

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

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

**ORDER**

**Adopted: July 14, 2005**

**Released: July 19, 2005**

By the Commission: Chairman Martin; Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

**I. INTRODUCTION**

1. In this *Order*, we grant a request for clarification that *two-line* captioned telephone service<sup>1</sup> is a type of TRS eligible for compensation from the Interstate TRS Fund.<sup>2</sup> We also grant NECA's proposed allocation methodology for determining the number of *inbound* two-line captioned telephone minutes that should be compensated from the Interstate TRS Fund.<sup>3</sup>

**II. BACKGROUND**

**A. One-Line and Two-Line Captioned Telephone Service**

2. In the August 2003 *Captioned Telephone Declaratory Ruling*, the Commission concluded "that captioned telephone VCO [Voice Carry Over<sup>4</sup>] service is a type of TRS, and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications

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<sup>1</sup> See *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121 (August 1, 2003) (*Captioned Telephone Declaratory Ruling*) (recognizing captioned telephone service as a form of telecommunications relay service (TRS)).

<sup>2</sup> See Ultratec, Inc., Sprint Corporation, and Hamilton Relay, Inc., *Request for Clarification*, CC Docket No. 98-67 and CG Docket No. 03-123, filed December 7, 2004 (*Ultratec Petition*). We refer to Ultratec, Inc., Sprint Corporation, and Hamilton Relay, Inc. as Petitioners.

<sup>3</sup> See The National Exchange Carrier Association, Inc., CC Docket No. 98-67 and CG Docket No. 03-123, *Petition for Declaratory Ruling*, filed December 10, 2004 (*NECA Petition*).

<sup>4</sup> Voice Carry Over (VCO) service is a "form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA [Communications Assistant] types the response back to the person with the hearing disability. The CA does not voice the conversation." 47 C.F.R. § 64.601(18); see generally *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, 4662, para. 24 (July 26, 1991).

Act.”<sup>5</sup> Captioned telephone service uses a special telephone that has a text display. It permits, on one standard telephone line, the user – typically someone who has the ability to speak and some residual hearing – to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying.<sup>6</sup> A communications assistant (CA) using specially developed voice recognition technology generates the captions. No typing is involved. The *Captioned Telephone Declaratory Ruling* permits providers of *interstate* captioned telephone service to be compensated from the Interstate TRS Fund.<sup>7</sup>

3. To use one-line captioned telephone service, the captioned telephone user dials the number of the person she wishes to call. Unlike with other forms of TRS, the user does not dial the number of a TRS provider (or the 711 access number). Although the user has dialed the number of the other party, the captioned telephone automatically calls a captioned telephone CA at a TRS facility. The TRS provider, in turn, calls the number of the called party, and all three parties (the captioned telephone user, the CA, and the called party) are connected. Unlike “traditional” TRS where the CA would type what the called party says, the CA instead repeats or re-voices what the called party says and voice recognition technology automatically transcribes the CA’s voice into text, which is then transmitted directly to the user and displayed on the captioned telephone. As a result, the captions appear on the captioned telephone at nearly the same time the user hears the called party’s spoken words. Throughout the call the CA is completely transparent and does not participate in the call by voicing any part of the conversation; there is no interaction with the CA by either party to the call.<sup>8</sup> Calls may be placed to captioned telephone users via a provider’s toll free access number. When such an “inbound” captioned telephone call is made, the caller is prompted by a recording to enter the number he or she wishes to call, and the call is automatically processed.

4. The *Captioned Telephone Declaratory Ruling* did not address two-line captioned telephone service, and Petitioners now seek clarification that this type of captioned telephone service is also a type of TRS eligible for compensation from the Interstate TRS Fund. As Petitioners explain, two-line captioned telephone service requires the user to have *two* standard telephone lines connected to a captioned telephone.<sup>9</sup> The first line is set up as the user’s primary telephone line, and the second line transmits the captions from the captioned telephone relay service.<sup>10</sup> When a two-line captioned telephone user places an *outbound* call,<sup>11</sup> he or she dials the number of the party he or she wants to call on the first line, in the same way that a voice telephone call is made to the called party. When this call is being made, the two-line captioned telephone *simultaneously* connects to the captioned telephone relay service on the second line. When this connection is made, “the two-line captioned telephone takes the voice of the party who is called [via] the first line and sends it to the captioned telephone relay [provider] over the second line.”<sup>12</sup> As with one-line captioned telephone, the captioned telephone CA then re-voices everything that is said by the called party. Voice recognition technology transcribes what the CA says into text, and sends captions back on the second line to the text display on the two-line captioned telephone.<sup>13</sup> In short,

<sup>5</sup> *Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 1621, para. 1.

<sup>6</sup> See generally *id.* at 16122-16123, paras. 3-6 (describing how captioned telephone service works).

<sup>7</sup> See *id.* at 16127-16130, paras. 18-23 (addressing cost recovery for providers of captioned telephone service).

<sup>8</sup> *Id.* at 16122-16123, para. 4.

<sup>9</sup> See, e.g., *Ultratec Petition* at 2.

<sup>10</sup> *Id.*

<sup>11</sup> An outbound call occurs when a captioned telephone user initiates (dials) a call from his or her captioned telephone hardware device.

<sup>12</sup> *Ultratec Petition* at 2.

<sup>13</sup> *Id.*

with one-line captioned telephone service the outbound call goes through the captioned telephone service provider to be connected to the called party; with two-line captioned telephone service, the primary telephone line links the calling and called parties directly, and the captioned telephone service is brought in on a second line.

5. For *inbound* calls to the two-line captioned telephone user,<sup>14</sup> the calling party simply dials the telephone number of the person he or she wants to call. The call goes directly to the two-line captioned telephone in the same way a call would come in to any traditional telephone. When the captioned telephone user answers the call, his or her two-line captioned telephone automatically calls the captioned telephone relay service on the second telephone line, and the call then proceeds in the same manner as an *outbound* two-line captioned telephone call.<sup>15</sup>

6. Petitioners cite several benefits that two-line captioned telephone service offers that are not available with one-line captioned telephone service. First, because a two-line captioned telephone allows direct inbound dialing, no special “relay” numbers are needed and users can give out their own telephone numbers to persons who may want to call them, not the number of a captioned telephone relay service provider.<sup>16</sup> Second, because two-line captioned telephone service directly connects both parties to the call on the same telephone line (and adds the captioned telephone relay service on a second telephone line), it allows the user access to other telephone network features available to voice telephone users such as \*69 (to receive information about the last incoming call and to return such call), call waiting, and call forwarding.<sup>17</sup> In addition, and for the same reason, this service makes it possible for users to directly access 9-1-1 emergency services in the same way that hearing telephone users access these services (while simultaneously receiving captions back on the second telephone line).<sup>18</sup> Two-line captioned telephone service also allows two or more persons to be on the call at the same time (*e.g.*, by using another telephone extension in the same house) because the primary connection is a direct voice connection, just like with any other call.<sup>19</sup> Finally, unlike with one-line captioned telephone service, the captions service can be added to a call at any time during the call (even after the call is in progress) by engaging the second line (which is the call to the captioned telephone service).<sup>20</sup>

## **B. Jurisdictional Separation of Costs and Inbound Two-Line Captioned Telephone Service**

7. Petitioners and NECA acknowledge that although providers can readily determine which one-line captioned telephone calls are interstate and which are intrastate for reimbursement purposes, and can also make that determination for *outbound* two-line captioned telephone calls, they cannot do so for *inbound* two-line captioned telephone calls. Therefore, NECA proposes that we adopt an allocation methodology for the jurisdictional compensation of the *inbound* two-line captioned telephone calls; *i.e.*, for determining which such calls shall be compensated by a state, and which such calls shall be compensated from the Interstate TRS Fund.

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<sup>14</sup> An inbound call occurs when a captioned telephone user receives a call from a voice telephone caller.

<sup>15</sup> *Ultratec Petition* at 3.

<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.* at 5. In contrast, one-line captioned telephone service uses a single connection to carry both voice traffic and captioning information, which are encoded into a single data stream. This data stream would be unintelligible to a user who picks up a separate phone connected to the line on which one-line captioned telephone service is being used.

<sup>20</sup> *Id.* at 5-6; *see* note 10, *supra*.

8. As NECA explains, for one-line captioned telephone service the relay center is able to determine whether each call is intrastate or interstate because such calls go through the relay center, and therefore the center can determine where the call originates (from the automatic number identification (ANI) of the caller's telephone number) and where it ends (from the called party's telephone number).<sup>21</sup> This applies to both *inbound* and *outbound* one-line captioned telephone calls. For *outbound* two-line captioned telephone calls, the process of determining the jurisdictional nature of the call is the same as for one-line captioned telephone service.<sup>22</sup> The telephone captures the number of the called party that is dialed, and automatically forwards that number to the relay center through the second line.<sup>23</sup> For *inbound* two-line captioned telephone calls, however, the relay center is incapable of determining the location of the calling (*i.e.*, originating) party to the call. This is because the originating inbound caller calls the captioned telephone user directly, and the captioned telephone does not receive information about the calling party that can be forwarded to the relay center when the captioned telephone calls the relay center on the second line.<sup>24</sup> As a result, the relay center does not receive the calling party's ANI, and therefore cannot determine the jurisdictional nature of the call in order to report and bill either the state or the Interstate TRS Fund for the call.<sup>25</sup> According to NECA, presently states are compensating providers of inbound two-line captioned telephone calls for all such calls.<sup>26</sup>

9. The problem of determining the jurisdictional nature of inbound two-line captioned telephone calls was addressed at the Interstate TRS Advisory Council's (Council) April 2004 and September 2004 meetings.<sup>27</sup> NECA, on behalf of the Council, now requests that the Commission adopt an allocation methodology to determine the portion of such calls that will be considered intrastate, and the portion that will be considered interstate. NECA notes that an allocation methodology has been approved and is currently used for toll free (800) and pay-per-call (900) number calls because providers cannot determine the jurisdictional nature of such calls.<sup>28</sup> In those cases, the share of minutes compensable from the Interstate TRS Fund is based on the relationship of interstate and international TRS minutes to intrastate toll,<sup>29</sup> interstate, and international TRS minutes.<sup>30</sup> NECA requests that a similar interstate

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<sup>21</sup> *NECA Petition* at 1-2; *see also Ultratec Petition* at 6. In other words, the TRS provider (*i.e.*, call center) captures network information from both the caller's and the called person's telephone numbers.

<sup>22</sup> *NECA Petition* at 2.

<sup>23</sup> *See Ultratec Petition* at 6. As a result, in this situation the call center receives from the calling party (the user of the two-line captioned telephone) the telephone number of both the calling and called parties.

<sup>24</sup> *NECA Petition* at 2; *Ultratec Petition* at 7.

<sup>25</sup> *NECA Petition* at 2; *Ultratec Petition* at 7. Petitioners suggest that although Caller ID might provide the necessary information, "this would not offer a consistent solution because it is often blocked or unavailable," and also note that "Caller ID is a fee-based service [that] may put an unfair additional financial burden on the user." *Ultratec Petition* at 7.

<sup>26</sup> *NECA Petition* at 2.

<sup>27</sup> *See NECA Petition* at 2-3.

<sup>28</sup> *Id.*; *see, e.g., 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, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948, at 22953, para. 12 (December 21, 2001) (adopting same allocation methodology for 900 number calls that is in place for toll free calls).

<sup>29</sup> Because this allocation is a means of estimating the percentage of 800 and 900 number calls that are interstate, and 800 and 900 number calls are not local calls, only intrastate calls that are toll calls, and not *all* intrastate calls, are included in the denominator of this calculation.

<sup>30</sup> *NECA Petition* at 3. Each year, as part of its submission to the Commission of its proposed TRS compensation rates for the upcoming fund year, NECA determines what the allocation factor should be and applies it to 800 and

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allocation factor be calculated and applied to all inbound two-line captioned telephone calls. However, for such calls NECA proposes that the allocation factor be based on the relationship between the number of interstate and international traditional TRS minutes to the total number of *all* traditional TRS minutes (*i.e.*, including *all* intrastate minutes, as well as all interstate and international minutes).<sup>31</sup> In other words, although NECA proposes that the same allocation *methodology* used for 800 and 900 calls also be used to determine an allocation factor for inbound two-line captioned telephone calls, the *allocation factor* applied would not be the same for 800/900 calls and for inbound two-line captioned telephone calls because the denominator would not be the same. NECA notes that based on this proposed allocation methodology, the allocation factor for the 2004-2005 fund year (using the traditional TRS data projected for the calendar years 2004 and 2005) would be 10 percent. Pursuant to this methodology and allocation factor, “10% of the two-line inbound [captioned telephone] minutes would be allocated to the interstate jurisdiction for payment from the Interstate TRS Fund, while the remaining 90% of the two-line inbound [captioned telephone] minutes would continue to be billed to the intrastate jurisdiction.”<sup>32</sup>

### III. DISCUSSION

#### A. Two-line Captioned Telephone Service as a Type of TRS

10. We conclude that *two-line* captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund. As noted above, in the August 2003 *Captioned Telephone Declaratory Ruling* the Commission concluded that (one-line) captioned telephone is a type of TRS eligible for compensation from the Interstate TRS Fund.<sup>33</sup> The record reflects that two-line captioned telephone service is simply a variation of captioned telephone service that offers the same functionality while also offering the user additional features, noted above.<sup>34</sup> These additional features – including direct inbound dialing and the ability to use call waiting, call forwarding, directly call 911, and have two or more persons on the call at the same time – represent another step forward toward functional equivalency. Therefore, we clarify that two-line captioned telephone service, like one-line captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund. In reaching this conclusion we are mindful that Section 225 obligates the Commission “to ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States,”<sup>35</sup> and to “ensure that [the TRS] regulations . . . encourage . . . the use of existing technology and do not discourage or impair the development of

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900 number calls. In calculating the allocation factor, NECA generally uses the providers’ projected minutes of use for traditional TRS.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 3-4. On December 16, 2004, the *Ultratec Petition* and *NECA Petition* were placed on Public Notice. *Request for Clarification Filed by Ultratec, Inc., Sprint Corporation and Hamilton Relay, Inc. and Petition for Declaratory Ruling Filed by The National Exchange Carrier Association, Inc. Concerning Two-Line Captioned Telephone Voice Carry Over, A Form of Telecommunications Relay Service*, CC Docket No. 98-67, CG Docket No. 03-12, Public Notice (Dec. 16, 2004) (*Two-line Captioned Telephone Public Notice*). Comments were filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (California Coalition Comments) (January 6, 2005) and Telecommunications for the Deaf, Inc. (TDI Comments) (January 7, 2005). Ultratec, Inc. (Ultratec) filed reply comments to the NECA Petition on January 18, 2005 (Ultratec Reply Comments). All commenting parties support both petitions.

<sup>33</sup> *Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 16121, para. 1.

<sup>34</sup> *Ultratec Petition* at 2-6; *see also* California Coalition Comments at 1-3; TDI Comments at 1-2.

<sup>35</sup> 47 U.S.C. § 225(b)(1).

improved technology.”<sup>36</sup> We also note that no commenters oppose this conclusion.

## B. Compensation from the Interstate TRS Fund

11. We conclude that the same allocation methodology presently used for 800 and 900 number call minutes should be used for inbound two-line captioned telephone call minutes. In enacting Section 225, Congress provided for the compensation of TRS providers for their costs of providing TRS.<sup>37</sup> This cost recovery regime distinguishes between interstate and intrastate TRS: the providers of interstate TRS are compensated from the Interstate TRS Fund, and providers of intrastate TRS are compensated from the states.<sup>38</sup> As noted above, however, with *inbound* two-line captioned telephone calls there is currently no way for the provider to determine the jurisdictional nature of the call. As a result, the provider cannot determine which calls should be reported and billed to the states, and which should be reported and billed to the Interstate TRS Fund. In these circumstances, NECA has proposed an allocation methodology by which an interstate allocation factor is calculated and applied to all inbound two-line captioned telephone minutes. NECA notes that the impact of the use of its allocation methodology on the fund would be minimal.<sup>39</sup> NECA states that although captioned telephone minutes are growing, they are not a significant portion of the TRS provider payments (less than 1% of the monthly fund requirements), and that inbound captioned telephone minutes are in turn a small portion of total captioned telephone minutes.<sup>40</sup> No party filed an alternate proposal or an opposition to NECA’s proposal.

12. We agree with NECA’s recommendation that the same allocation methodology presently used for 800 and 900 number call minutes should be used for inbound two-line captioned telephone call minutes. Application of this methodology will ensure that the Interstate TRS Fund compensates providers of *inbound* two-line captioned telephone calls only for such minutes reasonably estimated to be interstate in nature. As a result, we adopt NECA’s proposed methodology and instruct the Interstate TRS Fund administrator to determine and apply, on an annual basis, an allocation factor for inbound two-line captioned telephone calls that is based on the relationship between interstate and international traditional TRS calls and all intrastate, interstate, and international traditional TRS calls.<sup>41</sup> This allocation factor, along with the allocation factor for 800 and 900 number calls, shall be reflected in the Interstate TRS Fund Administrator’s annual filing with the Commission proposing the TRS compensation rates for the upcoming TRS Fund year.<sup>42</sup> Finally, we note that Ultratec suggests that we monitor the usage data of one-line and two-line captioned telephone service to ensure that any allocation methodology adopted accurately reflects the usage of two-line captioned telephone service.<sup>43</sup> We will do so as part of our general oversight of the regulation and compensation of TRS.

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<sup>36</sup> 47 U.S.C. § 225(d)(2).

<sup>37</sup> See 47 U.S.C. § 225(d)(1)(D). The users of TRS cannot be required to pay for the service. *Id.*; see also *Captioned Telephone Declaratory Ruling* 18 FCC Rcd. at 16127, para. 18 n.48.

<sup>38</sup> See, e.g., 47 U.S.C. §§ 225(c) and (d)(3); 47 C.F.R. §§ 64.603, 64.604(c)(5). Presently the costs of providing certain types of intrastate TRS are compensated from the Interstate TRS Fund, including VRS and IP Relay. See *Captioned Telephone Declaratory Ruling*, 18 FCC Rcd. at 16127-16128, para. 18 n.52.

<sup>39</sup> *NECA Petition at 4.*

<sup>40</sup> *Id.*

<sup>41</sup> As with the determination of the allocation factor for 800 and 900 number calls, the fund administrator will generally use the providers’ projected minutes of use for traditional TRS.

<sup>42</sup> Upon the release of this *Order*, NECA shall determine an allocation factor for inbound two-line captioned telephone calls as specified herein and submit it to the Commission. After public notice and an opportunity for comments, the Commission will issue an order approving or modifying the proposed factor.

<sup>43</sup> Ultratec Reply Comments at 4-5.

#### IV. PROCEDURAL ISSUES

##### A. Final Regulatory Flexibility Certification

13. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>44</sup> requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>45</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>46</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>47</sup> 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).<sup>48</sup> Nationwide, there are approximately 1.6 million small organizations.<sup>49</sup>

14. This *Order* addresses two petitions concerning the regulation and compensation of captioned telephone service, a form of telecommunications relay service (TRS). As noted in paragraph 2 of this *Order*, in August 2003, the Commission concluded that captioned telephone Voice Carry Over (VCO) service is a type of TRS, and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act.<sup>50</sup> The *Captioned Telephone Declaratory Ruling* did not address two-line captioned telephone service, and petitioners now seek clarification that this type of captioned telephone service is also a type of TRS eligible for compensation from the Interstate TRS Fund.

15. As noted in paragraph 10 of this *Order*, the record reflects that two-line captioned telephone service is simply a variation of captioned telephone service that offers the same functionality while also offering the user additional features. These additional features represent another step forward toward functional equivalency. Therefore, in this *Order* the Commission clarifies that two-line captioned telephone service, like one-line captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund.

16. We do not believe this clarification will have a significant economic impact; however, in the event that it does, we also note that there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.<sup>51</sup>

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<sup>44</sup>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. 857 (1996).

<sup>45</sup> 5 U.S.C. § 605(b).

<sup>46</sup> 5 U.S.C. § 601(6).

<sup>47</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>48</sup> 15 U.S.C. § 632.

<sup>49</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>50</sup> See para. 2, *supra*; *see also Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 16121, para. 1.

<sup>51</sup> 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997

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Currently, only three providers are providing captioned telephone service and being compensated from the Interstate TRS Fund: CapTel, Inc., Hamilton and Sprint. We expect that only one of the providers noted above may be a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of two-line captioned telephone service the costs of providing interstate service. The Commission will send a copy of this *Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>52</sup> This certification will also be published in the Federal Register.<sup>53</sup>

#### **B. Paperwork Reduction Act Analysis**

17. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It 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 modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we have assessed the effects of our determination that two-line captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund, and find that such action will not affect businesses with fewer than 25 employees.

#### **C. Congressional Review Act**

18. The Commission will send a copy of this *Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### **D. Materials in Accessible Formats**

19. To request materials in accessible formats (such as braille, large print, electronic files, or audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

### **V. ORDERING CLAUSES**

20. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225, this *Order* IS hereby ADOPTED.

21. IT IS FURTHER ORDERED that the Request for Clarification submitted by Ultratec, Inc, Sprint Corporation, and Hamilton Relay, Inc., IS GRANTED to the extent indicated herein.

22. IT IS FURTHER ORDERED that the Petition for Declaratory Ruling filed by the

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Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.").

<sup>52</sup> 5 U.S.C. § 605(b).

<sup>53</sup> *Id.*

National Exchange Carrier Association, Inc. (NECA), on behalf of the Interstate Telecommunications Relay Service Advisory Council, IS GRANTED to the extend indicated herein.

23. IT IS FURTHER ORDERED that this *Order* shall be effective 30 days after publication in the Federal Register.

24. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of this *Order*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-141

*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order (CG Docket No. 03-123, CC Docket No. 98-67), FCC 05-140

*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

*Closed Captioning of Video Programming Telecommunications for the Deaf, Inc. Petition for Rulemaking*, Notice of Proposed Rulemaking (CG Docket No. 05-231), FCC 05-142

The items that we adopt today should improve the quality of life for individuals with hearing or speech disabilities. One of the critical functions of the Commission is to ensure that these individuals have access to communications technologies in the same manner as people without hearing or speech disabilities. Those consumers that rely on Telecommunications Relay Services and Closed Captioning Services must not be left out of the telecommunications revolution. In each of the orders adopted today, we take measures to fulfill our statutory goal of ensuring that every person has equal access to this nation's communications services.

The four items adopted today coincide with the upcoming 15<sup>th</sup> anniversary of President George H. W. Bush's signing of the Americans with Disabilities Act (ADA) on July 26<sup>th</sup> and the recent 25<sup>th</sup> anniversary of closed captioning which occurred last March. With the passage of the ADA in 1990, the Commission was directed to ensure that hearing or speech disabilities not pose an impediment to communication. I take this charge very seriously. Accessing communication services is vital to the ability of the individuals with disabilities to participate fully in society. The ADA specifically requires the Commission to ensure that Telecommunications Relay Services (TRS) "are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States." In honor of the 15<sup>th</sup> anniversary of this very important statute, we adopt several items that make TRS more accessible to this community.

During the past 15 years, we have seen the evolution of TRS. Traditional TTY service over regular phone lines has evolved into IP Relay and Video Relay Services (VRS) used over Internet connections. VRS permits users to participate in near real-time conversations in the users' primary language, American Sign Language (ASL). Because of these features, its popularity in the deaf and hard of hearing community has soared. For example, the minutes of use of VRS have increased ten-fold in the past two years and are continuing to grow at a phenomenal rate.

With the steps we take today, we expand the reach of the TRS fund to compensate VRS translations between spoken Spanish and ASL as well as two-line captioned phone service. In addition, we take an important step to achieving adequate service quality of VRS by, for the first time, imposing speed of answer and hours of service requirements. Just as a hearing person can pick up the phone and immediately place a call, a person with a disability should be able to reach his or her VRS provider to

place a call without experiencing unreasonable delays. We also begin a rulemaking on whether our closed captioning rules are achieving our goal of making video programming accessible to the millions of deaf and hard of hearing Americans, and we ask whether any revisions should be made to make these rules more effective.

The Commission is more committed than ever to ensuring that the goals of the ADA are achieved. The actions we take today join the many others that the Commission has taken over the years to eradicate the barriers that stand in the way of functional equivalency. Functional equivalency means individuals with disabilities having access to the same services as everyone else. This equal access is vital to accessing jobs, education, public safety, and simple communications with family, friends, and neighbors.

Although there is still more to do in order to achieve functional equivalence, I am proud of the items adopted today. I want to assure those of you with hearing or speech disabilities that we will not stop actively working to fulfill your need for functional equivalence. We could not have taken today's actions without your valuable input. We thank you for your participation in our proceedings and look forward to working with you and the service providers to come up with solutions to the next set of challenges that we intend to tackle. It is by working together that we can best ensure that the tremendous advances in communications are enjoyed by *all* Americans.

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123), FCC 05-141*

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03-123 and CC Docket No. 98-67), FCC 05-140*

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123), FCC 05-139*

*Re: Closed Captioning of Video Programming and Telecommunications for the Deaf, Inc. Petition for Rulemaking (CG Docket No. 05-231), FCC 05-142*

Lou Ann Walker, a noted advocate for the hearing-impaired, once said that the inability to *hear* is a nuisance, but the inability to *communicate* is a tragedy. These four items will allow consumers with hearing or speech impediments to communicate better by enabling them to receive improved service from their telephones and televisions.

Many of the decisions this Commission is called upon to make involve arcane matters with sometimes ambiguous results. That is not the case here. The issues in these items could not be clearer, and the effects of our rulings could not be more concrete. Today's decisions promise to have a profound and positive impact on the lives of millions of Americans living with hearing and speech disabilities. In short, I am hopeful that by expanding access to TRS and VRS offerings, and by opening a new proceeding to consider our closed captioning rules for video programming, we are helping to turn tragedies into nuisances.

Of course, whenever we enhance offerings such as TRS, VRS, and closed captioning, we must bear in mind the costs imposed by those offerings, which are borne by all consumers. I am pleased that the TRS and VRS items will dramatically expand access to these services *without* significantly increasing the costs involved. I am also satisfied that the *Notice of Proposed Rulemaking* on closed captioning seeks comment on issues relating to cost and practicality, and will produce a full record on those matters for the Commission's consideration.

Finally, I am particularly pleased that we have been able to resolve the cost-containment questions raised by compensating Spanish-language VRS from the Interstate TRS Fund. The record shows that Spanish is, by far, the most widely used non-English language spoken in the United States. It also demonstrates that the costs of providing ASL-to-Spanish VRS service are not significantly greater than the costs associated with ASL-to-English VRS service, a factor that was not clearly evident from the prior record. In my judgment these factors warranted reevaluation, and ultimately reversal, of our earlier decision denying compensation for such services.

One of our most important responsibilities is to make sure that there are no telecom "have-nots," and that the wealth of services provided by today's new technologies are available to *all* consumers. These four items, taken together, help to do just that.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-141

*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order (CG Docket No. 03-123, CC Docket No. 98-67), FCC 05-140

*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

*Closed Captioning of Video Programming Telecommunications for the Deaf, Inc. Petition for Rulemaking*, Notice of Proposed Rulemaking (CG Docket No. 05-231), FCC 05-142

We all join in celebrating the fifteenth anniversary of the Americans with Disabilities Act. It's hard to believe it's already been fifteen years since Congress directed the Commission to ensure that people with disabilities have access to functionally equivalent communications services. "Functional equivalency" may sound like Washington jargon, but for 54 million Americans it translates into equal opportunity, equal rights and fuller participation in society.

We have come a long way in these fifteen years. And I am pleased that the Commission has been a part of some of that progress—expanding TRS, bringing new services like IP relay and VRS into the TRS fold, ensuring hearing aid compatibility with wireless phones. But this would be a hollow celebration if we did not also use this anniversary as a time of rededication, a time of commitment to new goals and new challenges. Because while the old obstacles of access and education and outreach have not been resolved completely, new challenges, born of technology and economic change, rise up to confront us.

The Commission takes on some of these challenges today. By finding that two-line captioned telephone service is eligible for support from the TRS fund, we expand functional equivalency for millions of Americans who are hard of hearing. By developing speed of answer requirements for VRS, we recognize that the ability to make a telephone call without delay is fundamental to our concept of a "rapid, efficient, Nation-wide" communications system. To date, VRS customers have endured unacceptably long waiting times—sometimes, I am told, up to 30 minutes—before being able to place a call. This kind of delay undermines functional equivalency. So I am pleased that today we introduce speed of answer standards that will pare down waiting time, without sacrificing the quality of the interpreting service.

We also reverse last year's misguided decision to exclude some forms of non-shared language TRS from reimbursement. As I pointed out at the time, Spanish speakers are the fastest growing minority group in the deaf school age population in the United States. For this population to communicate in a functionally equivalent manner with their Spanish-speaking parents, American Sign Language-Spanish VRS should be eligible for compensation from the TRS fund. I am pleased that we finally reach this conclusion here.

In addition to these actions on the TRS front, the Commission initiates a Notice of Proposed Rulemaking to update our closed captioning policies. For individuals who are deaf and hard of hearing,

closed captions provide a critical link to news, entertainment and emergency information. By granting the petition for rulemaking filed by Telecommunications for the Deaf, the National Association of the Deaf, Self Help for Hard of Hearing People, the Association for Late Deafened Adults and the Deaf and Hard of Hearing Consumer Advocacy Network, we make an effort to keep our rules current and ensure that video programming is accessible to everyone.

Though we make progress today, there are many issues that still need our attention. There are open questions about equipment interoperability and certification for national VRS providers. There is the need always for more outreach and education. And, on another front, the disability community is justly concerned about fallout from the U.S. Supreme Court decision in *Brand X*. They do not want to see semantic exercises in classification and reclassification deny them the victories they have already won and the opportunities that new technologies hold for the future.

So we have our work cut out for us. Even as we celebrate this fifteenth anniversary, there is still a long and winding road to travel—rules to be adopted, jobs to be secured, people to be appreciated for their talents and humanity, hearts and minds to be really won over. Our actions today represent some good strides down that road. I am pleased to support them in full.

Finally, a note of appreciation for the Consumer and Governmental Affairs Bureau. The Disability Rights Office is not the largest office in this agency. But millions of Americans with disabilities—and their friends, and their families, and their co-workers—are better off because of the work of this office. Their efforts keep us all better connected. Thank you.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123 and CC Docket No. 98-67; FCC 05-139, FCC 05-140, FCC 05-141 (July 14, 2005).*

In keeping with the fifteenth anniversary of the Americans with Disabilities Act, which we celebrate this summer, we adopt today three items that will improve the quality of and access to important communications services for the deaf and hard of hearing community. These individuals rely on telecommunications relay service (TRS) not only to communicate with friends and family, but also to run successful businesses, reach operators in the event of an emergency, and complete everyday tasks that many of us take for granted. Having been a staff member in the U.S. Senate when the ADA was enacted and having worked on its passage, I remain committed to the goals of the ADA and its requirement that telecommunications services for hearing and speech –disabled individuals be “functionally equivalent” to those services provided to hearing individuals. We must continue our efforts to ensure that these services are available and of high quality. With an understanding of how critical these services are, I approve these Orders, each of which brings us closer to ensuring functionally equivalent services for millions of hearing-impaired and speech-impaired Americans.

I am particularly pleased that the Commission found non-shared language Spanish translation Video Relay Service (VRS) to be a form of TRS compensable from the Interstate TRS Fund. Non-shared language Spanish translation VRS allows a person signing in American Sign Language to communicate with a Spanish speaker through a communications assistant, who translates what is signed into spoken Spanish. When we addressed this same issue in 2004, I emphasized how our country is growing increasingly multi-ethnic and multi-cultural and that I believe the FCC must be responsive to these communities. Today’s Order does just that. As a result of this measure, deaf individuals, particularly children who are raised in Spanish-speaking homes but who are taught ASL in school as their primary language, will again be able to harness the power of VRS to communicate with their families and community members.

Today’s Order also adopts a speed of answer rule for VRS, requires that VRS be offered around the clock, and provides compensation for VRS Mail from the Interstate TRS Fund. Each of these measures ensures that VRS will remain a high quality service. While many hearing persons take it for granted that they will hear a dial tone when they pick up their telephone, this is not always the case for the millions of hearing-impaired or speech-impaired Americans. We received comments indicating that some individuals have had to wait up to twenty minutes before reaching a communications assistant to begin taking information for their call. These delays are unacceptable, especially considering that the person waiting could be trying to call for an ambulance or to report a crime.

By adopting a phased-in approach for the speed of answer requirement, this Order also responds to concerns that there may not be enough interpreters today to meet our ultimate goals for speed of answer. I’m pleased that we state clearly our intent to re-examine the speed of answer rule in 2007 to determine whether to further tighten this rule, even as we afford VRS providers a reasonable time to reduce their speed of answer times. I appreciate how providers, community organizations, and state and local governments have worked together to support schools across the country in their efforts to recruit and train more qualified interpreters. I hope that this kind of cooperation will continue as more and more interpreters are needed to meet the growing demand for VRS.

Finally, we clarify that two-lined captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund and adopt a specific methodology for compensating such calls. Like one-line captioned telephone service, two-lined captioned telephone service allows the user,

typically someone who has the ability to speak and some residual hearing, to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying. Two-lined captioned telephone service also offers several additional benefits, like call waiting and call forwarding. More important, this service also allows users to directly access 911 emergency services. Today's action not only takes another step forward toward securing functional equivalency of TRS services, but it also ensures that this critical service will continue to be offered to the hard of hearing community.

I want to thank Chairman Martin and my colleagues for their commitment on these issues, particularly for their willingness to look again at the question of Spanish-language VRS, which was particularly important to me. I also want to thank Monica Desai and the staff of our Consumer and Governmental Affairs Bureau for their hard work and dedication on these items. I look forward to working with my colleagues and with the hearing and speech impaired communities as we continue to work towards the ADA's enduring standard of accessibility and functional equivalency for all Americans.