

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

In the Matter of
Contributions to the Telecommunications Relay
Services Fund
CG Docket No. 11-47

REPORT AND ORDER

Adopted: October 7, 2011

Released: October 7, 2011

By the Commission: Commissioner McDowell concurring.

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I. INTRODUCTION

1. In this Report and Order, we adopt rules to implement Section 103(b) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).¹ Section 103(b) adds a new Section 715 to the Communications Act of 1934 (“Act”) as amended, requiring interconnected and non-interconnected voice over Internet protocol (“VoIP”) service providers to participate in and contribute to the Telecommunications Relay Services Fund (“TRS Fund”) by October 8, 2011.² Although providers of interconnected VoIP services have been contributing to the TRS Fund since 2007,³ the CVAA, in effect, codifies this obligation, and extends it to non-interconnected VoIP providers.

2. This Order takes various actions to ensure that the obligations of non-interconnected VoIP service providers are consistent with and comparable to the obligations of other TRS Fund contributors, as directed by Section 715.⁴ To that end, this Order requires TRS Fund contributions to be assessed against interstate end-user revenues. Where interstate end-user revenues are generated from non-interconnected VoIP services offered with other (non-VoIP) services, it directs that TRS contributions not be assessed against those revenues unless the providers of such services (1) also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) also offer the non-VoIP services without the non-interconnected VoIP services at a different (discounted) price. This Order also affirms that only service providers with interstate end-user revenues must contribute a minimum of \$25 to the TRS Fund. In addition, the Order addresses registration and reporting requirements, the methodology for calculating interstate end-user revenues by non-interconnected VoIP service providers, and the implementation deadlines for these providers.

¹ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, § 103(b), 124 Stat. 2751, 2755 (2010). The law was enacted on October 8, 2010. *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010 making technical corrections to the CVAA.

² Section 715 of the Act is codified at 47 U.S.C. § 616. Section 715 specifically states that, within one year after enactment of the CVAA (by October 8, 2011),

... each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on the date of enactment of such Act, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.

³ On May 31, 2007, the Commission extended Section 225’s TRS requirements to interconnected VoIP service providers, including the requirement that such providers contribute to the TRS Fund. *See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities*, Report and Order, 22 FCC Rcd 11275, 11291-97, ¶¶ 32-43 (2007) (“VoIP TRS Order”).

⁴ 47 U.S.C. § 616.

II. BACKGROUND

A. Contributions to the TRS Fund

3. Section 225 to the Communications Act requires the Commission to ensure that telecommunications relay services (“TRS”) are available, “to the extent possible and in the most efficient manner,” to persons with hearing or speech disabilities in the United States.⁵ The Commission has recognized and permits compensation for various forms of TRS, including PSTN-based services such as TTY-to-voice, speech-to-speech, and captioned telephone relay service, and Internet-based forms of TRS, such as video relay service, Internet protocol (“IP”) relay, and IP captioned telephone relay service.⁶

4. Section 225 created a cost recovery regime under which providers of TRS are compensated for their reasonable costs of providing TRS.⁷ This allows the costs attributed to the provision of *interstate* TRS to be “recovered from all subscribers for every interstate service,” and the costs attributed to the provision of *intrastate* TRS to be “recovered from the intrastate jurisdiction.”⁸ With respect to *interstate* TRS, there are two components to the cost recovery framework set forth in the Commission’s rules: (1) collecting contributions, currently from carriers and providers of interconnected VoIP services, which are then put into the TRS Fund;⁹

⁵ 47 U.S.C. § 225(b)(1). Section 225 was added to the Communications Act by the Americans with Disabilities Act. Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), codified at 47 U.S.C. § 225. As amended by Section 103(a) of the CVAA, TRS is defined as follows:

... telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

Pub. L. No. 111-260 § 103(a); 47 U.S.C. § 225(a)(3). For traditional TRS, an individual uses a text telephone (“TTY”) to communicate with another person over the public switched telephone network (“PSTN”) through a communications assistant (“CA”). A TTY is a text device that employs graphic communication in the transmission of coded signals through a wire or radio communication system. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act*, Report and Order and Request for Comments, 6 FCC Rcd 4657 at 4657, ¶ 1, n.1 (1991). The CA converts everything that the TTY caller types into voice and types all of the responses back into text so that the two users can have a conversation with each other. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12479, ¶ 3 n.18 (2004) (describing how a traditional TRS call works).

⁶ See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379, 8381-82, ¶ 3 (2006) (describing various forms of TRS).

⁷ 47 U.S.C. § 225(d)(3). Congress directed that TRS users cannot be required to pay rates “greater than the rates paid for functionally equivalent voice communication services.” 47 U.S.C. § 225(d)(1)(D). Accordingly, as noted above, all subscribers contribute to the costs of these services.

⁸ 47 U.S.C. § 225(d)(3)(B); see also 47 C.F.R. § 64.604(c)(5)(ii). The costs of intrastate TRS generally are recovered by the states through rate adjustments or surcharges on local phone bills. Currently, the costs of all Internet-based relay services are compensated from the TRS Fund.

⁹ 47 C.F.R. § 64.604(c)(5)(iii)(A); 47 C.F.R. § 64.601(b).

and (2) compensating eligible TRS providers from the TRS Fund for the costs of providing eligible TRS services.¹⁰

5. Under current Commission rules, carriers and interconnected VoIP service providers contribute to the TRS Fund on the basis of interstate end-user telecommunications and interconnected VoIP revenues.¹¹ The contribution amount is the product of the service provider's interstate end-user telecommunications and interconnected VoIP revenues and a contribution factor determined annually by the Commission.¹² Contributors are required to file a completed FCC Form 499-A with the Universal Service Administrative Company ("USAC") by April 1 of each year.¹³

B. Interconnected VoIP Services

6. As noted above, since 2007, the Commission's rules have required interconnected VoIP service providers to make contributions to the TRS Fund.¹⁴ Upon establishing this obligation, the Commission delegated authority to the Wireline Competition Bureau ("WCB"), to work in consultation with the Consumer & Governmental Affairs Bureau ("CGB") to make any revisions to the FCC Form 499-A or its instructions that may be necessary to implement the *VoIP TRS Order*.¹⁵ The FCC Form 499-A was revised accordingly in 2007,¹⁶ and interconnected VoIP service providers began making contributions for the 2007-2008 TRS Fund year based on their fourth quarter 2006 revenues as reported on FCC Form 499-A.¹⁷ Since then, interconnected VoIP service providers have been reporting revenues and contributing to the TRS Fund on an annual basis in this manner.

C. Non-Interconnected VoIP Services

7. The CVAA defines "non-interconnected VoIP service" as a service that enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol, requires Internet protocol compatible customer premises equipment, and does not include any service that is an interconnected VoIP service.¹⁸ Examples of VoIP services that are not within the Commission's definition of "interconnected VoIP" include "one-way" VoIP services (*i.e.*, services that enable users to terminate calls to the

¹⁰ 47 C.F.R. § 64.604(c)(5)(iii)(E).

¹¹ 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and (B); 47 C.F.R. § 64.601(b).

¹² 47 C.F.R. § 64.604(c)(5)(iii)(B).

¹³ See Telecommunications Reporting Worksheet, FCC Form 499-A (2010) available at <http://www.fcc.gov/formpage.html> ("FCC Form 499-A").

¹⁴ See ¶ 1, *supra*. The obligations adopted in the *VoIP TRS Order* became effective on October 5, 2007. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 23 FCC Rcd 1680, 1681, ¶ 4 n.10 (2008) ("*2007-08 TRS Rate Order*").

¹⁵ *VoIP TRS Order*, 22 FCC Rcd at 11295-96, ¶ 41.

¹⁶ See Instructions to FCC Form 499-A (2007) (Form 499-A Revised November 2007) available at http://www.usac.org/_res/documents/fund-administration/pdf/499/form-499a-FY2007-instructions.pdf.

¹⁷ *2007-08 TRS Rate Order*, 23 FCC Rcd at 1681, ¶ 4 n.12 (2008). Because this assessment was made for only part of the year, the contribution amount was prorated.

¹⁸ Pub. L. 111-260, § 101, adding definition of "non-interconnected VoIP service" to Section 3 of the Act, codified at 47 U.S.C. § 153(36).

PSTN but do not permit users to receive calls that originate on the PSTN, or enable users to receive calls from the PSTN, but do not permit the user to make calls terminating to the PSTN) and “IP-based voice services that do not require a broadband connection.”¹⁹

8. Unlike providers of interconnected VoIP service, providers of “non-interconnected VoIP service” have not been required to contribute to the TRS Fund. Nor have non-interconnected VoIP service providers been required to register with the Commission or report revenues through the annual filing of FCC Form 499-A for any purpose. New Section 715 of the Communications Act creates this obligation.

9. On March 3, 2011, the Commission released a Notice of Proposed Rulemaking seeking comment on proposals to implement Section 715’s requirement for VoIP service providers to participate in and contribute to the TRS Fund.²⁰ The Commission received nine (9) comments and five (5) reply comments in response.²¹ Based on this record and our statutory obligations under the CVAA, we adopt the rules discussed below to implement Section 715.

III. REPORT AND ORDER

A. Definitions

10. *Background.* In the *TRS Contribution NPRM*, the Commission proposed to replace the current definition of “interconnected VoIP service” in its TRS rules with the definition provided in the CVAA.²² The CVAA states that “interconnected VoIP service” has the meaning given such term under Section 9.3 of the Commission’s rules, “as such section may be amended from time to time.”²³ The Commission also proposed to amend the TRS rules at Section 64.601(a) to add the definition of “non-interconnected VoIP service,” as set forth in the CVAA.²⁴

¹⁹ *VoIP 911 Order*, 20 FCC Rcd at 10277, ¶ 58. See also 47 C.F.R. §§ 9.3 and 64.601(a)(10) (providing definition of “interconnected VoIP service”).

²⁰ See *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Notice of Proposed Rulemaking, 26 FCC Rcd 3285 (2011) (“*TRS Contribution NPRM*”).

²¹ See Appendix A for the list of commenters to this proceeding.

²² *TRS Contribution NPRM*, 26 FCC Rcd at 3291-92, ¶¶ 13-14.

²³ Pub. L. 111-260, § 101, adding the definition of “interconnected VoIP service” to Section 3 of the Act, codified at 47 U.S.C. § 153(25). Section 9.3 of the Commission’s rules currently defines “interconnected VoIP service” as a service that: (1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user’s location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. 47 C.F.R. § 9.3.

²⁴ *TRS Contribution NPRM*, 26 FCC Rcd at 3292, ¶ 16. The CVAA defines “non-interconnected VoIP service” as:

- (A) . . . a service that--
- (i) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and
 - (ii) requires Internet protocol compatible customer premises equipment; and
- (B) does not include any service that is an interconnected VoIP service.

Pub. L. 111-260, § 101, adding definition of “non-interconnected VoIP service” to Section 3 of the Act, codified at 47 U.S.C. § 153(36).

11. *Discussion.* As proposed in the *TRS Contribution NPRM*, we amend our TRS rules at Section 64.601(a)(10) to replace the current definition of “interconnected VoIP service” with the definition provided in the CVAA.²⁵ We agree with commenters who support this change as being reasonable and in accordance with the CVAA.²⁶ This action will ensure that the definition of “interconnected VoIP service” in our TRS rules remains current and consistent with how this term is defined in Section 9.3 of the Commission’s rules, as that definition may evolve.²⁷

12. In addition, we add the definition of “non-interconnected VoIP service,” as set forth in the CVAA,²⁸ to our TRS rules at Section 64.601(a). While some commenters urge adoption of a narrower definition that excludes “incidental” non-interconnected VoIP services,²⁹ we decline to amend the definition of “non-interconnected VoIP service” as set forth by Congress in the CVAA.

B. Participation in and Contribution to the TRS Fund

1. Revenue Base

13. *Background.* In the *TRS Contribution NPRM*, we sought input on how the Commission could best ensure that the obligations of non-interconnected VoIP service providers that offer some or all of their interstate services free to the public are consistent with and comparable to the obligations of other TRS Fund contributors.³⁰ We specifically sought guidance on how we could ensure the cost of interstate TRS “is recovered from all subscribers for every

²⁵ Pub. L. 111-260, § 101, codified at 47 U.S.C. § 153(25).

²⁶ See Consumer Groups Comments at 3; MPSC Comments at 5 (stating the change is compliant with section 101 of CVAA); Verizon Comments at 6 (stating the proposed definition is reasonable).

²⁷ See *TRS Contribution NPRM*, 26 FCC Rcd at 3291-92, ¶ 14.

²⁸ Pub. L. 111-260, § 101, codified at 47 U.S.C. § 153(36).

²⁹ See CEA Comments at 1-2 (incidental services do not constitute an offer of a service) and 4 (unreasonable and contrary to the CVAA); NetCoalition Comments at 2 (incidental services do not constitute an offer of a service and requiring contribution will negatively impact innovation); VON Coalition Comments at 3 (negative impact on innovation). See also ITI Comments at 1-2 and 5; Citrix Online Reply Comments at 2-3; Google Reply Comments at 5 (stating a large proportion of non-interconnected VoIP providers do not have access to TRS and lack a method to collect end-user revenue); Sprint Nextel Reply Comments at 2-3. See also *Implementation of Sections 716 and 717 of the Communication Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, 3145-6, ¶ 32 (2011) (noting commenters who urge exclusion of “incidental” non-interconnected VoIP service by definition). But see comments of parties supporting use of this definition: Consumer Groups Comments at 3; Verizon Comments at 6 (stating the proposal is reasonable); AT&T Reply Comments at 2; CenturyLink Reply Comments at 1.

³⁰ *TRS Contribution NPRM*, 26 FCC Rcd at 3293, ¶ 21. Congress directs the Commission to “ensure that contributions are made on an equitable basis, taking into account whether such services are offered free to the public.” Senate Report at 6; House Report at 23. Congress also permits the Commission to “consider administrative costs to the provider when calculating contributions.” Senate Report at 6. Considering those administrative costs and the fact that certain VoIP services are offered for free to the public, Congress permits “the Commission [to] determine that an obligation for any one provider could be zero or a *de minimis* amount.” *Id.* We sought input on the types of “administrative costs to the provider” and how these may be considered when calculating contributions. *TRS Contribution NPRM*, 26 FCC Rcd at 3294, ¶ 22.

interstate service” when those services are offered free to the public.³¹ We proposed to require assessments on non-interconnected VoIP services based on end-user interstate revenues, but also asked about assessing contributions from providers of free VoIP services based on revenues from other sources, such as revenues from advertisers or donors, or from all sources.³² Finally, we sought comment on how we should account for VoIP services provided as part of or in combination with non-VoIP services that generate revenue, such as Internet-based video games or other non-VoIP services.³³

14. *Discussion.* Currently, contributions to the TRS Fund from carriers and interconnected VoIP service providers are based on “interstate end-user telecommunications revenues.”³⁴ Likewise, in order to achieve consistency with the obligations of other providers that must contribute to the TRS Fund, we will base all TRS Fund contributions of non-interconnected VoIP service providers only on their interstate end-user revenues at this time, a position supported by several commenters.³⁵ We will not require non-interconnected VoIP service providers who do not generate interstate end-user revenues (*i.e.*, who offer their services for free) to contribute to the TRS Fund,³⁶ and further reject proposals to assess contributions based on other factors that are inconsistent with or not comparable to the factors used to determine the obligations of other TRS Fund contributors.³⁷ Given the ongoing evolution of VoIP technologies, however, we reserve the right to re-visit ways to assess contributions based on revenue from alternate or additional sources from providers of these technologies (*e.g.*, advertising) to support TRS in the future.

15. Consistent with and comparable to the obligations of other TRS Fund contributors, we assess TRS Fund contributions against interstate end-user revenues generated from non-interconnected VoIP services, to the extent described herein.³⁸ Specifically, we require providers that offer non-interconnected VoIP services on a stand-alone basis for a fee to contribute to the TRS Fund on the basis of their interstate end-user revenues generated from such

³¹ *TRS Contribution NPRM*, 26 FCC Rcd at 3293-94, ¶ 21. *See also* 47 U.S.C. § 225(d)(3)(B).

³² *TRS Contribution NPRM*, 26 FCC Rcd at 3293-94, ¶¶ 19, 21.

³³ *TRS Contribution NPRM*, 26 FCC Rcd at 3293-94, ¶ 21.

³⁴ 47 C.F.R. § 64.604(c)(5)(iii)(A).

³⁵ *See, e.g.*, ITI Comments at 7; MPSC Comments at 6; NetCoalition Comments at 3; Google Reply Comments at 3; VON Coalition letter dated July 25, 2011 (assessing contributions against other sources of revenue “would force a number of companies to either exit the market or begin charging for their services” resulting in less choice for and higher costs to consumers.)

³⁶ *Accord*, ITI Comments at 3; VON Coalition Comments at 4; Google Reply Comments at 2. *See also* ITI letter dated July 21, 2011 at 3 (“Imposing a TRS obligation . . . on free services may risk causing providers to reconsider such offerings.”).

³⁷ *See, e.g.*, Verizon Comments at 4; CenturyLink Reply Comments at 2 (proposing a “per subscriber minimum contribution” from non-interconnected VoIP service providers that do not collect end-user revenues); *but see* Google Reply Comments at 2 (a “per subscriber” contribution scheme would result in “disparate treatment” of non-interconnected VoIP services, and fails to consider that many VoIP users are occasional or one-time users). *See also* Consumer Groups Comments at 4 (suggesting that contributions be based on revenue from all sources); ITI Comments at 5 (proposing contributions to the TRS Fund based on the ability of an end-user to use TRS).

³⁸ *See* para. 16, *infra*.

services. We also require certain providers of other (non-VoIP) services that generate end-user revenues and integrate non-interconnected VoIP service into their other (non-VoIP) services to contribute to the TRS Fund. In so doing, we accommodate the claims of some commenters that it is currently infeasible or impractical for most providers of other (non-VoIP) services that generate end-user revenues whose services integrate non-interconnected VoIP service to apportion revenues between these services.³⁹ For example, a video gaming service may integrate voice communication functions that utilize non-interconnected VoIP services, but use of and revenues derived from such functions may not be readily identifiable or separable from the gaming service components. Accordingly, the rules we adopt herein will only require providers of non-interconnected VoIP services that are offered with other (non-VoIP) services that generate end-user revenues to allocate a portion of those end-user revenues to the non-interconnected VoIP service in two circumstances: (1) when those providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) when those providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price.⁴⁰ Under our rules, such providers may use the safe harbor methods established in the *CPE Bundling Order* for allocating revenues.⁴¹

³⁹ See, e.g., Citrix Online Comments at 5-7 (stating some services so tightly integrate non-interconnected VoIP services that it is infeasible to separate them and they have “no stand-alone value”); ITI Comments at 4 (stating incidental VoIP is not independently tracked and it would be costly and raise privacy concerns to do so); VON Coalition Comments at 3 (stating end-user revenue should not include revenue from services to which VoIP is an add on, because of the high costs of separating the services); Citrix Online Reply Comments at 3, Google Reply Comments at 6 (stating that requiring disaggregation could cause providers to eliminate voice features and create unnecessary regulatory hurdles).

⁴⁰ For example, were a provider to offer a video gaming service with an integrated non-interconnected VoIP service for \$20 per month, and also offer the non-interconnected VoIP service separately for \$5 per month, the provider would be obligated to attribute \$5 per month to the non-interconnected VoIP component for purposes of making TRS contributions. Alternatively, if a provider were to offer a video gaming service with a non-interconnected VoIP service component for \$20 per month and without that component for \$15 per month, \$5 per month would be attributed to the non-interconnected VoIP service component. Nothing in this Report and Order disturbs or calls into question the validity of apportioning assessable revenues from bundled services offerings for purposes of Universal Service Fund (“USF”) contributions, as currently allowed under the *CPE Bundling Order*. See *Policy And Rules Concerning The Interstate, Interexchange Marketplace/Implementation Of Section 254(G) Of The Communications Act Of 1934, As Amended/In 1998 Biennial Review -- Review Of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418, 7446-48, ¶¶ 50-54 (2001) (“*CPE Bundling Order*”). In the *CPE Bundling Order*, the Commission established ways for contributors to the USF to allocate revenue when telecommunications services, customer premises equipment, and enhanced services are offered in a bundled package. USF contributions, like contributions to the TRS Fund, are based on interstate end-user revenues. See *id.*, 16 FCC Rcd at 7446, ¶ 47. See also *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544, ¶ 51; 2011 Form 499-A Instructions, at page 20 (requirements for reporting revenues from bundled offerings).

⁴¹ The Commission established two “safe harbor” methods for allocating revenues in an easily ascertainable and reasonable manner when telecommunications services and CPE or enhanced services are offered as a bundled package. *CPE Bundling Order*, 16 FCC Rcd at 7447-8, ¶¶ 49 and 52. Contributors may elect to report revenues from such bundled service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services. *Id.*, 16 FCC Rcd at 7447, ¶ 50. Alternatively, contributors who are unable or unwilling to disaggregate telecommunications revenue from other revenue when telecommunications services are bundled with CPE or enhanced service (continued....)

16. For all other providers of non-interconnected VoIP service, we find good cause to waive their TRS Fund contribution obligations until further notice.⁴² Although Section 715 does not include a specific statutory waiver provision,⁴³ it directs the Commission to prescribe the manner in which contributions by interconnected VoIP service providers and non-interconnected VoIP service providers shall be made “consistent with and comparable to the obligations of other contributors to such Fund.”⁴⁴ These existing contributors’ obligations are established by Commission rule,⁴⁵ and like all Commission rules the contribution rules are subject to waiver.⁴⁶ Waiver of contribution requirements for these VoIP service providers is thus “consistent with and comparable to” the contribution rules for existing contributors as required by Section 715.

17. We waive at this time contribution requirements for providers of non-interconnected VoIP service other than the categories we have specifically required to contribute to the TRS Fund as described above. We find it reasonable to treat such providers differently for contributions purposes because they are not holding out the VoIP service as a revenue-generating component of their offering. We believe that the likely administrative burden on providers and the Commission associated with requiring such providers to make annual contributions to the TRS Fund outweighs any benefits to the TRS Fund. In addition, many of these providers do not generate end-user revenues from their products and services that include VoIP capability, and those that do have no meaningful way of attributing an appropriate amount of such revenues to the non-interconnected VoIP component of their integrated service. Because of the relative low impact on the TRS Fund of excluding such providers from contribution obligations, coupled with the avoided administrative burdens, we find waiver in this instance to be in the public interest. We further find that this waiver will help preserve incentives to innovate and to add voice communication features to a wide variety of services. We therefore waive our TRS Fund contribution requirements (registration, reporting and payment of contributions) for providers of non-interconnected VoIP services other than (A) providers that offer non-interconnected VoIP services on a stand-alone basis for a fee; and (B) providers of non-interconnected VoIP services
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offerings may elect to treat all bundled revenues as telecommunications service revenue. *Id.*, 16 FCC Rcd at 7447, ¶ 51. When contributors choose to use other allocation methods, we apply the standards underlying the safe harbors in evaluating the reasonableness of such alternative methods. *Id.*, 16 FCC Rcd at 7448, ¶ 53. *See also 2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544, ¶ 51 (adopting “safe harbors” for reporting revenues for interconnected VoIP services that are bundled with CPE or enhanced services, including information services).

⁴² Accordingly, we need not at this time address commenters’ assertions that a provider of a non-VoIP service that incorporates a non-interconnected VoIP service component does not provide non-interconnected VoIP service for purposes of Section 715. *See* para. 12, n.29, *supra*.

⁴³ Compare Section 716 of the CVAA, which expressly authorizes the Commission to waive statutory accessibility requirements for, among other things, any provider of advanced communications services (including non-interconnected VoIP service), or any class of such services that is “designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.” 47 U.S.C. § 617(h)(1).

⁴⁴ 47 U.S.C. § 616.

⁴⁵ *See* 47 C.F.R. § 1.47(h) ; 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and (B)

⁴⁶ 47 C.F.R. § 1.3. In general, waivers must articulate an “appropriate general standard,” show special circumstances warranting a deviation from the general rule, and show such a deviation will serve the public interest. *See Northeast Cellular Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

that are offered with other (non-VoIP) services that generate end-user revenues (1) when those providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee, or (2) when those providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price.⁴⁷ As we gain experience with the practices of providers of non-interconnected VoIP services, we may re-visit the continued need for this waiver and the extent to which we need to revise our rules governing these assessments, to ensure consistent and comparable obligations among all TRS Fund contributors.

2. Minimum Contribution Requirement

18. *Background.* In the *TRS Contribution NPRM*, we noted that we presently impose a minimum \$25 contribution requirement on “all telecommunications carriers that have end-user revenues.”⁴⁸ We explained that if contributions are based solely on interstate end-user revenues, some VoIP providers may have a zero contribution calculation.⁴⁹ We asked whether this minimum \$25 contribution requirement or a “de minimis” contribution amount should be imposed on non-interconnected VoIP service providers or, alternatively, on all telecommunications and VoIP service providers *that have no end-user revenues*.⁵⁰

19. *Discussion.* Our current rules do not require telecommunications or interconnected VoIP service providers that have no end-user revenues for a given reporting year to contribute the minimum \$25 or a “de minimis” amount to the TRS Fund. Although some commenters support imposing such minimum contribution from non-interconnected VoIP service providers with no end-user revenue,⁵¹ we find that doing so would not be consistent with or comparable to the obligations of other contributors, as directed by the CVAA.⁵² Thus we will not require a minimum contribution from non-interconnected VoIP service providers with no end-user revenue at this time.

3. Contributor Registration

20. *Background.* In the *TRS Contribution NPRM*, we proposed requiring non-interconnected VoIP service providers, like other contributors to the TRS Fund, to register with the Commission using FCC Form 499-A.⁵³ In addition, we sought comment on our proposal that

⁴⁷ To the extent that such providers are subject to registration or other requirements outside the context of section 64.604(c)(5)(iii) of our rules, we clarify that this waiver does not affect those compliance obligations.

⁴⁸ *TRS Contribution NPRM*, 26 FCC Rcd at 3294-95, ¶ 23, citing *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Fund Administration, Fund Size Estimate, and Payment Formula, July 2001 through June 2002)*, Order, 16 FCC Rcd 12895, ¶ 7 (2001). See also 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and (B).

⁴⁹ We noted that a zero contribution calculation might occur either because a provider has not charged for end user service during the reporting year or because it had administrative costs that canceled out that revenue. *TRS Contribution NPRM*, 26 FCC Rcd at 3294-95, ¶ 23.

⁵⁰ *TRS Contribution NPRM*, 26 FCC Rcd at 3294-95, ¶ 23. See also Senate Report at 6.

⁵¹ See, e.g., Citrix Online Comments at 7; Consumer Groups Comments at 4; MPSC Comments at 6; Sprint Nextel Comments at 2; Citrix Online Reply Comments at 1. But see ITI Comments at 3.

⁵² See 47 U.S.C. § 616.

⁵³ *TRS Contribution NPRM*, 26 FCC Rcd at 3295-96, ¶ 26. See FCC Form 499-A; FCC Form 499-A Instructions at 17-18. See also 47 C.F.R. § 64.1195 (requiring telecommunications providers who provide or will provide interstate telecommunications service to file registration information).

the registration requirements for carriers and interconnected VoIP service providers be adapted as part of our TRS rules or incorporated into Section 64.1195 of our rules.⁵⁴ We also sought comment on whether to amend Section 1.47(h) of our rules to include providers of non-interconnected VoIP services among those required to designate a District of Columbia agent for service of process using the FCC Form 499-A in accordance with its instructions.⁵⁵

21. *Discussion.* As proposed, we require non-interconnected VoIP service providers with interstate end-user revenues to register with the Commission and designate a District of Columbia agent for service of process. Registration with the Commission includes obtaining an FCC registration number (“FRN”) from the Commission registration system (“CORES”), in accordance with the FCC Form 499-A Instructions. Commenters generally support this action.⁵⁶ We further adopt this registration requirement as part of our TRS rules and also amend Section 1.47(h) of our rules, to make these requirements applicable to non-interconnected VoIP service providers with interstate end-user revenues that are subject to contribution to the TRS Fund.⁵⁷ As noted in the *TRS Contribution NPRM*, we believe that these actions will facilitate enforcement of our TRS contribution obligations and are necessary to ensure that the obligations of non-interconnected VoIP service providers are consistent with and comparable to those of other TRS Fund contributors.⁵⁸

4. FCC Form 499-A

22. *Background.* Section 715 of the Act requires “each interconnected VoIP service provider and each provider of non-interconnected VoIP service [to] participate in and contribute to the [TRS] Fund.”⁵⁹ In the *TRS Contribution NPRM*, we noted that carriers and *interconnected* VoIP service providers are currently required to contribute to the TRS Fund and to use FCC Form 499-A to report their “interstate end-user telecommunications revenues” for purposes of making TRS Fund contributions.⁶⁰ We noted our belief that the term “participate in” includes the requirement for TRS Fund contributors to submit FCC Form 499-A annually,⁶¹ and sought comment on our proposal to require *non-interconnected* VoIP service providers to use FCC Form 499-A to report their interstate end-user revenues.⁶² For the purpose of timely implementation of Section 715, we proposed to require non-interconnected VoIP service providers to report their

⁵⁴ *TRS Contribution NPRM*, 26 FCC Rcd at 3295-96, ¶ 26. See also 47 C.F.R. § 64.1195 and *TRS Contribution NPRM*, 26 FCC Rcd at 3302-03, Appendix A (setting forth proposed subsection 64.604(c)(5)(iii)(C)).

⁵⁵ *TRS Contribution NPRM*, 26 FCC Rcd at 3295-96, ¶ 26. See also 47 C.F.R. § 1.47(h) and *TRS Contribution NPRM*, 26 FCC Rcd at 3300-01, Appendix A (setting forth proposed amendment to subsection 1.47(h)).

⁵⁶ See, e.g., MPSC Comment at 7; CenturyLink Reply Comments at 1. See also ITI letter dated July 21, 2011 at 3 (“Imposing . . . administrative requirements on free services may risk causing providers to reconsider such offerings.”).

⁵⁷ See Appendix B (Final Rules).

⁵⁸ *TRS Contribution NPRM*, 26 FCC Rcd at 3295-96, ¶ 26.

⁵⁹ 47 U.S.C. § 616.

⁶⁰ *TRS Contribution NPRM*, 26 FCC Rcd at 3292, ¶ 17. See also 47 C.F.R. §§ 64.604(c)(5)(iii)(A) and (B).

⁶¹ *TRS Contribution NPRM*, 26 FCC Rcd at 3295, ¶ 25. See also Section 64.604(c)(5)(iii)(B).

⁶² *TRS Contribution NPRM*, 26 FCC Rcd at 3292, ¶ 17.

interstate end-user revenues as “telecommunications revenues” on the FCC Form 499-A.⁶³ We also proposed to direct WCB to exercise its delegated authority to make any revisions to the FCC Form 499-A, as well as any instructions that may be necessary to effectuate the requirements of Section 715.⁶⁴

23. *Discussion.* As proposed, we now amend Section 64.604(c)(5)(iii)(A) to require non-interconnected VoIP service providers to contribute to the TRS Fund and direct them to use FCC Form 499-A to report their interstate end-user revenues for purposes of TRS Fund contributions. This action is supported generally by commenters, though some also suggest using FCC Form 499-A Block 5 (to report “other revenues”), rather than Block 4, to distinguish non-interconnected VoIP service revenues from telecommunications revenues.⁶⁵ We reject this latter proposal as unnecessary. The heading at the top of Block 4 specifies that it is for reporting both end-user *and* non-telecommunications revenues.⁶⁶ Line 418 of Block 4 is clearly labeled for reporting non-telecommunications revenues.⁶⁷ To provide even greater clarity, the 2012 version of FCC Form 499-A, which has been submitted to the Office of Management and Budget (“OMB”) for approval, has a new line 418.4, designated for reporting “non-interconnected VoIP revenues not included in any other category.”⁶⁸ We believe the revisions to FCC Form 499-A for 2012 resolves commenters’ concerns about distinguishing non-interconnected VoIP service revenues from telecommunications revenues.⁶⁹ Consistent with the above modifications, we also modify TRS rule 47 C.F.R. § 64.604(c)(5)(iii)(A) as proposed in the *TRS Fund Contribution NPRM*,⁷⁰ by replacing the phrase “interstate end-user telecommunications revenues” with “interstate end-user revenues” and by deleting the last sentence (“For purposes of this paragraph, telecommunications revenues include revenues from non-interconnected VoIP services.”).

5. Interstate Revenue Safe Harbor

24. *Background.* As we explained in the *TRS Contribution NPRM*, and in the *2006 Interim Contribution Methodology Order*, the Commission recognized that some interconnected

⁶³ *TRS Contribution NPRM*, 26 FCC Rcd at 3293, ¶ 19.

⁶⁴ *TRS Contribution NPRM*, 26 FCC Rcd at 3292-93, ¶ 18.

⁶⁵ See CEA Comments at 4-5; ITI Comments at 7; TIA Comments at 2; VON Coalition Comments at 5; Citrix Online Reply Comments at 4; Google Reply Comments at 7; Sprint Nextel Reply Comments at 3. Sprint Nextel also suggests adding “Non-interconnected VoIP TRS” to line 105 in Block 1. See Sprint Nextel Reply Comments at 4.

⁶⁶ See 2011 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2010 Revenues), at 5, available at <http://transition.fcc.gov/Forms/Form499-A/499a-2011.pdf>, last visited August 1, 2011.

⁶⁷ See 2011 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2010 Revenues), at 5, available at <http://transition.fcc.gov/Forms/Form499-A/499a-2011.pdf>, last visited August 1, 2011. In addition, adoption of commenters’ proposal may cause confusion because interconnected VoIP service providers have been reporting revenues on FCC Form 499-A, Block 4. Furthermore, the use of Block 5 is inappropriate because it has been designated for other purposes (*i.e.*, providing additional revenue break outs). See *id.*

⁶⁸ See 2012 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2011 Revenues), at 6 available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=239260&version=1>.

⁶⁹ *TRS Contribution NPRM*, 26 FCC Rcd at 3292-93, ¶ 19.

⁷⁰ *TRS Contribution NPRM*, 26 FCC Rcd at 3301, Appendix A (Proposed Rules).

VoIP service providers may not have the ability to identify whether their calls are interstate.⁷¹ To address this, the Commission's rules permit an interconnected VoIP service provider to use actual revenues, a traffic study, or the interim safe harbor percentage of 64.9 (to estimate the interstate portion of total end-user revenues) for the purposes of reporting interstate end-user revenues on the FCC Form 499-A and making TRS Fund contributions.⁷² In the *TRS Contribution NPRM*, we asked whether we should extend the 64.9 percent safe harbor to non-interconnected VoIP providers.⁷³

25. *Discussion.* We conclude that it is appropriate to permit non-interconnected VoIP service providers to report their interstate end-user revenues using actual revenues, a traffic study, or the interim 64.9 percent safe harbor. We agree with commenters that this approach is consistent with and comparable to the obligations of other TRS Fund contributors.⁷⁴

6. Billed or Collected Revenue

26. *Background.* In the *TRS Contribution NPRM*, we noted that FCC Form 499-A filers are instructed to provide information about interstate end-user telecommunications revenues that are "billed" (or "earned") or "uncollectible," rather than revenues "collected."⁷⁵ We requested comments on whether calculations of all TRS Fund contributions – like the contribution calculations made by contributors to the Universal Service Fund – should be based on each contributor's collected revenues rather than billed revenues.⁷⁶

27. *Discussion.* We require the calculations of TRS Fund contributions to be based on collected revenues, rather than billed revenues. Commenters support this proposal because they believe this will ease administrative burdens.⁷⁷ Consistent with the manner in which USF assessable revenues are determined, the contribution base for TRS will be determined from gross billed revenues, minus uncollectible revenues/bad debt expenses.⁷⁸ Revising our calculations in this manner will also achieve greater consistency in the administration of the USF and TRS Fund.

7. Conforming Amendments to Rules

28. *Background.* To provide improved consistency and clarity across our TRS rules, and among the categories of entities obligated to contribute to the TRS Fund, in the *TRS*

⁷¹ See *TRS Contribution NPRM*, 26 FCC Rcd at 3289-90, ¶ 8, and 3296, ¶¶ 27-28, citing *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7546, ¶ 56.

⁷² See *VoIP TRS Order*, 22 FCC Rcd at 11295-96, ¶ 40.

⁷³ *TRS Contribution NPRM*, 26 FCC Rcd at 3296, ¶ 28.

⁷⁴ See, e.g., MPSC Comments at 8; Verizon Comments at 7; CenturyLink Reply Comments at 2. *But see* VON Coalition letter dated August 24, 2011, at 6-7 (supporting a safe harbor, but asserting that the 64.9% safe harbor is based on other services that are predominantly interstate and international, and that this presumption is insupportable and highly speculative for non-interconnected VoIP service).

⁷⁵ *TRS Contribution NPRM*, 26 FCC Rcd at 3296-97, ¶ 29. See also 2011 FCC Form 499-A, 2011 FCC Form 499-A Instructions at 25 -26.

⁷⁶ *TRS Contribution NPRM*, 26 FCC Rcd at 3296-97, ¶ 29.

⁷⁷ See, e.g., MPSC Comments at 8; AT&T Reply Comments at 3 (agreeing that "greater consistency in the administration of the Interstate TRS Fund and the USF is desirable and would ease administrative burdens in the administration of both funds.").

⁷⁸ See 2011 FCC Form 499-A Instructions, at 25-26 (Lines 421-423).

Contribution NPRM, we proposed to replace the terms “carrier,” “carriers,” and “service providers” in Section 64.604(c)(5)(iii)(B) with the term “contributor(s).”⁷⁹ Similarly, we proposed using the phrase “revenues subject to contributions” in Section 64.604(c)(5)(iii)(B) in lieu of “interstate end-user telecommunications revenues” and “interstate end-user revenues of such services” in Section 64.604(c)(5)(iii)(B).⁸⁰

29. *Discussion.* We adopt these non-substantive changes to our TRS rules, as proposed, to provide greater clarity regarding the type of end-user revenues assessable for TRS contributions.

8. Implementation Deadlines

30. *Background.* As noted above, Section 715 requires the Commission to ensure that each provider of interconnected and non-interconnected VoIP service participate in and contribute to the TRS Fund within one year after the CVAA’s enactment, *i.e.*, by October 8, 2011.⁸¹ Interconnected VoIP service providers have already met this statutory requirement because they have been reporting revenues and contributing to the TRS Fund on an annual basis since 2007.⁸² For non-interconnected VoIP service providers to meet the statutory deadline, in the *TRS Contribution NPRM* we proposed to require these providers first, to register and designate a District of Columbia agent for service of process by September 30, 2011, using FCC Form 499-A,⁸³ and second, to complete and submit FCC Form 499-A by April 1, 2012.⁸⁴ In addition, we proposed to begin assessing non-interconnected VoIP service providers for TRS Fund contributions based on revenues reported for the October through December 2011 period. These assessments would be used to determine TRS contributions for the 2012-2013 TRS Fund year (July 1, 2012 through June 30, 2013).⁸⁵

31. *Discussion.* The VON Coalition advocates for a two-year implementation time period “to allow non-interconnected VoIP providers adequate time to implement compliance programs.”⁸⁶ We are, however, constrained by clear statutory language that requires non-interconnected VoIP service providers to participate in and contribute to the TRS Fund within one year after the date of enactment of the CVAA, or by October 8, 2011.⁸⁷ As such, we adopt our timetable for non-interconnected VoIP service providers that have interstate end-user revenues as proposed, with slight modifications as described below:

- By December 31, 2011, non-interconnected VoIP service providers shall register with the Commission and designate a District of Columbia agent for service of process using FCC Form 499-A in accordance with the form’s instructions.

⁷⁹ *TRS Contribution NPRM*, 26 FCC Rcd at 3295, ¶ 24.

⁸⁰ *TRS Contribution NPRM*, 26 FCC Rcd at 3295, ¶ 24.

⁸¹ See ¶ 1, *supra*.

⁸² *TRS Contribution NPRM*, 26 FCC Rcd at 3289 ¶ 7, and 3297, ¶ 30.

⁸³ *TRS Contribution NPRM*, 26 FCC Rcd at 3297, ¶ 31.

⁸⁴ *TRS Contribution NPRM*, 26 FCC Rcd at 3297, ¶ 31.

⁸⁵ *TRS Contribution NPRM*, 26 FCC Rcd at 3297, ¶ 31.

⁸⁶ See VON Coalition letter dated August 24, 2011, at 4; see also Microsoft letter dated September 9, 2011.

⁸⁷ See 47 U.S.C. § 616.

- By April 1, 2012, non-interconnected VoIP service providers shall complete and submit FCC Form 499-A to report fourth-quarter 2011 interstate end-user revenues, which shall be the basis for TRS Fund contributions for the 2012-2013 funding period.

We take this action to meet the one year statutory deadline established by the CVAA.⁸⁸

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Certification

32. Pursuant to the Regulatory Flexibility Act of 1980, as amended (“RFA”),⁸⁹ the Commission has prepared a Final Regulatory Flexibility Certification of the possible significant economic impact on small entities of the policies and rules addressed in this Order. The final certification is set forth in Appendix C.

B. Paperwork Reduction Act of 1995

33. This document contains new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁹⁰ 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.” In this present document, we have assessed the effects of the rules for contributions to the TRS Fund and find that the collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees. The Commission received pre-approval from OMB for the information collection requirements on May 23, 2011, and the information collection requirements were adopted as proposed.⁹¹

C. Congressional Review Act

34. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁹²

⁸⁸ *Accord*, MPSC Comments at 8.

⁸⁹ *See* 5 U.S.C. § 604.

⁹⁰ *See* 44 U.S.C. § 3506(c)(4).

⁹¹ *See* OMB Control Number 3060-0855.

⁹² *See* 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(i), 4(j), 225, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 225, and 616, that this Report and Order IS ADOPTED and the Commission's rules ARE HEREBY AMENDED as set forth in the final rule changes appendix (Appendix B) attached to this Report and Order.

36. IT IS FURTHER ORDERED that the rules adopted in this Report and Order WILL BE EFFECTIVE 30 days after publication of a summary in the Federal Register.⁹³

37. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report 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

⁹³ See 5 U.S.C. § 553(d)(3) (“[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except . . . as otherwise provided by the agency for good cause found and published with the rule”); see also 47 C.F.R. §§ 1.103(a), 1.427(b).

APPENDIX A**List of Commenters****(CG Docket No. 11-47)**

This is a list of parties who filed comments and reply comments within the designated comment periods in the proceeding. The complete record in this proceeding is available in the Electronic Comment Filing System located at <http://www.fcc.gov/cgb/ecfs/>.

Contributions to the Telecommunications Relay Services Fund, CG Docket No. 11-47, Notice of Proposed Rulemaking, 26 FCC Rcd 3285 (2011).

Comments

Citrix Online LLC (Citrix Online)
Consumer Electronics Association (CEA)
National Association of the Deaf (Consumer Groups)
Information Technology Industry Council (ITI)
Michigan Public Service Commission (MPSC)
NetCoalition
Telecommunications Industry Association (TIA)
Verizon
Voice on the Net Coalition (VON Coalition)

Reply Comments

AT&T
CenturyLink
Citrix Online LLC (Citrix Online)
Google Inc. (Google)
Sprint Nextel Inc. (Sprint)

Ex Parte

Citrix Online letter dated September 28, 2011
ITI letters dated June 10, 2011, July 21, 2011, and August 1, 2011
Microsoft Corporation (Microsoft) letter dated September 9, 2011
Verizon letters dated September 19, 2011, October 3, 2011, and October 4, 2011
VON Coalition letters dated July 25, 2011, August 12, 2011, August 24, 2011, September 28, 2011, and October 2, 2011

APPENDIX B**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 64 as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. In § 1.47, revise paragraph (h) to read as follows:

§ 1.47 Service of documents and proof of service.

(h) Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, and non-interconnected VoIP provider, as defined in § 64.601(a)(15) of this chapter and with interstate end-user revenues that are subject to contribution to the Telecommunications Relay Service Fund, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier, interconnected VoIP provider, or non-interconnected VoIP provider in any proceeding before the Commission. Such designation shall include, for the carrier, interconnected VoIP provider, or non-interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier, interconnected VoIP provider, or non-interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers, interconnected VoIP providers, and non-interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the **Federal Register**, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier, interconnected VoIP provider, or non-interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier,

interconnected VoIP provider, or non-interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier, interconnected VoIP provider, or non-interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k), 227; secs. 404(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620, unless otherwise noted.

Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

4. The authority citation for subpart F is revised to read as follows:

Authority: 47 U.S.C. 151-154; 225, 255, 303(r), 616, and 620.

5. In § 64.601, revise paragraph (a)(10), redesignate paragraphs (a)(15) through (a)(27) as paragraphs (a)(16) through (a)(28), and by adding new paragraph (a)(15) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(10) Interconnected VoIP service. The term “interconnected VoIP service” has the meaning given such term under § 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

(15) Non-interconnected VoIP service. The term “non-interconnected VoIP service” –

(i) means a service that –

(A) enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and

(B) requires Internet protocol compatible customer premises equipment; and

(ii) does not include any service that is an interconnected VoIP service.

6. In § 64.604, revise paragraphs (c)(5)(iii)(A) and (c)(5)(iii)(B), remove paragraph (c)(5)(iii)(D), redesignate paragraph (c)(5)(iii)(C) as paragraph (c)(5)(iii)(D), and add new

paragraph (c)(5)(iii)(C) to read as follows:

§ 64.604 Mandatory minimum standards.

(c) ***

(5) ***

(iii) ***

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

(B) *Contribution computations.* Contributors' contributions to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least \$25 per year. Contributors whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer and Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) Registration Requirements for Providers of Non-Interconnected VoIP Service.

(I). *Applicability.* A non-interconnected VoIP service provider that will provide

interstate service that generates interstate end-user revenue that is subject to contribution to the Telecommunications Relay Service Fund shall file the registration information described in paragraph (c)(5)(iii)(C)(2) of this section in accordance with the procedures described in paragraphs (c)(5)(iii)(C)(3) and (c)(5)(iii)(C)(4) of this section. Any non-interconnected VoIP service provider already providing interstate service that generates interstate end-user revenue that is subject to contribution to the Telecommunications Relay Service Fund on the effective date of these rules shall submit the relevant portion of its FCC Form 499-A in accordance with paragraphs (c)(5)(iii)(C)(2) and (3) of this section.

(2). Information required for purposes of TRS Fund contributions. A non-interconnected VoIP service provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(1) of this section shall provide the following information:

- (i) The provider's business name(s) and primary address;
- (ii) The names and business addresses of the provider's chief executive officer, chairman, and president, or, in the event that a provider does not have such executives, three similarly senior-level officials of the provider;
- (iii) The provider's regulatory contact and/or designated agent;
- (iv) All names that the provider has used in the past; and
- (v) The state(s) in which the provider provides such service.

(3). Submission of registration. A provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(1) of this section shall submit the information described in paragraph (c)(5)(iii)(C)(2) of this section in accordance with the Instructions to FCC Form 499-A. FCC Form 499-A must be submitted under oath and penalty of perjury.

(4). Changes in information. A provider must notify the Commission of any changes to the information provided pursuant to paragraph (c)(5)(iii)(C)(2) of this section within no more than one week of the change. Providers may satisfy this requirement by filing the relevant portion of FCC Form 499-A in accordance with the Instructions to such form.

APPENDIX C

Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ 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.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).⁵

2. The Report and Order adopts rules to require providers of non-interconnected voice over Internet protocol (“VoIP”) service to contribute to the interstate Telecommunications Relay Services Fund (“TRS Fund”). Non-interconnected VoIP services enable real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol, requires Internet protocol compatible customer premises equipment, and does not include any service that is an interconnected VoIP service.⁶ Telecommunications relay services (“TRS”) are services that enable individuals who are deaf, hard of hearing, deaf-blind, or

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

² 5 U.S.C. § 605(b).

³ 5 U.S.C. § 601(6).

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

⁵ 15 U.S.C. § 632.

⁶ 47 U.S.C. § 153(36). Examples of *non-interconnected* VoIP services include “one-way” VoIP services (*i.e.*, services that enable users to make or receive calls, but not both) and services that enable individuals to communicate by voice with other individuals solely via the Internet (*e.g.*, as a stand-alone service or as a feature or function of a non-VoIP service, such as a video game, webinar, or web conferencing service). Non-interconnected VoIP services, other than “one-way” VoIP services, are often provided to users for free.

Interconnected VoIP service is defined as a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user’s location;
- (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

47 C.F.R. § 9.3. Interconnected VoIP service is marketed as a stand-alone service or with other services, such as television and Internet subscription services.

who have a speech disability to make and receive calls.⁷ There are two components to the cost recovery framework for interstate TRS: (1) collecting contributions which are put into the interstate TRS Fund;⁸ and (2) compensating TRS providers from the TRS Fund for the costs of providing TRS services.⁹ The Report and Order addresses the first component – contributions to the interstate TRS Fund.

3. In summary, the rules adopted in the Report and Order require providers of non-interconnected VoIP services that generate interstate end-user revenues to take the following actions: register with the Commission; designate a District of Columbia agent for service of process; complete and submit a Telecommunications Reporting Worksheet (FCC Form 499-A) annually to report their interstate end-user revenues; and contribute approximately one percent of their interstate end-user revenues or a minimum \$25 to the TRS Fund. As described more fully below, these actions will not have a significant economic impact on providers of non-interconnected VoIP services with interstate end-user revenues. Further, the rules adopted in the Report and Order will have no economic impact on providers of free non-interconnected VoIP services, because those providers are not required to take any action.

4. In the Notice of Proposed Rulemaking in this proceeding,¹⁰ the Commission concluded that no Initial Regulatory Flexibility Analysis was required because, even if a substantial number of small entities might be affected by the proposed rules, the cumulative economic impact on any entity required to participate in and contribute to the TRS Fund will be *de minimis*. The Commission now certifies that the rules adopted in the Report and Order will not have a significant economic impact on a substantial number of small entities.

5. The rules adopted in the Report and Order implement Section 103(b) of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), signed into law by President Obama on October 8, 2010.¹¹ Section 103(b) of the CVAA adds Section 715 to the Communications Act.¹² Section 715 requires each interconnected VoIP service provider and each provider of non-interconnected VoIP service to participate in and contribute to the interstate TRS Fund by October 8, 2011, in a manner that is consistent with and comparable to the obligations of other TRS Fund contributors.¹³ Carriers have been contributing to the TRS

⁷ 47 U.S.C. § 225(b)(1).

⁸ The costs attributed to the provision of interstate TRS are “recovered from all subscribers for every interstate service.” 47 U.S.C. § 225(d)(3)(B); *see also* 47 C.F.R. § 64.604(c)(5)(ii).

⁹ The Commission has recognized and permits compensation for various forms of interstate TRS, including PSTN-based interstate services such as TTY-to-voice, speech-to-speech, and captioned telephone relay service, and Internet-based forms of TRS, such as video relay service, Internet protocol (“IP”) relay, and IP captioned telephone relay service. *See also* <http://www.fcc.gov/guides/telecommunications-relay-service-trs>.

¹⁰ *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Notice of Proposed Rulemaking, 26 FCC Rcd 3285 (2011).

¹¹ Pub. L. No. 111-260, § 103(b), 124 Stat. 2751, 2755 (2010). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010, making technical corrections to the CVAA.

¹² Section 715 of the Communications Act is codified at 47 U.S.C. § 616.

¹³ TRS Fund contributions will be assessed against non-interconnected VoIP service interstate end-user revenues generated on or after October 1, 2011 to meet this statutory deadline.

Fund since its inception. Providers of interconnected VoIP services have been contributing to the TRS Fund since 2007. The CVAA, in effect, affirms the contribution requirement for providers of interconnected VoIP services, and extends this contribution requirement to non-interconnected VoIP service providers.

6. Currently, all TRS Fund contributors must register with the Commission and designate a District of Columbia agent for service of process. Contributors file a completed FCC Form 499-A annually to report their interstate end-user revenues. Contributions to the TRS Fund are made on the basis of interstate end-user revenues. The amount of interstate end-user revenues reported on FCC Form 499-A is multiplied by a contribution factor, determined annually by the Commission, to compute the amount of the TRS Fund contribution for that year. Historically, contributions to the TRS Fund have been slightly less than one percent of interstate end-user revenues.

7. The rules adopted by the Report and Order require non-interconnected VoIP service providers with interstate end-user revenues to also register with the Commission and designate a District of Columbia agent for service of process using FCC Form 499-A in accordance with its instructions.¹⁴ These providers must also complete and submit FCC Form 499-A annually to report their interstate end-user revenues.¹⁵ It has previously been estimated that filling out the FCC Form 499-A takes 13.5 hours (*i.e.*, less than two work days of a single full-time employee) annually. Thus, completing and submitting FCC Form 499-A does not have a significant economic impact upon small entities.

8. The Report and Order affirms that contributions to the TRS Fund are made on the basis of interstate end-user revenues. Non-interconnected VoIP service providers that offer their services for free have no interstate end-user revenues and, therefore, no requirement to register with the Commission, designate a District of Columbia agent for service of process, complete and submit a FCC Form 499-A, or contribute any amount to the TRS Fund. Consequently, these rules will not have any economic impact on providers of free non-interconnected VoIP services.

9. TRS Fund contributions will be assessed against interstate end-user revenues from non-interconnected VoIP services provided as a stand-alone offering for a fee (not for free). TRS Fund contributions will also be assessed against the interstate end-user revenues generated from other (non-VoIP) services (*e.g.*, a video gaming service) that have a non-interconnected VoIP service feature or function: (1) when these providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) when these providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price.¹⁶ Such providers may use the safe harbor methods identified in the *CPE*

¹⁴ Non-interconnected VoIP service providers with interstate end-user revenues must register with the Commission and designate a District of Columbia agent for service of process by December 31, 2011.

¹⁵ Non-interconnected VoIP service providers with interstate end-user revenues must complete and submit their first FCC Form 499-A by April 1, 2012, to report their interstate end-user revenues for the period from October 1 through December 31, 2011.

¹⁶ For example, were a provider to offer a video gaming service with an integrated non-interconnected VoIP service feature for \$20 per month, and also offer the non-interconnected VoIP service separately for \$5 per month, the provider would be obligated to attribute \$5 per month to the non-interconnected VoIP service feature for purposes of making TRS contributions. Alternatively, if a provider were to offer a video gaming service with a non-interconnected VoIP service feature for \$20 per month and without that feature for \$15 per month, \$5 per month would be attributed to that feature.

Bundling Order for allocating and reporting revenues.¹⁷ Historically, contributions to the TRS Fund have been slightly less than one percent of revenues. The contribution factor for the 2011-2012 TRS Fund year is 1.058 percent.¹⁸ This contribution rate will not have a significant economic impact upon small entities.

10. The Report and Order also affirms that service providers with interstate end-user revenues must contribute a minimum of \$25 to the TRS Fund.¹⁹ A \$25 contribution does not constitute a significant economic impact on small entities.

11. Therefore, based on the foregoing analysis of all foreseeable economic impacts, we certify that the requirements of this Report and Order will not have a significant economic impact on a substantial number of small entities.

12. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.²⁰ In addition, the 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.²¹

¹⁷ See *Policy And Rules Concerning The Interstate, Interexchange Marketplace/Implementation Of Section 254(G) Of The Communications Act Of 1934, As Amended/In 1998 Biennial Review -- Review Of Customer Premises Equipment And Enhanced Services Unbundling Rules In The Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418, 7446-48, ¶¶ 50-54 (2001) (“*CPE Bundling Order*”). The Commission established two “safe harbor” methods for allocating revenues in an easily ascertainable and reasonable manner when telecommunications services and CPE or enhanced services are offered as a bundled package. *CPE Bundling Order*, 16 FCC Rcd at 7447-8, ¶¶ 49 and 52. Contributors may elect to report revenues from such bundled service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services. *Id.*, 16 FCC Rcd at 7447, ¶ 50. Alternatively, contributors who are unable or unwilling to disaggregate telecommunications revenue from other revenue when telecommunications services are bundled with CPE or enhanced service offerings may elect to treat all bundled revenues as telecommunications service revenue. *Id.*, 16 FCC Rcd at 7447, ¶ 51. When contributors choose to use other allocation methods, we apply the standards underlying the safe harbors in evaluating the reasonableness of such alternative methods. *Id.*, 16 FCC Rcd at 7448, ¶ 53. See also *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7544, ¶ 51 (adopting “safe harbors” for reporting revenues for interconnected VoIP services that are bundled with CPE or enhanced services, including information services).

¹⁸ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities: Structure and Practices of the Video Relay Service Program*, Order, 26 FCC Rcd 9972, 9981, ¶ 26 (2011).

¹⁹ See 47 C.F.R. § 64.604(c)(5)(iii)(B) (“Each subject contributor that has revenues subject to contribution must contribute at least \$25 per year.”).

²⁰ See 5 U.S.C. § 801(a)(1)(A).

²¹ 5 U.S.C. § 605(b).