

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

In the Matter of
Structure and Practices of the Video Relay Service
Program
CG Docket No. 10-51

SECOND REPORT AND ORDER AND ORDER

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By the Commission:

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I. INTRODUCTION

1. In this Second Report and Order, we amend the Commission’s process for certifying Internet-based Telecommunications Relay Service (iTRS) providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of iTRS, as proposed in the Commission’s April 2011 Further Notice of Proposed Rulemaking in the Video Relay Service (VRS) reform docket, CG Docket No. 10-51.1 In the Certification FNPRM, the Commission sought comment on ways to revise the current

1 Structure and Practices of the Video Relay Service Program, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (VRS Practices R&O and Certification FNPRM; or VRS Practices R&O when just referring to its Report and Order portion, and Certification FNPRM when just referring to its FNPRM (continued....)

certification process to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers. We seek in this *Second Report and Order* to promote the effectiveness, efficiency, and sustainability of iTRS.<sup>2</sup> The measures adopted in this *Second Report and Order* are another step<sup>3</sup> forward in the Commission's efforts to reform the structure and practices of the VRS program, and thus may be transitional, pending other structural changes that the Commission may make to this program.<sup>4</sup>

2. Specifically, in this *Second Report and Order*, we require all iTRS providers to obtain certification from the Commission in order to be eligible to receive compensation from the Fund; require all VRS applicants for Commission certification to lease, license or own, as well as operate, essential facilities associated with TRS call centers and to employ interpreters to staff those centers at the date of the application; and require each iTRS applicant for certification to submit specific types of documentary evidence of its ability to comply with all of the Commission's rules, including those newly adopted in the *VRS Practices R&O*. In addition, we adopt rules governing on-site visits by Commission staff to the premises of applicants for certification, as well as to iTRS providers' premises after they are certified. We also revise our rules governing annual compliance reports filed by certified providers, and substantive TRS program changes that must be reported to the Commission. Finally, we require prior approval for planned cessations of VRS service of 30 minutes or longer. In the accompanying *Order*, we adopt an interim rule requiring that providers certify, under penalty of perjury, that their certification applications

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portion). Notwithstanding prior definitions of "iTRS," see, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Order, 24 FCC Rcd 14342 (2009) (temporarily waiving a requirement regarding treatment of toll free numbers for VRS and Internet Protocol relay (IP Relay) services), for purposes of this *Second Report and Order*, we use the term "iTRS" to reflect the definition of "Internet-based TRS" in our rules, essentially meaning all forms of TRS in which an individual with a hearing or speech disability uses an Internet connection with the TRS communications assistant (CA). Cf. 47 C.F.R. § 64.601(a)(11) (defining of "Internet-based TRS"). At present, this includes VRS, Internet Protocol relay (IP Relay), the Internet-enabled form of captioned telephone relay service (IP CTS), and any combination of these services or use of these services with other forms of relay, such as voice carryover (allowing a user to speak directly to the other party while having the conversation relayed back) or hearing carryover (allowing a user to hear the other party directly while using relay to convey messages). We note that in the future, "iTRS" may also include other forms of relay services that utilize an Internet connection. Though this *Second Report and Order* is issued in a docket largely focusing on VRS, the policies and rules we adopt here apply to providers of all forms of iTRS, unless specified otherwise.

<sup>2</sup> Cf. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597, 8598, ¶ 1 (2010) (*2010 VRS NOI*) (initiating a fresh look at the structure of the VRS program and how VRS providers should be compensated).

<sup>3</sup> See, e.g., *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, 25 FCC Rcd 1868 (2010) (addressing VRS call practices and compensability of certain VRS calls); Declaratory Ruling, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 6012 (2010) (addressing ways to detect and prevent waste, fraud and abuse in the VRS program) (*2010 VRS Declaratory Ruling, Order and NPRM*); *VRS Practices R & O and Certification FNPRM*.

<sup>4</sup> See generally *2010 VRS NOI*. As the Commission noted in the *Certification FNPRM*, 26 FCC Rcd at 5589, ¶ 95 n.263, the certification process that we adopt here may be superseded or modified by future Commission actions on VRS reform.

and annual compliance filings required under section 64.606(g) of the Commission's rules<sup>5</sup> are truthful, accurate, and complete.

## II. BACKGROUND

3. Title IV of the Americans with Disabilities Act (ADA), codified at section 225 of the Communications Act of 1934, as amended (Act), 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.<sup>6</sup> When the ADA was first enacted in 1990, there was only one type of TRS, which relayed calls between voice telephone users and individuals who used TTYs connected to the public switched telephone network. Since then the Commission has approved for compensation from the Fund a variety of innovative relay services that allow users to take advantage of Internet-based technologies. Specifically, in March 2000, the Commission approved VRS, which uses a broadband Internet connection between the VRS user and the communications assistant (CA) to enable a person using American Sign Language (ASL) to communicate over video with another person through a CA.<sup>7</sup> Additionally, in 2002, the Commission approved IP Relay, a text-based form of TRS that uses the Internet for the link of the call between the relay user and the CA, allowing users to communicate with computers or mobile devices that have Internet capability.<sup>8</sup> Finally, in 2007, the Commission approved an Internet-enabled form of captioned telephone relay service, IP CTS, which uses an Internet connection to carry captions between the relay provider and the user.<sup>9</sup> This service allows users who wish to speak to the other party themselves to simultaneously listen to what is said over the telephone and read captions of what the other person is saying. Currently, all these forms of iTRS are compensated exclusively through the Fund.<sup>10</sup>

4. Over the past two years, the Commission has initiated a number of proceedings to evaluate the VRS and other iTRS programs, to ensure that these programs are effective, efficient, and sustainable in the future. For example, in June 2010, the Commission initiated an inquiry to ensure that VRS is available to and used by the full spectrum of eligible users, and is provided efficiently so as to be less susceptible to the waste, fraud, and abuse that have plagued that program.<sup>11</sup> In the *2010 VRS NOI*,

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<sup>5</sup> 47 C.F.R. § 64.606(g).

<sup>6</sup> 47 U.S.C. § 225(b)(1); *see* Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), as amended by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified at 47 U.S.C. § 715). *See also* Pub. L. 111-265, 124 Stat. 2795 (2010), making technical corrections to the CVAA.

<sup>7</sup> *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 98-67, 15 FCC Rcd 5140, 5152-54, ¶¶ 21-27 (2000) (*2000 TRS Order*). A VRS call is initiated to a VRS CA and the CA, in turn, places an outbound telephone call to the called party. During the call, the CA relays the communications between the two parties, signing what the hearing person says to the deaf or hard of hearing user and responding in voice to the hearing person. A VRS call can also be initiated by having the hearing person connect to the CA, who then places the video call to the ASL user.

<sup>8</sup> *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (2002).

<sup>9</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (2007) (*IP CTS Declaratory Ruling*).

<sup>10</sup> *See, e.g., id.* at 381, ¶ 6. *But see 2010 VRS NOI*, 25 FCC Rcd at 8617, ¶ 70 (asking about jurisdictional separations).

<sup>11</sup> *See 2010 VRS NOI*, 25 FCC Rcd at 8607, ¶ 31; *see also* para. 5, *infra* (discussing VRS fraud and abuse).

the Commission raised concerns about the extent to which the Commission's eligibility requirements for compensation from the Fund are effective to ensure that potential VRS providers are qualified to provide VRS in accordance with the Commission's rules.<sup>12</sup> The Commission asked whether Commission certification of all VRS providers is necessary to ensure that only qualified providers are permitted to provide VRS service and receive compensation from the Fund and that all eligible providers are subject to effective supervision by the Commission. The Commission also asked whether entities that do not own or operate any TRS facilities, but merely subcontract out the call center functions needed to handle VRS calls, should be eligible for VRS certification.<sup>13</sup> Furthermore, the Commission raised concerns about the extent to which the Commission's current oversight of the VRS program sufficiently deters potential fraud and abuse.<sup>14</sup> For example, the Commission asked whether states have the appropriate incentives to monitor VRS providers that, under current Commission rules, are eligible to receive compensation from the Fund by virtue of their state contracts.

5. In April 2011, the Commission released the *VRS Practices R&O*, adopting rule changes designed to enable it to detect and prevent fraud and abuse in the provision of VRS.<sup>15</sup> The Commission noted that although VRS has proven to be extremely popular, this service has become vulnerable to fraud and abuse, which in turn has threatened its long-term sustainability. For example, the Commission noted that in November 2009, the U.S. Department of Justice indicted 26 people, including call center managers, paid callers, and VRS CAs, for allegedly billing the Fund for illegitimate calls resulting in tens of millions of dollars of payments, and that most of these individuals have pleaded guilty or have been convicted.<sup>16</sup> In an effort to curb such illicit activities, and ensure that VRS remains a valuable communication tool for Americans who rely on this service for their daily communications, the Commission adopted a number of changes to the VRS program, some of which apply to all iTRS providers.<sup>17</sup>

6. In an effort to ensure that all entities seeking Commission certification in the future – or currently certified entities seeking recertification – are fully qualified to provide iTRS in compliance with our rules and requirements, including all of the new obligations adopted in the *VRS Practices R&O*, the Commission adopted an FNPRM proposing changes to its certification process for all iTRS providers in conjunction with the *VRS Practices R&O*.<sup>18</sup> The Commission expressed the goal of establishing clear criteria for granting certification to qualifying entities, and adopting measures that will enable us to

<sup>12</sup> 2010 VRS NOI, 25 FCC Rcd at 8605, ¶ 25.

<sup>13</sup> *Id.* at 8605-06, ¶¶ 24-26.

<sup>14</sup> *Id.* at 8606, ¶ 26.

<sup>15</sup> See *VRS Practices R&O*, 26 FCC Rcd at 5546, ¶ 1. For example, the Commission instituted prohibitions against certain practices such as relaying calls from a home, the use of privacy screens by CAs, and revenue sharing arrangements for CA or call center functions between entities eligible for compensation from the Fund and ineligible entities.

<sup>16</sup> See *id.* at 5549, ¶ 4 n.14, citing 2010 VRS Declaratory Ruling, Order and NPRM, 25 FCC Rcd at 6016, ¶ 6 n.22. The Commission further noted then, and reiterate now, that we continue to receive allegations of abusive practices by VRS providers or their subcontractors. *VRS Practices R&O*, 26 FCC Rcd at 5549-50, ¶ 4.

<sup>17</sup> For example, new rules adopted in the *VRS Practices R&O* pertaining to automated call data collection, whistleblower protections, and the retention of billing records apply to all iTRS providers. *VRS Practices R&O*, 26 FCC Rcd at 5582, ¶ 79 (call data collection); 5577, ¶ 68 (whistleblower protections); 5585, ¶ 87 (record retention).

<sup>18</sup> See *Certification FNPRM*, 26 FCC Rcd at 5587-93, ¶¶ 92-103. Although the 2010 VRS NOI asked only about the certification process for VRS providers, the FNPRM extended these proposals to all iTRS providers, including providers of VRS, IP Relay and IP CTS.

exercise the oversight needed to ensure full compliance with our rules.<sup>19</sup> We have reviewed the comments filed on these issues and find that various modifications to the proposed criteria for eligibility for compensation from the Fund, as well as to the certification process, for all iTRS providers are warranted. We address each of these below.

### III. SECOND REPORT AND ORDER

#### A. Eligibility for Compensation from the TRS Fund

7. Under our current rules, an iTRS provider is eligible to provide relay services and receive compensation from the Fund if it is: (1) operated under contract with and/or by a certified state TRS program; (2) owned or operated under contract with an interstate common carrier; (3) an interstate common carrier offering TRS under the Commission's rules; or (4) certified by the Commission.<sup>20</sup> In the *Certification FNPRM*, the Commission proposed to eliminate the first three of these bases for eligibility, and to instead require all iTRS providers to be certified by the Commission in order to provide iTRS and receive payment from the Fund.<sup>21</sup> The Commission specifically noted that eligibility through methods other than certification by the Commission has failed to ensure that providers are qualified to provide VRS or to provide the Commission with the requisite information to determine compliance with our TRS rules. The Commission also expressed concerns that these alternative eligibility methods have permitted participation in the VRS program by unqualified, non-compliant providers, and have hampered the Commission's efforts to exercise stringent Commission oversight over entities providing service.<sup>22</sup>

8. *Discussion.* Based on the record before us, and the substantial support of the commenters,<sup>23</sup> we adopt a requirement for all iTRS providers to receive certification from the Commission to be eligible to receive compensation from the TRS Fund. As the Commission stated in the *Certification FNPRM*, the current alternative eligibility methods have failed to ensure that all providers are qualified to provide service that complies with the Commission's rules, or to facilitate Commission oversight of all entities eligible under these criteria. As the Commission further explained, states generally do not have their own rules governing iTRS, nor do they directly compensate iTRS providers. Therefore, they generally have little or no incentive to either verify the qualifications of the providers with which they contract or exercise the oversight needed to ensure full compliance with the Commission's TRS rules.<sup>24</sup>

9. The Commission similarly has questioned whether eligibility under the second and third alternative methods ensures that all providers are qualified to provide service that complies with the

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<sup>19</sup> *Certification FNPRM*, 26 FCC Rcd at 5589, ¶ 95.

<sup>20</sup> 47 C.F.R. § 64.604(c)(5)(iii)(F)(1-4). See also *IP CTS Declaratory Ruling*, 22 FCC Rcd at 391, ¶ 28 (allowing certification of IP CTS providers by the Commission).

<sup>21</sup> *Certification FNPRM*, 26 FCC Rcd at 5589-90, ¶¶ 96-97.

<sup>22</sup> *Id.* at 5589, ¶ 96. The Commission noted, for example, that CAC, a VRS provider certified under a state program, served as a billing agent for Viable, whose executives and associates pled guilty for defrauding the TRS Fund and the FCC. See *id.* at 5589 n.264.

<sup>23</sup> ANI Comments at 2-3; CSDVRS Comments at 1; Purple Comments at 2-3; Snap Comments at 2; Sprint Comments at 2-3; ASL Holdings Comments at 3. But see SignOn Comments at 4-6 (recommending a separate registration process that is less onerous for entities that provide limited components of VRS service, for example, interpreter services); AT&T Comments at 5 (the requirement would be overreaching).

<sup>24</sup> See *Certification FNPRM*, 26 FCC Rcd at 5589-90, ¶ 96. See also ANI Comments at 2-3; Purple Comments at 2 ("The Commission already has a full record supporting its view that...the states lack the incentive or resources to properly govern participants in the TRS fund who are eligible due to one or more state TRS contracts").

Commission's rules, or affords sufficient Commission oversight of entities eligible under those criteria. In 2004, for instance, the Commission stated that, under those two criteria, "there is no means by which the Commission can determine whether the providers are offering the TRS services in compliance with our rules" because of the absence of a Commission certification process at that time.<sup>25</sup> The Commission interpreted the third eligibility method, an interstate common carrier offering TRS under the Commission's rules, to apply only to common carriers "offering telephone voice transmission services [and] that are obligated to provide TRS in a state that does not have a certified TRS program."<sup>26</sup> Indeed, the Commission already has found that the second and third alternative methods are not sufficient to confer eligibility for compensation from the Fund for the provision of IP CTS.<sup>27</sup> As subsequently clarified, "[t]he intent of the more specific eligibility rules for IP CTS providers . . . is to ensure" greater oversight of IP CTS providers than those eligibility methods afford.<sup>28</sup> Finally, experience has shown that common carrier status generally has little or no bearing on the qualifications of a company to provide iTRS service because states may grant applications for common carrier status without verifying the applicant's qualifications or experience.<sup>29</sup> Nor do they ensure that the carrier has the facilities or staff to comply with our iTRS rules.

10. In light of these circumstances, including the waste, fraud and abuse that have plagued the VRS program, we now *require* all iTRS providers to be certified by the Commission in order to receive compensation from the Fund. Because the Commission bears the responsibility for managing the Fund and ensuring the integrity of its iTRS programs, it should have the exclusive authority to ensure that iTRS is provided by qualified providers and to exercise effective oversight over the operations of these providers.<sup>30</sup> We find that requiring all iTRS providers to become Commission-certified is a reasonable

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<sup>25</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12516, ¶ 99 (2004) (*2004 TRS Report and Order*). There, the Commission declined at that juncture to require all providers seeking compensation from the Fund, including interstate traditional (TTY-based) TRS providers, to be certified by the Commission, but sought further comment on whether there should be a Commission certification process for providers of IP Relay and VRS. The Commission added the Commission certification process as another basis for eligibility the following year. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (2005) (*IP Relay/VRS Certification Order*).

<sup>26</sup> *2004 TRS Report and Order*, 19 FCC Rcd at 12517, ¶ 103 n.304. The Commission explained that Title IV of the ADA, codified at section 225 of the Act, puts the obligation on the entities providing telephone transmission service to also offer TRS, and that the three eligibility categories that existed at that time, prior to adoption of a Commission certification process, were modeled upon the ways in which common carriers could be deemed to be in compliance with their underlying obligation under section 225 to provide TRS. *Id.* at ¶ 103 and n.304. When the Commission adopted its certification process the following year, it explained that those three eligibility categories were adopted at a time when all TRS calls were carried over telephone lines, and concluded that those categories "do not reflect advances in the way that TRS is offered," particularly with respect to the forms of iTRS that existed at that juncture, VRS and IP Relay. *IP Relay/VRS Certification Order*, 20 FCC Rcd at 20586, ¶¶ 17, 18.

<sup>27</sup> *IP CTS Declaratory Ruling*, 22 FCC Rcd at 391, ¶ 28.

<sup>28</sup> *Consumer & Governmental Affairs Bureau Clarifies the Eligibility Requirement for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund for Providers of Internet Protocol Captioned Telephone Service*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 2889, 2891 (CGB 2008).

<sup>29</sup> See para. 34, *infra*.

<sup>30</sup> *Certification FNPRM*, 26 FCC Rcd at 5589-90, ¶ 96; see ANI Comments at 3 (it would be administratively burdensome for the Commission to determine whether all state certification programs are sufficient); ASL Holdings Comments at 3; Snap Comments at 2; Sprint Comments at 3 (the Commission has determined that it has sole  
(continued....)

and appropriate way to achieve these objectives and further our goals of promoting effective, efficient, and sustainable iTRS services, and reducing fraud and abuse in the VRS program.<sup>31</sup> We further find that applying this requirement to all iTRS will help to ensure that the difficulties the Commission has encountered in the VRS program will less likely be repeated for other iTRS programs.

11. Accordingly, an iTRS provider will no longer be permitted to receive compensation from the Fund unless it is certified by the Commission. The requirement for Commission certification will apply to new applicants, and to existing providers who have been eligible to provide iTRS under one of the previous alternative methods for eligibility. It likewise will apply to all forms of iTRS,<sup>32</sup> and to all iTRS providers seeking recertification after their certifications expire, including those providers currently eligible under an existing Commission certification.<sup>33</sup>

12. We decline the request of AT&T to exempt interstate common carriers currently eligible for compensation from the Fund for provision of iTRS.<sup>34</sup> As discussed above, we find that an applicant's status as an interstate common carrier does not necessarily demonstrate that provider's ability to meet the Commission's iTRS provider requirements. For instance, an interstate common carrier does not necessarily have the core components and staffing in place to provide iTRS.<sup>35</sup> As we discuss above, the certification requirement is a critical tool that is designed to help ensure the integrity of the iTRS programs, ensure that iTRS services conform to our rules, ensure that only qualified providers receive compensation from the Fund, and help combat waste, fraud and abuse. We will therefore not exempt interstate common carriers or any other class of providers from the iTRS certification requirement. Existing iTRS providers who are currently eligible for compensation from the Fund by virtue of their interstate common carrier status, and who seek to continue to receive compensation from the Fund, must apply for certification under the new process.<sup>36</sup>

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jurisdiction over Internet-based TRS services, and therefore rightfully bears the responsibility for ensuring that entities offering such services are doing so lawfully and in compliance with Commission standards). *But see* Sorenson Comments at 3 (suggesting that state-based certification from the state of Utah is adequate to ensure compliance with the TRS rules).

<sup>31</sup> CSDVRS, for instance, asserts that requiring certification for providers that are not already certified "will promote compliance and consistency in providing quality relay services" in accordance with the Commission's TRS rules. CSDVRS Comments at 1.

<sup>32</sup> *See* AT&T Comments at 3; Purple Comments at 2; Sprint Comments at 2. *But see* Hamilton Comments at 3-5 (arguing against application of new certification requirements to forms of iTRS other than VRS).

<sup>33</sup> *See, e.g.*, CSDVRS Comments at 1-2 (supporting the proposal in the *Certification FNPRM* that providers not yet certified be required to apply for certification, and stating that providers currently certified by the Commission should be allowed to continue providing relay services until the expiration of their certification term).

<sup>34</sup> AT&T Comments at 3, 6-7 (arguing that there is no evidence that interstate common carriers offering TRS have engaged in any fraudulent or abusive behavior toward the TRS Fund or have facilitated participation in the TRS program by unqualified entities, and that the Commission should give these measures a chance to take full effect and review their success before undertaking changes that might drive iTRS providers from the market). *Contra*, Purple Comments at 2 (opposes grandfathering of existing providers who are not currently certified by the Commission).

<sup>35</sup> *See* para. 9, *supra*.

<sup>36</sup> *See* para. 59, *infra*.

**B. Requirements to Operate Call Center and Employ CAs**

13. In the *VRS Practices Order*, the Commission amended its rules to require all providers eligible for compensation from the Fund to operate their own call centers and employ their own CAs -- that is, to provide the core components of VRS.<sup>37</sup> The Commission also permitted, however, an eligible provider to engage a third party entity to provide CAs or call center functions on its behalf if that third party entity also is an eligible provider under the Commission's rules.<sup>38</sup> Thus, for example, an entity eligible to receive compensation from the Fund as an interstate common carrier could continue subcontracting out its call center functions to a provider that was also eligible to be compensated from the Fund. Such arrangements will no longer be acceptable, however, for interstate common carriers that have been receiving payments from the Fund by virtue of their interstate common carrier status, because we will now require all VRS providers to obtain certification, and to operate their own calling facilities and employ their own CAs as conditions to obtaining certification.

14. AT&T objects to the new requirements for all VRS providers to operate their own call centers and employ their own CAs, arguing that ownership and operation of call centers is not necessary to provide quality VRS service, and that such a requirement would unnecessarily limit the pool of potential VRS providers and reduce competition among providers.<sup>39</sup> Sprint agrees that VRS facility ownership should not be a requirement for TRS certification, noting that some providers that owned their own call centers engaged in questionable conduct, and the provision in the new rules that prohibits eligible providers from billing the Fund on behalf of "white label" providers should be sufficient to prevent the reemergence of such providers.<sup>40</sup> Gallaudet opposes the requirement that call centers contracted by VRS providers must themselves be owned by eligible VRS providers, arguing that it is not now a VRS provider, and it would not be in a position to become an eligible VRS provider in order to continue to provide high quality interpreting services to a VRS provider under contract.<sup>41</sup>

15. We will require that entities wishing to be eligible for compensation from the Fund for the provision of VRS be certified by the Commission, operate the core facilities necessary to provide VRS service and employ their own CAs. We are not persuaded by the arguments of AT&T, Sprint and Gallaudet, and find, for the reasons discussed below, that these requirements are necessary to ensure the provision of quality VRS and to prevent waste, fraud, and abuse.

16. The requirements adopted in the *VRS Practices R&O*, including those requiring VRS providers to lease, license or acquire and operate their own facilities and employ their own CAs, emanated from the Commission's goals of establishing better oversight of the VRS program, in order to ensure compliance with the Commission's rules and reduce fraud.<sup>42</sup> Moreover, requiring VRS providers to operate their own call centers and to employ their own CAs will ensure that certified providers exercise necessary oversight of their own operations and compliance with Commission rules, and enable the Commission to better oversee the core operations of these providers. Applying these requirements uniformly will help to ensure quality of service and compliance with the Commission's rules, and reduce

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<sup>37</sup> *VRS Practices R&O*, 26 FCC Rcd at 5574, ¶ 58.

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

<sup>39</sup> AT&T Comments at 12.

<sup>40</sup> Sprint Comments at 4-5. "White label" refers to an entity that is offering relay service but not eligible for direct payment from the Fund, and instead bills the Fund through an eligible provider. *See VRS Practices R&O*, 26 FCC Rcd at 5571, ¶ 52 n.147.

<sup>41</sup> Gallaudet Reply Comments at 16-18; *see also* Sorenson Reply Comments at 2.

<sup>42</sup> *VRS Practices R&O*, 26 FCC Rcd at 5572-74, ¶¶ 54-58.



waste, fraud and abuse in the VRS industry. Conversely, it will avoid the risks of lack of Commission oversight associated with allowing the contracting out of CA services or call center functions to entities that are not eligible VRS providers.

17. *ACD Platforms.* For the same reasons, we will require that any VRS provider that is leasing<sup>43</sup> an automatic call distribution (ACD) platform<sup>44</sup> from an eligible provider or from a third-party non-provider must have a written lease for such ACD platform and must include a copy of such written lease with its application for certification.<sup>45</sup> The terms of the lease may not include (i) compensation of the lessor by the lessee related to minutes of use or (ii) revenue sharing agreements between the lessor and the lessee.<sup>46</sup> In addition, a VRS provider leasing an ACD platform from an eligible provider must locate the ACD platform on its own premises and must use its own employees to manage the ACD platform. In other words, an eligible VRS provider may lease the ACD platform from an eligible provider on a stand-alone basis, but may not lease capacity on another provider's ACD.<sup>47</sup> The Commission will deny any application for certification that does not comply with the above requirements. In addition, if it is later discovered that a certified VRS provider is leasing from an eligible provider an ACD platform subject to an arrangement (whether in writing or verbal) that does not comply with the above requirements, the Fund Administrator shall immediately suspend all payments to both the lessor and the lessee.

18. We find that ACD leases with eligible providers calling for revenue sharing, compensation related to minutes of use, sharing of the ACD platform, or sharing the management of the ACD platform may give providers an increased incentive and ability to generate illegitimate minutes to bill to the Fund, and thus could result in continuation of the types of unlawful activities that we have already seen on the part of many white label providers,<sup>48</sup> undermining our efforts to reduce waste, fraud and abuse. In order to prevent fraud and ensure that only providers certified by the Commission provide the core components of VRS and exercise oversight of, and are accountable for, their own operations, we prohibit these practices. Allowing ACD leasing between providers without these restrictions would undermine the VRS rules that the Commission adopted in the *VRS Practices R&O*, the primary purposes of which are to reduce fraud and establish better oversight of the VRS Program.<sup>49</sup> If two providers were permitted to share an ACD platform (particularly through an arrangement based on VRS revenues generated), they would have an increased ability to commingle minutes that they will bill to the Fund which, in turn, would dilute the accountability of each provider and hamper the Commission's oversight of each.

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<sup>43</sup> All references to leasing, leases, lessors, and lessees in this discussion of ACD platforms shall be construed to refer correspondingly to licensing, licenses, licensors, and licensees.

<sup>44</sup> By the term "ACD platform," we mean the hardware and/or software that comprise the essential call center function of call distribution, and that are a necessary core component of iTRS.

<sup>45</sup> We require the provider to use for its call center functions the ACD platform whose lease is on record with the Commission or, in any event, upon which the provider is relying for compliance with these requirements.

<sup>46</sup> See generally *VRS Practices R&O*, 26 FCC Rcd at 5570-76, ¶¶ 47-63.

<sup>47</sup> Any provider may purchase outright an ACD platform from any other entity, including another certified provider.

<sup>48</sup> *VRS Practices R&O*, 26 FCC Rcd at 5572-73, ¶ 55 (citing the series of indictments and guilty pleas listed therein at 5549, ¶ 4 n.14, and the list of questionable VRS practices in the *OIG Semi Annual Report* of the criminal investigations to Congress, discussed *id.* at 5550, ¶ 4).

<sup>49</sup> *VRS Practices R&O*, 26 FCC Rcd at 5574, ¶ 57.

19. For VRS providers that lease their ACD platforms from manufacturers or equipment distributors not affiliated with VRS providers,<sup>50</sup> however, we require a written lease for such ACD platform that conforms to the same restrictions on lease terms discussed above (i.e., no compensation related to minutes of use and no revenue sharing between lessor and lessee), and that the applicant include a copy with its application for certification. The ban on revenue sharing and compensation based upon minutes of use should remove any incentive on the part of the non-provider lessor to facilitate any scheme by a provider to generate illegitimate minutes. We find that the additional restrictions placed above on leases from one VRS provider to another are unnecessary because concerns about the ability of a provider to generate illegitimate minutes are significantly lower in the case of a provider leasing an ACD platform from a manufacturer or other entity not affiliated with a provider. Further, we emphasize that each provider, regardless of how it meets the requirement to operate its own VRS facilities, will be solely responsible and accountable for submitting accurate data relevant to its own operations to the Fund Administrator.

20. *IP Relay and IP CTS Providers.* In the *Certification FNPRM*, we also proposed that all iTRS certification applicants, including IP Relay and IP CTS applicants, own and operate facilities associated with TRS call centers, and employ CAs on a full time or part time basis.<sup>51</sup> We now agree with Hamilton and Purple that, at this juncture, we should not require IP Relay and IP CTS providers to own and operate their own facilities and employ their own CAs.<sup>52</sup> In the *VRS Practices R&O*, the Commission adopted requirements that VRS providers own and operate their own facilities and employ their own CAs as part of a package of rules designed to reduce fraud, establish better oversight of the VRS program, and address the unauthorized revenue sharing arrangements that have escalated in the VRS program.<sup>53</sup> Though IP Relay and IP CTS providers frequently use subcontractors to operate call centers, to date there has been no public record of significant waste, fraud and abuse in those programs from the use of subcontractors as there is in the VRS program, where there have been dozens of indictments related to fraud.<sup>54</sup> We therefore find that to apply these requirements to IP Relay and IP CTS providers at this time could force such providers to expend significant sums to restructure their businesses to own and operate their own facilities, and thereby result in disproportionate industry disruption as compared to regulatory benefit. Nevertheless, we will monitor the provision of IP Relay and IP CTS services and revisit this issue should the need arise. Moreover, as discussed below, we still apply to IP Relay and IP CTS providers some of the evidentiary documentation requirements that we adopt, which we believe will be sufficient to ensure that these providers are operating in compliance with the Commission's rules.<sup>55</sup>

### C. Evidentiary Documentation for Submission for Certification Application

21. In the *Certification FNPRM*, as discussed above, the Commission proposed that applicants for certification or renewal of an expiring certification<sup>56</sup> be required to provide documentary

<sup>50</sup> If a VRS provider leases its ACD platform from a manufacturer or equipment distributor that is affiliated with a VRS provider, the same restrictions apply as to ACD platform leases between providers. See paras. 17-18, *supra*.

<sup>51</sup> Specifically, the Commission proposed to require such applicants to provide documentary and other evidence demonstrating that the applicant owns and operates such facilities and employs CAs. *VRS Practices R&O*, 26 FCC Rcd at 5590, ¶ 97; see Section III.C., *infra*.

<sup>52</sup> Hamilton Comments at 9; Purple Comments at 8. See also Hamilton Reply Comments at 4; Purple Reply Comments at 5. No one opposed Hamilton's and Purple's comments regarding this issue.

<sup>53</sup> *VRS Practices R&O*, 26 FCC Rcd at 5574, ¶¶ 57-58.

<sup>54</sup> *Id.* at 5549-50, ¶ 4 n.14.

<sup>55</sup> See paras. 26-29 and 31, *infra*.

<sup>56</sup> Currently, certifications are granted by the Commission for a period of five years. 47 C.F.R. § 64.606(c)(2).

and other evidence that the applicant owns, licenses or leases and operates facilities associated with iTRS call centers, and employs CAs, on a full or part-time basis, to staff such call centers as of the date of the application.<sup>57</sup> As set forth in greater detail below, the Commission proposed that certification applicants submit specific evidentiary documentation. The Commission sought comment on the extent to which these submissions are necessary to achieve our objectives, other types of documentation we should require, and the level of detail needed to ensure that the Commission is able to assess whether an applicant is fully qualified to provide iTRS in compliance with our rules and requirements.<sup>58</sup> We proposed that the required evidence include, but not be limited to: copies of deeds or leases for call centers; lists of individuals with equity interests in or control of the applicant; lists of employees; proofs of purchase or license agreements for equipment and technologies used by the applicant; copies of employment agreements for all of the applicant's executives and CAs; a listing of all financing arrangements pertaining to the applicant's provision of iTRS; a list of all sponsorship arrangements; copies of subcontracting agreements for non-essential services; and copies of "all other agreements" associated with the provision of iTRS.<sup>59</sup>

22. While the majority of the commenters support the need for the Commission to collect some documentation prior to granting certification, they differ on the extent of the information the Commission should require.<sup>60</sup> Specifically, several commenters question the necessity of imposing all of the proposed requirements for documentation listed in the *Certification FNPRM*, arguing that doing so would be burdensome, not serve the purpose of the new certification process, and waste applicant and Commission resources.<sup>61</sup> For example, Purple agrees that it is important that applicants be able to provide evidentiary support of their ability to meet all of the rules, but is concerned about the extent of the list of proposed documentation and believes that it is too voluminous.<sup>62</sup> AT&T maintains that the proposed certification process would be overly complicated and would seek information from applicants far beyond what is needed to determine the qualifications of an applicant to be certified for payment from the Fund for its provision of iTRS. AT&T argues that, in contrast, it would be reasonable to require an applicant to

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<sup>57</sup> See *Certification FNPRM*, 26 FCC Rcd at 5590, ¶ 97.

<sup>58</sup> See *id.* at 5591, ¶ 98.

<sup>59</sup> *Id.* at 5590-91, ¶ 97.

<sup>60</sup> For example, Sorenson challenges any change to the Commission's current certification process, which requires only a narrative description of provider operations with no accompanying documentation, and argues that there is no evidence in the record to show that this existing procedure is inadequate to prevent future fraud. See Sorenson Comments at 5.

<sup>61</sup> See, e.g., Snap Comments at 3; Sorenson Comments at 1; Sprint Comments at 3 (arguing that many of the documents proposed by the FCC as a condition for certification are not reasonably and specifically tied to the provider's iTRS operations). ANI, for example, recommends that only the following information be required in the application: 1) evidence of lease or ownership interest in call center facilities; 2) a list of individuals or entities with a 10% or greater interest in the applicant; 3) a list of all officers and directors of the applicant and any other entities that control the applicant; 4) a list of all significant sources of funding (greater than \$10,000,000); 5) proof that the applicant owns or leases the essential equipment and software required to provide the service; and 6) copies of all other agreements critical to the provision of the service. ANI Comments at 4.

<sup>62</sup> Purple Comments at 3-5. Purple contends that some of the proposed requirements, including employee lists, compensation, copies of license agreements, non-essential sub-contracting agreements, financing agreements, and "all other agreements," would be overly broad, burdensome to produce, unlikely to be reviewed by Commission staff in a timely manner, and unnecessary with other compliance plans and checks and balances in place. In their place, Purple proposes providers be required to demonstrate certain categories (ownership structure; financial viability; ability to satisfy operational, technical, functional, and compliance standards), and provide a list of sub-contractor relationships; copies of written compliance plans; and copies of process control procedures. See *id.*

describe a work force plan, explain how it will meet Commission-imposed speed of answer requirements, and demonstrate its qualifications by providing a general description of the facilities, including their location and the technologies that will be used to provide iTRS.<sup>63</sup> ANI contends that the proposed modifications do not balance the need to reform the certification process against the administrative burdens that it may unnecessarily impose on small businesses.<sup>64</sup> Finally, some providers complain that the documentation proposed is particularly burdensome when applied to applicants with more diverse business operations, where iTRS is not the sole, or even the primary, revenue source. They request that the Commission clarify that the information collection requirements apply only to an applicant's iTRS operations, not to other parts of their businesses that are not related to iTRS.<sup>65</sup>

23. *Discussion.* We have modified some of the documentation requirements originally proposed in the *Certification FNPRM* to minimize the burden on applicants to the extent consistent with our responsibility to ensure that only qualified providers are certified and that we are able to exercise adequate oversight of providers. All of the requirements we adopt below are adopted pursuant to one or more of our objectives in this *Second Report and Order* to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers.

24. *Deeds or Leases for Call Centers.* In response to the comments,<sup>66</sup> we modify our proposal that a certification applicant file a copy of "each" deed or lease for "each" of its call centers. Instead, we will require VRS providers that maintain five or fewer domestic call centers to submit the deeds or leases for all of those call centers, while requiring providers with more than five domestic call centers to submit a representative sampling of the deeds or leases<sup>67</sup> for five of their centers, together with a list of all other call centers that they operate. We note that the *VRS Practices R&O* already requires that providers, twice per year, submit a list to the Commission and the TRS Fund administrator of the locations of all of their call centers that handle VRS calls. Specifically, the list must contain the street address of each call center, the number of individual CAs and CA managers employed at each call center, and the name and contact information (phone number and email address) for the managers at each call center.<sup>68</sup> We direct that the list we require here contain the same information. In addition, all providers must submit copies of deeds or leases for all international call centers that they operate, regardless of the number of such centers; these supplement the aforementioned five (or fewer, if applicable) domestic deeds or leases.

25. We disagree with Sorenson's contention that the Commission does not need actual copies of deeds or leases to learn that an applicant owns and operates facilities.<sup>69</sup> As we have previously noted, several VRS investigations have involved fraud committed at call centers that are not operated by an eligible VRS provider.<sup>70</sup> Therefore, requiring copies of call center deeds or leases provides important verification that the certified provider itself is operating the call centers. In addition, having copies of

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<sup>63</sup> AT&T Comments at 9-10.

<sup>64</sup> ANI Comments at 2.

<sup>65</sup> AT&T Comments at 14; *see also* Sprint Comments at 3, 7.

<sup>66</sup> *See, e.g.*, AT&T Comments at 10.

<sup>67</sup> When choosing a representative sampling of deeds or leases, applicants should consider size (by number of CAs) and locations of call centers; providers already in the market should also consider call volume.

<sup>68</sup> *VRS Practices R&O*, 26 FCC Rcd at 5554, ¶ 12.

<sup>69</sup> Sorenson Comments at 3.

<sup>70</sup> *VRS Practices R&O*, 26 FCC Rcd at 5554, ¶ 11.

actual call center deeds or leases will help verify that the providers' CAs are handling calls at call centers rather than at home, a previously widespread practice that we prohibited in the *VRS Practices R&O*.<sup>71</sup> Furthermore, requiring providers to submit actual deeds or leases of only five of their call centers, when they have more than that number, will ensure a sufficiently large sample to verify that applicants for certification are utilizing legitimate call centers, while lessening the documentation burdens on applicants as originally proposed in the *Certification FNPRM*. Having documentation of all international calling centers will also help to facilitate information gathering in situations where there is suspicion of TRS fraud occurring outside the United States, making such operations more transparent and thereby enhancing enforcement efforts.<sup>72</sup> Because we do not require at this juncture that IP Relay or IP CTS providers actually own or operate call centers,<sup>73</sup> we do not apply this documentation requirement to them.

26. *Entities with Financial Interest in Applicant.* We adopt the Commission's proposal to require that all iTRS applicants for certification or renewal submit a list of individuals or entities that hold at least a 10 percent equity interest in the provider, have the power to vote 10 percent or more of the securities of the provider, or exercise *de jure* or *de facto* control over the provider. In addition, we require applicants to submit a description of its organizational structure, and the names of its executives, officers, general partners (if the applicant is structured as a partnership), and members of its board of directors. No commenters objected to this requirement, which we adopt to obtain full disclosure of the companies' management structure, ownership structure and affiliated entities, which in turn will allow us to determine whether providers are subject to undue influence, or *de jure* or *de facto* control by other entities. We decline, however, to adopt the Commission's proposal in the *Certification FNPRM* that certification applicants submit a list of all financing arrangements pertaining to the provision of iTRS, including documentation on loans for equipment, inventory, property, promissory notes, and liens. While such documentation could be helpful to monitor for fraud, at this juncture we are requiring submission (or retention by applicants) of sufficient documentation to detect fraud such that the incremental benefit of requiring submission of financing documents to the Commission is outweighed by the burdens that this requirement could impose, particularly on providers with varied, non-iTRS operations.

27. *List of Employees and Copies of Employment Agreements.* In the *Certification FNPRM*, the Commission proposed to require that certification applicants provide a list of names of all their employees, and that they furnish copies of employment agreements for all of their executives and CAs. We now adopt substantially modified versions of those proposals. With respect to employee lists, we require only that providers submit a list of numbers of full-time and part-time employees involved in TRS operations, that includes, divided by the following positions: the executives and officers; video phone installers; CAs; and persons involved in marketing and sponsorship activities. In response to several comments objecting to the scope of the Commission's original proposal,<sup>74</sup> we are not requiring the submission of information on employees, such as janitorial staff, who do not have any direct involvement with relay services.<sup>75</sup> Limiting the employee lists as described herein relieves the burden on all iTRS providers, including companies that have large non-iTRS operations. These lists of numbers of

<sup>71</sup> See *id.* at 5554-59, ¶¶ 13-20.

<sup>72</sup> We note that international TRS fraud has been a serious problem in the past. See, e.g., *id.* at 5550, ¶ 4 n.18; 5563-65, ¶¶ 31-33.

<sup>73</sup> See para. 20, *supra*.

<sup>74</sup> ANI Comments at 4; AT&T Comments at 10; Purple Comments at 5; Snap Comments at 3; Sorenson Comments at 4.

<sup>75</sup> See, e.g., Sprint Comments at 7-8 (suggesting that any employee list be limited to those employees who work on VRS or iTRS issues, and whose salaries and other expenses are included in Sprint's annual cost submission to the TRS Fund Administrator).

employees will help the Commission to evaluate the applicant's ability and readiness to provide the service, while at the same time significantly curtailing the paperwork burdens for applicants. Nevertheless, we require applicants to retain the more comprehensive documentation that the Commission originally asked for regarding employees, including names and copies of employment agreements -- to the extent they are involved in TRS operations -- and to furnish it to the Commission upon the Commission's request.

28. Likewise, instead of submitting agreements for all of its executives and CAs, iTRS certification applicants must retain employment agreements for its executives responsible for the provision of iTRS, including senior operations and marketing personnel, and copies of CA employment contracts. We disagree with AT&T that the agreements we are requiring applicants to retain bear little relationship to applicants' ability to provide iTRS in conformance with Commission rules.<sup>76</sup> In the *VRS Practices R&O*, the Commission noted that the indictments from criminal investigations into VRS fraud were replete with alleged instances in which CAs were rewarded for handling calls that otherwise would not have been made.<sup>77</sup> In response, the Commission adopted rules prohibiting CAs from receiving compensation, being given preferential work schedules, or otherwise benefitting in any way based on the number of minutes or calls that they relay.<sup>78</sup> Therefore, requiring providers to retain CA employment agreements and furnish them upon request to the Commission could help the Commission to evaluate overall compliance with our rules, and to ensure that compensation of CAs is not based on minutes or calls. Similarly, Commission examination of retained executive employment agreements could help to ensure that, like their employees, these executives' salaries are not based on illegitimate performance objectives. Consistent with record retention requirements that the Commission adopted in the *VRS Practices R&O*,<sup>79</sup> we likewise adopt a five year duration period for the employment agreements and other employee records that we require providers to retain in this *Second Report and Order*. In sum, we find that these requirements impose a minimal burden on providers, and will directly serve to further the Commission's goals of eliminating fraud and abuse of the TRS Fund.

29. *Proofs of Purchase or Lease for Use of All Equipment and/or Technologies.* We adopt a slightly modified version of the Commission's proposal to require applicants for certification to submit proofs of purchase or license agreements for all equipment and/or technologies, including hardware and software, used for the applicant's VRS call center functions. We disagree that a representative list of equipment for the applicant's first year of operations, or a general description of the facilities and technologies that will be utilized by the applicant, is sufficient,<sup>80</sup> or that the scope of the required documentation is overbroad due to "most providers . . . utiliz[ing] at least some equipment or technology that is not directly tied to a TRS call."<sup>81</sup> We will require applicants, in their submissions, to describe the technology and equipment used to support their call center functions -- including, but not limited to, ACD, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration -- and for each core call center function, state whether it is owned or leased (and from whom if leased or licensed), and provide proofs of purchase, license agreements, or leases. Per the

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<sup>76</sup> See AT&T Comments at 10.

<sup>77</sup> *VRS Practices R&O*, 26 FCC Rcd at 5549-50, ¶ 4 n.14; 5560, ¶ 23.

<sup>78</sup> *Id.* at 5560, ¶ 23; 47 C.F.R. § 64.604(c)(5)(iii)(C)(5).

<sup>79</sup> 26 FCC Rcd at 5585, ¶ 87.

<sup>80</sup> Sorenson Comments at 4; AT&T Comments at 11.

<sup>81</sup> AT&T Comments at 10.

Commission's proposal, these core call center functions include ACD, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration.<sup>82</sup>

30. This requirement's scope is limited to equipment and/or technologies to be used by the applicant for its call center functions, *i.e.*, to provide the core components (other than CAs) of VRS. This requirement will help the Commission to ensure that the applicant has the full operational and technical capability to operate a call center, in compliance with the Commission's mandatory minimum standards, which include speed of answer, handling of emergency calls, and the processing of ten-digit numbering registration. Furthermore, having such documentation will help the Commission to ensure that providers and other entities comply with the Commission's rules designed to reduce fraud, and to put an end to unauthorized revenue sharing arrangements that have escalated in the VRS program, as adopted by the Commission in the *VRS Practices R&O*.<sup>83</sup> For instance, a new Commission rule specifies that an eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions on its behalf, unless that authorized third party also is an eligible provider;<sup>84</sup> and above we adopt supplemental restrictions for ACD platform leases.<sup>85</sup> Therefore, seeing the actual agreements will help the Commission verify an applicant's compliance with that rule. Because we do not require at this juncture that IP Relay or IP CTS providers actually own or operate their own facilities,<sup>86</sup> we do not apply this documentation requirement to them.

31. *List of Sponsorship Arrangements.* In the *Certification FNPRM*, the Commission proposed that certification applicants submit a list of all sponsorship or marketing arrangements and associated agreements, including those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing. We now adopt a slightly modified requirement that applicants submit a list of all such sponsorship or marketing arrangements and associated agreements, but only those related to iTRS. No commenter objects to this requirement. As the Commission noted in the *VRS Practices R&O*, one of the primary sources of fraud uncovered through recent investigations of VRS providers was calls ostensibly made for the purpose of marketing and outreach.<sup>87</sup> By adopting this requirement, the Commission will be better able to determine how applicants market their services as providers, whether fraud or abuse of the Fund is likely to occur from such activities, and whether it is probable that such marketing will produce inefficiencies.<sup>88</sup>

32. *Copies of Subcontracting Agreements for Non-Essential Services.* In the *Certification FNPRM*, the Commission proposed to require applicants for certification to file copies of any subcontracting agreements for services not directly essential for the provision of iTRS, such as maintenance and transportation services. We agree with commenters that requiring copies of subcontracting agreements for services not directly essential for the provision of iTRS, such as maintenance and transportation services, would be overly burdensome and not helpful for a determination

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<sup>82</sup> See *VRS Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5591, ¶ 97; see also *id.* at 5574, ¶ 58.

<sup>83</sup> See *VRS Practices R&O*, 26 FCC Rcd at 5574, ¶ 57.

<sup>84</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(N)(1)(iii); *VRS Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5612, App. E.

<sup>85</sup> See paras. 17-19, *supra*.

<sup>86</sup> See para. 20, *supra*.

<sup>87</sup> *VRS Practices R&O*, 26 FCC Rcd at 5550, ¶ 4 n.14.

<sup>88</sup> Cf. 47 U.S.C. § 225(b)(1) (TRS to be "efficient"); para. 1, *supra* (goal of this proceeding to promote effective, efficient, and sustainable iTRS).

of the qualifications of an applicant for certification.<sup>89</sup> We believe that the scope of such documentation would be overly broad and only marginally useful, and we now decline to adopt this requirement.

33. *Copies of All Other Agreements Related to Provision of iTRS.* In the *Certification FNPRM*, the Commission proposed to require applicants for certification to submit copies of “all other agreements” associated with the provision of iTRS. Although we decline to adopt a requirement that applicants submit copies of all other such agreements that are not included in any of the above categories, we may seek additional relevant information from individual applicants that we deem to be directly relevant to the applicant’s ability to comply with our rules, on an as-needed basis. This is consistent with the *VRS Practices R&O*, in which the Commission required that “all third-party contracts or agreements be...available to the Commission and the TRS Fund administrator upon request.”<sup>90</sup>

34. *Common Carrier Status.* Finally, as discussed above, in the *Certification FNPRM*, we sought comment on a number of proposed modifications to our certification process that the Commission originally raised in the *2010 VRS NOI*.<sup>91</sup> We noted that in the *2010 VRS NOI*, the Commission sought input on whether demonstration of common carrier status should continue to be a condition of certification for all applicants,<sup>92</sup> and we proposed to retain a requirement that an applicant for certification demonstrate its status as a common carrier as part of its application’s supporting documentation.<sup>93</sup> We now agree with commenters that such a requirement is no longer necessary for iTRS certification applications.<sup>94</sup> Experience has shown that common carrier status generally has little or no connection with the qualifications of an iTRS provider.<sup>95</sup> In the *2010 VRS NOI*, we noted that many states have been known to “rubber stamp” applications by would-be iTRS providers for common carrier status, even where the applicant for such status has no telecommunications background or intention of engaging in other telecommunications services.<sup>96</sup> As explained by Sorenson, common carrier status does not ensure compliance with the TRS mandatory minimum standards, TRS providers are not necessarily common carriers, and section 225 of the Act only requires that common carriers provide TRS, but not that all TRS providers be common carriers.<sup>97</sup> We will therefore eliminate the requirement that iTRS providers demonstrate their status as common carriers in order to receive certification. We note, however, that all providers, regardless of whether they are common carriers, are required to provide service in a manner that is both compliant with the Act and the Commission’s rules and orders, and consistent with our policies and goals to prevent fraud and abusive practices. To that end, we will seek comment in a forthcoming NPRM on whether it is necessary to adopt a rule to make non-common carrier iTRS providers subject to the same prohibitions against unjust or unreasonable practices that common carriers are subject to under the Act.<sup>98</sup>

<sup>89</sup> AT&T Comments at 10; Purple Comments at 5; Snap Comments at 3; Sorenson Comments at 3-4.

<sup>90</sup> *VRS Practices R&O*, 26 FCC Rcd at 5574, ¶ 60.

<sup>91</sup> See *Certification FNPRM*, 26 FCC Rcd at 5587-89, ¶¶ 92-95.

<sup>92</sup> *Id.* at 5588, ¶ 93 (citing *2010 VRS NOI*, 25 FCC Rcd at 8605-06, ¶¶ 25-26).

<sup>93</sup> *VRS Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5607, App. D (proposed 47 C.F.R. § 64.606(a)(2)(iv)); see 47 C.F.R. § 64.606(a)(2)(vii) (current common carrier status demonstration requirement).

<sup>94</sup> See, e.g., Sorenson Comments at 6; Purple Comments at 5; Consumer Groups Reply Comments at 3. No commenter opposed elimination of this requirement.

<sup>95</sup> See ANI Comments at 2.

<sup>96</sup> *2010 VRS NOI*, 25 FCC Rcd at 8605, ¶ 25.

<sup>97</sup> See Sorenson Comments at 6 (citing 47 U.S.C. § 225(c) and *2000 TRS Order*, 15 FCC Rcd at 5174-75, ¶ 81).

<sup>98</sup> See 47 U.S.C. §§ 201(b), 202(a).



**D. On-Site Visits**

35. *Background.* In the *Certification FNPRM*, the Commission proposed that the iTRS certification process include, at the Commission's discretion, on-site visits to the premises of applicants, to assess the merits of certification applications. The Commission explained that this requirement would enable it to determine applicants' qualifications, and enable it and the Fund administrator to oversee the providers' operations and activities so as to ensure they are in compliance with our rules.<sup>99</sup>

36. *Discussion.* In Section III.C. above, we adopt documentation requirements for certification applications that should greatly enhance the Commission's ability to evaluate the qualifications of iTRS certification applicants, as well as assist with potential fraud detection. Nevertheless, we agree with commenters that on-site visits can provide a useful tool to better enable the Commission to verify the information provided in a certification application, and help us to better assess an applicant's ability to provide service in compliance with our rules.<sup>100</sup> On-site visits may uncover deficiencies in an application or noncompliance in a provider's operations, which will decrease opportunities for and may, in turn, prevent, waste, fraud and abuse. Accordingly, we reserve the right to include, as part of the iTRS certification process, an on-site visit to the applicant's headquarters, offices or call centers.<sup>101</sup> We also reserve the right to make subsequent, unannounced on-site visits of iTRS providers once they receive certification, for the purpose of ensuring continued compliance with certification requirements.<sup>102</sup>

37. In order to avoid an interruption of service after October 1, 2011<sup>103</sup> by those VRS providers who are already providing service via subcontracting, but who seek to become eligible providers through Commission certification, we reserve the right to conditionally grant certification, subject to a subsequent optional on-site visit<sup>104</sup> of any applicant where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but that the Commission needs to verify some of the information contained in the application. Such grant of conditional certification will be without prejudice to the Commission's final determination of the applicant's qualifications, and will be dependent on the Commission verifying the information provided in the application for certification. Ultimate conversion to a full certification will occur when the Commission finds, based on review of the application, that the conditional grantee is in compliance with our rules and qualified to receive compensation from the Fund for the provision of iTRS services. In other words, the Commission will complete its review of the applicant's qualifications subsequent to the site visit, and if the Commission finds the applicant to be qualified based on the complete review, then the Commission will issue full certification. If the Commission finds the applicant not to be qualified based

<sup>99</sup> *Certification FNPRM*, 26 FCC Rcd at 5591, ¶ 98.

<sup>100</sup> See, e.g., SignOn Comments at 8 (on-site visits to an applicant's call center or other facility are an appropriate means of determining that the physical premises of a company's operations comply with the Commission's requirements and that all centers meet the Commission's mandatory minimum standards, including standards on confidentiality, emergency access, and redundancy); Purple Comments at 7; ANI Comments at 4.

<sup>101</sup> ANI Comments at 4; ASL Comments at 1; Purple Comments at 7; SignOn Comments at 8-9; Snap Comments at 4-5.

<sup>102</sup> ANI Comments at 4; SignOn Comments at 9.

<sup>103</sup> The current stay of section 64.604(c)(5)(iii)(N)(1)(iii) of the Commission's rules expires on October 1, 2011. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order Suspending Effective Date, 26 FCC Rcd 8327 (2011). That section requires all VRS providers to be directly eligible for reimbursement from the Fund, which, by that date, must be accomplished via the certification process for new entrants.

<sup>104</sup> See *2010 VRS NOI*, 25 FCC Rcd at 8605, ¶ 25.

on the complete review, the application will be denied and the conditional certification will automatically terminate 35 days after the denial; in such a case, the provider must give at least 30 days notice to its customers that the provider will no longer provide service.<sup>105</sup> We find that the ability to issue conditional grants of certification balances the need for continuity of service with the need to ensure that only qualified applicants for iTRS service are eligible to receive compensation from the TRS Fund for their provision of iTRS services. Since the Commission will grant the conditional authorization without prejudice to its final determination of the applicant's qualifications, it will retain the ability to fully review each application for VRS certification on the merits, and be able to verify information through an on-site visit when needed to make a final ruling on the application.

#### E. Annual Reports and Certification Renewals

38. Under existing rules, providers are required to make an annual filing to show that they are in compliance with our TRS rules.<sup>106</sup> As has been the Commission's practice in the past, annual compliance reports are required to be filed on each anniversary of the date of certification as issued via Public Notice from the Commission or its Consumer and Governmental Affairs Bureau (CGB).<sup>107</sup> This filing currently takes the form of a narrative that recounts the provider's continued eligibility for certification. In the *Certification FNPRM*, we proposed that providers be required to submit with their annual reports updates to the information provided in their application for certification.<sup>108</sup> We also solicited comment on whether the provision of this information on an annual basis would eliminate the need for renewal of certification every five years, as is now required by our rules.<sup>109</sup>

39. Some commenters who support our proposal for providers to submit updates, with their annual reports, to the information contained in their applications suggest that this requirement should take the place of having to apply for renewal of certification every five years.<sup>110</sup> They maintain that submission of updates to their annual reports will provide the Commission sufficient opportunity to regularly review a provider's operations and compliance and to take appropriate action based on such information without needing formal recertification every five years.<sup>111</sup> Hamilton and Sorenson oppose the annual update proposal, arguing that it would be unduly burdensome.<sup>112</sup> AT&T and ANI request clarification that the annual report would not require resubmission of all of the information already

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<sup>105</sup> We find that 35 days should be sufficient to provide an opportunity to transition customers to another VRS provider.

<sup>106</sup> 47 C.F.R. § 64.606(g).

<sup>107</sup> See, e.g., *Notice of Certification of American Network as a Provider of Internet Protocol Relay Service (IP Relay), Video Relay Service (VRS), Internet Protocol Captioned Telephone Relay Service (IP CTS) Eligible for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund*, CG Docket No. 03-123, Public Notice, 24 FCC Rcd 80, 82 n.11 (CGB 2009) ("The first [annual] report shall be due one year after the release date of this Public Notice, and subsequent reports shall be due each year thereafter").

<sup>108</sup> See *Certification FNPRM*, 26 FCC Rcd at 5592, ¶ 100.

<sup>109</sup> See *id.* Currently, providers must re-apply for a renewal of their five-year certification by filing documentation with the Commission at least 90 days prior to the expiration of such certification. See *IP Relay/VRS Certification Order*, 20 FCC Rcd at 20589, ¶ 14 ("a certified provider must file for renewal at least 90 days prior to the expiration of certification by filing the documentation required for certification"); 47 C.F.R. § 64.606(c)(2).

<sup>110</sup> ANI Comments at 7-8; CSDVRS Comments at 2; Purple Comments at 6; SignOn Comments at 9-10.

<sup>111</sup> Purple Comments at 6; SignOn Comments at 9-10.

<sup>112</sup> Hamilton Comments at 10; Sorenson Comments at 4.

submitted in the application for certification.<sup>113</sup> Most providers concur with our proposal that providers re-apply every five years.<sup>114</sup>

40. *Discussion.* Due to the evolving nature of the technologies and market for iTRS services, it is essential for the Commission to be informed on an annual basis of any updates to the information provided in the certification application. The rules we adopt in this *Second Report and Order* therefore require certified iTRS providers to append to their annual reports any documentary evidence required for certification that has changed since the date that certification was granted, and that has not been included in annual reports filed since the date of certification, and to provide a summary of such changes.<sup>115</sup> If all documents that a provider supplied to the Commission at the time of its certification application and with subsequent annual reports remain accurate and current, a provider is instead required to append to its annual report an attestation that it has no updates to its certification documentation and subsequent annual reports. We find that this additional requirement will not impose a significant burden on iTRS providers, as they already are required to file an annual compliance report under section 64.606 of our rules, and they will simply need to update their documentation to reflect any changes since the prior year's filing. Likewise, we minimize the burdens on providers by limiting the annual updates to information that has changed since that particular information was last reported to the Commission, and we have substantially curtailed the documentation we require as compared to the Commission's proposals in the *Certification FNPRM*.<sup>116</sup> We therefore believe that the requirements as adopted address the concerns of some commenters about their associated burdens.

41. We decline to eliminate our current rule requiring iTRS providers to apply for recertification every five years.<sup>117</sup> Because iTRS providers are compensated from the TRS Fund, to facilitate Commission oversight of iTRS providers, ensure compliance with our rules, and reduce waste, fraud and abuse, it is essential that the Commission have the opportunity to fully re-evaluate each provider's qualifications periodically to determine whether each provider is in compliance with the Commission's rules and is otherwise qualified to provide iTRS service. We note that a term of five years for iTRS certification is consistent with the period of certification granted for state TRS programs under the Commission's rules.<sup>118</sup>

#### F. Notification of Substantive Change

42. At present, our rules require VRS and IP Relay providers to notify the Commission of substantive changes in their programs within 60 days of when these changes occur, and to further certify that their service continues to meet mandatory minimum standards after implementing such changes.<sup>119</sup>

<sup>113</sup> ANI Comments at 7-8; AT&T Reply Comments at 6-7.

<sup>114</sup> Hamilton Comments at 10; SnapVRS Comments at 5; AT&T Reply Comments at 7; Consumer Group Reply Comments at 3.

<sup>115</sup> Providers holding certifications under our previous certification rules must append all the documentary evidence required by revised section 64.606(a)(2) and (g) to their next annual report.

<sup>116</sup> See Section III.C., *supra*.

<sup>117</sup> We amend 47 C.F.R. § 64.606(c)(2) to reflect the documentation requirements that we adopt above, as well as to incorporate a ministerial change to clarify that the recertification application must be filed at least 90 days prior to expiration of the certification. See App. D, *infra*; see also note 113, *supra*.

<sup>118</sup> See 47 C.F.R. § 64.606(c)(1).

<sup>119</sup> 47 C.F.R. § 64.606(f)(2). See generally *IP CTS Declaratory Ruling* (where the Commission clarified that IP CTS is a form of TRS eligible for compensation from the Fund, but did not specifically apply the requirements of 47 C.F.R. § 64.606(f)(2) to IP CTS providers).

However, our rules do not specify what constitutes a “substantive change.” In the *Certification FNPRM*, we asked what types of changes should trigger a requirement to notify the Commission under the “substantive change” rule, including (i) the use of new equipment and/or technologies to facilitate the manner in which relay services are provided, (ii) providing services from a new facility not previously identified to the Commission or the Fund administrator, and (iii) changes in a provider’s management, name branding of its product, or marketing and outreach activities.<sup>120</sup>

43. Most providers suggest that the notification requirement should apply only to changes that materially affect mandatory minimum standards, rather than incremental changes to a business, such as the introduction of new features or services.<sup>121</sup> They argue that requiring frequent notifications is burdensome and inconsistent with the way the Commission regulates mainstream telecommunications.<sup>122</sup> Snap requests that the Commission limit the definition of substantive changes to “. . . very specific circumstances, such as where a company’s financial, operational or functional stability may come into question, [or] when a provider’s corporate structure may change or otherwise be impacted. . . .”<sup>123</sup> In contrast, ANI argues that any programmatic change should be disclosed to the Commission, and that the new rules should make clear that the Commission may act upon such changed information to de-certify a provider if it finds that the changed circumstances affect the provider’s eligibility.<sup>124</sup>

44. *Discussion.* Given the critical need for the Commission to effectively oversee each provider’s operations and any substantial changes that might be made to those operations, we believe that the benefits from obtaining this information from all providers far outweigh any burdens that might be associated with such notifications. Nor are we persuaded by arguments that telecommunications providers do not have similar reporting obligations. Unlike mainstream telecommunications companies, VRS and IP Relay providers are compensated from the Interstate TRS Fund rather than by the subscribers who use their services. Thus, it is incumbent upon the Commission to ensure that such providers are and remain fully compliant with our rules before approving such compensation.

45. In this regard, we find that providing service using new technologies and equipment is the type of substantive change that warrants notification to the Commission. Over the past year, a number of providers have launched new video technologies that have not been reported to the Commission,<sup>125</sup> some of which have raised compliance issues, especially with respect to the critical ability of VRS users to access emergency 911 services.<sup>126</sup> In order to ensure that the Commission has complete and up-to-date information about the types of technologies and equipment used by VRS and IP Relay providers, we amend our rules to require that each provider notify the Commission within 60 days of its launch of any new equipment or technology, including hardware and software, that it offers to consumers to the extent that such equipment or technology changes the way in which consumers access the provider’s VRS or IP

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<sup>120</sup> *Certification FNPRM*, 26 FCC Rcd at 5592, ¶ 100.

<sup>121</sup> See, e.g., CSDVRS Comments at 4; Sorenson Comments at 8, Snap Comments at 6; Purple Reply Comments at 6; and Sorenson Reply Comments at 6.

<sup>122</sup> CSDVRS Comments at 3-4; see also Snap Comments at 6.

<sup>123</sup> Snap Comments at 5.

<sup>124</sup> ANI Comments at 8.

<sup>125</sup> See generally *Consumer And Governmental Affairs Bureau Seeks Comment on Application of New And Emerging Technologies for Video Relay Service Use*, CG Docket No. 10-51, Public Notice, 26 FCC Rcd 1950 (CGB 2011).

<sup>126</sup> See generally *Enforcement Bureau Reminds Internet-Based Telecommunications Relay Service Providers of Emergency Calling Requirements*, Enforcement Advisory No. 2011-05, 26 FCC Rcd 1870 (EB 2011).

Relay services or has a bearing on the provider's compliance with the Commission's mandatory minimum standards.<sup>127</sup>

46. We also find that providing services from a new facility not previously identified to the Commission or the Fund administrator and discontinuation of service from any facility are types of substantive changes warranting notification to the Commission. In order to ensure that all VRS and IP Relay providers comply with our rules, we must have in our records the existence and location of all VRS and IP Relay facilities established by the providers. Without such information, it will be more difficult to monitor compliance with our rules and to reduce waste, fraud and abuse.

47. We take this opportunity to reiterate that if a Commission-certified provider purchases, acquires, or merges with another iTRS provider, such transaction constitutes a substantive change under section 64.606(f)(2) of the Commission's rules, and therefore requires notice to the Commission within 60 days of its consummation.<sup>128</sup> We further note that a Commission certification is not transferable to an entity not already certified by the Commission as eligible for compensation from the Fund.<sup>129</sup> In other words, Commission certification only confers eligibility for compensation from the Fund upon the entity receiving the certification.

48. We will not, however, consider changes in a provider's management, name branding of its product, or marketing and outreach activities to be "substantive changes" for purposes of the 60-day notification requirement. We find that this 60-day notification requirement should be limited to those changes that likely impact a provider's ability to provide service in compliance with our rules. At this time, we do not find it necessary to apply this 60-day notification requirement to changes in a provider's management, name branding of its product, or marketing and outreach activities to ensure compliance with our rules, but will revisit the issue if the need arises. Moreover, we believe that the rule changes we adopt in this *Second Report and Order*, including the substance of the annual reporting requirements, will enable the Commission to better monitor compliance with our rules and help us reduce waste, fraud and abuse.

### G. Temporary Cessation of Service

49. *Background.* As explained in the *Certification FNPRM*, our rules do not explicitly address the obligations associated with a provider's decision to temporarily cease its operations. To avoid future interruptions in service that may hamper the ability of relay customers to place iTRS calls, we proposed requiring that each certified provider seek prior Commission authorization of any voluntary interruption in the provision of iTRS. Specifically, we proposed that a provider submit a written request to CGB at least 60 days prior to any planned interruption, with detailed information of (1) its justification for such service interruption; (2) its plan to notify customers about the impending interruption; and (3) its plans for resuming service, so as to minimize the impact of such interruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption.<sup>130</sup> We further proposed delegating authority to CGB to grant or deny such requests

<sup>127</sup> See 47 C.F.R. § 64.604 *et seq.*

<sup>128</sup> *Consumer and Governmental Affairs Bureau Clarifies the Transferability of Telecommunications Relay Service (TRS) Provider Certification*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 10438 (CGB 2008).

<sup>129</sup> *Id.* "Because the Commission certifies providers based on the attestations of their owners or their representatives, who are ultimately responsible for compliance with the Commission's rules, the certification of a provider does not automatically transfer to new owners." *Id.* at 10439.

<sup>130</sup> This proposed rule is comparable to the process under section 214(a) of the Act that domestic telecommunications service providers must follow with respect to having to apply for and obtain permission for a planned discontinuance or reduction in its service. Section 214(a) requires that a domestic interstate common carrier  
(continued....)

for service interruption, and to provide a response to the provider within 35 days of the proposed interruption, in order to afford an adequate period of notification to consumers. We proposed to direct that CGB, in deciding whether to grant or deny such requests, consider, among other things, the length of time for the proposed interruption, the reason for such interruption, the frequency with which such requests have been made by the same provider in the past, the potential impact of the interruption on consumers, and the provider's plans for a smooth service restoration.<sup>131</sup>

50. With respect to unforeseen service interruptions due to circumstances beyond a provider's control, we proposed in the *FNPRM* that the affected provider submit a written notification to CGB within two business days of when the service disruption first occurred, with an explanation of how the provision of its service has been restored or will be restored imminently. Finally, we proposed taking enforcement action against certified providers, including, but not limited to, the revocation of certification and/or suspension of payment, in the event that a voluntary interruption of service occurs without obtaining prior authority from the CGB or in the event that the requested cessation proceeds notwithstanding CGB's denial of the provider's request.<sup>132</sup>

51. *Discussion.* As supported in the comments, we will adopt our proposal to require Commission approval in advance of planned service outages by VRS providers<sup>133</sup> and to require notification to consumers in advance of such outages.<sup>134</sup> Because Section 64.604(b)(4)(i), which requires that service be provided 24 hours a day, seven days a week, currently applies to VRS but not to IP Relay and IP CTS,<sup>135</sup> we adopt these requirements for VRS and not for the other iTRS services. As proposed in the *FNPRM*, applications for temporary cessation of service must be filed at least 60 days in advance of such planned outage, and the Commission will act on any such application at least 35 days in advance of the planned service interruption date to afford providers a sufficient opportunity to notify consumers.<sup>136</sup> Interruptions of service are of concern to the Commission, given the impact that these might have on relay users, and the requirements we are adopting herein will help avoid future interruptions in service that may hamper the ability of customers to place VRS calls.

52. We agree with ANI that we should draw a distinction between relatively brief outages and lengthy outages.<sup>137</sup> To address this concern, we adopt a *de minimis* exception to our initial proposal to require prior Commission consent for *all* planned service outages. Planned outages of less than 30 minutes will not require prior consent of the Commission or prior notification to consumers, but the

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apply for service discontinuance, as well as notify its customers of such planned discontinuance to ensure minimal or no service disruption for its customers. See 47 U.S.C. § 214; 47 C.F.R. § 63.71. The Commission applied those rules to interconnected VoIP in 2009. See *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039 (2009).

<sup>131</sup> *Certification FNPRM*, 26 FCC Rcd at 5592-93, ¶ 101.

<sup>132</sup> *Id.* at 5593, ¶ 102.

<sup>133</sup> See SignOn Comments at 10; Snap Comments at 6; Sorenson Comments at 8; *but see* ANI Comments at 9 (although the Commission should require notification, approval by the Commission should not be required).

<sup>134</sup> See Sorenson Comments at 8

<sup>135</sup> See 47 C.F.R. § 64.604(b)(4)(i).

<sup>136</sup> *Certification FNPRM*, 26 FCC Rcd at 5592-93, ¶ 101.

<sup>137</sup> See ANI Comments at 9; *see also* AT&T Reply Comments at 8. Neither ANI nor any other commenter proposed a specific amount of time for drawing the distinction.

Commission must be notified of such outages within two business days after the outage.<sup>138</sup> As requested by Sorenson in its comments, we clarify that we will not construe load-shifting among call centers as an interruption in service if service is not affected by such load shifting.<sup>139</sup>

53. We reject CSDVRS' arguments that the notification and approval process proposed in the *Certification FNPRM* is not standard in the telecommunications industry, is overly broad and cumbersome, and that notification to consumers should be left to the discretion of the providers.<sup>140</sup> We are concerned that not all VRS providers are complying in good faith with our requirement that VRS service be offered 24 hours a day, seven days a week.<sup>141</sup> Because VRS providers are compensated through a Federal program, consumers do not directly compensate providers for service, and we are concerned about waste, fraud and abuse as well as enforcement of our requirement for providing service 24 hours a day, seven days a week, our requirements for VRS providers in regard to interruptions of service will be different than our requirements for telecommunications providers. Because they would in effect sanction noncompliance with our VRS rule requiring service 24 hours per day, seven days per week, we reject ANI's proposal to simply require a 14-day advance notification of a planned service outage,<sup>142</sup> and ASL Holdings' proposal to draw a distinction between temporary and permanent discontinuation of service. We also reject ASL Holdings' proposal to provide that all applications for temporary discontinuation of service are deemed granted if not acted upon within 30 days as unnecessary, given the Commission's commitment to address applications within that timeframe.

54. As also supported in the comments, we will require that unforeseen service interruptions of any iTRS service beyond the control of the provider be reported to CGB within two business days of the start of such service interruption.<sup>143</sup> As supported by the Consumer Groups, we also require that notification of service outages be provided to consumers on an accessible website, and that the website also include timely updates of service status.<sup>144</sup> Because all iTRS consumers have an interest in robust iTRS services and in knowing when and how often such services offered by certain providers are interrupted, we apply these requirements pertaining to notification of unforeseen service outages to all iTRS providers.

55. We reject Sorenson's argument that these requirements are burdensome.<sup>145</sup> While we acknowledge the concern expressed by ASL Holdings that there may be unusual circumstances under which it is impossible for a provider to notify the Commission within two business days of the unforeseen

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<sup>138</sup> Even though the Part 4 rules regarding disruptions of communications serve a somewhat different regulatory purpose than the rules we are adopting for VRS providers in this *Second Report and Order*, the use of 30 minutes for drawing the distinction between planned outages requiring prior Commission consent and planned outages requiring notification after the fact is consistent with the 30 minute exception for reporting outages found in Part 4 of the rules. See 47 C.F.R. §§ 4.1 *et seq.*

<sup>139</sup> See Sorenson Comments at 8-9. We also will not construe load-shifting among call centers as an interruption in service, for purposes of reporting unforeseen service interruptions, if service is not affected by such load shifting. See para. 54, *infra*.

<sup>140</sup> CSDVRS Comments at 4-5; see also AT&T Reply Comments at 2; Purple Reply Comments at 6; Sorenson Reply Comments at 6.

<sup>141</sup> See 47 C.F.R. § 67.604(b)(4)(i).

<sup>142</sup> ANI Comments at 8-9; see also AT&T Reply Comments at 8.

<sup>143</sup> See ASL Comments at 9; Consumer Groups Comments at 4; Snap Comments at 7; *contra*, CSDVRS Comments at 5.

<sup>144</sup> See Consumer Groups Comments at 4.

<sup>145</sup> See Sorenson Comments at 9; see also Purple Reply Comments at 6.

service interruption,<sup>146</sup> we find that two days is generally ample time for an iTRS provider to provide the basic notifications that we require. In addition, as with planned outages, we clarify that we will not construe load-shifting among call centers as an interruption in service if service is not affected by such load shifting.<sup>147</sup>

56. As supported by Snap in its comments, we adopt our proposal to take enforcement action against certified providers, including, but not limited to, the revocation of certification and/or suspension of payment, in the event that a voluntary interruption of service occurs without obtaining prior authority from CGB, in the event that the requested cessation proceeds notwithstanding CGB's denial of the provider's request, if an unforeseen interruption is not followed by timely notice, or any interruption continues for an unreasonable period of time.<sup>148</sup> We may, in our discretion, also take enforcement action against those VRS providers who abuse the 30 minute *de minimis* exception for obtaining prior Commission consent to planned service interruptions. Specifically, if a provider were to have repeated service interruptions of less than 30 minutes, we will investigate the cause of such interruptions and take appropriate action including, but not limited to, the revocation of certification and/or suspension of payment for failure to comply with our rule requiring that VRS service be offered 24 hours per day, seven days per week.<sup>149</sup> As is the case with telecommunications services, consumers of VRS services are entitled to reliable service 24 hours per day, seven days per week. Because the consumers do not directly compensate VRS providers, and thus do not "vote" with their wallets, these requirements are necessary to ensure adequate Commission oversight and reliable VRS service for consumers.

#### H. Timeframe for Existing Providers to Apply for New Certification

57. In order to ensure the seamless delivery of iTRS during any transition period following the Commission's establishment of new eligibility requirements and certification procedures, the Commission proposed in the *Certification FNPRM* that any provider currently eligible to receive compensation from the TRS Fund via a means other than FCC certification<sup>150</sup> be permitted, concurrently with the submission of its application for Commission certification, to seek temporary waiver, while its certification application is pending, of any new requirements to obtain certification from the Commission in order to be eligible. The Commission stated that this would enable the provider to continue to receive compensation from the Fund and to continue providing iTRS during this interim period.<sup>151</sup> The Commission requested comment on these proposals generally, as well as a time frame for these providers to seek Commission certification and temporary waiver. In addition, the Commission sought feedback on what an applicant seeking such a waiver should have to demonstrate in order to establish that a temporary waiver of the certification requirement would serve the public interest. Further, in the event that an applicant's request for temporary waiver and/or application for certification were to be denied, the

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<sup>146</sup> See ASL Comments at 9. Under those circumstances, we will entertain a request for waiver for good cause shown pursuant to section 1.3 of our rules. 47 C.F.R. § 1.3.

<sup>147</sup> See Sorenson Comments at 8-9.

<sup>148</sup> See Snap Comments at 6.

<sup>149</sup> See 47 C.F.R. § 67.604(b)(4)(i).

<sup>150</sup> This includes iTRS providers that are presently eligible because they are operating relay facilities under contract with a certified state TRS program, own or operate relay facilities under contract with a common carrier providing interstate services, or are an interstate common carrier.

<sup>151</sup> The Commission also proposed to apply these provisions to those providers whose Commission certifications are due to expire before the new certification requirements go into effect.



Commission proposed that the applicant be given at least 30 days to discontinue its service in order to allow its affected consumers sufficient time for transition to another eligible provider's service.<sup>152</sup>

58. Sorenson opposes the proposal that an eligible provider applying for certification concurrently submit a request for temporary waiver of the new certification rules, arguing that compliance with the new regulations will be time consuming. Sorenson proposes as an alternative that providers be given, at minimum, six months to comply with the new requirements, including applying for Commission certification, that providers should be allowed to apply for temporary waivers separately from their applications for certification, and that such waivers be granted to all iTRS providers, currently eligible under our rules to receive compensation from the TRS Fund, that are also in good standing.<sup>153</sup>

59. *Discussion.* In order to ensure the seamless delivery of iTRS during the transition period following Commission establishment of the new eligibility requirements and certification procedures, any provider currently eligible to receive compensation from the TRS Fund via a means other than Commission certification is required to apply for certification within 30 days after publication in the Federal Register of notice of Office of Management and Budget (OMB) approval of the rules in this *Second Report and Order* containing information collections, if it wishes to continue receiving compensation from the Fund without interruption pending review of its certification application. We hereby grant interim eligibility to any iTRS provider currently eligible to receive compensation directly from the TRS Fund via a means other than Commission certification, to continue to be eligible to receive compensation from the Fund. Such interim eligibility shall expire (1) 35 days after this application deadline, in the event no application is timely filed; (2) 35 days after Commission dismissal or denial of the application for certification in the event of Commission dismissal or denial,<sup>154</sup> or (3) upon Commission grant of the application for certification in the event of Commission grant. Where interim eligibility expires under (1) or (2), we require the provider to give its customers at least 30 days notice that the provider will no longer provide service. We decline to give providers six months to apply for certification under the new rules, as proposed by Sorenson.<sup>155</sup> Providers have been on notice since April 2011 of the proposals we now adopt as requirements in this *Second Report and Order*. We believe that the 30-day time period from OMB approval of the rules with information collections that we adopt in this *Second Report and Order* – and which is only triggered after a period of public comment on the information collections and then time for OMB consideration -- will provide sufficient time for currently eligible providers to apply for certification, while receiving compensation for the provision of iTRS pursuant to interim eligibility as set forth above. Moreover, currently eligible providers such as Sorenson likely will actually have more time to submit their certification applications than prospective, newly eligible providers, whose ability to take part in revenue sharing arrangements will expire on October 1, 2011.<sup>156</sup>

60. For those providers with Commission certifications that would have expired before the new certification requirements adopted in this *Second Report and Order* go into effect had they not been

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<sup>152</sup> *Certification FNPRM*, 26 FCC Rcd at 5593, ¶ 103.

<sup>153</sup> Sorenson Comments at 9-10.

<sup>154</sup> We find that 35 days should be sufficient to provide an opportunity to transition customers to another iTRS provider.

<sup>155</sup> Sorenson Comments at 9-10.

<sup>156</sup> See note 106, *supra*. See also *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order Suspending Effective Date, 26 FCC Rcd 8372 (2011).

extended to November 4, 2011,<sup>157</sup> we require that they submit applications for recertification under the new requirements adopted in this *Second Report and Order* after the requirements become effective but at least 30 days prior to the expiration of their currently extended certifications -- that is, no later than October 5, 2011, provided that the rules are effective by that date.<sup>158</sup> We acknowledge that Commission rules normally require recertification applicants to apply at least 90 days prior to the certification expiring.<sup>159</sup> We find it reasonable under the circumstances to require these providers to file their applications within this time frame, however, because they have been on notice since April 2011 of the proposals we now adopt as requirements in this *Second Report and Order*, and have been on notice since May 2011 of the November 4, 2011 expiration of their certifications.

61. As discussed above, the current stay of the Commission's rule which prohibits revenue sharing arrangements<sup>160</sup> expires on October 1, 2011. For those iTRS providers who are not currently eligible to receive compensation directly from the Fund but are currently providing service under a revenue sharing arrangement, and are interested in seeking a seamless transition to certified iTRS provider, we urge that they file their certification applications on, or as soon as possible after, the day the rules adopted in this *Second Report and Order* become effective, so that review of their applications can commence as soon as possible.

#### IV. ORDER

62. In this *Order*, we adopt interim rules requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under section 64.606(g) of the Commission's rules are truthful, accurate, and complete. As discussed below, we find good cause to adopt these interim rules to ensure that providers seeking certification and providers holding certifications may be held accountable for their submissions as they seek to secure or retain certification under the rules adopted in the attached *Second Report and Order*.<sup>161</sup>

63. The TRS rules currently require certification under penalty of perjury by a provider's senior executive as to the truthfulness, accuracy and completeness, and compliance with the Commission's rules and orders, of requests for compensation from the Fund and of data submissions to the Fund administrator.<sup>162</sup> The Commission had first adopted this rule on an interim basis, citing the immediate need to make senior executives more accountable for their submissions, thereby preserving the

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<sup>157</sup> See *Consumer and Governmental Affairs Bureau Announces Extension of Expiring Certifications for Providers of Internet-Based Telecommunications Relay Services*, CG Docket Nos. 03-123 and 10-51, Public Notice, 26 FCC Rcd 6737 (CGB 2011) (temporarily extending, until November 4, 2011, certification periods for VRS and IP Relay providers with certifications scheduled to expire before that date, pending the Commission's consideration of new requirements related to reform of the certification process).

<sup>158</sup> We will also afford 35 days to any such provider whose recertification application is dismissed or denied to transition its customers to another iTRS provider, and require such provider to give its customers at least 30 days notice that the provider will no longer provide service. Cf. note 109, *supra*, and accompanying text.

<sup>159</sup> See note 113, *supra*.

<sup>160</sup> 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(iii).

<sup>161</sup> These rules constitute new information collections subject to the Paperwork Reduction Act of 1995, and approval by OMB. They will become effective upon the Commission's publication in the Federal Register of a notice announcing approval of the collections by OMB.

<sup>162</sup> See *VRS Practices R&O*, 26 FCC Rcd at 5585-87, ¶¶ 88-91; *id.* at 5610-11 (codifying rule at 47 C.F.R. § 64.604(c)(5)(iii)(C)(5)).

TRS Fund.<sup>163</sup> In adopting this rule on a permanent basis, the Commission found that the interim rule had not been “burdensome for providers,” and further explained that “[r]equiring a signed statement sworn to be true under penalty of perjury is a vehicle long and regularly used in a myriad of legal contexts to guarantee the veracity of the declarations, as well as to provide a means for civil enforcement and criminal prosecution” to hold high level officials accountable for the actions and submissions of their companies.<sup>164</sup> In addition, any applicant for, or holder of, any Commission authorization already is required to ensure that its statements to the Commission are truthful, accurate, and complete under the Commission’s rules.<sup>165</sup>

64. Consistent with these existing requirements, we conclude that interim rules requiring certification by a senior executive, under penalty of perjury, to the truthfulness, accuracy, and completeness of certification applications and annual compliance filings are a necessary and “critical component of our efforts to curtail fraud and abuse.”<sup>166</sup> In particular, these interim rules will help to ensure that the Commission has true and complete information, thereby ensuring that only qualified providers are eligible for compensation from the Fund.<sup>167</sup>

65. Section 553 of the Administrative Procedure Act requires that agencies provide notice of and an opportunity for public comment on their proposed rules except, *inter alia*, “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>168</sup> Agencies, including the Commission, have been afforded “substantial deference” when imposing interim regulations with or without prior notice and comment, particularly where such regulations have been shown to be necessary to prevent irreparable harm and the agency is seeking comment on the matter in a rulemaking proceeding.<sup>169</sup>

66. In this case, we find good cause to adopt the following interim rules:

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification under paragraph (a)(2) of this section, must certify as follows: I swear under penalty of perjury that I am \_\_ (name and title), \_an

<sup>163</sup> See 2010 VRS Declaratory Ruling, Order, and NPRM, 25 FCC Rcd at 6018-20, ¶¶ 11-16; 6038, App. B.

<sup>164</sup> VRS Practices R&O, 26 FCC Rcd at 5586, ¶ 90 (citing 47 C.F.R. § 1.16).

<sup>165</sup> See 47 C.F.R. § 1.17.

<sup>166</sup> See VRS Practices R&O, 26 FCC Rcd at 5586, ¶ 90.

<sup>167</sup> We note that the Commission’s rules require similar certifications in other application and report contexts. See, e.g., 47 C.F.R. § 1.2105 (requiring applicants for eligibility to bid in Commission auctions to make various certifications under penalty of perjury, including, for instance, identifying all parties with whom the applicant has entered into joint ventures or other arrangements of any kind relating to the licenses being auctioned); FCC Form 499-A (Telecommunications Reporting Worksheet, upon which carrier and interconnected voice over Internet protocol provider contributions to TRS, Universal Service, and other Funds are based, must be supported by certification under penalty of perjury as to truthfulness and completeness).

<sup>168</sup> 5 U.S.C. § 553(b)(3)(B).

<sup>169</sup> See, e.g., *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1105-06, para. 10 (2009) (acknowledging that “the FCC should be given ‘substantial deference’ when acting to impose interim regulations,” and that courts “have deferred to the Commission’s decisions to enact interim rules based on its predictive judgment that such rules were necessary to preserve universal service”) (citations omitted).

officer of the above-named applicant, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.<sup>170</sup>

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an Internet-based TRS provider under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual report under paragraph (g) of this section, must, with each such submission, certify as follows: I swear under penalty of perjury that I am \_\_ (name and title), \_\_ an officer of the above-named reporting entity, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.<sup>171</sup>

67. Specifically, we find good cause to adopt these interim rules without notice and comment, pursuant to 5 U.S.C. § 553(b)(3)(B), in light of the impending deadlines for initial and recertification applications. As discussed above in the *Second Report and Order*, the current stay of the Commission's rule which prohibits revenue sharing arrangements expires on October 1, 2011, and iTRS providers who are not eligible to receive compensation directly from the Fund but are currently providing service under a revenue sharing arrangement will no longer be able to provide service through such arrangements.<sup>172</sup> Similarly, providers currently eligible for compensation from the Fund via a means other than Commission certification must apply for certification within 30 days after the rules adopted in the *Second Report and Order* become effective,<sup>173</sup> and providers with Commission certifications expiring November 4, 2011 must apply for recertification after the rules become effective but at least 30 days prior to their expirations provided that the rules are effective by that date,<sup>174</sup> or risk having to shut down their operations and being denied compensation from the Fund. We therefore find it necessary to adopt these interim rules without further delay. Moreover, we find that interim rules are consistent with the public interest, given the importance of ensuring that only qualified providers are certified to become eligible for compensation from the Fund. Finally, we conclude that notice and comment, in this instance, are impracticable given the impending certification application deadlines. In a forthcoming Notice of Proposed Rulemaking, we will seek additional comment on whether to make this rule permanent.

## V. PROCEDURAL MATTERS

68. *Final Paperwork Reduction Act of 1995 Analysis.* This *Second Report and Order* 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-

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<sup>170</sup> See App. C, *infra* (adding new interim 47 C.F.R. § 64.606(a)(2)(v)).

<sup>171</sup> See *id.* (adding new interim 47 C.F.R. § 64.606(g)(2)).

<sup>172</sup> See para. 61, *supra* (urging such providers to file their certification applications on, or as soon as possible after, the day the rules adopted in the *Second Report and Order* become effective if they are interested in seeking a seamless transition to certified iTRS provider).

<sup>173</sup> See para. 59, *supra*.

<sup>174</sup> See para. 60, *supra*.

198,<sup>175</sup> we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

69. In this present document, we have assessed the effects of imposing various requirements on iTRS providers to obtain certification from the Commission in order to be eligible for compensation from the TRS Fund. We have determined that any additional data filing requirements imposed by this *Second Report & Order* on iTRS providers are reasonable and necessary in order to ensure compliance with our rules. We have taken steps to address the concerns of commenters stating that some of our proposed rules were overly burdensome. For example, we initially proposed to require that a provider file a deed or lease for every service center operated. We have modified this requirement in our final rule to allow for providers with more than five centers to submit a sampling of deeds and leases. In addition, we limited our proposed requirement for providers to submit documentation of all financial arrangements to just those arrangements valued at \$500,000 or more. We have also modified the proposed requirement that providers submit copies of all subcontracting agreements, to require the submission of only those agreements related to the provision of iTRS service. The Commission concludes that it has taken steps to further reduce the burdens on affected entities to apply for certification to receive compensation from the TRS Fund for the provision of iTRS services, and that the remaining filing requirements are not overly burdensome.

70. *Congressional Review Act.* The Commission will send a copy of this *Second Report & Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. § 801(a)(1)(A).

71. *Final Regulatory Flexibility Certification.* With respect to this *Second Report & Order*, a Final Regulatory Flexibility Certification (“FRFC”) is contained in the Appendix. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an FRFC of the expected impact on small entities of the requirements adopted in this *Second Report & Order*. The Commission will send a copy of the *Order*, including the FRFC, to the Chief Counsel for Advocacy of the Small Business Administration.

72. *Final Regulatory Flexibility Analysis.* The interim rules adopted in this *Order* are being adopted without notice and comment, and therefore are not subject to Regulatory Flexibility Act analysis under 5 U.S.C. § 604(a). We will perform appropriate regulatory flexibility analyses for any permanent rules we adopt at a later date.

73. 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 and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Second Report & Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html>.

## VI. ORDERING CLAUSES

74. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), (j) and (o), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j) and (o), 225, and 303(r), and Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(B), this *Second Report and Order and Order* IS ADOPTED.

75. IT IS FURTHER ORDERED that, pursuant to Section 1.427(a) of the Commission’s rules, 47 C.F.R. § 1.427(a), this *Second Report and Order and Order* and the rules adopted herein shall be

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<sup>175</sup> See 44 U.S.C. § 3506(c)(4).

effective 30 days after date of publication of a summary in the *Federal Register*, except for the rules containing information collections, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters****Commenters:**

SignOn: A Sign Language Interpreting Resource, Inc.	June 1, 2001
American Network, Inc.	June 1, 2001
Purple Communications, Inc.	June 1, 2011
AT&T Services, Inc.	June 1, 2011
CSDVRS, LLC	June 1, 2011
Sorenson Communications, Inc.	June 1, 2011
Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Association of Late-Deafened Adults, Inc., and American Association of the Deaf-Blind (Consumer Groups)	June 1, 2011
ASL Holdings, LLC	June 1, 2011
Hamilton Relay, Inc.	June 1, 2011
Snap Telecommunications, Inc.	June 1, 2011
Sprint Nextel Corporation	June 1, 2011
Todd Elliott	May 3, 2011
Rene G. Pellerin	May 2, 2011

**Reply Commenters:**

Gallaudet University	June 16, 2011
Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Association of Late-Deafened Adults, Inc., and American Association of the Deaf-Blind (Consumer Groups)	June 16, 2011
AT&T Services, Inc.	June 16, 2011
Hamilton Relay, Inc.	June 16, 2011
MaKa Communications Group, Inc.	June 16, 2011

Purple Communications, Inc.

June 16, 2011

Sorenson Communications, Inc.

June 16, 2011

Todd Elliott

June 14, 2011



## APPENDIX B

## Final Regulatory Flexibility Certification

## Docket No. 10-51

1. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> requires that a regulatory flexibility analysis be prepared for rulemaking 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>2</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</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>5</sup>

2. In this *Second Report and Order*, the Commission amends its process for certifying Internet-based Telecommunications Relay Service (iTRS) providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of iTRS, as proposed in the Commission's April 2011 Further Notice of Proposed Rulemaking in CG Docket No. 10-51.<sup>6</sup> In the *Certification FNPRM*, the

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<sup>1</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>2</sup> 5 U.S.C. § 605(b).

<sup>3</sup> 5 U.S.C. § 601(6).

<sup>4</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. S § 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>5</sup> Small Business Act, 15 U.S.C. § 632.

<sup>6</sup> *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (*VRS Practices R&O and Certification FNPRM*; or *VRS Practices R&O* when just referring to its Report and Order portion, and *Certification FNPRM* when just referring to its FNPRM portion). Notwithstanding prior definitions of "iTRS," see, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Order, 24 FCC Rcd 14342 (2009) (temporarily waiving a requirement regarding treatment of toll free numbers for VRS and Internet Protocol relay (IP Relay) services), for purposes of this *Second Report and Order*, we use the term "iTRS" to reflect the definition of "Internet-based TRS" in our rules, essentially meaning all forms of TRS in which an individual with a hearing or speech disability uses an Internet connection with the TRS communications assistant (CA). Cf. 47 C.F.R. § 64.601(11) (defining of "Internet-based TRS"). At present, this includes VRS, Internet Protocol relay (IP Relay), the Internet-enabled form of captioned telephone relay service (IP CTS), and any combination of these services or use of these services with other forms of relay, such as voice carryover (allowing a user to speak directly to the other party while having the conversation relayed back) or hearing carryover (allowing a user to hear the other party directly while using relay to convey messages). We note that in the future, "iTRS" may also include other forms of relay services that utilize an Internet connection. Though this *Second Report and Order* is issued in a docket largely focusing on VRS, the policies and rules we adopt here apply to providers of all forms of iTRS, unless specified otherwise.

Commission sought comment on ways to revise the current certification process to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers.

3. Specifically, in this *Second Report and Order*, the Commission requires all iTRS providers to obtain certification from the Commission in order to be eligible to receive compensation from the Fund; requires all VRS applicants for Commission certification to lease, license or own, as well as operate, essential facilities associated with TRS call centers and to employ interpreters to staff those centers at the date of the application; and requires each iTRS applicant for certification to submit specific types of documentary evidence of its ability to comply with all of the Commission's rules, including those adopted in the *VRS Practices R&O*. In addition, the Commission adopts rules governing on-site visits by Commission staff to the premises of applicants for certification, as well as to iTRS providers' premises after they are certified. The Commission also revises its rules governing annual compliance reports filed by certified providers, and substantive TRS program changes that must be reported to the Commission. Finally, the Commission requires prior approval for planned cessations of VRS service of 30 minutes or longer.

4. The Commission has assessed the effects of imposing various requirements on iTRS providers to obtain certification from the Commission in order to be eligible for compensation from the TRS Fund. The Commission has determined that any additional data filing requirements imposed by this *Second Report and Order* on iTRS providers are reasonable and necessary in order to ensure compliance with the Commission's rules, particularly in light of the widespread fraud currently being investigated in the VRS industry.<sup>7</sup> VRS is a form of iTRS. The Commission has taken steps to address the concerns of commenters stating that some of the Commission's proposed rules were overly burdensome. For example, the Commission initially proposed to require that a provider file a deed or lease for every service center operated. The Commission has modified this requirement in its final rule to allow for providers with more than five centers to submit a representative sampling of deeds and leases. In addition, the Commission has declined to adopt its proposed requirement for providers to submit documentation of all financing arrangements pertaining to the provision of iTRS. The Commission has also declined to adopt the proposed requirement that providers submit copies of all subcontracting agreements for services not directly essential for the provision of iTRS. The Commission concludes that it has taken steps to further reduce the burdens on affected entities to apply for certification to receive compensation from the Fund for the provision of iTRS, and that the remaining filing requirements are not overly economically burdensome.

5. In order to be compensated, TRS providers are already required to comply with all of the Commission's rules governing the provision of TRS. All reasonable costs of providing service in compliance with this *Second Report and Order* are compensable from the Fund. Thus, because certified providers will recoup the costs of compliance within a reasonable period, the Commission asserts that such providers will not be detrimentally burdened. This applies to currently eligible iTRS providers, as well as potential future applicants to provide iTRS.

6. Applications to become a certified iTRS provider are voluntarily submitted. Therefore, the Commission is not imposing an expense on a potential applicant that it cannot avoid by either declining to apply for certification, or by complying with the Commission's rules. If a small entity, as defined by the SBA, makes the latter business decision and applies for certification by showing that it can comply with all of the Commission's rules, its expenses will be indirectly reimbursed from the Fund once it becomes a certified provider. Therefore, for the small business entities receiving certification there is

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<sup>7</sup> See, e.g., *Second Report and Order* at para. 23, *supra*.

no adverse economic impact, and the question of whether there is a negative impact on a significant number of small entities is moot.

7. Therefore, we certify that the requirements of the *Second Report and Order* will not have a significant economic impact on a substantial number of small entities.

8. The Commission will send a copy of the *Second Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>8</sup> In addition, the *Second Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>9</sup>

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<sup>8</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>9</sup> See 5 U.S.C. § 605(b).

## APPENDIX C

## Interim Rules

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

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

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

**Authority:** 47 U.S.C. 154, 254 (k); secs. 403 (b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, 254 (k), and 620, unless otherwise noted.

**SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES**

2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151-154; 225, 255, 303(r), and 620.

3. Section 64.606 is amended by revising paragraph (a)(2) and paragraph (g) as follows:

(a)\*\*\*

(2)\*\*\*

(v) The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification under paragraph (a)(2) of this section, must certify as follows: I swear under penalty of perjury that I am \_\_ (name and title), \_an officer of the above-named applicant, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

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(g) Internet-based TRS providers certified under this section shall file with the Commission, on an annual basis, a report demonstrating that they are in compliance with §64.604.

(1) Such reports must update the information required in paragraph (a)(2) of this section and include updated documentation and a summary of the updates, or certify that there are no changes to the information and documentation submitted with the application for certification, application for renewal of certification, or the most recent annual report, as applicable.

(2) The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an Internet-based TRS provider under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual report under paragraph (g) of this section, must, with each such submission, certify as follows: I swear under penalty of perjury that I am \_\_\_ (name and title), \_\_\_ an officer of the above-named reporting entity, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

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## APPENDIX D

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

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

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

**Authority:** 47 U.S.C. 154, 254 (k); secs. 403 (b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, 254 (k), and 620, unless otherwise noted.

**SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES**

2. The authority citation for subpart F continues to read as follows:

**Authority:** 47 U.S.C. 151-154; 225, 255, 303(r), and 620.

3. Section 64.604 is amended by adding new paragraph (b)(4)(iv) and by revising paragraph (c)(5)(iii)(F) to read as follows:

§64.604 Mandatory minimum standards.

\*\*\*\*\*

(b)\*\*\*

(4)\*\*\*

(iv) A VRS provider leasing or licensing an automatic call distribution (ACD) platform must have a written lease or license agreement. Such lease or license agreement may not include any revenue sharing agreement or compensation based upon minutes of use. In addition, if any such lease is between two eligible VRS providers, the lessee or licensee must locate the ACD platform on its own premises and must utilize its own employees to manage the ACD platform.

\*\*\*\*\*

(c)\*\*\*

(5)\*\*\*

(iii)\*\*\*

(F) Eligibility for Payment from the TRS Fund.

(J) TRS providers, except Internet-based TRS providers, eligible for receiving payments from the TRS Fund must be:

- (i) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to §64.606; or
  - (ii) TRS facilities owned or operated under contract with a common carrier providing interstate services operated pursuant to this section; or
  - (iii) Interstate common carriers offering TRS pursuant to this section.
- (2) Internet-based TRS providers eligible for receiving payments from the TRS fund must be certified by the Commission pursuant to §64.606.

\* \* \* \* \*

4. Section 64.606 is amended by revising the section heading and paragraph (a)(2), by adding new paragraph (a)(3), by revising paragraphs (b)(2), (c)(2), (e)(2), (f)(2) and (g), and by adding new paragraph (h) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a)\*\*\*

(2) Internet-based TRS provider. Any entity desiring to provide Internet-based TRS and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer and Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "Internet-based TRS Certification Application." The documentation shall include, in narrative form:

- (i) A description of the forms of Internet-based TRS to be provided (*i.e.*, VRS, IP Relay, and/or IP captioned telephone relay service);
- (ii) A detailed description of how the applicant will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, including documentary and other evidence, and in the case of VRS, such documentary and other evidence shall demonstrate that the applicant leases, licenses or has acquired its own facilities and operates such facilities associated with TRS call centers and employs communications assistants, on a full or part-time basis, to staff such call centers at the date of the application. Such evidence shall include, but not be limited to:
  - (A) In the case of VRS applicants or providers,
    - (1) Operating five or fewer call centers within the United States, a copy of each deed or lease for each call center operated by the applicant within the United States;
    - (2) Operating more than five call centers within the United States, a copy of each deed or lease for a representative sampling (taking into account size (by number of communications assistants) and location) of five call centers operated by the applicant within the United States, together with a list of all other call centers that they operate that includes the information required under §64.604(c)(5)(iii)(N)(2);
    - (3) Operating call centers outside of the United States, a copy of each deed or lease for each call center operated by the applicant outside of the United States;
    - (4) A description of the technology and equipment used to support their call center functions – including, but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration -- and for each core call center function, a statement

whether such technology and equipment is owned, leased or licensed (and from whom if leased or licensed); and

(5) Proofs of purchase, leases or license agreements for all technology and equipment used to support their call center functions, including a complete copy of any lease or license agreement for automatic call distribution.

(B) For all applicants, a list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, members of its board of directors, general partners (in the case of a partnership), and managing members (in the case of a limited liability company);

(C) For all applicants, a list of the number of applicant's full-time and part-time employees involved in TRS operations, including and divided by the following positions: executives and officers; video phone installers (in the case of VRS), communications assistants, and persons involved in marketing and sponsorship activities;

(D) For all applicants, copies of employment agreements for all of the provider's employees directly involved in TRS operations, executives, and communications assistants, and a list of names of employees directly involved in TRS operations, need not be submitted with the application, but must be retained by the applicant for five years from the date of application, and submitted to the Commission upon request; and

(E) For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including any associated written agreements;

(iii) A description of the provider's complaint procedures; and

(iv) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(3) Assessment of Internet-based TRS Provider Certification Application. In order to assess the merits of a certification application submitted by an Internet-based TRS provider, the Commission may conduct one or more on-site visits of the applicant's premises, to which the applicant must consent.

(b)\*\*\*

(2) Requirements for Internet-based TRS Provider FCC certification. After review of certification documentation, the Commission shall certify, by Public Notice, that the Internet-based TRS provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) Establishes that the provision of Internet-based TRS will meet or exceed all non-waived operational, technical, and functional minimum standards contained in §64.604;

(ii) Establishes that the Internet-based TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in §64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints.

(c)\*\*\*



(2) Internet-based TRS Provider FCC certification period. Certification granted under this section shall remain in effect for five years. An Internet-based TRS provider applying for renewal of its certification must file documentation with the Commission containing the information described in paragraph (a)(2) of this section at least 90 days prior to expiration of its certification.

\* \* \* \* \*

(e)\*\*\*

(2) Suspension or revocation of Internet-based TRS Provider FCC certification. The Commission may suspend or revoke the certification of an Internet-based TRS provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified Internet-based TRS provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified Internet-based TRS provider may not be in compliance with the minimum standards.

(f)\*\*\*

(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change. Substantive changes shall include, but not be limited to:

(i) The use of new equipment or technologies to facilitate the manner in which relay services are provided;

(ii) Providing services from a new facility not previously identified to the Commission or the Fund administrator; and

(iii) Discontinuation of service from any facility.

(g) Internet-based TRS providers certified under this section shall file with the Commission, on an annual basis, a report demonstrating that they are in compliance with §64.604. Such reports must update the information required in paragraph (a)(2) of this section and include updated documentation and a summary of the updates, or certify that there are no changes to the information and documentation submitted with the application for certification, application for renewal of certification, or the most recent annual report, as applicable.

(h) Unauthorized service interruptions.

(1) Each certified VRS provider must provide Internet-based TRS without unauthorized voluntary service interruptions.

(2) A VRS provider seeking to voluntarily interrupt service for a period of 30 minutes or more in duration must first obtain Commission authorization by submitting a written request to the Commission's Consumer and Governmental Affairs Bureau (CGB) at least 60 days prior to any planned service interruption, with detailed information of:

(i) Its justification for such interruption;

(ii) Its plan to notify customers about the impending interruption; and

(iii) Its plans for resuming service, so as to minimize the impact of such disruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption. CGB will grant or deny such a request and provide a response to the provider at least 35 days prior to the proposed interruption, in order to afford an adequate period of notification to consumers. In evaluating such a request, CGB will consider such factors as the length of time of the proposed interruption, the reason for such interruption, the frequency with which such requests have been made by the provider in the past, the potential impact of the interruption on consumers, and the provider's plans for a smooth service restoration.

(3) In the event of an unforeseen service interruption due to circumstances beyond an Internet-based TRS service provider's control, or in the event of a VRS provider's voluntary service interruption of less than 30 minutes in duration, the provider must submit a written notification to CGB within two business days of the commencement of the service interruption, with an explanation of when and how the provider has restored service or the provider's plan to do so imminently. In the event the provider has not restored service at the time such report is filed, the provider must submit a second report within two business days of the restoration of service with an explanation of when and how the provider has restored service. The provider also must provide notification of service outages covered by this paragraph to consumers on an accessible website, and that notification of service status must be updated in a timely manner.

(4) A VRS provider that fails to obtain prior Commission authorization for a voluntary service interruption or fails to provide written notification after a voluntary service interruption of less than 30 minutes in duration, or an Internet-based TRS provider that fails to provide written notification after the commencement of an unforeseen service interruption due to circumstances beyond the provider's control in accordance with this subsection, may be subject to revocation of certification, suspension of payment from the TRS Fund, or other enforcement action by the Commission, as appropriate.