitations on the ability of TRS facilities to determine a wireless caller's location, dialing a TRS facility is currently not as effective a means to transmit wireless emergency calls to the appropriate PSAP as a direct call to 911 on a wireless telephone. See the FCC's Consumers' Guide to Telecommunications Relay Service (TRS), available at <http://www.fcc.gov/cgb/dro/trs/dial7-911.html#911>. See also the Department of Justice's Fact Sheet on TTY Access for 911 and Telephone Emergency Services, available at <http://www.fcc.gov/cgb/dro/doj911es.html>.

¹⁶⁷ See discussion of emergency call handling over wireless telephones and equipment at section VI.B.1.b, *infra*.

¹⁶⁸ See *In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Second N11 Report and Order*, 16 FCC Rcd 15188 (2000). Nationwide 711-dialing access is designed to allow any TRS user to initiate calls from any telephone, anywhere in the United States, and be connected to the TRS facility serving that calling area. 711 dialing access for TRS became effective on October 1, 2001.

¹⁶⁹ *Improved TRS NPRM* at ¶ 126.

¹⁷⁰ See generally Segalman Comments.

¹⁷¹ *Improved TRS Order* at ¶ 15. See also, e.g., Segalman Comments.

be connected directly to a specially trained STS CA.¹⁷² STS consumers state that it would be most convenient for an STS consumer to access STS relay services through an STS-dedicated 3-digit number. They note that many persons with speech disabilities also have associated physical and memory disabilities, and therefore find it easier to dial a 3-digit number than a ten-digit number.¹⁷³ Some LEC commenters assert, however, that a separate 10-digit nationwide toll free number for STS consumers is the only technologically feasible approach to directly route a TRS consumer to STS relay services.¹⁷⁴ USTA, on the other hand, counters that adoption of a separate nationwide 10-digit STS toll-free number would raise numerous implementation and maintenance issues.¹⁷⁵

49. Discussion. The Commission recognizes that STS consumers desire a dedicated, 3-digit, STS-specific TRS access dialing number;¹⁷⁶ however, we believe it is premature at this time to designate a 3-digit access code for STS relay service, and therefore we decline to do so. 711 dialing is a relatively new service, and because there are a limited number of N11 codes such 3-digit codes must be allocated cautiously.¹⁷⁷ Moreover, allowing 711 access for calls to all types of TRS services, including STS, is consistent with the Commission's objective for initiating 711 access.¹⁷⁸

50. The record also reflects that adopting a nationwide 10-digit STS access number could lead to a long and perhaps confusing list of TRS dialing access numbers for different types of TRS services.¹⁷⁹ The adoption of a dedicated 10-digit STS access number would also contradict the objective of requiring universal, nationwide 711 access to TRS.¹⁸⁰ For these reasons, we also decline to adopt a dedicated 10-digit STS number.

51. The Commission believes that the existing 711 number adequately provides a

¹⁷² See, e.g., Segalman Comments and STS Consumers Comments *passim*; SHHH Comments at 5.

¹⁷³ See, e.g., Segalman Comments; STS Consumer Comments. The Commission reminds TRS providers that Commission rules require that they ensure that CAs are sufficiently trained to effectively meet the specialized communication needs of TRS consumers. See 47 C.F.R. § 64.604(a)(1).

¹⁷⁴ See, e.g., AT&T Comments at 2; Bell Atlantic Comments at 2; Sprint Comments at 2 n.2.

¹⁷⁵ For example, USTA states that providing national 800 access could require modifying the toll-free database used for the routing of STS calls and billing information. USTA Comments at 2-5. See also SBC Comments at 1-3.

¹⁷⁶ See, e.g., Segalman Comments and STS Consumers Comments *generally*; SHHH Comments at 5. *But see, e.g.,* WorldCom Comments at 1-2 (extend the speed of answer requirement to accommodate the additional time needed for 711 calls to reach the appropriate CA).

¹⁷⁷ See *Second N11 Report and Order*, 16 FCC Rcd 15188 (2000).

¹⁷⁸ *Id.*

¹⁷⁹ See, e.g., Segalman Comments and STS Consumers Comments *generally*; SBC Comments at 1-3; USTA Comments at 4-5. *But see* AT&T Comments at 2; Bell Atlantic Comments at 2; Sprint Comments at 2 n.2.

¹⁸⁰ See *Second N11 Report and Order*, 16 FCC Rcd 15188 (2000)(711 must be accessible for any type of TRS call).

means for STS consumers to reach an STS CA.¹⁸¹ In any 711 call, the CA has to route and/or set up the call according to the form of TRS (*i.e.*, STS) or type of TRS call (*i.e.*, HCO, VCO) requested.¹⁸² We also note that nearly all state TRS programs provide STS relay access by having the 711 CA manually transfer the call to a designated STS CA.¹⁸³ Further, state TRS programs and TRS providers are responsible for ensuring that they provide STS to TRS consumers in a manner that complies with our mandatory minimum standards.¹⁸⁴ To the extent that STS calls are not reaching STS CAs in an appropriate fashion, the TRS provider may have to provide additional CA training, deploy advanced technologies, or offer multiple dialing options.¹⁸⁵

b. Use of Dialing Menu

52. Background. In the *Improved TRS FNPRM*, the Commission asked for comment on ways to “make TRS more functionally equivalent for TRS users.”¹⁸⁶ In response, some commenters suggest that access to STS relay service through 711 could be improved by use of a dialing menu (*i.e.*, an Interactive Voice Response (IVR) or Interactive Text Response system for TTY users), with STS the first option in the voiced dialing menu.¹⁸⁷ In this way, STS users would simply need to “press” the first key indicated to make their type of call selection, such as STS or HCO. STS consumers favor this approach if there is no STS-designated 3-digit dialing code.¹⁸⁸

53. Discussion. The record shows that some states are currently utilizing a dialing

¹⁸¹ See, e.g., AT&T Comments at 3; Bell Atlantic Comments at 2; SBC Comments at 1-2; Sprint Comments at 2.

¹⁸² In addition to a TTY-to-voice/voice-to-TTY call setup, TRS facilities are required to handle VCO, HCO, certain non-English TRS calls, and STS. 47 C.F.R. §§ 64.603, 64.604(a)(3). As a result of this *Order*, TRS facilities will soon also be required to provide two-line VCO and two-line HCO calls, as well as VCO-to-VCO, VCO-to-TTY, HCO-to-HCO, and HCO-to-TTY.

¹⁸³ Maryland Dept. of Budget and Mgt. Comments at 1.

¹⁸⁴ The *Second NII Report & Order* makes clear that the implementation of 711 access to TRS does not alter the mandatory minimum standards for TRS. We also note that the speed of answer rule provides that the speed of answer time concludes when the originating call reaches the first CA, not when the call reaches a designated STS CA. 47 C.F.R. § 64.604(b)(2).

¹⁸⁵ We note that many state TRS programs currently provide access to STS relay service via a designated STS toll-free number, their traditional TRS toll-free number, and/or by dialing 711. For example, the Maryland State Relay Program maintains three options for STS dialing access, asserting this makes their service more functionally equivalent for STS users because it allows STS users to select from different telephone numbers. See, e.g., Maryland Dept. of Budget and Mgt. Comments at 12. The Commission encourages TRS providers to maintain existing alternative seven or ten-digit dialing numbers for STS because this will enable frequent TRS users to maximize call-processing efficiency, program speed-dialing, and have multiple dialing options for accessing STS relay services. See *Second NII Report & Order* at ¶ 28.

¹⁸⁶ See *Improved TRS FNPRM* at ¶ 126.

¹⁸⁷ See generally Segalman Reply Comments; STS Consumer Comments.

¹⁸⁸ See generally Segalman Reply Comments.

menu that includes a means of facilitating access to STS, with the default menu option connecting to a TTY after a designated period of time if no selection is made.¹⁸⁹ As we continue to monitor the implementation of universal nationwide 711 dialing access for all types of TRS calls, we will also monitor the utilization of dialing menus for access to STS. We will therefore not require the use of dialing menus at this time, although we encourage TRS facilities to be innovative in order to provide convenient and efficient access to TRS services for all consumers.¹⁹⁰ Finally, we note that although a dialing menu may make it take longer for TRS and STS consumers to reach the appropriate CA for their desired relay service, and a reasonable amount of time is acceptable in these circumstances and still not violate our speed of answer requirement.¹⁹¹

C. Technical Standards

1. Equal Access to Interexchange Carriers

54. Our present TRS mandatory minimum standards provide that “TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.”¹⁹² That regulation was adopted in our first TRS Report and Order that adopted the TRS mandatory minimum standards; therefore, like all of those standards, it was intended to help define functional equivalency.¹⁹³ We have construed this rule to mean that TRS users must be able to use their “long distance carrier of choice when making relay calls.”¹⁹⁴ We have emphasized that “[i]f TRS users are not able to use their carrier of choice and are forced to select an alternate provider, they may pay rates that are higher than those charged by their preferred carrier, or may not have access to

¹⁸⁹ See generally Segalman Comments.

¹⁹⁰ Some TRS providers suggest that TRS facilities offer caller profiling so that a TRS consumer can designate his or her preferred type of relay service, including, for example their preferred type of TRS call (such as STS, VCO, HCO), which CA gender they prefer, whether the CA should type out the background information, and what CA speed of typing they prefer. See, e.g., AT&T Comments at 4-6; Bell Atlantic Comments at 11-12. Caller profiles may speed up the call processing time by enabling a TRS facility to more quickly and efficiently identify the type of incoming call, and then automatically route the call to an appropriate CA or other call set-up. We believe that these methods of handling the growing number of types of TRS calls could facilitate call set-up and could result in more efficient service. TRS facilities may determine which features most efficiently and effectively respond to STS relay requests, as long as the chosen method is consistent with our mandatory minimum standards.

¹⁹¹ See 47 C.F.R. § 64.604(b)(2). The *Speed of Answer* rule provides, in relevant part, that “TRS shall, except during network failure, answer 85 percent of all calls within 10 seconds by any method which results in the caller’s call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility’s network. The call is considered delivered when the relay center’s equipment accepts the call from the local exchange carrier and the public switched network actually delivers the call to the TRS facility.”

¹⁹² 47 C.F.R. § 64.604(b)(3).

¹⁹³ See *First TRS Report and Order* at ¶ 22; see generally 47 C.F.R. § 64.604.

¹⁹⁴ See *Improved TRS Order* at ¶ 85.

particular services.”¹⁹⁵ We further noted that both results are “inconsistent with the ADA and the Commission’s rules.”¹⁹⁶

55. We have recognized, however, that TRS providers do not have complete control over whether the TRS consumer will be able to access his or her carrier of choice. A TRS consumer will be able to access his or her IXC of choice only if that IXC has the ability to accept a call from the TRS provider.¹⁹⁷ The statute and regulations require each IXC offering voice transmission service to offer TRS. Section 225(c) states that “each common carrier providing voice transmission services shall ... provide” TRS “throughout the area in which it offers service,” and may do so “individually, through designees, through a competitively selected vendor, or in concert with other carriers.”¹⁹⁸ It is this statutory obligation of each IXC offering voice transmission service to offer TRS throughout its service area that makes it possible for the TRS consumer to have access to his or her long distance carrier (IXC) of choice. Put another way, while the regulations require TRS providers to offer their TRS consumers access to the consumers’ long distance carrier of choice, the statute and the regulations require each IXC to provide TRS, and it is the latter obligation that makes the former obligation possible.¹⁹⁹

56. As we have previously explained, as a general matter an IXC can ensure that TRS consumers can have access to its service in one of two ways: either the IXC can build or lease facilities that interconnect with the LEC serving the TRS facility, or the IXC can purchase and resell the services of another IXC that already has access to the TRS facility.²⁰⁰ As we further explained, “in those instances when IXCs elect not to interconnect with the LEC facilities that

¹⁹⁵ Common Carrier Bureau Reminds All Common Carriers of Their Obligation to Provide Access to Their Telecommunications Service via Telecommunications Relay Services, DA 99-1871, Public Notice, 15 FCC Rcd 9916, 9917 (1999) (*Carriers’ Obligation Public Notice*).

¹⁹⁶ *Id.* (citing 47 U.S.C. 225(c); 47 C.F.R. §§ 64.603, 64.604(b)(3)). We note that in the *IP Relay Declaratory Ruling* the Commission permanently waived the carrier of choice requirement for IP Relay calls provided the IP Relay consumer is not charged for any long distance part of the call. *See IP Relay Declaratory Ruling*, 17 FCC Rcd 7779 at ¶ 31.

¹⁹⁷ *See* Enforcement Bureau Issues Letter in Support of Initiatives by the Maryland Public Service Commission to Promote Compliance with FCC Rules Pertaining to Telecommunications Relay Services, DA No. 00-2383, Public Notice (*rel’d* Oct. 23, 2000) (*Enforcement Bureau Compliance Letter Public Notice*).

¹⁹⁸ 47 U.S.C. § 225(c); *see also* 47 C.F.R. § 64.603 (same).

¹⁹⁹ Because “each” common carrier offering telephone voice transmission service must provide TRS in its service area, local exchange carriers, as well as IXCs, have the obligation to offer TRS. Most common carriers that offer local telephone service comply with this obligation through the state’s competitive selection of a TRS provider. In other words, once a state selects its “competitively selected vendor,” *see* 47 C.F.R. § 604.603, the other common carriers in the state that offer local telephone service are deemed to have met their obligation to provide TRS. Most states select only one TRS provider for their state program. As a result, as a practical matter this means that TRS users must use their state’s chosen TRS provider for their local (non-toll) calls. *See 1998 TRS Notice of Proposed Rulemaking* at ¶ 63.

²⁰⁰ *See 1998 TRS Notice of Proposed Rulemaking* at ¶ 63. TRS facilities operated by LECs do not have this problem because they have interconnection agreements with all IXCs doing business in their operating territory.

serve the TRS provider's facilities, resale of another IXC's services may be a cost efficient alternative for obtaining connectivity with the TRS facility for purposes of completing calls placed by TRS users."²⁰¹

57. In September 1999, we issued a Public Notice reminding common carriers of their obligation to provide access to their services via TRS, stating that "[c]arriers should take appropriate measures to ensure that callers in the areas that they serve have access to their services through TRS."²⁰² We also made clear that the ability of TRS consumers to access their carrier of choice rested on common carriers meeting their obligation "to allow access via TRS to their services throughout the area(s) in which they offer service."²⁰³

58. In October 2000, in another Public Notice, we revisited the interplay between the carrier of choice rule and the statutory obligation of all common carriers to provide TRS. The Public Notice detailed a letter the Enforcement Bureau sent to a state relay administrator addressing this issue. We noted that in order for a TRS user to be able to access his or her carrier of choice, "it is incumbent on the IXC to contact the TRS provider and ensure that the TRS provider has sufficient information about the IXC's network and billing requirements to properly route TRS calls to the IXC."²⁰⁴ We further noted that notwithstanding "the warnings to carriers in the *Improved TRS Order* and the 1999 Public Notice,²⁰⁵ it is clear that TRS users in many states do not currently have the same access to their carrier of choice as non-TRS users."²⁰⁶ We made it clear that although the TRS providers have the obligation under our regulations to ensure that TRS consumers can access their IXC of choice, IXCs that did not currently offer TRS access in states where they offer service must make the necessary arrangements to ensure that TRS users can access their services.²⁰⁷

59. Although our present carrier of choice regulation provides that the wireline TRS consumer must have access to his or her IXC of choice, without expressly addressing the respective obligations of the IXCs and the state relay provider to make such access possible, we have made it clear that in view of section 225(c) each IXC must take affirmative steps to contact the state TRS providers to ensure that TRS consumers can access the particular IXC in making a TRS call. At the same time, the TRS providers must ensure that their TRS consumers can in fact access their chosen IXC, once it is possible for the TRS call to be routed to that IXC.

60. Despite our past efforts to make clear to wireline TRS providers and common

²⁰¹ *Id.*

²⁰² *Carriers' Obligation Public Notice.* The Commission noted that it had been informed that "some TRS users have been unable to place TRS calls through their chosen carrier or have been unable to make 'dial-around' calls using a carrier-specific access code."

²⁰³ *Id.*

²⁰⁴ *Enforcement Bureau Compliance Letter Public Notice.*

²⁰⁵ *Carriers' Obligation Public Notice.*

²⁰⁶ *Enforcement Bureau Compliance Letter Public Notice.*

²⁰⁷ *Enforcement Bureau Compliance Letter Public Notice.* We also emphasized that "a carrier's failure to take appropriate steps to enable access to its service by TRS users may lead to monetary forfeitures or other enforcement actions by the Commission." *Id.* (footnote omitted).

carriers their respective obligations with respect to our carrier of choice rule, recent informal complaints filed with the Commission indicate that some TRS users remain unable to be connected with their IXC of choice when making a relay call.²⁰⁸ Further, state TRS programs indicate low compliance by IXCs with the requirement that they make the necessary arrangements to ensure that TRS calls can be placed through their services.²⁰⁹ Based on informal discussions with representatives of state TRS administrators, TRS providers, and some IXCs, it appears that the low compliance with the carrier of choice requirements may result from several factors. For example, TRS providers are not currently required to have facilities that connect the TRS facility to each LEC access tandem in the state. This is because in many cases the TRS facility is located either outside any major metropolitan area within the state or, in some cases, outside the state.²¹⁰ In addition, some IXCs serve only certain areas within a state. As a result, they may not have a Point of Presence (POP)²¹¹ that connects them with the access tandem serving the TRS facility. Finally, we understand that some IXCs apparently still lack awareness of their obligation to ensure that TRS consumers can access their services, or believe – incorrectly – that their contribution to the Interstate TRS Fund satisfies their obligations under section 225 to provide TRS.

61. We therefore once again remind IXCs that, pursuant to section 225(c), they must take such affirmative steps as may be necessary to ensure that TRS providers can place TRS wireline consumers' long distance calls through their IXC if the consumer so chooses. To the extent it may not be possible for an IXC to interconnect with the LEC serving the TRS provider, the IXC must make other arrangements, as noted above, to obtain the required connectivity with the TRS facility. Further, we clarify, to the extent necessary, that the mere fact that a common carrier makes contributions to the Interstate TRS Fund, as required by section 225(d)(3)(B) and section 64.604(c)(5)(iii) of our regulations, does not relieve it of its obligation to provide TRS. The funding mechanism for the Interstate TRS Fund (implicating “[e]very carrier providing interstate telecommunications services”) operates independently of the statutory obligation of “[e]ach common carrier providing voice transmission services” to provide TRS.²¹² Finally, we again note that under the carrier of choice rule the TRS provider must ensure that the TRS consumer can use his or her IXC carrier of choice, unless that particular carrier has not made arrangements to be interconnected with the TRS provider's LEC.

2. Additional TRS Features and Services

62. The Commission is charged with ensuring that its TRS regulations do not discourage or impair the development of improved technology that might foster the availability

²⁰⁸ The Commission's Consumer and Governmental Affairs Bureau received twelve informal complaints in 2002 regarding TRS carrier of choice issues.

²⁰⁹ For example, out of approximately 350 IXCs registered in Maryland, 28 of those IXCs can be accessed via TRS. See Maryland Relay, <http://www.mdrelay.org/relay/lonmgdistancecarriers.htm>.

²¹⁰ For example, the TRS facility serving Kentucky is located in Baton Rouge, Louisiana. The TRS facility serving Wisconsin is located in Nebraska.

²¹¹ Point of Presence (POP) is the IXC equivalent of a local phone company's central office; *i.e.*, it is where the long distance carrier (IXC) terminates its long distance lines and those lines are connected to the local telephone company's lines.

²¹² *Cf.* 47 C.F.R. § 64.604(c)(5)(iii)(A) (emphasis added), with 47 U.S.C. § 225(c) (emphasis added).

of improved telecommunications services to persons with disabilities.²¹³ In view of this mandate, in the *Improved TRS FNPRM* we tentatively concluded that several types of innovative services that a TRS facility might provide to TRS consumers when the LEC network serving the TRS facility offers such services to the general public.²¹⁴ We sought comment on our tentative conclusions. As set forth below, we adopt rules requiring TRS facilities to make available to TRS consumers such features when they are available to the general public.²¹⁵ As discussed below, we find that additional types of features or services are being provided by TRS providers, are technologically feasible and are desired by TRS users. We therefore adopt rules to require that these additional features and services be provided on an interstate and intrastate basis within six months of publication of this *Order* in the *Federal Register*. Requiring TRS providers to provide these additional features and services is consistent with our mandate to seek to make available to persons with disabilities new telecommunications technologies.²¹⁶

a. Answering Machine Message Retrieval

63. Background. In the *Improved TRS FNPRM*, we sought comment on the feasibility of providing answering machine message retrieval to TRS users.²¹⁷ Currently, there is no reference in our rules to retrieving answering machine messages through TRS.²¹⁸ This feature allows a TTY user to retrieve voice messages left on his or her voice mailbox or voice answering machine by an incoming call from a third party. Answering machine retrieval through TRS is accomplished when the recipient of the message, the TRS user, calls the TRS facility and has the CA listen to the voice messages.²¹⁹ The CA transmits the messages in text back to the TRS

²¹³ See 47 U.S.C. § 225(d)(2).

²¹⁴ See *Improved TRS FNPRM* at ¶ 138.

²¹⁵ The record does not demonstrate whether certain other features about which we initially sought comment, such as anonymous call rejection, V.18 and other TTY protocols should be required as part of the TRS mandatory minimum standards. See *Improved TRS Order* at ¶¶ 132, 138 respectively. We therefore seek further comment about these features in the *NPRM, infra*.

²¹⁶ See, e.g., 47 U.S.C. § 225(b)(1), (d)(2); 47 C.F.R. § 64.604(b)(5).

²¹⁷ *Improved TRS FNPRM* at ¶ 138.

²¹⁸ This is not to be confused with our rule on Voice Mail and Interactive Menus, which addresses TRS calls from a TRS user to a called third party that reaches the called party's voice mail or answering system's interactive menu. See 47 C.F.R. § 64.604(6). The Voice Mail and Interactive Menus rule addresses CAs handling such systems through TRS. Answering Machine Message Retrieval addresses on the process of retrieving messages for a person with a disability from his or her own answering machine or voice mail.

²¹⁹ We note that the TRS confidentiality rules apply when a CA listens to a voice message and transmits the message in text to the TRS user. 47 C.F.R. § 64.604(a)(2)(i) states that “[e]xcept as authorized by [47 U.S.C. § 605], CAs are prohibited from disclosing the content of any relayed conversation regardless of content, ... even if to do so would be inconsistent with state or local law.” See also 47 U.S.C. § 225(d)(1)(F). 47 U.S.C. § 605(a) prohibits disclosure of interstate or foreign telephone conversations except in certain circumstances generally relating to law enforcement. See also, *In the Matter of Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990, Notice of Proposed Rulemaking*, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 93-104, 8 FCC Rcd 1802 (1993) (discussing confidentiality rules).

user.²²⁰

64. This process can be achieved with two telephone lines, or through one telephone line if the TRS user uses a TTY that works with a regular telephone handset.²²¹ The CA listens to the messages through a telephone handset and relays them back to the user as text.²²² Retrieving voice mailbox messages works similarly; however, because voice mailboxes²²³ generally use an access code or personal identification number (PIN), the TRS user instructs the CA how to access his or her voice mailbox before the CA does so. In addition, these instructions should address how the menu selection process works because the menu choices listed by voice mailboxes generally require a response within a short period of time (or otherwise the system “times-out”), and thus the CA often must relay messages quickly.

65. Discussion. Based on our responsibility to ensure that TRS users receive functionally equivalent telecommunications services, we conclude that answering machine and voice mail retrieval are TRS features that must be provided to TRS users. The record reflects that TRS providers currently provide these features, it is technologically feasible, and these features are desired by TRS consumers.²²⁴

b. Automatic call forwarding

66. Background. In the *Improved TRS FNPRM*, we sought comment on the technological feasibility of providing automatic call forwarding to TRS consumers.²²⁵ The automatic call forwarding feature permits calls placed by a TTY or other TRS user to another party’s telephone number through a CA to be automatically forwarded to that other party’s forwarded telephone number as previously designated by that other user.²²⁶ After the call is forwarded to the voice user’s designated alternate number, the CA is on the telephone line to begin relaying the call when the voice user answers the call. This feature benefits a TTY user in the same way it benefits any telephone user: it ensures that TTY calls will be connected to the

²²⁰ Specific CA training may be necessary to effectively implement this feature. *See, e.g.*, California PUC Comments at 6.

²²¹ These calls may typically begin when the TTY user calls the TRS facility and types, *e.g.*, “I WANT TO USE ANS MCH RETRIEVAL GA.” The TTY user would not need to give the CA a number to dial because the answering machine is at her same location. The CA instructs her to “PLS PLACE UR HANDSET NEXT TO ANS MACH AND TURN ON GA.” The CA then hears the answering machine play the voice messages through the CA’s telephone handset.

²²² The CA will be able to both listen to voice messages and send text messages simultaneously if a TTY with an acoustic couple that works with telephone headset and the answering machine do not share the same telephone line. If they do, then the CA will need to listen to the complete messages before relaying the messages in text.

²²³ A voice mail system includes a PBX mailbox system.

²²⁴ *See e.g.*, California PUC comments at 6; NAD/TAN/CAN comments at 29-30; SHHH comments at 15.

²²⁵ *Improved TRS FNPRM* at ¶ 138.

²²⁶ The Commission agrees with GTE’s assessment that this feature presents a terminating line issue. *See* GTE Comments at 13. We note that WorldCom defines this feature to mean that when a voice caller dials a TTY number, the call automatically connects to the TRS facility, making it a relay call from voice-to-TTY. WorldCom Comments at 21.

desired voice user even when the voice user is at a different number than that given to the CA by the TTY user.²²⁷

67. Discussion. Although we raised this issue in the *Improved TRS FNPRM*, we need not require this feature as a mandatory minimum standard because this feature is one that the called party subscribes to through his or her local telephone company.²²⁸ When the called party has subscribed to call forwarding, any calls to that number – whether from a CA relaying a TRS call or from a person making a conventional voice call– will be automatically forwarded to the alternate number designated by the called party.

c. Call Release

68. Background. In the *Improved TRS FNPRM*, we sought comment on the technological feasibility of providing a TRS call release feature to TRS consumers.²²⁹ Call release allows a CA to set up a TTY-to-TTY call that once set up does not require the CA to relay the conversation. The call release feature allows the CA to sign-off or be “released” from the telephone line, without triggering a disconnection between two TTY users,²³⁰ after the CA connects the originating TTY caller to the called party’s TTY through, *e.g.*, a business switchboard.²³¹ For example, if a person, who is deaf, wants to call another person, who is also deaf, at a hotel the calling party generally must go through the hotel’s switchboard to reach the guest room. The calling party calls the hotel on a TTY through TRS, is transferred to the hotel room by the hotel switchboard, and then conducts a TTY-to-TTY call directly with the other person without the use of a CA. Currently, in these circumstances, Commission rules allow for a CA to remain on the line, billing minutes for providing TRS. TRS call release would allow for the CA to sign off, or be “released,” once the two TTY parties are connected. At this point, the call ceases to be a TRS call subject to the per-minute reimbursement.

69. Discussion. We believe that TRS call release is necessary to provide functionally equivalent telecommunications services for TRS users. When a non-TRS user calls another party through a business switchboard, the caller is able to conduct a conversation with their called party without an intermediary remaining on the line. Similarly, with TRS call release, a TTY user can conduct a conversation with another TTY user without the assistance of an intermediary, once the CA has connected the calling party to the called party. Requiring TRS call release allows a TTY user to conduct his or her conversation privately after the CA facilitates the routing of the call from a TTY user to another TTY user through a central switchboard and then disconnects the TRS facility from the call. Several state TRS programs and TRS providers currently offer TRS call release.²³² Based on the record in this proceeding,

²²⁷ Although we conclude that automatic call forwarding does not raise issues unique to TRS, we remind TRS providers of their obligation to handle all types of calls, including those forwarding to an alternate number designated by the called party.

²²⁸ See GTE Comments at 13.

²²⁹ *Improved TRS FNPRM* at ¶ 138.

²³⁰ Only the actual minutes that a CA spends on the line with the TRS user prior to the transfer to the intended TTY party is reimbursable. See 47 C.F.R. § 64.604(c)(5)(iii)(E).

²³¹ See, *e.g.*, TDI Comments at 6.

²³² See, *e.g.*, California PUC Comments at 6; Massachusetts ATP Comments at 3.

we find that TRS call release is technologically feasible. Accordingly, we conclude that call release functionality will benefit TRS users and is required under our functional equivalency mandate. We require that TRS call release be provided on an intrastate and interstate basis.

d. Speed dialing

70. Background. In the *Improved TRS FNPRM*, we sought comment on the feasibility of providing TRS users with speed dialing capability.²³³ For the general public, speed dialing can be provided by a LEC or a consumer's CPE. Currently, many TRS facilities offer this service by manually storing a list of telephone numbers with designated speed dialing codes in the TRS user's consumer profile.²³⁴ In the context of TRS, speed dialing allows a TRS user to give the CA a "short-hand" name or number (*i.e.*, "call Mom") for the user's most frequently called telephone numbers. This feature permits a person making a TRS call through a CA to place the call without having to remember or locate the number he or she desires to call.

71. Discussion. TRS providers indicate that it is technologically feasible and that they are able to provide functional speed dialing for TRS users.²³⁵ TRS users state that speed dialing functionality is desirable in TRS.²³⁶ No parties filed comments opposing the requirement of speed dialing functionality in TRS. We note that many LECs offer a speed dialing feature to the general public as an adjunct-to-basic telephone transmission service. We therefore adopt rules to require that TRS facilities provide speed dialing functionality on an intrastate and interstate basis. We decline to adopt specific requirements for speed dialing functionality at this time. We anticipate that TRS providers will develop customized speed dialing and expect that consumers' needs will be addressed as this feature matures.

e. Three-way calling

72. Background. In the *Improved TRS FNPRM*, we sought comment on whether it was technologically feasible to provide three-way calling to TRS users.²³⁷ The three-way calling feature allows more than two parties to be on the telephone line at the same time with the CA.²³⁸ This is a desirable calling feature because it offers parties to a telephone call a way to add a third party to the call, which may often be convenient. It has long been available to voice telephone users.

73. Discussion. TRS consumers support requiring TRS facilities to offer the three-way calling feature.²³⁹ The record reflects that several TRS providers currently offer this

²³³ *Improved TRS FNPRM* at ¶ 138.

²³⁴ *See, e.g.*, WorldCom Comments at 25. Currently, four major TRS providers, AT&T, Hamilton, WorldCom and Sprint offer this service. TRS providers collect the telephone numbers from the form completed by the TRS users by a telephone call, mail, or website. *See, e.g.*, www.hamilton.net/relay/VCO.html; www.sprintbiz.com/government/sprint.relay/features.

²³⁵ *See, e.g.*, WorldCom Comments at 25.

²³⁶ *See, e.g.*, NAD/TAN/CAN Comments at 30; TDI Comments at 13.

²³⁷ *Improved TRS FNPRM* at ¶ 138.

²³⁸ Three-way calling may include up to three conversation participants plus the CA.

²³⁹ *See, e.g.*, NAD/TAN/CAN Comments at 30; SHHH Comments at 12; TDI Comments at 12.

feature.²⁴⁰ This feature is generally arranged in one of two ways.²⁴¹ First, the TRS consumer may request that the CA set up the call with two other parties. Once the CA does this, the CA voices TTY messages to the hearing users and relays voice messages as text to the TTY user. A second way to set up a three-way call is for the TRS user to connect to two telephone lines at the same time from his or her premises by using the telephone's switch-hook (or "flash") button. After making or receiving the first connection, the TRS user presses the flash button to put the first person on hold and get a new dial signal. The TRS user then dials the third party's number. When that call is answered, the TRS user again depresses and releases the flash button to link the three calls. At this point, the CA again relays voice messages to the TRS user, and voices text messages to the hearing parties. Since the record reflects that this feature is technologically feasible, and because it offers important benefits to all users, we will require three-way calling as a mandatory minimum standard for TRS. Once again, this conclusion necessarily follows from the functional equivalency mandate that governs our regulation of TRS.²⁴²

74. Requiring TRS providers to offer three-way calling as a standard feature of TRS, however, raises the question of how the costs of three-way TRS calls are to be recovered from the States or the Interstate TRS Fund. This issue arose in the Commission's enforcement action in *Publix Network Corp.*²⁴³ In that case, an entity purporting to provide TRS, *inter alia*, handled conference calls and submitted cost recovery requests to the Interstate TRS Fund that were calculated on the basis of each two-way leg of each conference call, rather than on the basis of the time CAs spent facilitating the calls.²⁴⁴ In the *Publix Show-Cause Order*, the Commission stated that the proper method for accounting for conference calls, or any other calls, "reflects the minutes of actual relay service, irrespective of how many callers are on the call."²⁴⁵ As three-way calling matures to providing multi-party conference calling, there may be instances where more than one CA is necessary. The justification for reimbursement for multiple-CAs will have

²⁴⁰ See, e.g., GTE Comments at 15; WorldCom Comments at 25.

²⁴¹ There is another type of TRS calling with multiple parties that involves the use of CART (Communication Access Real-time Translation). CART is an instant translation of the spoken word into English using a stenotype machine, notebook computer, and real-time software. See National Court Reporter's Association, CART, <http://www.cart.ncraonline.org/index.html> (visited January 24, 2003). As a result, with the use of CART the conversation pace tends to be at a much higher rate (150 to 200 wpm) during the multiple-party call than with a CA using a standard keyboard. See Massachusetts ATP Comments at 3. At this time, the Commission is not able to determine whether TRS providers should be required to offer this specific type of CART conference call, since it was not raised in our *Improved TRS FNPRM*. We are requesting further comment on this feature in the *NPRM, infra*.

²⁴² The Commission will not mandate how CAs handle different formalities and procedures among the three or more parties; however, we suggest each CA instruct the conference call parties to identify themselves each time they speak and to talk one at a time.

²⁴³ See *Publix Network Corp.; Customer Attendants, LLC; Revenue Controls Corp.; SignTel, Inc.; and Focus Group, LLC*, EB Docket No. 02-149, File No. EB-01-TC-052, *Order to Show Cause and Notice of Opportunity for Hearing (Publix Show-Cause Order)*, 17 FCC Rcd 11,487 (2002).

²⁴⁴ See *Publix Show-Cause Order* at ¶ 31.

²⁴⁵ *Id.* at ¶ 32 (citing Letter from Dorothy T. Attwood, Chief, Common Carrier Bureau, Federal Communications Commission to Raanan Liebermann, President, Publix Network Corp., June 25, 2001; Letter from Maripat Brennan, Director of Fund Administration, National Exchange Carriers Ass'n to Raanan Liebermann, CEO, Publix Network Corp., May 10, 2001).

to be made by the TRS provider on a case-by-case basis, and that, as in all other contexts, attempts to collect more compensation than is justified may subject the TRS provider to enforcement action.

75. The Commission's rules regarding cost recovery state that formulae for cost recovery "shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery from the Interstate TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS facility beginning after call set-up and concluding after the last message call unit."²⁴⁶ The essence of the "beginning after call set-up" provision is that cost recovery shall be based on the time that CAs spend facilitating calls, rather than the time that circuits are completed, or a total time period that includes the time needed to set up a call. Because the time the CA spends actually facilitating communication between individuals who have hearing or speech disabilities and those who do not have such disabilities is the basis of cost recovery, we clarify that cost recovery for three-way calling shall also be based upon the time the CA spends facilitating communication, excluding set-up time, and regardless of the fact that the call has more than two participants.

f. Waivers for IP Relay and VRS

76. Consistent with the *IP Relay Reconsideration Order*,²⁴⁷ and the *STS/VRS Waiver Order*,²⁴⁸ we will waive the requirement that IP Relay and VRS providers provide call release, three-way calling, and speed dialing. This waiver shall apply to all other current and potential IP Relay and VRS providers beginning on the release date of this *Order*. As set forth in the *IP Relay Reconsideration Order*, for administrative convenience all waivers granted will expire on January 1, 2008. These waivers will be contingent on IP Relay and VRS providers filing an annual report with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technological problems that prevent IP Relay and VRS providers from providing these features and services. For administrative efficiency, the first annual report on all waivers will be due twelve months from the date of publication of the *IP Relay Reconsideration Order* in the *Federal Register*.²⁴⁹

D. Public Access to Information and Outreach

77. In the *Improved TRS FNPRM*, we sought comment on whether we should implement a nationwide outreach campaign.²⁵⁰ Specifically, we sought comment on modeling an outreach campaign based on the Maryland experience.²⁵¹ We also sought comment on various funding mechanisms and whether the Interstate TRS Fund Advisory Council, with input from stakeholders, would be an appropriate entity to make recommendations on TRS outreach.²⁵²

²⁴⁶ 47 C.F.R. § 64.604(c)(5)(iii)(E).

²⁴⁷ See *IP Relay Order on Reconsideration*, CC Docket No. 98-67, FCC 03-46 at ¶ 1.

²⁴⁸ See *STS/VRS Waiver Order*, FCC 01-371, 16 FCC Rcd 22,948 (2001) at ¶¶ 26-27.

²⁴⁹ See *IP Relay Order on Reconsideration*, CC Docket No. 98-67, FCC 03-46, 68 FR 18825 (published April 16, 2003).

²⁵⁰ *Improved TRS FNPRM* at ¶¶ 134-136.

²⁵¹ See *Improved TRS FNPRM* ¶ 134.

²⁵² See *Improved TRS FNPRM* ¶ 134.

We proposed that any outreach campaign address all forms of TRS and all types of TRS calls, and be modeled after successful state advertising and outreach programs.²⁵³ We further requested comment on whether we should require a state TRS program to include, and budget for, outreach efforts as one criterion for certification.²⁵⁴

78. The record on this issue is one of conflicting views on central issues regarding outreach.²⁵⁵ State TRS programs, TRS consumers, and organizations representative of TRS consumer interests assert that it is appropriate for the Interstate TRS Fund to fund outreach efforts.²⁵⁶ Sprint, a TRS provider, also supports outreach funded from the Interstate TRS Fund.²⁵⁷ In contrast, WorldCom, also a TRS provider, proposes that the Commission encourage states to require TRS providers to provide outreach programs as part of the relay service agreement,²⁵⁸ and that the Commission fund such programs from its own operating budget.²⁵⁹ SBC asserts that increased awareness is desirable as long as there are no increases in the fees paid or charged by carriers and consumers.²⁶⁰

79. Based on the conflicting comments,²⁶¹ we conclude that we do not have an adequate record on which to make a determination on the open questions concerning outreach. Because we need additional information on which to base our final determinations regarding outreach, we are asking for such additional and specific information in the *NPRM*. We will instruct the Consumer Advisory Committee (CAC) to review the issues concerning outreach as set forth in the *NPRM*, and make recommendations to the Commission regarding this matter.

²⁵³ See FCC Public Forum on 711 Access to Telecommunications Relay Services CC Docket No. 92-105 September 8, 1999, Comment by Gil Becker (Education Segment), Comment by Brenda Battat (Education Segment). See also, e.g., Maryland Dept. of Budget and Mgt. Comments at 3; NAD/TAN/CAN Reply Comments at 12; TDI Reply Comments at 15.

²⁵⁴ *Improved TRS FNPRM* ¶ 136.

²⁵⁵ Cf. California PUC Comments at 4; Florida PSC Reply Comments at 4; NAD/TAN/CAN Comments at 24; TDI Comments at 7; Sprint Comments at 7, with SBC Comments at 9; WorldCom Comments at 17-18.

²⁵⁶ See, e.g., California PUC Comments at 4; NAD/TAN/CAN Comments at 24; NECA and TRS Advisory Council *ex parte* meeting with Commission staff, Dec. 11, 2002; STS Consumers; TDI Comments at 7.

²⁵⁷ See Sprint Comments at 6-9; see also California PUC Comments at 4; SBC Comments at 9. We note that some providers currently submit some limited advertising costs to NECA, the interstate TRS Fund administrator, as part of their TRS operating expenses on which the per minute TRS reimbursement rate is based.

²⁵⁸ See WorldCom Comments at 18.

²⁵⁹ See WorldCom Comments at 11, 17-18. WorldCom supports outreach, but asserts that the Commission cannot assess common carriers a specific fee to fund a national outreach campaign or to direct common carriers to expend some specified amount of money on such a campaign. See *id.* at 14-16.

²⁶⁰ See, e.g., SBC Comments at 9; see also WorldCom Comments at 11.

²⁶¹ Cf. California PUC Comments at 4; Florida PSC Reply Comments at 4; NAD/TAN/CAN Comments at 24; TDI Comments at 7; Sprint Comments at 6-9, with SBC Comments at 9; WorldCom Comments at 15-18. See also, e.g., AT&T Comments at 7-9; NECA and TRS Advisory Council *ex parte* meeting with Commission staff, Dec. 11, 2002; SHHH Comments at 9-11; STS Consumers; TDI Comments at 6-7.

80. We take this opportunity to once again remind common carriers that our current regulations require common carriers to take various steps to inform and educate the public of the availability and use of TRS.²⁶² We are confident that adherence to these requirements will inform and educate the general public about TRS and will help ensure that persons with disabilities are successful in using TRS.

V. ORDER ON RECONSIDERATION IN CC DOCKET NO. 98-67

A. Introduction

81. Petitions for Reconsideration (*Petitions*) of the *Improved TRS Order* were filed by the Florida Public Service Commission (Florida PSC), the National Association of State Relay Administrators (NASRA), VISTA Information Technologies, Inc. (VISTA), the Public Utility Commission of Texas (Texas PUC), SBC Communications Inc. (SBC)²⁶³ and WorldCom, Inc. (WorldCom) (collectively, *Petitioners*).²⁶⁴ *Petitioners* seek reconsideration of certain aspects of the *Improved TRS Order*,²⁶⁵ which expanded the forms of TRS and types of TRS calls available to consumers and adopted new rules to improve the quality of TRS. Comments in response to the *Petitions* were filed by: Sprint Corporation (Sprint), Ultratec, Inc. (Ultratec), Self Help for Hard of Hearing People, Inc. (SHHH), and the National Association of the Deaf-Telecommunications Advocacy Network and Consumer Action Network (NAD/TAN/CAN).²⁶⁶ WorldCom and NAD/TAN/CAN filed replies to the comments of various parties.²⁶⁷ We address

²⁶² 47 C.F.R. § 64.604(c)(3). The rule states: "Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population. In addition, each common carrier providing telephone voice transmission services shall conduct, not later than October 1, 2001, ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible."

²⁶³ SBC withdrew its Petition for Reconsideration and/or Clarification August 10, 2001.

²⁶⁴ See Florida Public Service Commission *Petition for Reconsideration and Clarification* of 00-56, filed April 12, 2000 and Request for Waiver for Extension of Time to Implement Improved TRS Order filed Oct. 24, 2000 (*Florida PSC Petition*); National Association for State Relay Administration (NASRA) *ex parte* Comments and Request for Reconsideration of Effective Date of Amended Rules filed May 5, 2000 (*NASRA Petition*); SBC *Petition for Reconsideration or Clarification* filed July 21, 2000, *withdrawn* August 10, 2001 (*SBC Petition*); Texas PUC *Petition for Reconsideration* filed March 24, 2000 (*Texas PUC Petition*); Vista Technologies *Petition for Reconsideration* filed June 13, 2000 (*Vista Petition*); WorldCom *Petition for Reconsideration* filed July 21, 2000 and withdrawal of one issue, per *ex parte* meeting and letter dated June 6, 2001 (*WorldCom Petition*).

²⁶⁵ FCC 00-56, 15 FCC Rcd 5140 (2000).

²⁶⁶ See NAD/TAN/CAN Comments filed July 25, 2000 (*NAD/TAN/CAN Recon Comments*); SHHH Comments filed July 21, 2000 (*SHHH Recon Comments*); Sprint Comments filed August 22, 2000 (*Sprint Recon Comments*); Ultratec Comments filed Aug. 11, 2000 (*Ultratec Recon Comments*).

²⁶⁷ See NAD/TAN/CAN Reply Comments filed Aug. 14, 2000 (*NAD/TAN/CAN Recon Reply Comments*); WorldCom Reply Comments filed Sept. 7, 2000 (*WorldCom Recon Reply Comments*).

each issue below.²⁶⁸ For the reasons given, we grant in part and deny in part the *Petitions*.

B. Discussion

1. Communication Assistants (CAs)

a. CA Minimum Typing Speed at Hire

82. In the *Improved TRS Order*, the Commission adopted a minimum typing speed for communications assistants of 60 words per minute (wpm).²⁶⁹ VISTA and WorldCom request that the Commission reconsider this provision and permit CAs to have a minimum typing speed of 45 to 55 wpm.²⁷⁰ VISTA proposes requiring a 55 wpm for newly hired CAs, with a training period of 90 days, and that at the end of the training period new hires must pass the typing speed test at 60 wpm. VISTA states that, in its experience, after such a training period its newly hired CAs are able to meet Massachusetts Relay's requirement of 65 wpm.²⁷¹ WorldCom agrees with VISTA on having a 90-day training period, but proposes a 45 wpm requirement for newly hired CAs.²⁷² In support of this request, VISTA and WorldCom argue that in their experience, a lower minimum typing speed requirement for new hires and a 90-day training period is necessary in order to identify, hire, and train qualified persons to provide TRS.²⁷³ Sprint agrees with VISTA's proposal to exclude newly hired CAs from the 60 wpm requirement until they have had a reasonable period for on-the-job training.²⁷⁴ Sprint, VISTA and WorldCom assert that the minimum 60 wpm requirement would severely hamper the ability to hire new CAs and would eliminate some excellent potential CAs without giving them the opportunity to develop their skills.²⁷⁵

83. NAD/TAN/CAN and SHHH oppose lowering the minimum typing speed requirement and counter that there are technology and software applications that can assist in increasing typing speed.²⁷⁶ NAD/TAN/CAN also asserts that there is a sufficient pool of potential, qualified CAs available.²⁷⁷ Ultratec asserts that technology can assist new CAs to

²⁶⁸ In addition to the issues addressed in this *Order on Reconsideration*, the *WorldCom Petition* raises issues relating to: (1) reimbursement according to session time for STS and VRS; and (2) whether the Commission has authority to allow recovery of intrastate VRS costs from the Interstate TRS Fund. See *WorldCom Petition* at 9-12. We will defer these issues to a future proceeding concerning TRS cost recovery.

²⁶⁹ See *Improved TRS Order* at ¶ 74; 47 C.F.R. 64.604(a)(1).

²⁷⁰ *Vista Petition* at 6; *WorldCom Petition* at 12-13.

²⁷¹ *Vista Petition* at 2.

²⁷² *WorldCom Petition* at 13.

²⁷³ *Vista Petition* at 6; *WorldCom Petition* at 13.

²⁷⁴ Sprint Comments at 2-3.

²⁷⁵ See, e.g., *Sprint Petition* at 2-3; *Vista Petition* at 2; *WorldCom Petition* at 13.

²⁷⁶ NAD/TAN/CAN Comments at 3; SHHH Comments at 2.

²⁷⁷ NAD/TAN/CAN Comments at 3.

easily reach 60-80 wpm with a one-percent or less error rate, without lengthy training.²⁷⁸

84. We conclude that our requirement that CAs must transmit words at a minimum speed of 60 wpm is a reasonable and necessary minimum to reduce the length of TRS calls, and therefore to provide functionally equivalent service. We agree with NAD/TAN/CAN, SHHH, and Ultratec that numerous options exist to increase the manual typing speed of CAs, including the use of speech recognition technology. Certainly a new hire without any CA experience is not capable of performing the job without some training, and our requirement does not obviate a training period for CAs.²⁷⁹ We find, however, that it is reasonable to expect a trained typist, with or without technological assistance, to meet the 60 wpm minimum. We clarify that a CA must test at 60 wpm prior to the time he or she first begins facilitating TRS calls for the public.

85. We conclude that the rule requiring CAs to provide a typing speed of 60 wpm is reasonable and necessary under the functional equivalent mandate.²⁸⁰ We also note that since the implementation of the 60 wpm typing speed requirement, the Commission has not received any indication from TRS users that TRS providers are not able to meet the 60 wpm requirement. Accordingly, we find that VISTA's and WorldCom's concerns are without merit. For these reasons, we deny the *Petitions* on CA typing speed.²⁸¹

b. CA 'Hot Key' To Alert Caller To Pre-Recorded Message

86. In the *Improved TRS Order*, the Commission adopted a new rule requiring CAs to alert the TRS user to the presence of a recorded message and interactive menu by using a hot key on the CA's terminal.²⁸² The *Florida PSC Petition* proposes that this rule should be clarified or amended to indicate that technology other than a hot key on the CA's terminal can be used to achieve the same notification. The Florida PSC asserts that "the rule should not be so limiting of possible technology alternatives."²⁸³

87. We clarify that the term "hot key" is not associated with any one technology. Our intent is to indicate a one-stroke technology at the CA terminal that "would send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been

²⁷⁸ Ultratec Comments at 9.

²⁷⁹ Our rules require that CAs "be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing or speech disabilities; and that CAs have competent skills in typing, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette." 47 C.F.R. § 64.604(a).

²⁸⁰ This requirement is waived for STS and VRS CAs because it is not applicable to those forms of TRS. See *Improved TRS Order* at ¶ 41 (STS waiver), ¶ 42 (VRS waiver).

²⁸¹ NASRA states their concern that a change in the minimum typing speed may have an impact on current and recently negotiated contracts. Because we do not alter this requirement, NASRA's concerns are moot. However, we expect that any contract language between state TRS programs and TRS providers will reflect the parties' understanding that should our regulations be modified during the contract period, our federal requirements supersede any conflicting previous contract language.

²⁸² *Improved TRS Order* at ¶ 94; 47 C.F.R. § 64.604(b)(6).

²⁸³ *Florida PSC Petition* at 5.

encountered,”²⁸⁴ and thereby enable the TRS user to request a summary of any recorded message. Accordingly, we clarify that TRS programs and providers may select their own technology, so long as the functionality of a hot key is provided.

c. CA In-Call Replacement Time and Session Logs for STS

88. In the *Improved TRS Order*, the Commission required that CAs must stay with an STS TRS call for a minimum of 15 minutes.²⁸⁵ This requirement was established to minimize disruption to an STS caller by ensuring that the time invested by the STS caller with a STS CA to ensure that the CA understands the STS caller’s speech is not lost by an abrupt transfer to a new CA.²⁸⁶ WorldCom requests that the Commission extend the effective date of this requirement for one year.²⁸⁷ WorldCom asserts that this requirement will reduce the availability of each STS CA by one hour per day, which will increase the provider’s expenses by approximately 15 percent.²⁸⁸ WorldCom also requests that the Commission require STS providers to keep a log of average and minimum session times to give the Commission an accurate picture of STS usage.²⁸⁹

89. The *Improved TRS Order* required STS relay services to be offered by March 1, 2001.²⁹⁰ WorldCom’s objection was raised prior to implementation date of this rule. TRS providers were given nearly one year from the release of the *Improved TRS Order* to implement STS, including the in-call replacement requirement for STS CAs. For this reason, WorldCom’s request for a one-year extension of the effective date, even if the request for an extension of time to comply had been promptly granted, would have been of little practical effect. Further, the *WorldCom Petition* provides no evidence not considered in the *Improved TRS Order* and offers no persuasive arguments in support of its assertions. STS has been successfully provided since that time and the Commission has received no complaints about this requirement. Therefore, we conclude that the Commission’s requirement that a CA remain with a STS caller for a minimum of 15 minutes is a reasonable mandatory minimum standard. Finally, we deny WorldCom’s request to require STS providers to keep a log of average and minimum session times. The Commission’s rules already require that TRS providers provide the Interstate TRS Fund Administrator with true and accurate data, including total minutes of use, total interstate minutes of use, and total TRS operating expenses,²⁹¹ and we believe this information is sufficient.

d. Qualified Interpreter Definition

90. In the *Improved TRS Order*, the Commission adopted the U.S. Department of

²⁸⁴ *Improved TRS Order* at ¶ 94.

²⁸⁵ 47 C.F.R. § 64.604(a)(5).

²⁸⁶ *Improved TRS Order* at ¶¶ 70-71.

²⁸⁷ *WorldCom Petition* at 8-9.

²⁸⁸ *WorldCom Petition* at 8-9.

²⁸⁹ *WorldCom Petition* at 9.

²⁹⁰ *Improved TRS Order* at ¶ 17.

²⁹¹ 47 C.F.R. § 64.604(c)(5)(iii)(C).

Justice (DOJ) definition of “qualified interpreter.”²⁹² WorldCom asserts that the Commission should suspend the requirement that TRS providers use qualified interpreters.²⁹³ WorldCom argues that the standard enacted by DOJ was intended to apply to situations where the interpreter is employed by a private agency that does not have common carrier responsibilities, unlike TRS providers. WorldCom asserts that such agencies can simply not take business for which it has no qualified interpreter. TRS providers, on the other hand, cannot turn calls away. WorldCom argues that the “qualified interpreter” requirement would force TRS providers to have a VRS interpreter for every specialized professional vocabulary.²⁹⁴ WorldCom further argues that the Commission has not considered the cost implications of this requirement, which it believes is significant enough to discourage voluntary provision of VRS. NAD/CAN/TAN opposes the *WorldCom Petition*, and asks the Commission to maintain its definition of qualified interpreter, noting that if an interpreter is not qualified to convey all the necessary vocabulary, he or she can call upon another VRS CA to assist with the call.²⁹⁵

91. We decline to suspend the definition of “qualified interpreter.” VRS users must have an expectation of reaching a qualified interpreter in order to have confidence in relay services. The alternative would be to allow unqualified interpreters to function as VRS CAs, that is, interpreters unable “to interpret effectively, accurately, and impartially” and incapable of “using any necessary specialized vocabulary.” The definition of qualified interpreter was adopted to protect VRS users from encountering interpreters who lack the skills necessary to interpret VRS calls. It is therefore not in the public’s interest to suspend the Commission’s definition of qualified interpreter.

92. We do not find WorldCom’s assertion that this definition will require TRS providers to hire separate VRS interpreters for “every specialized professional vocabulary” to be persuasive.²⁹⁶ Interpreters necessarily encounter diverse audiences and topics. In general, they are conversant in the vocabularies of various professions and fields. As a “profession [that] serves a population with varied communication needs and language skills, interpreters must be versatile in order to meet the challenges which may arise in any interpreting situations.”²⁹⁷ Finally, WorldCom’s assertion that the Department of Justice’s definition of qualified interpreter “applies to situations where the interpreter travels to events,” rather than the work environment experienced by VRS interpreters,²⁹⁸ is not supported by the language of the regulation.²⁹⁹

²⁹² *Improved TRS Order* at ¶ 48; see 47 C.F.R. § 64.601(14), providing that a qualified interpreter is an “interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.”

²⁹³ *WorldCom Petition* at 10.

²⁹⁴ *Id.*

²⁹⁵ NAD/TAN/CAN Comments at 9.

²⁹⁶ *WorldCom Petition* at 10.

²⁹⁷ Laurent Clerc National Deaf Education Center, Gallaudet University, “Becoming a Sign Language Interpreter,” <http://clerccenter.gallaudet.edu/InfoToGo/357.html> (visited 2/19/03).

²⁹⁸ *WorldCom Petition* at 10.

²⁹⁹ See 28 C.F.R. § 36.104.

2. Speed of Answer Requirement

a. Abandoned Calls

93. In the *Improved TRS Order*, the Commission amended its speed-of-answer requirements to require that abandoned calls, such as calls answered by the TRS facility but that never reach a CA, be included in determining whether the provider meets the requirement to answer 85 percent³⁰⁰ of the calls within 10 seconds or less.³⁰¹ The record indicated that including abandoned calls in the speed-of-answer determination was the only way to ensure compliance with the 85 percent standard, since otherwise the statistics could indicate that a provider is meeting this rule, when in fact consumers are being kept waiting in a queue for a CA.³⁰² NASRA expresses concerns about how the new speed-of-answer requirements and calculation of daily time measurement will impact negotiated contracts.³⁰³ WorldCom argues that misdialed 711 numbers (*i.e.*, calls dialed to 711 where the caller intended to call a different N11 number) will be common with implementation of the 711 access number, and that therefore TRS providers will find it difficult to comply with the requirement that they answer 85 percent of calls within 10 seconds if abandoned calls are included in the calculation.³⁰⁴ WorldCom therefore requests that the Commission allow a grace period of one year during which time dropped and abandoned calls would not be included in the calculation of speed of answer time.

94. The *Improved TRS Order* was published in the *Federal Register* on July 5, 2000. The 711 requirement did not go into effect until October 1, 2001. Therefore, to the extent WorldCom's request of a one year extension to implement the revised speed-of-answer requirements rests on its concern over the implementation of 711 dialing, it is without foundation. We further note that at the time of the petition, WorldCom predicted that there would be an increase of misdialing prior to the implementation of 711 access. However, we note that no significant misdialing has been reported, nor has any TRS provider reported difficulty in complying with the amended rules. Consequently, we deny the *WorldCom Petition*.

b. Speed-Of-Answer Requirements for STS and VRS

95. Background. In the *Improved TRS Order*, the Commission concluded STS and VRS fall within the definition of TRS.³⁰⁵ The Commission did not address, however, how the manner in which STS and VRS calls are made may affect our speed of answer requirements. WorldCom asks that we forbear from applying the speed-of-answer requirements established for traditional TRS to STS and VRS for one year. WorldCom argues that both of these types of calls generally require a longer set-up time than for traditional TRS calls.³⁰⁶ WorldCom states that the

³⁰⁰ Our current rules use the symbol for percent (%). We will adopt a change that will convert the symbol to the word "percent." This will make our rules more accessible to people that use assistive communications programs that do not recognize the symbol for percent, such as Braille.

³⁰¹ *Improved TRS Order* at ¶ 64; 47 C.F.R. § 64.604(b)(2).

³⁰² *Improved TRS Order* at ¶ 64.

³⁰³ See *NASRA Petition* at 1-2.

³⁰⁴ *WorldCom Petition* at 13.

³⁰⁵ See *Improved TRS Order* at ¶ 14 (as to STS); ¶ 22 (as to VRS).

³⁰⁶ *WorldCom Petition* at 8.

need to review special vocabularies, become familiar with the speech patterns of a STS caller, and determine other specific calling requirements may take over an hour. For this reason, WorldCom also asserts that application of our present speed of answer requirement could require providers to hire twice as many STS and VRS CAs.

96. Discussion. We conclude that WorldCom's request is moot as to VRS. In the *TRS Waiver Order*,³⁰⁷ the Commission granted with a request for a temporary waiver of the speed-of-answer requirements for VRS. The Commission stated that a temporary waiver of this requirement would permit more entrants into the VRS market and provide more time for technology to develop. The Commission noted that VRS is not a mandatory service and is still developing, and that, accordingly, waiver of the speed-of-answer requirement would assist in stimulating growth of the new service. Therefore, because these requirements have previously been waived for two years, we dismiss WorldCom's request.

97. We further conclude that the concerns expressed by WorldCom regarding STS call set-up time are not relevant to a speed-of-answer calculation, and we deny its request for a waiver of the speed-of-answer requirement for STS. Speed-of-answer refers to the time it takes to answer a call; the preparation time needed to successfully execute a TRS call occurs after the call has been answered. Accordingly, while STS calls may require additional set-up time, we find no reason why the initial response to an STS call should be any greater than for any other TRS service. We note that WorldCom and other TRS providers are required to provide appropriate staffing, and therefore if proportionally more CAs are needed for STS than for traditional TRS due to the nature of STS calls, permitting a waiver of the speed-of-answer requirement will not address that fundamental difference.

3. Non-Shared Language TRS

98. In the *Improved TRS Order*, the Commission adopted a non-English language TRS requirement,³⁰⁸ concluding that "non-English language relay services which relay conversations in a shared language" are TRS.³⁰⁹ We required that interstate TRS providers offer TRS in the Spanish language, and encouraged state providers to offer other non-English language relay services as dictated by the demographics of the relevant area.³¹⁰ The *Texas PUC Petition* urges the Commission to go beyond this present requirement and also find that multi-

³⁰⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, *Order*, 17 FCC Rcd 157 (2001) (*VRS Waiver Order*) (granting temporary waivers for VRS of certain TRS requirements, e.g., the requirement to handle all types of calls normally accepted by a common carrier, the requirement to have a system to immediately and automatically turn emergency calls over to the nearest public service answering point, and the requirement to provide equal access to interexchange carriers).

³⁰⁸ Our regulations define "non-English language relay service[s]" as a telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language. See 47 C.F.R. § 64.601(13). By relaying a conversation in a "shared language" we mean that both the calling and called party use the same language; therefore, in relaying the conversation the CA does not translate what is typed or voiced from one language to another.

³⁰⁹ See *Improved TRS Order* at ¶ 29.

³¹⁰ *Id.* at ¶ 31; 47 C.F.R. § 64.603.

lingual translation relay services (*i.e.*, non-shared language TRS) provided by an interstate TRS provider are reimbursable from the Interstate TRS fund.³¹¹ Sprint filed comments³¹² supporting the *Texas PUC's Petition*, encouraging the Commission to adopt a requirement for multi-lingual relay services to address non-shared language TRS. Based on issues raised in *Texas PUC Petition*, we will include this matter in the attached *NPRM*. We will seek comment on whether the Commission should allow interstate non-shared language translation service through TRS to be reimbursed by the Interstate TRS fund.

4. Procedural Issues

a. Consumer Complaint Logs

99. In the *Improved TRS Order*, the Commission required TRS providers to maintain a log of consumer complaints.³¹³ In addition, the *Improved TRS Order* required that the log be retained until the next application for certification is granted.³¹⁴ Florida PSC notes that the Commission did not include a rule to effectuate these provisions. Florida PSC asks on reconsideration that we adopt rules to effectuate the requirements that TRS providers maintain a consumer complaint log and retain the log until the next application for certification is granted. In the *Improved TRS Reconsideration Order*, the Commission on its own motion added a rule³¹⁵ relating to the requirements for consumer complaint logs.³¹⁶ Accordingly, Florida PSC's request has been addressed and is moot.

b. Reorganization and/or Consolidation of Rules

100. Florida PSC requests that the Commission place its regulations for the permissible rate of call blocking in one location in the rules. Presently, section 64.604(b)(2) of our rules requires adequate staffing to allow 85 percent of all calls to be answered within 10 seconds, and requires a LEC to provide upon request to TRS administrators and TRS facilities the call attempt rates and the rates of calls blocked between the LEC and the relay.³¹⁷ Section 64.604(b)(4) of our rules requires that TRS facilities use adequate network facilities so that under projected calling volume, "the probability of a busy response due to loop trunk congestion [will] be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network."³¹⁸ Florida PSC argues that "for rule clarity," these matters should be addressed "in the same part of the rule."³¹⁹

101. The Florida PSC raises a valid point regarding the placement of rules covering the

³¹¹ *Texas PUC Petition* at 3.

³¹² Sprint Comments at 4.

³¹³ *Improved TRS Order* at ¶ 121.

³¹⁴ *Id.*

³¹⁵ 47 C.F.R. § 64.604(c)(1).

³¹⁶ *Improved TRS Reconsideration Order*, FCC 00-200, at ¶¶ 4-5.

³¹⁷ See 47 C.F.R. § 64.604(b)(2).

³¹⁸ 47 C.F.R. § 64.604(b)(4).

³¹⁹ *Florida PSC Petition* at 5.

same functionality, *e.g.*, the permissible rate of call blocking and the responsibility of a TRS facility to provide adequate network capacity. We received no comments opposing such reorganization. In response to the rule changes adopted this *Report and Order*, as well as the Florida PSC Petition for Reconsideration, and in the interest of administrative efficiency, we have moved certain rules and/or consolidated various rules to present the responsibilities of the various parties more clearly in the mandatory minimum standards. The revised rules are found in Appendix D of this *Order*.

c. Extension of Time For Effective Date of Rules

102. The Florida PSC and NASRA request that the Commission extend the time in which the new regulations adopted in the *Improved TRS Order* become effective.³²⁰ Both parties note that, in the view of the new regulations, state contracts with TRS providers may have to be re-let and 30 days does not provide enough time for compliance. In the *Improved TRS Reconsideration Order*, the Commission on its own motion extended the effective date of the new regulations.³²¹ Accordingly, these requests have been addressed and are moot.

VI. NOTICE OF PROPOSED RULEMAKING IN CG DOCKET NO. 03-123

103. In this *NPRM*, we continue our inquiry into TRS technology and various improved services and features that may further the statutory goal of functional equivalency.³²² In some cases, we seek to develop a more comprehensive record concerning proposals first raised in the *Improved TRS FNPRM*. Since the *Improved TRS Order & FNPRM* was released, technological advancements have taken place that merit attention. More broadly, we recognize that the functional equivalency standard itself contemplates the periodic reassessment of our TRS regulations.³²³ Therefore, as set forth below, we seek comment on matters that include new types of calls and new technologies, IP Relay, and emergency preparedness. Our goal is to continue to improve the quality and level of service of TRS.

A. National Security/Emergency Preparedness for TRS Facilities and Services

104. On November 17, 1988, the Commission issued a Report and Order establishing the Telecommunications Service Priority Program (TSP) as the regulatory, administrative, and operational framework for restoring and providing certain priority telecommunications services

³²⁰ See, *e.g.*, *Florida PSC Petition* at 1-2; *NASRA Petition* at 1-2.

³²¹ In the *Improved TRS Reconsideration Order*, we stated that the effective date for the rule changes were as follows: Amendments to sections 64.601 through 64.605 of the Commission's rules (other than the amendments to sections 64.604(c)(2) and 64.604(c)(7)), were effective 180 days from the date of publication of the *Improved TRS Reconsideration Order* in the Federal Register. The amendments to section 64.604(c)(2) were effective June 30, 2000. The amendments to section 64.604(c)(7) were effective 30 days from the date of publication of the *Improved TRS Reconsideration Order* in the Federal Register. The *Improved TRS Order* as amended by the *Improved TRS Reconsideration Order* was published in the *Federal Register*, on June 21, 2000, 65 FR 38462.

³²² See 47 U.S.C. § 225(a)(3).

³²³ TRS regulations are found at 47 C.F.R. § 64.601 *et seq.*

in the event of an emergency.³²⁴ The targeted priority telecommunications services – called the National Security and Emergency Preparedness (NS/EP) recovery priorities – are contained in our regulations.³²⁵ As a general matter, NS/EP priorities are those services necessary to respond to and manage any event or crisis (local, national, or international) that causes, or could cause, serious harm to life or property. These priorities include restoring telecommunications services for the general public, but they do not presently address the provision of TRS.³²⁶

105. In view of the functional equivalency mandate, and the critical importance of telecommunications to all persons in the time of an emergency, we tentatively conclude that it is appropriate to assign at least the same NS/EP priority to TRS that applies to LECs or other telecommunications services available to the general public. In most cases, TRS is the only means of communication between persons with hearing or speech disabilities and emergency services and other persons. We note that our rules already require that TRS facilities have redundancy features, including uninterruptible power sources for emergency use, that are functionally equivalent to those in the central switching office in the public switched telephone network (PSTN).³²⁷ We therefore tentatively propose that TRS and TRS facilities receive an NS/EP priority status commensurate with that given to LEC facilities, and seek comment on whether our rules should be amended to provide for the continuity of operations of TRS facilities in the event of an emergency. That way, if operation of the LEC and the TRS facility were compromised during an emergency, both facilities would be reinstated simultaneously. We also seek comment on other means by which we might ensure equal treatment of LEC facilities and TRS facilities in this context. Finally, we seek comment on whether TRS providers and state TRS programs must provide an operational plan, beyond that already required in our rules, to ensure the survivability and continued operations of TRS facilities in case of an emergency.

³²⁴ See, e.g., *National Security Emergency Preparedness Telecommunications Service Priority System*, GEN Docket No. 87-505, *Report and Order*, FCC 88-341 (1988), 3 FCC Rcd 6650 (1988); see also *National Security Emergency Preparedness Telecommunications Service Priority System*, GEN Docket No. 87-505, *Memorandum Opinion and Order*, 4 FCC Rcd 8473, 54 Fed. Reg. 50622-01 (1989). The TSP Program was created as an amendment to Part 64 of the FCC's Rules and Regulations (Title 47 C.F.R.). The FCC designated the Executive Office of the President (EOP) as administrator of the TSP Program. The EOP delegated its responsibilities to the Manager of the National Communications System (NCS), which, in turn, assigned the administration and execution of the TSP Program to the Office of Priority Telecommunications (OPT) located at the NCS. The Commission also participates in the Network Reliability and Interoperability Council and has convened a Homeland Security Policy Council. See <http://www.fcc.gov/hspc/>.

³²⁵ 47 C.F.R. Part 64, Appendix A Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NS/EP).

³²⁶ See 47 C.F.R. Part 64, Appendix A Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NS/EP). The TSP Program has two components, restoring existing service and providing any necessary new service. If a restoration priority is applied to an existing telecommunication service, efforts will be made to restore that service before other non-TSP services. TSP restoration priorities are assigned before any particular service outage occurs based on the importance of that service. A provisioning priority is obtained to facilitate priority installation of new telecommunication services. As a matter of general practice, telecommunications service vendors restore existing TSP services before providing for new TSP services.

³²⁷ See 47 C.F.R. § 64.604(b)(4).

B. Mandatory Minimum Standards

1. Operational Standards

a. Security of IP Relay Calls

106. Currently, our confidentiality rule provides that CAs are prohibited from disclosing the content of any relayed conversation regardless of content.³²⁸ We believe, that in order to further ensure confidentiality during IP Relay calls, additional requirements may be necessary. Although IP Relay is bound by our strict TRS rules on confidentiality, use of the Internet does not come with the same privacy protections as does traditional TRS over the PSTN. With PSTN-based TRS, each call is carried over a dedicated circuit and is therefore highly secure. IP Relay involves information packets that are sent via the Internet, the conversations are channeled through the third party that is the TRS provider. For this reason, for example, many e-commerce merchants who take credit card orders provide message encryption³²⁹ to maintain the security of private information.

107. We seek comment on whether IP Relay calls should be provided with the level of security using encryption that is commonly used in commercial transactions over the Internet. We also seek comment to determine whether alternative security measures exist or are expected that could be used by IP Relay providers to ensure the security of IP Relay transmissions. We further seek comment on whether encryption or alternative security measure can be best achieved without requiring registration, sign-ins, or passwords for IP Relay users.

b. Emergency Call Handling over Wireless Networks

108. Previously in the *Report and Order*,³³⁰ we described the current problems associated with making an emergency call with a wireless telephone to a TRS facility via 711 or another direct dialing access number. We seek comment on how TRS facilities currently route emergency wireless 711 calls. In particular, we seek information on how TRS facilities determine the appropriate PSAP to which the call should be routed. We seek comment to learn what it would entail for TRS facilities to route a wireless TRS call to the same PSAP that would receive the call if the same caller dialed 911 on a wireless telephone.³³¹ We also seek comment

³²⁸ See 47 C.F.R. § 64.604(a)(2). CAs are permitted to transfer certain information to a PSAP regarding emergency situations. See, e.g., 47 C.F.R. § 64.604(a)(4). In addition, in limited circumstances disclosure is permitted for law enforcement purposes. See *IP Relay Declaratory Ruling* at ¶ 14 (discussing application of 47 U.S.C. § 64.605 to TRS).

³²⁹ Encryption is the transformation of data into a form unreadable by anyone without a secret decryption key. Its purpose is to ensure privacy by keeping the information hidden from anyone for whom it is not intended. *Newton's Telecom Dictionary* 266.

³³⁰ See discussion of emergency call handling and wireless TRS calls at section IV.B.2, *supra*.

³³¹ See also, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Further Notice of Proposed Rulemaking, FCC 02-326, 17 FCC Rcd 25,576 (2002); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, Order to Stay, FCC 02-210, 17 FCC Rcd 14,841 (2002); *Carrier Transition Reports for Implementation of the 911 Abbreviated Dialing Code Pursuant to*

(continued...)

on whether there would be any difference in this context if an emergency call is made to the TRS facility via 711 or a direct dialing access number.

109. Further, we seek comment to determine whether wireless carriers have the capability and should be required to transmit Phase I or Phase II E911 information to TRS facilities, and, if Phase I or Phase II E911 capability does not exist, whether the TRS facility should be exempt from the requirement to route wireless 711 emergency calls to the same PSAP that would receive the call if the same caller directly dialed 911 on a wireless telephone, or if some other system or mechanism could provide equivalent functionality or outcome in this context. Commenters should discuss the benefits as well as the challenges associated with any particular systems that they propose. Interested parties should also comment on the technological feasibility and/or readiness of TRS facilities to implement the requirements associated with such systems. We also seek comment on whether TRS facilities should be required to forward Phase I or Phase II E911 location information to the appropriate PSAP in addition to routing the call. Commenters should discuss the benefits as well as the challenges associated with such a requirement.

c. Non-English Language TRS

110. Our regulations define “[n]on-English language relay service” as a “telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.”³³² In the *Improved TRS Order*, we required that Interstate TRS providers offer TRS in the Spanish language, and encouraged state providers to offer other non-English language TRS as dictated by the demographics of the relevant area.³³³ We also found that non-English language TRS that relay conversations in a shared language are telecommunications relay services, and therefore can be reimbursed from the Interstate TRS fund.³³⁴

111. In addressing this issue in the *1998 TRS Notice of Proposed Rulemaking*,³³⁵ we noted that “some TRS providers may be offering ‘translation’ services to TRS users (*i.e.*, communication between two parties who each use a different language) including Spanish-language and [American Sign Language] ASL translation services.”³³⁶ We tentatively concluded, however, “that any such ‘translation’ TRS, especially foreign language translation

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the Wireless Communications and Public Safety Act of 1999, CC Docket No. 92-105, WT Docket No. 00-110, Public Notice, DA 02-507 (*rel'd* March 01, 2002).

³³² 47 C.F.R. § 64.601(13). By relaying a conversation in a “shared language” we mean that both the calling and called party use the same language; therefore, in relaying the conversation the CA does not translate what is typed or voiced from one language to another.

³³³ *Improved TRS Order* at ¶ 29.

³³⁴ *Id.*

³³⁵ *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990, Notice of Proposed Rulemaking*, CC Docket No. 90-571, FCC 98-90, 13 FCC Rcd 14187 (1998)(*1998 TRS Notice of Proposed Rulemaking*).

³³⁶ *1998 TRS Notice of Proposed Rulemaking* at ¶ 39.

services, are value-added TRS offerings that go beyond ‘relaying’ of conversation between two end users.”³³⁷ At the same time, we asked whether an exception should be made for ASL translation services. We noted that ASL is a language unique to the deaf community,” and therefore “ASL translation services may be necessary to provide ‘functional equivalency’ to ASL users.”³³⁸

112. In the *Improved TRS Order*, the Commission concluded that the provision of ASL translation service was necessary to provide “functional equivalency” to ASL users.³³⁹ We noted that ASL is a language with a syntax and grammar different than that of English, and that because many ASL relay users type in ASL syntax rather than in English syntax, a CA must be able to correctly translate the ASL text message to English in order to avoid translation inaccuracies.

113. In response to the *Improved TRS Order*, the Texas PUC filed a petition³⁴⁰ requesting that the Commission allow other non-shared language relay translation service (beyond ASL translation service) to be reimbursable from the Interstate TRS Fund.³⁴¹ The Texas PUC asserts that there is a great demand for the translation of non-shared language through TRS.³⁴² The Texas PUC asserts that states with large Hispanic populations often have a substantial number of Hispanic children who are deaf and, as a result, do not learn Spanish. Because these children are educated in ASL and English, many deaf children of Spanish speaking families are not able to participate in family communications.³⁴³ The Texas PUC asserts that TRS is often the only means of communication for these families. The Texas PUC asserts also that calling through TRS first in order to reach a commercial translation service is time-consuming and cost-prohibitive to many Hispanic families with deaf children.³⁴⁴ Sprint supports the *Texas PUC Petition*, stating that the provision of Spanish-to-English relay service is absolutely necessary because otherwise hearing-impaired children of foreign language-speaking

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Improved TRS Order* at ¶¶ 44-46.

³⁴⁰ Public Utilities Commission of Texas (Texas PUC), *Petition for Reconsideration*, filed March 24, 2000.

³⁴¹ This service would require TRS providers to offer translation services for those non-English languages common in their area, for example, Spanish-to-English conversations through a CA/translator. The petition is not clear if the request is limited to Spanish-to-English conversations, or any multi-lingual relay service, and therefore we include this matter in this *NPRM*.

³⁴² Hispanics are the fastest growing minority group in the deaf school age population in the United States. This is particularly true in Texas. Schildroth & Hotto, *Changes In Student And Program Characteristics. American Annals Of The Deaf*, 141(2), 68-71 (1996), Published in *Hispanic Outlook in Higher Education*, May 2000, Jean F. Andrews, Ph.D. & Donald L. Jordan, Ph.D. Lamar University, Beaumont, TX.

³⁴³ There are more than 7,000 deaf children from Spanish-speaking homes in the U.S. ASL becomes the first language for many of these Hispanic youths because it is the first language that is fully accessible them, even though ASL is not their home language. Schildroth & Hotto, *Changes In Student And Program Characteristics. American Annals Of The Deaf*, 141(2), 68-71 (1996).

³⁴⁴ *Texas PUC Petition* at 2.

parents would be unable to communicate with their families.³⁴⁵ Sprint also asserts that the incremental cost of providing multi-lingual relay service would be “*de minimis*,” and its inclusion in the TRS funding reports submitted by TRS providers to NECA would not have an appreciable impact on the payment amount or Interstate TRS Fund size.”³⁴⁶

114. Since the time we addressed this issue in the *1998 TRS Notice of Proposed Rulemaking*, the Commission has developed a better understanding of the needs of certain TRS consumers in this area, and recognizes that multi-lingual translation services through TRS may meet the unique needs of certain identifiable TRS users. We therefore seek comment on whether the Commission should allow TRS that employs a non-shared language translation service to be reimbursable from the Interstate TRS Fund. We also ask commenters to address whether provision of such a service is consistent with, or necessary under, our functional equivalency mandate. Commenters are also encouraged to provide information on the need for multi-lingual relay services, the costs associated with such services, and what would be involved for TRS providers to provide such services. In addition, the Commission seeks comment on whether multi-lingual relay services should be required on an intrastate and/or interstate basis, and if so, how it should be funded. The Commission also asks for comment on whether any of our TRS rules should be modified if we require multi-lingual translation services for TRS, and an appropriate time line for such an adoption. Finally, the Commission seeks comment on how, if adopted, multi-lingual translation services for TRS would be implemented with VRS, STS and other forms of TRS.

2. Technical Standards

a. Speed of Answer and Call Set-up Time

115. In the *First Report and Order*, the Commission adopted the rule that TRS providers must begin the actual relaying of a TRS call within 30 seconds of answering the call.³⁴⁷ In the *Improved TRS Order*, we amended this speed of answer requirement to require that TRS facilities, after answering the call, immediately handle the call, whether by a CA, or an automated process, but not place the call in a distribution queue. The rule now states that TRS providers shall “. . . answer 85 percent of all calls within 10 seconds by any method which results in the [TRS] caller’s call immediately being placed, not put in a queue or on hold.”³⁴⁸ Therefore, TRS providers must ensure that after a TRS call is “delivered” to the TRS facility’s network, *i.e.*, when the relay facility’s equipment accepts the call from the LEC and the PSTN actually delivers the call to the TRS facility,³⁴⁹ the call is promptly handled. This process is also referred to as “speed of answer.”

116. After a TRS call is answered pursuant to our speed of answer rule, the TRS provider may require additional time to set up the call. Some commenters have expressed frustration with the length of time it takes to set up certain forms of TRS, such as STS and VRS,

³⁴⁵ Sprint *Reconsideration Comments* at 4.

³⁴⁶ *Id.*

³⁴⁷ *First TRS Report and Order* at ¶ 21.

³⁴⁸ *Improved TRS Order* at ¶ 61; 47 C.F.R. § 64.604(b)(2).

³⁴⁹ 47 C.F.R. § 64.604(b)(2).

and certain types of non-traditional TRS calls, such as one and two-line VCO, and one and two-line HCO.³⁵⁰ The set up of such calls often require a series of steps. For example, a two-line VCO call requires the TRS user and the CA to activate a three-way calling feature and then bring in the intended called party before the CA begins relaying the conversation.³⁵¹ Furthermore, STS consumers report they often experience delays in being transferred to specially trained STS CAs.³⁵² Our regulations currently do not address call set up time.

117. The Commission recognizes that there may be several ways to reduce call set-up time, especially for non-traditional TRS calls. We therefore seek comment on how call set-up can be effectively and efficiently handled. We also seek comment on how call set-up time may be reduced with the aid of new technology or by any other methods. Finally, we seek comment on whether the Commission should require a specified call set-up time for various types and forms of TRS calls, and if so, how such set-up time should be measured.

b. TRS Facilities

(i) Communication Access Real-time Translation

118. One way the speed of a TRS call can be increased is by using communication access real-time translation (CART).³⁵³ With CART, a stenographer can type speech verbatim at a significantly higher word per minute (wpm) rate than is possible with typing on a standard keyboard. As a result, the conversation pace proceeds at a much higher rate (150 to 200 wpm) during a call. Maryland Relay offers CART for TRS users making three-way and conference calls.³⁵⁴

119. The Commission seeks comment to determine whether TRS providers should offer CART or CART-type services to improve the speed of TRS. We request detailed information regarding how CART, or similar technology and equipment, may be utilized by a TRS facility, including technical requirements, and CA training issues, as well as any challenges to providing this service through TRS. Commenters should provide specific information on any current CART relay uses, the application of CART relay in three-way or conference calls and other TRS scenarios, the benefits to TRS consumers of CART technology and stenographic service providers, the costs of providing CART relay, and any waivers, if appropriate, of Commission rules necessary to provide CART relay. We also seek comment on the supply of qualified CART providers. We ask, in particular, that associations representing CART providers provide specific information on the projected availability of qualified CART providers to meet the demand if CART is utilized by TRS facilities.

³⁵⁰ See generally Segalman Comments and STS Consumers Comments; NAD/TAN/CAN Comments at 29 n.32; SHHH Comments at 13-14.

³⁵¹ See, e.g., http://www.sprintbiz.com/government/sprint_relay/features.html.

³⁵² See generally Segalman Comments and STS Consumers Comments.

³⁵³ Communication access real-time translation (CART) is an instant translation of the spoken word into English using a stenotype machine, notebook computer, and real-time software. See National Court Reporter's Association, CART, <http://www.cart.ncraonline.org/index.html> (visited January 24, 2003).

³⁵⁴ See The Relay Connection, Spring 2002 "Conference Calling with High-Speed Captioning."

(ii) Interrupt Functionality

120. In the *Improved TRS FNPRM*, we sought comment on the technological feasibility of providing TRS consumers with interrupt functionality.³⁵⁵ This feature allows a TTY user to interrupt incoming text messages in order to convey a message back to the CA, so that the TRS conversation is more like a conventional telephone conversation in which each party can begin speaking before the other party has finished speaking.³⁵⁶ When a TTY user is typing, or is receiving, a TTY message, he or she cannot respond (*i.e.* type his or her message in return) until the sending party completely stops typing on their TTY.³⁵⁷ The record reflects that some TRS providers now offer some kind of interrupt functionality, which demonstrates that it is technologically feasible to do so.³⁵⁸ However, we seek additional information about how the interrupt functionality is being provided, whether any non-proprietary TTY protocols are able to support interrupt functionality, and consumer use of interrupt functionality.

(iii) TRS Consumers' LEC Offerings

121. Anonymous call rejection, call screening, and preferred call-forwarding are LEC features offered to voice users.³⁵⁹ Anonymous call rejection is a feature that automatically rejects calls to the user's number when the calling party has blocked his or her Caller ID information.³⁶⁰ Call screening or selective call blocking allows a user to create a list of telephone numbers (no-call list) from which the user does not wish to accept calls.³⁶¹ Calls from numbers on the no-call list receive an announcement that informs the caller that the called party is not receiving calls at this time. All calls not on the no-call list are placed to the called party. Preferred call-forwarding allows a user to create and maintain a list of "special" telephone numbers where, if a call is received from one of those numbers, the call will be forwarded to another number.

122. Anonymous call rejection, call screening, and preferred call-forwarding are all services that affect how incoming calls to the subscriber will be handled or directed. These

³⁵⁵ *Improved TRS FNPRM* at ¶ 138.

³⁵⁶ *See, e.g.*, TDI Comments at 6.

³⁵⁷ In a TRS call, the CA serves as a middle person, *e.g.*, when the call is between a TTY and a voice caller, the CA converts a TTY message to voice, and vice versa. When both end users are TTY users, the call is not a TRS call.

³⁵⁸ *See, e.g.*, California PUC Comments at 6; Massachusetts ATP Comments at 3.

³⁵⁹ The record does not demonstrate whether certain other features about which we initially sought comment, such as call back-redial, repeat dialing, anonymous call rejection, V.18 protocol, and other TTY protocols should be required as part of the TRS mandatory minimum standards. *See Improved TRS Order* at ¶¶ 132, 138. We also sought comment on call waiting and distinctive ringing, but did not receive sufficient information on these features as mandatory minimum standards. *See Improved TRS FNPRM* at ¶ 138. Based on the record we conclude that at this time these features are not TRS dependent. We therefore will not continue our inquiry into those features.

³⁶⁰ *See generally In the Matter of Petition for Rulemaking Filed by Albert C. Keulling*, DA 98-176, 13 FCC Rcd 2448 (1998) (Commission rejects proposal to have a national rule requiring that automatic call rejection be made available to all users at no charge for calls made with Caller ID blocking).

³⁶¹ *Improved TRS FNPRM* at ¶ 138.

incoming call services respond to the identification of the caller or, in some cases, the lack of such identification. We seek comment on their possible application in TRS. We tentatively conclude these services should be provided to TRS customers if they are offered by the subscribing TRS customer's local carrier *and* if the TRS facility can send Caller ID to the local carrier. We encourage commenters to provide detailed information on the possible provision of these services, relevant technical requirements for TRS facilities and users, and how these features or services would be implemented.

(iv) Talking Return Call

123. One telephone feature widely available in the United States to non-TRS users, that could be provided to TRS users if there was a change in the routing order of the TRS call, is *talking return call*, sometimes referred to as "automatic call-back." Talking return call is a feature widely available in the United States by non-TRS users. Talking return call allows a caller to automatically return the last incoming telephone call, whether or not the call was answered. To use this feature, the user enters a code (such as "*69") to obtain the telephone number of the party that last called the user's telephone number. The customer will then receive the last incoming telephone number via voice. Unfortunately, this is largely unusable by someone who is deaf. The feature includes an additional option for the caller to enter another code such as "1" to request that the carrier call the party in question. Deaf and hearing-impaired callers may also be able to use that feature, but without first hearing the number of the party who will be called. With this feature, if the called party's line is busy, the called party's switch monitors the called line for a given period of time to see if the called party hangs up and his/her line becomes available to receive calls. When the called party hangs up, the user is notified by a special signal pattern that the talking return call feature has connected with the intended party.

124. There is no way for the TRS facility to get the number of a party who called a TRS consumer directly, *i.e.*, made a non-TRS call to the TRS consumer. However, it is possible in principle for the TRS facility to provide the identification of the last party who called the TRS consumer via the TRS facility (unless the caller's information was blocked by the caller). If the TRS consumer is a TTY user, it may also be possible for the TRS facility to provide this information via a TTY interface, instead of the voice interface used by LECs. Finally, the TRS facility may be able to arrange to monitor a busy called line to see if it becomes idle and available to receive a call. We seek comments on the feasibility of TRS providers offering such TRS services and whether the talking return call functionality should be required as a mandatory minimum standard.

c. Technology

(i) Speech Recognition Technology

125. In the *Improved TRS FNPRM*, the Commission sought comment on computer-assisted speech recognition technology, sometimes referred to as voice-to-text (VTT) technology,³⁶² tailored for the TRS environment.³⁶³ Several commenters in that proceeding

³⁶² *Improved TRS FNPRM* at ¶ 138.

³⁶³ See Ultratec Comments at 4. With VTT, the CA, instead of typing, re-voices the voice caller's message into a specialized speech recognition device that translates the speech into text.

asserted that speech recognition technology could significantly shorten the time it takes for the voice caller's message to be converted into text,³⁶⁴ because it is nearly impossible to type the words into text as fast as dialogue is spoken over the telephone (*i.e.*, in real time). Several states have been undergoing trials with a type of speech recognition technology.³⁶⁵ The Commission believes that speech recognition technology may be a promising technology that can be incorporated into TRS to reduce the time it takes for a voice caller's message to be converted into text. At this time, however, we do not have adequate information on this new technology to require speech recognition technology as a mandatory minimum standard. We therefore seek comment on the current status of the development of speech recognition technology. We also seek comment on the extent, if any, to which TRS providers have already integrated speech recognition technology into their operations. Commenters are encouraged to address non-proprietary technologies available to support speech recognition technology, and whether any specific CA training might be necessary.

(ii) Transmission Speed

126. Text-based TRS calls normally take four times as long as similar voice-to-voice calls.³⁶⁶ Since initial guidelines for TRS were established by the Commission in 1991,³⁶⁷ new transmission protocols³⁶⁸ for TTYs have evolved that increase transmission speed. Although 45.45 bps Baudot is still the dominant protocol and the one present in many TTYs, other protocols, such as Bell 103 ASCII, V-series ASCII protocols, and proprietary protocols are also used in TTY products.³⁶⁹ Because faster transmission speeds for text-based TRS calls will move closer to the transmission speed of a voice-to-voice call, we seek comment on whether improved transmission speed for the TTY leg of calls through TRS is technologically feasible. Specifically, commenters should indicate what technical requirements are necessary to improve transmission speed, as well as any additional challenges that may be involved. We seek comment on whether the use of legacy, or older models, of TTYs prevents TRS users from benefiting from technological advancements in TRS. We also seek comment on how improved transmission speed could be compatible with legacy TTYs.

(iii) TTY Protocols

127. In the *Improved TRS FNPRM*, the Commission sought comment on the use of new transmission TTY protocols, such as V.18, for TTYs and similar products that might

³⁶⁴ See Ultratec Comments at 5. Ultratec's "CapTel" speech recognition technology transfers words to text of twice the speed of a typical CA's manual typing speed.

³⁶⁵ Ultratec's *CapTel* and *FasTan* speech recognition capabilities are currently being tested in several states. See, e.g., Maryland Dept. of Budget and Mgt. Comments at 3; Sprint *ex parte* Meeting, Oct. 5, 2001.

³⁶⁶ See, e.g., Ultratec Comments at 4; Maryland Budget and Mgt. Comments at 3.

³⁶⁷ Initial TRS regulations were effective pursuant to *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Red 4657 (1991)(*First TRS Report and Order*).

³⁶⁸ A protocol is a specific set of rules, procedures or conventions relating to format and timing and data transmission between two devices. See generally *Newton's Telecom Dictionary*.

³⁶⁹ *Improved TRS FNPRM* at ¶ 139.

improve the interconnection of TRS facilities or TTYs with wireless devices.³⁷⁰ The V.18 protocol is intended for use in text telephones, interworking units, text relay services, emergency centers, and computers to be used for text telephony in the public switched telephone network (PSTN).³⁷¹ The record indicates that the V.18 protocol standard and other possible TTY protocols, such as V.21, might improve the feasibility of interconnecting TRS facilities or TTYs with wireless devices;³⁷² however, we did not receive adequate information on this issue. Therefore, we seek further comment regarding the extent to which innovative non-proprietary protocols for TTY products are currently being used, and any advantages or disadvantages that such protocols may present to TRS providers in this context.

C. Public Access to Information and Outreach

128. Our TRS current mandatory minimum standards require carriers to take certain steps to ensure that the general public has access to information concerning TRS. The rules require that:

Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population. In addition, each common carrier providing telephone voice transmission services shall conduct, not later than October 1, 2001, ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible."³⁷³

129. We have noted previously that this rule may not be fully effective in ensuring that the public is aware of TRS.³⁷⁴ We seek comment on the scope of this problem. What is the current rate of hang-ups on TRS calls? How many of these are attributable to customer confusion? How effective are outreach efforts at addressing these issues?

130. As a result, we seek comment on the kinds of additional outreach requirements we should require of TRS providers. For example, we seek data regarding what types of outreach is most effective for these types of services. Are there any successful state programs that a national program could be modeled on? What should be the role of federal funding in these efforts? How should we balance the additional charges to consumers with the benefits of outreach? What types of materials are most effective at reaching targeted consumers? What distribution methods

³⁷⁰ See *Improved TRS FNPRM* at ¶¶ 139-144.

³⁷¹ See *Improved TRS Order and FNPRM* at n. 275.

³⁷² See, e.g., AT&T Comments at 10; Gallaudet Trace Comments at 3-4; NAD/TAN/CAN Comments at 31-33; TDI Comments at 14-15.

³⁷³ 47 C.F.R. § 64.604(c)(3) *Public Access to Information*.

³⁷⁴ See, e.g., *Improved TRS FNPRM* at ¶ 104.

are most effective? Further, we seek comment on whether TRS providers, in addition to directing outreach information to their customers, might adopt training for their employees so that all of their employees fully understand how TRS works and how it benefits the public so that they can, in turn, better inform consumers about TRS. We also seek comment on whether we should add these and other more particular or far-reaching outreach requirements of the mandatory minimum standards.

131. In addition, we seek comment on whether the states should have the obligation to reimburse intrastate TRS providers for any additional outreach requirement adopted in this proceeding, and whether the Interstate TRS Fund should reimburse interstate TRS providers for such outreach.³⁷⁵ In this regard, we note that eligible telecommunications carriers that receive universal service support must “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”³⁷⁶

132. We also seek comment on whether particular outreach requirements should be added to the requirements of the certification process that we have proposed in this *NPRM*, which would be conducted by the Commission for TRS providers seeking compensation from the Interstate TRS Fund. In this regard, we seek comment on whether TRS providers eligible for reimbursement from the Interstate TRS Fund would be required to engage in various specified outreach efforts as a precondition to receiving compensation from the fund.

133. Finally, we seek comment on how, if the Commission were to require a coordinated outreach campaign (instead of or in addition to the outreach required of individual TRS providers), such a campaign could be funded. We note that in the *Improved TRS FNPRM*³⁷⁷ we sought comment on the suggestion made by a number of commenters that an expanded outreach effort be supported by the Interstate TRS Fund.³⁷⁸ The Interstate TRS Fund is funded by mandatory contributions from all providers of interstate telecommunication services.³⁷⁹ Section 225 and our rules provide for payments from the Interstate TRS Fund to compensate eligible TRS providers for their reasonable costs of providing interstate TRS.³⁸⁰ We seek comment, including legal analysis, on whether the Interstate TRS Fund may be used to compensate third parties (*i.e.*, non-providers) for the cost of a coordinated outreach program. We also seek comment to determine whether the cost recovery provisions of section 225³⁸¹ require that portions of an outreach campaign designed for implementation at the state level must be paid for by the states.

³⁷⁵ We note that some providers currently submit some limited advertising costs to NECA, the interstate TRS Fund administrator, as part of their TRS operating expenses on which the per minute TRS reimbursement rate is based.

³⁷⁶ 47 C.F.R. § 54.405(b).

³⁷⁷ *Improved TRS FNPRM* at ¶¶ 134-136.

³⁷⁸ *See, e.g.*, Maryland Comments at 13; NAD/CAN Reply Comments at 12; TDI Reply Comments at 15.

³⁷⁹ 47 U.S.C. § 225(d)(3)(B); 47 C.F.R. § 64.604(c)(5)(i-ii), (iii)(A-B).

³⁸⁰ 47 C.F.R. § 64.604(c)(5)(iii)(E).

³⁸¹ 47 U.S.C. § 225(d)(3).

D. Procedures for Determining TRS Providers' Eligibility for Receiving Payments from the Interstate TRS Fund

134. Background. As noted above, the Commission issued its first order implementing TRS on July 26, 1991 and TRS became available on a uniform, nationwide basis pursuant to Commission regulations in July 1993.³⁸² Under its statutory mandate, the Commission has revisited the regulations governing TRS over the years to make available to consumers new forms of TRS, finding that TRS need not be limited to either telecommunications services³⁸³ or services that require a TTY.³⁸⁴

135. In March 2000, the Commission issued the *Improved TRS Order* which, among other things, concluded that VRS was a form of TRS, but tentatively concluded that the provision of VRS should not be mandatory given its technological infancy. The Commission nevertheless encouraged the use and development of VRS,³⁸⁵ and concluded that, on an interim basis, all VRS calls would be eligible for cost recovery through the Interstate TRS Fund.³⁸⁶ On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & FNPRM*, which further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS.³⁸⁷ Although the Commission did not require that TRS providers offer IP Relay, it authorized, on an interim basis, recovery of all costs of providing IP Relay from the Interstate TRS Fund. In light of these developments, we now seek comment on whether our rules governing the provision of TRS and the eligibility of TRS providers to receive compensation from the Interstate TRS Fund, should be amended or modified.³⁸⁸ Section 225 requires the Commission to ensure that *interstate* and *intrastate* telecommunications relay services are available, to the extent possible and in the most efficient manner, to persons with

³⁸² 47 U.S.C. § 225(b)(1). Section 225 requires common carriers providing telephone voice transmission services to provide TRS throughout the areas they serve. The statute mandated an implementation date of no later than July 26, 1993. *See* 47 U.S.C. § 225(c). Prior to the enactment of Title IV, some states offered relay services, but the services offered differed from state to state, were subject to many limitations, and were generally limited to intrastate calls. *See* Strauss, Title IV – Telecommunications, Implementing The Americans With Disabilities Act at 156-158 (Gostin & Beyer ed. 1993).

³⁸³ *See Improved TRS Order* at ¶ 88 (“We find that section 225 does not limit relay services to telecommunications services, but...reaches enhanced or information services.”).

³⁸⁴ *See, e.g., Improved TRS Order* at ¶ 13.

³⁸⁵ *Improved TRS Order* at ¶¶ 23-27.

³⁸⁶ *Improved TRS Order* at ¶ 26. In 2001, the Commission addressed cost recovery methods for traditional TRS, Speech-to-Speech relay (STS), and Video Relay Service (VRS), and sought additional comments on the appropriate cost recovery mechanisms for VRS. *See In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities – Recommended TRS Cost Recovery Guidelines/Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, FCC 01-371, 16 FCC Red 22948, (2001)(*STS/VRS Order*).

³⁸⁷ *IP Relay Declaratory Ruling* at ¶¶ 1, 10-14.

³⁸⁸ 47 C.F.R. § 64.604(c)(5).

hearing and speech disabilities in the United States.³⁸⁹

136. Discussion. In this *NPRM*, we seek comment on whether, and if so, how, the Commission should amend its rules to address the provision of TRS in circumstances not presently covered by our regulations, including a provider's eligibility for cost recovery for services currently reimbursed solely from the Interstate TRS Fund. For example, there is currently no method for a TRS provider, providing only interstate TRS and not participating in a certified state program as an approved intrastate provider, to be reimbursed for its provision of interstate TRS. Because there is no federal certification process, interstate TRS providers may seek reimbursement from the Interstate TRS Fund only after they have shown that they are an approved provider in a state TRS program that has been certified by the Commission. This is because the certification process is currently left to the states.³⁹⁰ There is no federal certification process for interstate TRS providers.³⁹¹

137. We seek comment on whether the Commission should establish such a process.³⁹² If the Commission should find such a process appropriate, we tentatively conclude that the rules would require TRS providers to apply to the Commission for certification as an interstate TRS provider, providing evidence that they are in compliance with the mandatory minimum standards found in section 64.604 of our rules.³⁹³ TRS providers would also be required to keep a log of any complaints received, and their disposition of such complaints.³⁹⁴ Approved interstate TRS providers would be required to submit a report each year to the Commission detailing their compliance with the mandatory minimum standards and listing the resolution of each complaint filed against the provider. Upon review of such reports, if the Commission determined that a TRS provider failed to meet these requirements, the provider's certification would be revoked and it would not be eligible for reimbursement.³⁹⁵ We seek comment on these proposed rules. We also seek comment on whether we should require all interstate TRS providers seeking reimbursement from the Interstate TRS Fund to apply to the Commission, under the rules proposed above, regardless of their involvement in a certified state program.

138. The Commission has previously found that TRS providers providing IP Relay and

³⁸⁹ 47 U.S.C. § 225(b)(1). As we have noted, the legislative history of the ADA makes clear that the enactment of Title IV was intended to further of the universal service mandate of Section 1 of the Communications Act. House Report at 129.

³⁹⁰ 47 C.F.R. § 64.604(c)(5)(iii)(F)(1).

³⁹¹ Obviously, the Commission does exercise enforcement authority concerning violations of its TRS rules. See, e.g., *Publix Network Corp.; Customer Attendants, LLC; Revenue Controls Corp.; SignTel, Inc.; and Focus Group, LLC*, EB Docket No. 02-149, File No. EB-01-TC-052, *Order to Show Cause and Notice of Opportunity for Hearing (Publix Show-Cause Order)*, 17 FCC Rcd 11,487 (2002).

³⁹² See Appendix E of this *Order* for proposed rules.

³⁹³ 47 C.F.R. § 64.604.

³⁹⁴ These would include complaints filed against the provider directly as well as those filed against the provider in any states or before the Commission pursuant to section 64.604(c) of our rules.

³⁹⁵ See similar process for state TRS program certification, 47 C.F.R. § 64.605(e) – Suspension or revocation of certification.

VRS should be reimbursed, in both cases on an interim basis, from the Interstate TRS fund.³⁹⁶ The Commission reasoned that section 225 of the Act requires that “regulation governing TRS cost recovery shall ‘generally’ provide that costs caused by interstate TRS shall be recovered from all subscribers for every interstate service and costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction.”³⁹⁷ Concerning both IP Relay and VRS, the Commission “interpreted the term ‘generally’ to give [it] the discretion to fund intrastate service from the interstate jurisdiction.”³⁹⁸ As WorldCom explained in its original petition requesting Interstate TRS Fund reimbursement for IP Relay, “because the first leg of an IP Relay call comes over the internet, rather than from a telephone, there is no automatic way to determine whether any call is intrastate or interstate.”³⁹⁹ Although both IP Relay and VRS are reimbursed exclusively from the Interstate TRS fund, providers of IP Relay and VRS, like every other provider of TRS, may only be certified for reimbursement if they are approved providers in a certified state TRS program.

139. We seek comment on whether the Commission should institute a certification process specifically for IP Relay, VRS, and any other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate, for the period of time that such services are reimbursed from the Interstate TRS Fund. We also seek comment on whether the proposed federal certification rules, detailed above, should be modified in the case of IP Relay or VRS. We note that some current providers of VRS, and some potential providers of IP Relay and VRS, are not common carriers. We seek comment on whether this should influence the need for a federal certification process.

140. In some of the scenarios described above, a state agency has the authority to approve TRS providers to participate in a certified state TRS program, and such approval allows the providers to be reimbursed from the Interstate TRS fund. We seek comment on whether a TRS provider should be required to obtain federal certification whenever it provides TRS services that are reimbursed from the Interstate TRS Fund. This would include TRS services that may potentially be intrastate (such as IP relay or VRS) but for various reasons, including our inability to ascertain the origination point of the TRS call, the reimbursement for such services currently comes from the Interstate TRS Fund. We ask commenters to consider whether such a requirement is in keeping with the mandate of section 225.⁴⁰⁰

VII. PROCEDURAL MATTERS

A. *Ex parte* Presentations

141. This *NPRM* is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that

³⁹⁶ *IP Relay Declaratory Ruling* at ¶ 20; *Improved TRS Order* at ¶¶ 24-27.

³⁹⁷ *IP Relay Declaratory Ruling* at ¶ 21.

³⁹⁸ *IP Relay Declaratory Ruling* at ¶ 21.

³⁹⁹ *IP Relay Declaratory Ruling* at ¶ 15.

⁴⁰⁰ “[T]he Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech – impaired individuals in the United States.” 47 U.S.C. § 225(b)(1).

they are disclosed.⁴⁰¹

B. Regulatory Flexibility Act

142. As required by the Regulatory Flexibility Act (RFA),⁴⁰² the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA), which is set forth in Appendix B. Also as required by the RFA,⁴⁰³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the *NPRM*, and should have separate and distinct headings designating them as responses to the IRFA. The Commission will send a copy of the *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking (Order)*, including the FRFA and IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

143. The *Report and Order, Order on Reconsideration* and *NPRM* contain new, modified and/or proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. These new, modified and/or proposed information collection(s) will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new, modified and/or proposed information collection(s) contained in this proceeding.

D. Comment and Reply Dates for NPRM in CG Docket No. 03-123

144. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1415, 1.419, interested parties may file comments on or before 30 days after *Federal Register* Publication, and reply comments on or before 45 days after *Federal Register* Publication. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

145. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-

⁴⁰¹ See generally, 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

⁴⁰² See 5 U.S.C. § 604. The RFA, see 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).

⁴⁰³ See 5 U.S.C. § 603.

mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325 Washington, DC 20554.

146. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, S.W., Room 6-C410, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CG Docket No. 03-123, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

VIII. ORDERING CLAUSES

147. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i) and 4(j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 218 and 225, this SECOND REPORT AND ORDER and ORDER ON RECONSIDERATION ARE ADOPTED and Part 64 of Commission's rules is AMENDED as set forth in the attached Appendix D.

148. IT IS FURTHER ORDERED that the amendments to sections 64.601 through 64.605 of the Commission's rules as set forth in Appendix D ARE ADOPTED, effective thirty days from the date of publication in the *Federal Register*, except that rule sections 64.604(a)(3) and 64.604(c)(2), that contain information collection requirements under the PRA, are not effective until approved by OMB. The Commission will publish a document in the *Federal Register* announcing the effective date for those sections.

149. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 225, 303 (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C.

§§ 151, 154(i), 154 (j), 225, 303(r), and 403, the NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

150. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this SECOND REPORT AND ORDER, ORDER ON RECONSIDERATION, AND NOTICE OF PROPOSED RULEMAKING, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

151. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY). This *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A: List of Parties

Improved TRS FNPRM, CC Dkt. No. 98-67, FCC 00-56 (2000)

Commenters: AT&T, Rebecca Ancheta, Jeanne Abrons, Virginia Alton, Peggy Barker, Bell Atlantic, Susan Barnhill, David Bekhour, Mary Bell, Cheryl Bergan, Todd Butterworth, California State and California Public Utility Commission (California PUC), Cellular Telecommunications Industry Association (CTIA), Sue Cohen, Geoffrey Curtis, Judith Clark, Fred Dickinson, Gus Estrella, GTE, Bruce Gibbings, Barry Gurdin, Don Gulley, Andrea Gough, Helen Goodman, Augusta Goldstein, Jeffrey Hill, Cheryl Heppner, Robert Hodges, Pam Hoye, Gretchen Jerk, David Kagan, Isadora Kunitz, Katherine Keller, Leo LaPointe, Dana Lognstreth, Rebecca Ladew, Larry Littleton, David McNaughton, Maryland Department of Budget & Management (Maryland Dept. of Budget and Mgt.), Massachusetts Assistive Technology Partnership (Massachusetts ATP), Craig Miller, C. Hugh Marsh, National Association of the Deaf Telecommunications Advocacy Network and Consumer Action Network (NAD/TAN/CAN), Amy Noakes, Fred Nisen, Thomas O'Neill, Rehabilitation Engineering Research Center- Gallaudet University and Trace Center, University of Wisconsin (RERC-TA), Tracy Rackensperger, SBC Communications, Inc. (SBC), Self Help for the Hard of Hearing (SHHH), Sprint, Linda Sullivan, Marsha Spector, Howard Sage, Jeff Schultz, Trici Schraeder, Telecommunication for the Deaf, Inc. (TDI), United States Telecom Association (USTA), WorldCom, Inc. (WorldCom), Eda Wilson, Julie Winsberg, Russ Zochowski; **Reply Commenters:** Emik & Anne Avakian, Ruth Ancheta, Rod Brawley, Venna Behm, Cellular Telecommunications Industry Association (CTIA), Cindy Curtis, Sue Cohen, Gail Cobin, Florida State Public Service Commission (Florida PSC), Bruce Fleming, Bob Glass, Leo LaPointe, Amy Noakes, Barry Romich, Sprint, Bob Segalman, Margaret Turk, Bobbi Tanberg, John Van Dusen, Anke Van Aardenne, Barbara Vick, WorldCom, Inc. (WorldCom), Janell Woodbury, Ron Wolf

Reconsideration of the Improved TRS Order, CC Dkt. 98-67, FCC 00-56

Petitioners: Florida Public Service Commission (Florida PSC); National Association for State Relay Administration (NASRA); SBC Communications, Inc. (SBC), Texas Public Utility Commission (Texas PUC); Vista Technologies (Vista); WorldCom, Inc. (WorldCom).

Commenters: Sprint Corporation (Sprint); Ultratec, Inc. (Ultratec); Self Help for Hard of Hearing People, Inc. (SHHH); National Association of the Deaf-Telecommunications Advocacy Network and Consumer Action Network (NAD/TAN/CAN); **Reply Commenters:** WorldCom and NAD/TAN/CAN.

IP Relay Declaratory Ruling & 2nd FNPRM, CC Dkt. No. 98-67, FCC 02-121

Commenters: Winston A. Ching, Chad A. Ludwig, Public Service Commission of the State of Missouri (MoPSC), Richard Roehm, Telecommunications for the Deaf, Inc. (NAD and ALDA supporting)(TDI), Sprint Corporation (Sprint), Verizon Communications, Inc. (Verizon), WorldCom, Inc. (WorldCom); **Reply Commenters:** Hamilton Relay Inc. (Hamilton), Telecommunication for the Deaf, Inc. (TDI)

IP Relay Declaratory Ruling & 2nd FNPRM, CC Dkt. No. 98-67, FCC 02-121

Petition for Reconsideration filed on the behalf of MCI WorldCom, Inc. and Sprint Corporation Commenters: AT&T, Communications Service for the Deaf, Inc.; **Reply Commenter:** Hamilton Relay Inc.

PSAP Public Notice, CC Dkt. 98-67, DA 02-1826

Commenters: AT&T, Deaf Seniors of America (DSA), Intrado, Inc. (Intrado), National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc. (NENA/APCO) Sprint Corporation (Sprint), Telecommunications for the Deaf, Inc. (TDI), Texas Commission on State Emergency Communications (TX-CSEC), Verizon Communications, Inc. (Verizon), Maryland Department of Budget and Management (Maryland Dept. of Budget & Mgt.), Telecommunications Access of Maryland (MD-TAM); **Reply Commenters:** National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc. and the National Association of State Nine-One-One Administrators (NENA/APCO/NASNA), Sprint Corporation, Inc. (Sprint), Telecommunications for the Deaf, Inc. (TDI), Verizon Communications, Inc. (Verizon).

Appendix B: Final Regulatory Flexibility Analysis (FRFA)

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the further notice of proposed rulemaking to which this *Report and Order* responds.² The Commission sought written public comment on the proposals in the *Improved TRS FNPRM*, including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

Need for, and Objective of, this *Report and Order*

2. This proceeding was generally initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. Our specific concerns were to address emergency call handling, Speech-to-Speech (STS) services, and to examine the mandatory minimum standards with regard to technological advancements in telecommunications. Because technological advancements in telecommunications services produce enhanced features available to the non-disabled telecommunications consumer, the Commission issued the *Improved TRS FNPRM* to further develop the record with the goal of determining the best plan to make the full range of telecommunications services available to TRS users.

3. The Commission issued the *Improved TRS FNPRM* to seek public comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. In doing so, the Commission sought to enhance the quality of TRS and broaden the potential universe of TRS users, consistent with Congress' direction at 47 U.S.C. § 225(d)(2), to ensure that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology. The *Improved TRS NPRM* also sought comment on outreach programs, the accessibility of emergency services to TRS, and whether SS7 technology and concomitant services should be made available to TRS facilities. The intent of the proposed rules was to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS.

4. In this *Report and Order*, the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section

¹ See 5 U.S.C. § 603. The RFA, see 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. 847 (1996).

² *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 (2000) (*Improved TRS Order & FNPRM*).

³ See 5 U.S.C. § 604. We also expect that we could certify the *Report and Order* under 5 U.S.C. § 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action.

225. First, we require that TRS providers offer certain LEC-based improved services and features where technologically feasible,⁴ several additional types of TRS calls,⁵ and other services and features⁶ through which consumers with varying needs, abilities, and preferences may access and use TRS. In addition, we require that all TRS providers successfully implement 711 dialing access for STS users. This *Report and Order* also revises the requirements for handling emergency calls. Finally, we provide guidance for public access to TRS-related information to improve the usability of TRS for all Americans. These amended and new rules will improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.

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

5. No comments were filed directly in response to the IRFA in this proceeding. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on at least one small entity that is a TRS provider.

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

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁷ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹¹

⁴ For example, new features that may be LEC-based such as three-way calling.

⁵ New mandatory types of TRS calls are: (1) two-line VCO; (2) two-line HCO; (3) VCO-to-TTY; (4) VCO-to-VCO; (5) HCO-to-TTY; and (6) HCO-to-HCO.

⁶ Other such services and features that may involve new technologies or require new tasks to be preformed by a CA include call release; and three-way or conference calling.

⁷ 5 U.S.C. § 604(a)(3).

⁸ 5 U.S.C. § 601(6).

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

¹⁰ 15 U.S.C. § 632.

¹¹ 5 U.S.C. § 601(4).

Nationwide, as of 1992, there were approximately 275,801 small organizations.¹² The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹³ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.¹⁴ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

7. Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules.¹⁵ For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service Report*.¹⁶

8. *Local Exchange Carriers*. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹⁷ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.¹⁹ This provides that such a carrier is small entity if it employs no more than 1,500 employees.²⁰ Commission data from 2000 indicate that there are 1,329

¹² 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹³ 5 U.S.C. § 601(5).

¹⁴ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

¹⁵ *But see* note 3, *supra*.

¹⁶ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (May 2002) (*Trends in Telephone Service*). FCC Website location (see online page 24): <http://www.fcc.gov/Bureaus/CommonCarrier/Reports/FCC-StateLink/IAD/trend502.pdf>.

¹⁷ 15 U.S.C. § 632.

¹⁸ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. 121.102(b).

¹⁹ 13 C.F.R. § 121.201, NAICS Code 517110.

²⁰ *Id.*

incumbent local exchange carriers, total, with approximately 1,024 having 1,500 or fewer employees.²¹ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,024 ILECS that are small businesses possibly affected by our action.

10. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.²² This provides that such a carrier is small entity if it employs no more than 1,500 employees.²³ Commission data from 2000 indicate that there are 229 interexchange carriers, total, with approximately 181 having 1,500 or fewer employees.²⁴ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 181 interexchange carriers that are small businesses possibly affected by our action.

11. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.²⁵ Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The Commission estimates that at least one TRS provider is a small entity. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities.²⁶ Consequently, the FCC estimates that at least one TRS provider is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. *Reporting and Recordkeeping.* This *Report and Order* may involve new mandatory reporting requirements. These rules require a speed dialing feature that may require TRS providers to maintain a list of telephone numbers. The *Report and Order* adopts a rule to require that TRS facilities provide speed dialing functionality on an intrastate and interstate basis; however, it does not adopt specific requirements for speed dialing functionality at this time. We anticipate that TRS providers will develop customized speed dialing and expect that

²¹ *Trends in Telephone Service* at Table 5.3.

²² 13 C.F.R. § 121.201, NAICS Code 517110

²³ *Id.*

²⁴ *Trends in Telephone Service* at Table 5.3.

²⁵ 13 C.F.R. § 121.201, NAICS Code 517110

²⁶ MCI WorldCom, for example, provides TRS in only a few states but is not a small business.

consumers' needs will be addressed as this feature matures. The *Report and Order* establishes voluntary reporting requirements associated with certain waivers available for certain TRS providers. Consistent with the *IP Relay Order on Reconsideration*,²⁷ this *Report and Order* establishes waivers for TRS providers who elect to provide Internet Protocol (IP) Relay and video relay service (VRS).²⁸ The waivers set forth in this *Report and Order* are contingent on annual reports filed with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technological problems that prevent IP Relay and VRS providers from offering these types of TRS calls. This requirement has very little economic impact on the TRS providers because it merely requires an annual submission of an annual report to the Commission and the reports are voluntary because IP Relay and VRS are not mandatory forms of TRS under our rules.

13. *Other Compliance Requirements.* The rules adopted in this *Report and Order* require that all TRS providers provide several types of TRS calls including: two-line VCO and two-line HCO,²⁹ HCO-to-TTY and HCO-to-HCO,³⁰ and VCO-to-TTY and VCO-to-VCO.³¹ The rules also require that TRS facilities route emergency TRS calls to the designated PSAP to which a direct voice call from a non-TRS number would be delivered.³² Furthermore, the rules require that TRS facilities provide certain technological features including: call release,³³ three-way calling.³⁴ The *Order on Reconsideration* clarifies certain reporting requirements for contact persons. These rules will affect TRS providers.

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

14. 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.³⁵ One of the main purposes of this

²⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rule Making, FCC 02-121, 17 FCC Rcd 7779 (2002) (*IP Relay Declaratory Ruling & FNPRM*), Order on Reconsideration, FCC 03-46, (*rel'd* March 14, 2003), 68 FR 18825 (published April 16, 2003) (*IP Relay Order on Reconsideration*).

²⁸ See *supra* sections IV(B)(1)(d), IV(C)(2)(f).

²⁹ See *supra* section IV(B)(1)(a).

³⁰ See *supra* section IV(B)(1)(b).

³¹ See *supra* section IV(B)(1)(c).

³² See *supra* section IV(B)(2).

³³ See *supra* section IV(C)(1)(c).

³⁴ See *supra* section IV(C)(1)(f).

³⁵ 5 U.S.C. § 603(c)(1)-(c)(4).

15. *Report and Order* is to clarify many of the current requirements for TRS providers. The annual reports associated with the waivers for IP Relay and VRS providers have been made to expire at the same time as previous waivers so that TRS providers have one deadline instead of multiple deadlines to which they must adhere if providing those non-mandatory forms of TRS. Any new requirements that are imposed are similar to services currently being offered and therefore the Commission expects a minimal impact on small business. Currently, most TRS providers are not small entities, and are either interexchange carriers or local exchange carriers, with very few exceptions.³⁶ This *Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation.

Report to Congress

16. The Commission will send a copy of the *Report and Order* and *Order on Reconsideration*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁷ 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. A copy of the *Report and Order*, *Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the *Federal Register*.³⁸

³⁶ See ¶ 11, *supra*.

³⁷ See 5 U.S.C. § 801(a)(1)(A).

³⁸ See 5 U.S.C. § 604(b).

Appendix C: Initial Regulatory Flexibility Analysis (IRFA)

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*.² Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.

Need for, and Objectives of, the *NPRM*

2. The Commission is issuing this *NPRM* to seek public comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. In doing so, the Commission hopes to enhance the quality of TRS, and broaden the potential universe of TRS users consistent with Congress' direction at 47 U.S.C. § 225 (d)(2) to the Commission to ensure that its regulations encourage the use of existing technology and not discourage or impair the development of improved technology.

3. Specifically, the *NPRM* proposes that TRS and TRS facilities should receive a National Security and Emergency Preparedness (NS/EP) Priority Status commensurate with that given to LEC facilities. Furthermore, the Commission requests comment on the mandatory minimum standards confidentiality rule for IP Relay TRS calls, and the use of encryption. The Commission also seeks comment on possibly requiring TRS that would employ a non-shared language translation service. Moreover the Commission seeks comment on amending its call set-up rules for various forms and types of TRS calls, including STS, VRS, VCO, HCO, and two-line VCO and HCO. The *NPRM* seeks comment on technological advancements that have taken place that may advance the functional equivalency of TRS. The intent of these proposed rules is to improve the overall effectiveness of the TRS program, and to improve the Commission's oversight of certified state TRS programs. The *NPRM* also seeks comment on additional outreach efforts that may benefit TRS consumers. Finally, the *NPRM* seeks comment on whether the Commission should institute a certification process specifically for providers of IP Relay, VRS, and any other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate, for the period of time that such services are reimbursed from the Interstate TRS Fund. Concerning the proposed certification rules, we ask whether they should be modified in the case of providers of IP Relay or VRS. We note that some current providers of VRS, and some potential providers of IP Relay and VRS, are not common carriers; we ask whether this should influence the need for a federal certification process.

¹ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by The Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *See* 5 U.S.C. § 603. We also expect that we could certify this action under 5 U.S.C. § 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action.

Legal Basis

4. The authority for actions proposed in this *NPRM* may be found in sections 1, 4(i) and (j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201-205, 218 and 225.

Description and Estimate of the Number of Small Entities to Which the Proposed 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 rules adopted herein.³ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁷ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁸ The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."⁹ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.¹⁰ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

6. Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules.¹¹ For some categories, the most

³ 5 U.S.C. § 604(a)(3).

⁴ 5 U.S.C. § 601(6).

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

⁶ 15 U.S.C. § 632.

⁷ 5 U.S.C. § 601(4).

⁸ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁹ 5 U.S.C. § 601(5).

¹⁰ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

¹¹ *But see* note 2, *supra*.

reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service Report*.¹²

7. *Local Exchange Carriers.* We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹³ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁴ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.¹⁵

8. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.¹⁶ This provides that such a carrier is small entity if it employs no more than 1,500 employees.¹⁷ Commission data from 2000 indicate that there are 1,329 incumbent local exchange carriers, total, with approximately 1,024 having 1,500 or fewer employees.¹⁸ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,024 ILECS that are small businesses possibly affected by our action.

9. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.¹⁹ This provides that such a carrier is small entity if it employs no more than 1,500 employees.²⁰ Commission data from 2000 indicate that there are 229 interexchange carriers,

¹² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (May 2002) (*Trends in Telephone Service*). FCC Website location (*see* online page 24): <http://www.fcc.gov/Bureaus/CommonCarrier/Reports/FCC-StateLink/IAD/trend502.pdf>.

¹³ 15 U.S.C. § 632.

¹⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. 121.102(b).

¹⁵ NAICS code 513310.

¹⁶ 13 C.F.R. § 121.201, NAICS Code 517110.

¹⁷ *Id.*

¹⁸ *Trends in Telephone Service* at Table 5.3.

¹⁹ 13 C.F.R. § 121.201, NAICS Code 517110

²⁰ *Id.*

total, with approximately 181 having 1,500 or fewer employees.²¹ The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 181 interexchange carriers that are small businesses possibly affected by our action.

10. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of “small entity” specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.²² Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses.²³ The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities.²⁴ The FCC estimates that there is at least one TRS provider that is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. This *NPRM* seeks comment on a proposal regarding possible certification of TRS providers seeking to provide interstate TRS. The proposed certification process would mirror an existing certification process established for certification of state TRS programs. The proposed certification process for interstate TRS providers, if implemented, would impose a new requirement to file information with the Federal Communications Commission.

Steps Taken To Minimize Significant Economic 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: (1) the establishment of differing compliance or reporting requirements or timetables that take (among others) 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.²⁵

13. The proposals in the *NPRM*, and the comments the Commission seeks regarding

²¹ *Trends in Telephone Service* at Table 5.3.

²² 13 C.F.R. § 121.201, NAICS Code 517110

²³ See National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

²⁴ MCI WorldCom, for example, provides TRS in approximately only a few states but is not a small business.

²⁵ 5 U.S.C. § 603.

them, are part of the Commission's role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities.²⁶ The guiding principal shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements, and assures functional equivalency in telecommunications services for persons with hearing and speech disabilities. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers, and we believe that the number of small entities impacted by these proposals would be potentially very small. With respect to proposed amendments to the Commission's rules governing TRS, by statute common carriers (including small entities) providing voice transmission services that are subject to the TRS rules may comply with their obligations individually, through designees, through competitively selected vendor, or in concert with other carriers.²⁷ For this reason, the Commission expects that the proposed rule amendments will have a minimal impact on small entities. We seek comment on our tentative conclusion.

Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.

²⁶ *See, e.g.*, 47 U.S.C. § 225.

²⁷ 47 U.S.C. § 225(c).

Appendix D: Final Rules

For the reasons discussed in the preamble, the Commission amends 47 C.F.R. subpart F as follows:

PART 64--MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

- 1. In Part 64, subpart F, remove the words “Consumer Information Bureau” and add, in their place, “Consumer & Governmental Affairs Bureau”.**
- 2. Section 64.601 is amended and the existing text substituted for by the following:**

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

- (1.) 711. The abbreviated dialing code for accessing all types of relay services anywhere in the United States.
- (2.) American Sign Language (ASL). A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.
- (3.) ASCII. An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.
- (4.) Baudot. A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.
- (5.) Call release. A TRS feature that allows the CA to sign-off or be “released” from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.
- (6.) Common carrier or carrier. Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.
- (7.) Communications assistant (CA). A person who transliterates or interprets conversation between two or more end users of TRS. CA supersedes the term "TDD operator."
- (8.) Hearing carry over (HCO). A form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. Two-line HCO is an HCO service that allows TRS users to use one telephone line for hearing and the other for sending TTY messages. HCO-to-TTY allows a relay conversation to take place between an HCO user and a TTY user. HCO-to-HCO allows a relay conversation to take place between two HCO users.
- (9.) Non-English language relay service. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

- (10.) Qualified interpreter. An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (11.) Public Safety Answering Point (PSAP). A facility that has been designated to receive 911 calls and route them to emergency services personnel as provided in 47 C.F.R. § 64.3000(c).
- (12.) Speech-to-speech relay service (STS). A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.
- (13.) Speed dialing. A TRS feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a "short-hand" name or number for the user's most frequently called telephone numbers.
- (14.) Telecommunications relay services (TRS). Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non- English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."
- (15.) Text telephone (TTY). A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term "TDD" or "telecommunications device for the deaf," and TT.
- (16.) Three-way calling feature. A TRS feature that allows more than two parties to be on the telephone line at the same time with the CA.
- (17.) Video relay service (VRS). A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.
- (18.) Voice carry over (VCO). A form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation. Two-line VCO is a VCO service that allows TRS users to use one telephone line for voicing and the other for receiving TTY messages. A VCO-to-TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user. VCO-to-VCO allows a relay conversation to take place between two VCO users.

3. Section 64.604 is amended by revising paragraphs (a)(1), (a)(3), (b), and (c)(2) to read as follows:

§ 64.604 Mandatory minimum standards.

The standards in this section are applicable December 18, 2000, except as stated in paragraphs (c)(2) and (c)(7) of this section.

- (a) Operational standards.
(1) Communications assistant (CA).

- (i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.
- (ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.
- (iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.
- (iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A "qualified interpreter" is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.
- (vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.
- (vii) TRS shall transmit conversations between TTY and voice callers in real time.

* * * * *

(3) Types of calls.

- (i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.
- (ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.
- (iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.
- (iv) Relay services shall be capable of handling pay-per-call calls.
- (v) TRS providers are required to provide the following types of TRS calls: (1) text-to-voice and voice-to-text; (2) VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; (3) HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO.
- (vi) TRS providers are required to provide the following features: (1) call release functionality; (2) speed dialing functionality; and (3) three-way calling functionality.
- (vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.
- (viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.

(4) Handling of emergency calls. Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is the designated PSAP to which a direct call from the particular number would be delivered. In addition, a CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services.

(5) STS called numbers. Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) Technical standards.

(1) ASCII and Baudot. TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) Speed of answer.

(i) TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(ii) TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network. A TRS facility shall ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(A) The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility.

(B) Abandoned calls shall be included in the speed-of-answer calculation.

(C) A TRS provider's compliance with this rule shall be measured on a daily basis.

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(3) Equal access to interexchange carriers. TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) TRS facilities.

(i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not to be provided every day, 24 hours a day.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(5) Technology. No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to

person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 C.F.R. §§ 64.1600 *et seq.*

(6) Caller ID. When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

(c) * * *

(2) Contact persons. Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following: 1) the name and address of the office that receives complaints, grievances, inquiries, and suggestions; 2) voice and TTY telephone numbers, fax number, e-mail address, and web address; and 3) the physical address to which correspondence should be sent.

* * * * *

Appendix E: Proposed Rules for Eligibility for Certification**1. Add a new § 64.604(c)(5)(iii)(F)(4), as follows:**

(4) Interstate TRS providers certified by the Commission pursuant to § 64.605.

2. Revise § 64.605 to rename the section “TRS Provider and State TRS Program Certification”; to rename subsection 64.605(a) as “Documentation”; to redesignate subsections 64.605(b) and (b)(1) through (b)(3) as (b)(1) and (b)(1)(i) through (b)(1)(iii); and to add the following subsections:**(a) Documentation.**

* * *

(2) Interstate TRS provider. Any TRS provider desiring to provide TRS on an interstate basis, independent from any state TRS program or any interstate common carrier, and desiring to establish eligibility to provide TRS and receive compensation for providing those services from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, Interstate TRS Provider Certification Program, Washington, DC 20554, and captioned "Interstate TRS Provider Certification Application." All documentation shall be submitted in narrative form, and shall clearly describe the forms of TRS to be provided (*i.e.*, VRS, STS, IP Relay, traditional text-to-speech TRS) and any waivers of mandatory minimum standards deemed necessary to provide the aforementioned forms of TRS. The Commission shall give public notice of each interstate TRS provider filing for certification including notification in the *Federal Register*.

(b) Requirements for certification.

* * *

(2) After review of certification documentation, the Commission shall certify, by letter, or order, the interstate TRS provider if the Commission determines that the certification documentation:

(i) Establishes that the interstate TRS provider meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the interstate TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in section 64.604, including the requirement that informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints are made available to TRS users; and

(iii) Where the interstate TRS provider exceeds the mandatory minimum standards contained in § 64.604, the state or the interstate TRS provider establishes that its program and services in no way conflict with federal law.

(c) Certification period

* * *

(2) Interstate TRS providers. Certification granted under this section shall remain in effect for one year. Providers shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with section 64.604. Interstate TRS providers shall also file a log of any complaints received, and their disposition of such complaints. An interstate TRS provider may apply for renewal of its certification by filing documentation to the Commission addressed to the Federal Communications Commission, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Washington, DC 20554, and captioned "Interstate TRS Provider Re-Certification Application," as prescribed by paragraphs (a) and (b) of this section.

(d) * * ***(e) Suspension or revocation of certification.**

* * *

(2)(i) The Commission may suspend or revoke the certification of an interstate TRS provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. If such certification has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

(ii) The Commission may, on its own motion, require a certified interstate TRS provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified interstate TRS provider may not be in compliance with the minimum standards.

(f) Notification of substantive change.

* * *

(2) Interstate TRS providers must notify the Commission of substantive changes in their TRS programs, services and features within 60 days of when such changes may occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

* * * * *

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking; CC Docket No. 98-67 & CG Docket No. 03-123

As developments in telecommunications technologies continue to improve the lives of Americans, the Commission must ensure that those Americans with disabilities are empowered to participate fully in this digital migration and reap its benefits equally with their neighbors. In executing this mission, we are to ensure that our regulations encourage the use of existing technology and do not discourage the development of improved technology. By expanding the scope and variations of covered services and features for TRS, the Commission responds to this obligation to keep pace with technological change.

This item acknowledges technological advancement by expanding the mechanisms by which TRS users may communicate even further by requiring TRS providers to offer six new variations of TRS calls including two-line voice carry over and two-line hearing carry over. It also opens the door to services such as call release, speed dialing and three-way calling to TRS users. We also take steps to ensure that critical safety-of-life applications – such as E911 – are functional and accessible over the TRS platform.

My colleagues and I remain committed to continue this work. Our efforts are in no way complete. On the contrary, developments central to our national security bring new considerations in our efforts to ensure functionally equivalent communications for hearing-impaired and speech-impaired individuals. Significantly, we initiate the important step to integrate TRS into our homeland security efforts by tentatively concluding that these facilities should receive the same National Security/Emergency Preparedness (NS/EP) priority under the Telecommunications Service Priority (TSP) System as local exchange carriers. This initiative will ensure that, in the event of a disaster or emergency, restoring TRS service – and, thus, the ability to communicate of individuals with speech and hearing disabilities – will receive the same priority as restoring other essential communications platforms. Additionally, we seek comment on the routing of emergency wireless calls made to a TRS center to the appropriate Public Safety Answering Point. Finally, although we have recently witnessed a nationwide marketing campaign by a TRS provider about TRS, we seek comment on ways to further achieve the important goal of educating the general public about TRS.

I would like to thank my colleagues for their contribution in the development of this item. I would also like to acknowledge the hard work of the Consumer and Governmental Affairs Bureau, specifically the Disability Rights Office, in bringing this item, that is so important in the lives of so many Americans, to the Commission.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, CONCURRING IN PART**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67, CG Docket No.03-123)*

When Congress passed the Americans with Disabilities Act more than twelve years ago, it directed the Commission to do everything we could to ensure that those with disabilities have access to functionally equivalent services so that all of America's citizens can participate fully in our society. I support today's item because, consistent with this vision, we take positive steps to update our TRS requirements. I also support our efforts to seek comment on the impact of new technological developments on TRS. As the pace of innovation quickens, we should commit to reviewing our TRS requirements with ever greater frequency.

I must concur in part rather than approve *en toto* because I believe that this item delays unnecessarily the start of effective national TRS outreach efforts. Three years ago, the Commission tentatively concluded that a nationwide awareness campaign would improve TRS by publicizing its availability more broadly than the limited bill inserts and directory listings required under our current rules. The Commission noted that our current rules have not effectively ensured that callers are aware of TRS and concluded that this lack of awareness was adversely affecting the quality of TRS. For example, we found that callers using relay service experience an unacceptably large number of hang-ups because people receiving TRS calls are not familiar with the service. Our record also reflected that many employment opportunities are not extended to individuals with hearing disabilities because employers are uncomfortable using, or are unwilling to use, TRS for business transactions. That is surely a problem when we are talking about a group experiencing over 50%, in many areas 75%, unemployment. Against this background, the Commission determines that we need more comment before embarking on a national awareness campaign. This timidity is not warranted by either the record or the statute. We have ample support to begin a nationwide outreach effort right now and we ought to be doing exactly that.

While we take steps forward today, we have much more to do. The Commission needs to complete its Section 255 proceeding on accessibility to equipment and services. We need to address compatibility problems between wireless phones and hearing aids and we need to encourage a robust dialogue between telecommunications companies and the hearing and speech impaired communities that rely on their products and services. These issues affect all of us—not only the millions of Americans with disabilities, but also the millions more who could communicate with these citizens and whose lives would be improved as their lives are improved.

Thank you to the Consumer and Governmental Affairs Bureau and the Disability Rights Office for their leadership on this item. I look forward to continuing our work together to resolve these issues.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: In the Matter of Amendment of Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities; CC Docket No. 98-67, CG Docket No. 03-123

I am an ardent supporter of universal service. I wholeheartedly believe that disability rights issues go hand-in-hand with universal service in that the Commission must strive for universal, or functionally equivalent, access to all telecommunications products and services. For persons with hearing and speech impairments, the initiatives we adopt today ensure that they are able to take full advantage of our country's ever-evolving telecommunications and information networks by being able to communicate through the latest technologies.

Public interest issues, especially disability rights, always should remain in the forefront of our decisions as Congress intended. While a staff member in the U.S. Senate, I worked on the Americans with Disabilities Act and devoted a great amount of attention to the Social Security Disability Insurance program. These concerns remain central to me on the Commission, as well.

Today's action is centered upon the adoption of the TRS Order, which is designed to give persons with hearing or speech impairments "functionally equivalent" access to our nation's telecommunications network. By adopting this Order, the Commission takes yet another significant step toward fulfilling the mandates of Title IV of the American with Disabilities Act (ADA). I fully support our decision today to require additional TRS features and services to facilitate and expand the use of TRS by persons with hearing and speech impairments.

I also welcome our request for comment on other matters related to TRS, and urge all stakeholders to comment on our tentative proposal to allow TRS facilities to receive an NS/EP priority status. This is particularly important since TRS can be the only means of communications between persons with hearing and speech impairments and emergency services personnel.

Our Further Notice also asks for input on the important goal of improving our outreach efforts for the TRS program to all Americans, an initiative that I strongly support. In the NPRM, we ask if we can require outreach and, if so, how best can we achieve results, and how best can we control costs by targeting the use of the funds.

I would like to thank the Consumer and Governmental Affairs Bureau and the Disability Rights Office on a job well done. This is an important issue to bring to our attention, and I hope that additional comprehensive steps will be taken to ensure functionally equal access to the network that drives our way of life.