

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

In the Matter of)
Structure and Practices of the Video Relay Service) CG Docket No. 10-51
Program)
Sprint Nextel Corporation Expedited Petition for)
Clarification)
Sorenson Communications, Inc. Petition for)
Reconsideration of Two Aspects of the)
Certification Order)
AT&T Services, Inc. Petition for Reconsideration)
of AT&T)

MEMORANDUM OPINION AND ORDER, ORDER,
AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order (*MO&O*), we address the September 6, 2011 Expedited Petition for Clarification filed by Sprint Nextel Corporation (Sprint),¹ and petitions for reconsideration filed by Sorenson Communications, Inc. (Sorenson)² and AT&T Services, Inc. (AT&T).³ Each petition relates to the Commission's July 28, 2011 *iTRS Certification Order* governing Commission certification of Internet-based telecommunications relay services (iTRS) providers for eligibility for compensation from the Interstate TRS Fund (Fund).⁴ For the following reasons, we grant in part and deny in part the Sprint Petition, grant the Sorenson Petition, and deny the AT&T Petition, to the extent discussed below.

2. In response to the Sorenson Petition, we revise section 64.606 of the Commission's rules⁵ to lessen the burdens on applicants for video relay service (VRS) certification and VRS providers to provide certain documentation to the Commission. We find good cause to make this modified rule effective upon publication in the *Federal Register* of notice of the approval of the modified rule by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).⁶ In the event that OMB approval of the modified rule and those adopted in the *iTRS Certification Order* that also contain information collections is granted within thirty days of publication of this *MO&O*, this will allow all such rules to go into effect concurrently.⁷

¹ Sprint Nextel Corporation, *Expedited Petition for Clarification*, CG Docket No. 10-51 (filed Sept. 6, 2011) (Sprint Petition).

² Sorenson Communications, Inc., *Petition for Reconsideration of Two Aspects of the Certification Order*, CG Docket No. 10-51 (filed Sept. 6, 2011) (Sorenson Petition).

³ AT&T Services, Inc., *Petition for Reconsideration of AT&T*, CG Docket No. 10-51 (filed Sept. 6, 2011) (AT&T Petition). Pursuant to section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Commission published a notice announcing the filing of the Sorenson and AT&T Petitions, and establishing a pleading cycle for oppositions and replies in response to those petitions for reconsideration. See *Structure and Practices of the Video Relay Service Program*, 76 Fed. Reg. 59,557 (Sept. 27, 2011). The one filing received by the Commission in response to that notice, the October 12, 2011 response of Purple Communications, Inc., is discussed in paragraph 22, *infra*.

⁴ *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898 (2011) (*iTRS Certification Order*).

⁵ 47 C.F.R. § 64.606.

⁶ See ¶ 21, *infra*. Both the Administrative Procedures Act (APA) and the Commission's rules require notice of substantive rules issued by the Commission, with limited exceptions, to be made not less than 30 days before such rules go into effect, absent good cause shown and published with the rule. See 5 U.S.C. § 553(d); 47 C.F.R. § 1.427(a).

⁷ See 47 C.F.R. § 1.427(b). OMB has yet to issue such approval, in part, because, when the Sorenson Petition was filed, Sorenson also filed PRA comments, raising the same contentions that it raised in its petition concerning the burdensome nature of the Commission's disclosure rules. Sorenson Communications, Inc., *Paperwork Reduction Act Comments*, CG Docket No. 10-51, OMB Control No. 3060-1150 (filed Sept. 6, 2011) (Sorenson PRA Comments). As discussed in paragraphs 16-21, *infra*, the rule modifications adopted herein address those concerns, and it is the expectation of the Commission that, with this Commission action, OMB approval of the rules, as so modified, will be forthcoming. Under these circumstances, to expedite the filing of certification applications and their processing by the Commission, good cause exists to make the modified rule and the other new rules become effective concurrently, upon publication of OMB's approval.

3. In the Order, we also, *sua sponte*, clarify our rules with respect to on-site visits that are part of the Commission's certification application review process and post-certification oversight of provider compliance with our iTRS rules. In the accompanying Further Notice of Proposed Rulemaking (*Further Notice*), we seek comment on our proposal to modify the rule⁸ governing the ability of eligible VRS providers to contract with or otherwise authorize a third party eligible provider to provide certain core VRS functions on their behalf.⁹

4. In the *iTRS Certification Order*, we required that all iTRS providers become certified by the Commission in order to be eligible for compensation from the Fund for their provision of iTRS, and implemented numerous changes to the certification process in order to prevent waste, fraud and abuse, enhance Commission oversight of iTRS providers, and ensure that only qualified entities are eligible to be compensated from the Fund for their provision of iTRS. Among the specific requirements we adopted were that all VRS applicants for Commission certification lease, license or own, as well as operate, essential facilities associated with TRS call centers and employ interpreters to staff those centers at the date of the certification application; and that each iTRS applicant for certification 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 and Certification FNPRM*. In addition, we adopted 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.¹⁰

II. MEMORANDUM OPINION AND ORDER

A. Sprint Petition

1. Definition of Employees

5. In the *iTRS Certification Order*, we required that entities wishing to become certified by the Commission for compensation from the Fund for their provision of VRS operate the core facilities necessary to provide VRS service and employ their own communications assistants (CAs).¹¹ Sprint requests that the Commission clarify that CAs who are trained by the provider, who are stationed at the facilities of the provider and who are directly under the provider's supervision should be deemed to be employees of the provider, in satisfaction of this requirement, regardless of whether or not they are hired directly by the provider.¹² Sprint asserts that the Commission did not define the term "employee," and that VRS providers with *de minimis* market shares will need flexibility in the way they develop their CA workforce, including being able to obtain the services of CAs on a temporary basis or pursuant to a

⁸ 47 C.F.R. § 64.604(c)(5)(iii)(N)(1)(iii). See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, 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).

⁹ See *VRS Practices R&O* at 5574, para. 58. VRS is one form of iTRS. Some of the other forms of iTRS for which providers currently may receive compensation from the Fund include Internet Protocol relay (IP Relay) and the Internet-enabled form of captioned telephone relay service. See *iTRS Certification Order*, 26 FCC Rcd at 10899, para. 1 n.1.

¹⁰ See generally *iTRS Certification Order*, 26 FCC Rcd at 10899, paras. 1-2.

¹¹ See *id.* at 10905, para. 15.

¹² Sprint Petition at 1.

contract of short duration with an interpreting agency, and that such arrangements would be consistent with Commission requirements.¹³

6. We deny Sprint's requested clarification. The Commission has consistently distinguished "employees" from "subcontractors" and "contractors" in adopting rules and requirements governing the provision of VRS,¹⁴ and we find that Sprint's proposed clarification would render those recognized distinctions meaningless. Moreover, we determined that it was necessary for eligible VRS providers to *employ* their own CAs (rather than contract out for CA services) to "ensure that certified providers exercise necessary oversight of their own operations and compliance with Commission rules," and we further recognized that requiring that CAs be employed by each eligible VRS provider would "enable the Commission to better oversee the core operations of these providers."¹⁵

7. For the reasons stated above, we disagree with Sprint's assertion that allowing applicants to obtain the services of CAs on a temporary, contractual basis, or pursuant to a contract of short duration with an interpreting agency, would be consistent with Commission requirements, given our consistent distinction between such workers and employees. Therefore, we reaffirm that any entity that is, or seeks to become, certified by the Commission for compensation from the Fund for its provision of VRS must actually employ the CAs that provide compensable relay service on its behalf. That is, an entity seeking certification or already certified by the Commission must ensure that each of its VRS CAs who relays calls for which the entity will seek reimbursement from the Fund is a full or part-time employee of that entity. A CA cannot be an independent contractor or a temporary worker assigned by an agency, on a non-employment basis, to handle VRS calls. We also clarify that this restriction should not preclude a provider from hiring a CA to handle VRS calls on a temporary or part-time basis so long as the CA is an actual, demonstrable employee, not a contractor or other temporary, non-employed worker, of the provider.¹⁶

2. Roll-Over VRS Traffic

8. Sprint further requests that the Commission clarify that certified VRS providers will be able to send traffic to other certified VRS providers "when they are unable to immediately handle that traffic

¹³ See *id.* at 5.

¹⁴ See, e.g., *VRS Practices R&O*, 26 FCC Rcd at 5569, para. 46 (including, among a provider or its affiliates, "subcontractors, partners, [and] employees"); at 5613, App. E (codifying this distinction at 47 C.F.R. § 64.604(c)(5)(iii)(N)(4)); at 5577-78, paras. 67-70 (adopting whistleblower protections for all "employees and contractors" of all TRS providers); at 5612, App. E (codifying such whistleblower protections at 47 C.F.R. § 64.604(c)(5)(iii)(M)).

¹⁵ *iTRS Certification Order*, 26 FCC Rcd at 10905, para. 16. The Commission also noted that the requirement would avoid the risks of lack of Commission oversight associated with allowing the contracting out of CA services to entities that are not eligible VRS providers. *Id.*

¹⁶ For instance, an employer could demonstrate employee status by withholding various taxes from an employee's pay, and reporting the employee's income on Internal Revenue Service Form W-2 (Wage and Tax Statement). Cf. FCC Form 470, which includes, in its "non-employee" classification of workers, contractors or others who are employed by the entity on a contract or short-term basis and who do not receive a W-2 application from the entity filling out that form. *Wireline Competition Bureau Announces Implementation Date for Revised Forms 470 and 471 and Accompanying Instruction*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 16123, 16140 (WCB 2010). As we discuss below, we expect that, once a VRS provider has been certified, it will continue to employ and utilize its own CAs, and not attempt to rely solely or in part on subcontracting or similar arrangements with other certified providers for these core functions. See ¶ 13, *infra*.

due to factors outside of their control, *e.g.*, a sudden surge in traffic due to an earthquake,” and still be able to bill and receive compensation from the Fund for such traffic under section 64.604(c)(5)(iii)(F)(I-4) of the Commission’s rules.¹⁷ In support of this request, Sprint maintains that “continuing to allow a certificated VRS provider the ability to roll-over VRS traffic to another certificated provider is clearly in the public interest since it would enable a VRS provider with a *de minimis* share of the market to handle an unexpected and temporary surge in traffic such as that experienced by wireline and wireless carriers in the immediate aftermath of the earthquake that occurred on August 23, 2011.”¹⁸

9. In the *VRS Practices R&O*, the Commission adopted, among other things, service requirements designed to prevent unauthorized revenue sharing arrangements in the VRS program, in order to reduce fraud and establish better oversight of the VRS program, which has become vulnerable to extensive fraud and abuse.¹⁹ One such requirement is contained in section 64.604(c)(5)(iii)(N)(I)(iii) of our rules, which prohibits an eligible provider from contracting with or otherwise authorizing any third party to provide interpretation services or call center functions on its behalf, unless that party is also eligible for compensation from the Fund.²⁰ The Commission specifically adopted the exception contained within that rule because it was satisfied that eligible entities that *have already met* the Commission’s eligibility requirements would “pose less risk to the integrity of the program.”²¹ In the subsequent *iTRS Certification Order*, we adopted new service requirements for VRS and other iTRS providers to meet in order to establish their eligibility via Commission certification. As explained in the *VRS Practices R&O*, we “amended [our] 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.”²²

10. The Commission also adopted the *VRS Practices R&O* and *iTRS Certification Order* against the backdrop of its longstanding VRS mandatory minimum service rules. Section 64.604(b)(4) of the Commission’s rules requires that VRS providers offer service every day, 24 hours per day.²³ When the Commission adopted the “24/7” rule and speed of answer requirements in 2005, it concluded, among

¹⁷ Sprint Petition at 1. Although Sprint cites section 64.604(c)(5)(iii)(F)(I-4) of the Commission’s rules as authority for when iTRS providers are deemed eligible to receive compensation from the Fund for their provision of iTRS, section 64.604(c)(5)(iii)(F) was amended in the *iTRS Certification Order*. See *iTRS Certification Order*, 26 FCC Rcd at 10902, para. 8; see also *id.* at 10935-36, App. D. Per amended section 64.604(c)(5)(iii)(F)(2), 47 C.F.R. § 64.604(c)(5)(iii)(F)(2), iTRS providers may now become eligible for compensation from the Fund only if certified by the Commission pursuant to 47 C.F.R. § 64.606.

¹⁸ Sprint Petition at 5-6.

¹⁹ See *VRS Practices R&O*, 26 FCC Rcd at 5574-75, paras. 57-61; see also generally *id.* at 5549-52, 5572-74, paras. 4-7, 55-56.

²⁰ See *id.* at 5612, App. E (codifying 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(iii)); see also *id.* at 5574, para. 58. On May 31, 2011, we stayed the effectiveness of 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(iii) until October 1, 2011. See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order Suspending Effective Date, 26 FCC Rcd 8327 (2011). On September 30, 2011, we extended the stay of effectiveness of 47 C.F.R. § 64.604(c)(5)(iii)(N)(I)(iii) until November 15, 2011. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Order, FCC 11-145 (rel. Sept. 30, 2011) (*VRS Revenue Sharing Prohibition Stay Extension Order*).

²¹ *VRS Practices R&O*, 26 FCC Rcd at 5574, para. 58 n.164.

²² *iTRS Certification Order*, 26 FCC Rcd at 10905, para. 13 (emphases added), citing *VRS Practices R&O*, 26 FCC Rcd at 5574, para. 58.

²³ See 47 C.F.R. § 64.604(b)(4).

other things, that these requirements for VRS “would be less meaningful if providers can choose when they will offer service.”²⁴ The Commission also contemplated that, in requiring VRS providers to offer service 24/7, providers would be able to establish optimal VRS CA staffing levels by offsetting answer performance during periods of high demand with such performance during periods when demand was lower, for example, in the late night hours.²⁵ In so doing, the Commission established its expectation that VRS providers would adequately staff their call centers 24/7, including “during periods of less demand.”²⁶

11. We grant Sprint’s request for clarification that certified VRS providers may roll-over VRS traffic to another eligible provider when unable to handle an unexpected and temporary surge in call traffic, and find this request generally to be consistent with the goals and policies of our VRS rules. We clarify that a certified provider may seek reimbursement from the Fund for minutes of use that it routes to another certified VRS provider where exigent circumstances warrant such routing to handle an unexpected and temporary increase in the certified provider’s incoming traffic.²⁷ Exigent circumstances do not include events that result in increases in traffic that, in the ordinary course of business, could reasonably have been anticipated, such as a surge in traffic occurring during a holiday period. We find that permitting roll-over VRS traffic under exigent circumstances will facilitate redundancy of VRS service so that providers can continue to ensure that their users have access to VRS during times of exigent circumstances, and thus is consistent with our VRS program goals and policies.²⁸

12. We also reiterate that section 64.604(c)(5)(iii)(N)(1)(iii) of our rules only allows *an eligible provider* to subcontract for CA services or call center functions with, or otherwise authorize the provision of such services or functions from, *another eligible provider*.²⁹ We therefore clarify that this rule does not apply to non-certified applicants for certification; as such, non-certified applicants for certification may not rely on the ability to subcontract for or otherwise authorize the provision of CA services or call center functions on their behalf after they are certified, to demonstrate their *eligibility* for certification.

13. Finally, the ability of persons with hearing and speech disabilities to access TRS services every day for 24 hours is a critical component of a functionally equivalent TRS service, in accordance with Title IV of the Americans with Disabilities Act, as codified in section 225 of the Communications

²⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order, 20 FCC Rcd 13165, 13179, para. 29 (2005) (2005 VRS R&O).

²⁵ *See id.* at 13176, para. 19.

²⁶ *Id.*

²⁷ We agree with Sprint that an appropriate example of such an exigent circumstance might be an unexpected and temporary surge in traffic, such as that experienced by wireline and wireless carriers in the immediate aftermath of the earthquake that occurred on the east coast on August 23, 2011.

²⁸ *See Certification FNPRM*, 26 FCC Rcd at 5590, para. 97 (facility redundancy to ensure continuance of service helps to ensure that relay services are functionally equivalent to voice telephone service); 47 C.F.R. § 64.604(b)(4). *See also iTRS Certification Order*, 26 FCC Rcd at 10920, para. 54 (requiring subsequent notification in the event of “unforeseen service outages”); *VRS Practices R&O*, 26 FCC Rcd at 5557, para. 18 (raising concerns that lack of redundancy could especially pose problems in the event that a caller is seeking emergency assistance via 9-1-1).

²⁹ *See* 47 C.F.R. § 64.604(c)(5)(iii)(N)(1)(iii).

Act of 1934, as amended.³⁰ Pursuant to our objective of ensuring the provision of quality VRS,³¹ the Commission has an obligation to ensure that all certified providers are capable of providing their services on a continuous basis.³² Therefore, as a corollary to this clarification, we expect that, once a VRS provider has been certified (conditionally or fully) by the Commission, it will continue to employ and utilize its own CAs and provide its own call center functions, as represented in its certification application, and not attempt to rely solely or in part on subcontracting or similar arrangements for these core services and functions. In the accompanying *Further Notice*, we seek comment on our similar proposal to modify our rules to allow subcontracting or similar arrangements with other eligible VRS providers only under exigent circumstances.

3. ACD Platform Leasing from Third-Party Non-Provider

14. Sprint's final request is that the Commission clarify that a VRS provider leasing an automatic call distribution (ACD) platform from a vendor not affiliated with any VRS provider need not locate such ACD on its premises or use its own employees to manage such platform.³³ We believe that Sprint's proposed clarification is appropriate. In the *iTRS Certification Order*, we adopted specific requirements governing the leasing by a VRS provider of an ACD platform from another eligible provider, or any entity affiliated with a VRS provider,³⁴ including the requirement that a VRS provider so 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.³⁵ With respect to VRS providers that lease their ACD platforms from manufacturers or equipment distributors not affiliated with VRS providers, however, we required only a written lease for such ACD platform that conforms to the same restrictions on lease terms that we imposed on ACD leases with other eligible providers or affiliated entities, and that the applicant include a copy of the lease with its application for certification.³⁶ We then specifically concluded that the "additional restrictions" that we placed on a provider leasing an ACD platform from another eligible provider or entity affiliated with a provider – which include locating the ACD platform on its own premises and using its own employees to manage the ACD platform – are unnecessary when a provider leases an ACD platform from an entity not affiliated with a VRS provider.³⁷

15. For these reasons, we grant Sprint's request insofar as we confirm that a VRS provider leasing an ACD platform from a vendor not affiliated with any VRS provider need not locate such ACD on its premises or use its own employees to manage such a platform. However, regardless of the location of the ACD, each provider is responsible for the oversight of all the core operations associated

³⁰ 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, 125 Stat. 2795 (2010), making technical corrections to the CVAA.

³¹ *See, e.g., iTRS Certification Order*, 26 FCC Rcd at 10905, para. 15.

³² *See id.* at para. 16.

³³ *See* Sprint Petition at 1, 6.

³⁴ *See iTRS Certification Order*, 26 FCC Rcd at 10907, para. 19 n.50.

³⁵ *See id.* at 10906, para. 17.

³⁶ *See id.* at 10907, para. 19.

³⁷ *Id.*

with such ACD platform,³⁸ and shall be held accountable for compliance with all pertinent Commission rules and policies.

B. Sorenson Petition

16. In its petition for reconsideration, Sorenson maintains that the Commission did not adequately justify the burdensomeness of requirements that VRS providers submit, as part of their certification applications and, as applicable, in annual reports regarding their compliance with the TRS rules: (1) “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”;³⁹ and (2) all written sponsorship agreements relating to iTRS.⁴⁰ For the following reasons, we grant Sorenson’s petition to the extent discussed below.

17. In the *iTRS Certification Order*, we adopted requirements for documentary evidence that certification applicants must submit in support of their applications.⁴¹ Among these requirements are that VRS applicants include “[p]roofs 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.”⁴² We adopted this requirement primarily to “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,” and also to help ensure that providers and other entities comply with the Commission’s rules designed to reduce fraud and put an end to unauthorized revenue sharing arrangements.⁴³ Sorenson argues that this will require it to devote thousands of hours to gather the information and result in the company having to submit thousands of pages of documents.⁴⁴

18. We agree with Sorenson that such an information collection requirement may be overly burdensome for a provider the size of Sorenson when evaluated in light of the objectives the requirement is intended to foster. Responding to similar concerns with respect to our original proposal in the *Certification FNPRM* that a certification applicant file a copy of each deed or lease for each of its call centers, in the *iTRS Certification Order*, we modified that proposed requirement to mandate that, where the provider has more than five domestic call centers, it need submit the deeds or leases for only five of those call centers that constitute a representative sample of its centers.⁴⁵ In order to similarly address Sorenson’s concerns, we now modify the documentation requirements for proofs of purchase, leases, or license agreements for technology and equipment used to support call center functions. Where the

³⁸ *See id.*

³⁹ Sorenson Petition at 6 (quoting *iTRS Certification Order*, 26 FCC Rcd at 10911, para. 29).

⁴⁰ *See* Sorenson Petition at i, 5. Sorenson advanced the same two arguments in its comments to OMB challenging these two requirements under the PRA. *See* Sorenson PRA Comments. As a result, the Commission’s request for OMB approval of the rules adopted in the *iTRS Certification Order* containing information collection requirements, and thereby subject to the PRA, remains pending.

⁴¹ *See generally iTRS Certification Order*, 26 FCC Rcd at 10907-13, paras. 21-34.

⁴² *Id.* at 10937, App. D (codifying requirements at 47 C.F.R. § 64.606(a)(2)(ii)(A)(5)). *See also id.* at 10911-12, para. 29.

⁴³ *Id.* at 10912, para. 30.

⁴⁴ *See* Sorenson Petition at 3-4.

⁴⁵ *See iTRS Certification Order*, 26 FCC Rcd at 10909, para. 24.

provider has more than five domestic call centers, it must provide such documentation for five of its centers, that constitute a representative sample of its centers.⁴⁶ As we did when we adopted modified requirements for submission of employment agreements and lists of employees,⁴⁷ however, we require applicants to retain proofs of purchase for all technology and equipment used to support call center functions for all of their call centers, and to furnish such documentation to the Commission upon the Commission's request.

19. In addition, as with call center deeds or leases, we continue to require providers to submit documentation for all technology and equipment used to support call center functions for VRS providers that maintain five or fewer domestic call centers, and for all international call centers regardless of the provider's size.⁴⁸ Furthermore, we continue to require all VRS applicants, regardless of size, to describe in their submissions 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.⁴⁹ However, in response to Sorenson's stated concerns, we modify the requirement that the applicant state whether the technology and equipment for each call center function is owned or leased⁵⁰ to pertain only to the maximum of five call centers for which, as described above, the applicant must provide proofs of purchase, license agreements, or leases. Finally, in light of the particular documentation requirements applicable to leased ACD platforms,⁵¹ we will continue to require that VRS applicants provide a *complete copy* of all ACD leases or license agreements.⁵²

20. Regarding the burdens associated with our documentation requirements related to sponsorship agreements, Sorenson argues that it would take roughly 242 hours of work to comply in its initial application, and an average of 26 hours per year to comply with respect to annual reporting updates.⁵³ In response to Sorenson's concerns, we clarify these requirements as follows. In the *iTRS Certification Order* (in the paragraph captioned "List of Sponsorship Arrangements"), we required that applicants submit "a list of all . . . sponsorship or marketing arrangements and associated agreements, but only those related to iTRS."⁵⁴ We clarify that applicants need only to submit a list of all sponsorship arrangements, and to describe on that list any associated written agreements relating to iTRS – applicants need not furnish the actual copies of the arrangements and associated agreements, but must retain copies of all such arrangements and agreements for a period of three years from the date of the application and submit them to the Commission upon request. We will revise section 64.606(a)(2)(ii)(E) of our rules

⁴⁶ As with call center deeds or leases, when choosing a representative sampling of call centers for which to supply documentation for the technologies and equipment used to support call center functions, applicants should include within that sampling a range of such centers as determined by the center's size (by numbers of CAs) and location. Providers already in the market should also consider call volume. *See id.* at n.67.

⁴⁷ *See id.* at 10911, para. 27.

⁴⁸ *See id.* at para. 24.

⁴⁹ *See id.* at 10911, para. 29.

⁵⁰ *See id.*

⁵¹ *See id.* at 10906-07, paras. 17-19.

⁵² *See id.* at 10937, App. D (codifying requirement at 47 C.F.R. § 64.606(a)(2)(ii)(A)(5)).

⁵³ *See* Sorenson Petition at 5.

⁵⁴ *iTRS Certification Order*, 26 FCC Rcd at 10912, para. 31.

accordingly.⁵⁵ Thus, as clarified, the burdens on any iTRS provider, including Sorenson, to comply with section 64.606(a)(2)(ii)(E) are hereby significantly lessened.

21. Both the APA and the Commission's rules require notice of substantive rules issued by the Commission, with limited exceptions, to be made not less than 30 days before such rules goes into effect, absent good cause shown and published with the rule.⁵⁶ In this case, we find good cause to make these rule modifications effective upon publication in the *Federal Register* of notice of the approval of the modified rule by OMB under the PRA. We extended the stay of effectiveness of section 64.604(c)(5)(iii)(N)(I)(iii) of our rules until November 15, 2011, in order to enable entities currently providing VRS via subcontracting to apply for certification prior to the expiration of the stay, and to prevent such entities from being forced to cease operations without having had the opportunity to seek a seamless transition to certification.⁵⁷ The rule modifications we adopt in this *MO&O* affect the documentation that certification applicants must submit to the Commission. Because entities not currently certified by the Commission must be certified by November 15, 2011, in order to be eligible for compensation from the Fund for their provision of iTRS, good cause exists to make the rule modifications in this *MO&O* effective as soon as possible, upon publication in the *Federal Register* of notice of OMB approval of these modifications. In the event that OMB approval of the modified rule and those adopted in the *iTRS Certification Order* that also contain information collections is granted within thirty days of publication of this *MO&O*, this will allow all such rules to go into effect concurrently, and enable entities seeking iTRS certification to apply immediately. Moreover, because the rule modifications we adopt in this *MO&O* modify rules that the Commission adopted on July 28, 2011 – and, in so doing, *decrease* the burdens on iTRS providers – interested entities have had far more than 30 days notice of the documentation requirements with which they must comply.

22. Purple Communications, Inc. filed a “response” to the Sorenson Petition, in which it requested that applicants be required in their VRS certification applications to disclose their financial arrangements with any contractors or interested entities.⁵⁸ Such a requirement is not necessary at this juncture because we believe that the safeguards included in our new disclosure requirements -- for example, those requiring disclosure of financial interests⁵⁹ and sponsorship arrangements⁶⁰ -- balance well the need for Commission oversight of providers with minimizing information collection burdens on providers.⁶¹ Indeed, as Purple itself concedes, “the certification process and related disclosure of sponsorship agreements seems to be an appropriate avenue to maximize transparency.”⁶²

⁵⁵ See App. C, *infra*.

⁵⁶ See note 6, *supra*.

⁵⁷ See *VRS Revenue Sharing Prohibition Stay Extension Order* at para. 4.

⁵⁸ See Purple Communications, Inc. *Response to Petition for Reconsideration*, CG Docket No. 10-51 (filed Oct. 12, 2011) (Purple Response).

⁵⁹ See *iTRS Certification Order*, 26 FCC Rcd at 10910, para. 26.

⁶⁰ See *id.* at 10912, para. 31.

⁶¹ See, e.g., *id.* at 10910, para. 26.

⁶² Purple Response.

C. AT&T Petition

23. In its petition for reconsideration, AT&T generally seeks reconsideration of the requirements in the *iTRS Certification Order* that applicants for certification operate their own call centers and employ their own CAs.⁶³ In addition, AT&T seeks reconsideration of the prohibition against VRS providers subcontracting these core VRS functions to another certified VRS provider.⁶⁴ AT&T argues that these changes to the rules are unsupported by the record, are unnecessary given other recently-adopted VRS rules, and could increase the costs of VRS providers.⁶⁵ Specifically, AT&T contends that the record in this Docket contains insufficient support to demonstrate that the facilities-based service requirements adopted in the *iTRS Certification Order* will reduce waste, fraud, or abuse of the Fund.⁶⁶

24. In the *iTRS Certification Order*, we considered and rejected the same arguments repeated by AT&T in its petition. In its comments filed in response to the *Certification FNPRM*, AT&T claimed that ownership and operation of call centers was not necessary to provide quality VRS service, and that imposing such a requirement would reduce competition among providers.⁶⁷ We were not persuaded by these arguments at that time, and we concluded in the *iTRS Certification Order* that requiring VRS providers to lease, license, or acquire and operate their own facilities and employ their own CAs would better ensure compliance with our rules and reduce fraud.⁶⁸ We see no reason to revisit that conclusion here. Indeed, there is ample evidence in the record of this proceeding that allowing VRS providers that operate without their own facilities to seek reimbursement from the Fund has contributed to the serious fraud that has plagued the VRS program.⁶⁹

25. Moreover, we do not agree with AT&T's assertion that the facilities-based service requirements are unnecessary in light of the TRS reforms that we have undertaken. We think it prudent to address waste, fraud and abuse, as witnessed in the VRS program, using multiple measures, and our broad review of the certification process, culminating in the *iTRS Certification Order*, is one of several important components of combating these unlawful activities.⁷⁰ We also cannot credit AT&T's speculative contention that the facilities-based service requirement could stifle competition and innovation in the provision of VRS.⁷¹ AT&T maintains that the rules requiring the operation of call centers and direct employment of CAs, and prohibiting the subcontracting of these core functions to another certified provider, could cause currently-operating providers to withdraw from the business of providing VRS.⁷² Our goals in reforming the certification rules are to ensure the provision of quality

⁶³ AT&T Petition at 1.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 2.

⁶⁷ AT&T *Certification FNPRM* Comments at 12.

⁶⁸ *iTRS Certification Order*, 26 FCC Rcd at 10905, para. 16.

⁶⁹ *See id.*, citing *VRS Practices R&O* at paras. 54-58.

⁷⁰ *See generally VRS Practices R&O* (adopting rules to detect and prevent fraud and abuse in the provision of VRS); *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry, 25 FCC Rcd 8597 (2010) (initiating a fresh look at the structure of the VRS program, in part to ensure that it is less susceptible to the waste, fraud and abuse that plague the current program).

⁷¹ *See* AT&T Petition at 9-12.

⁷² *See id.*

VRS in compliance with the Commission's rules, and to prevent waste, fraud, and abuse through improved Commission oversight,⁷³ and the facilities-based service requirements is designed to achieve these goals.⁷⁴ We therefore believe that VRS providers with legitimate business models should find greater opportunities to serve consumers once we have eliminated opportunities for arbitrage by providers who prioritize making money over providing quality service. As the Commission noted in the *VRS Practices R&O and Certification FNPRM*, questionable provider call handling practices have threatened the viability of the VRS program.⁷⁵ The reforms that we have adopted in the *iTRS Certification Order* and elsewhere, including the requirement that VRS providers themselves operate call centers and employ their CAs, represent our attempt to ensure that VRS will remain available to all consumers who use this service, through protecting the integrity of the VRS program,⁷⁶ and helping to ensure that compensation from the Fund only goes to providers qualified to provide VRS in compliance with our rules. Accordingly, for all of these reasons, we deny the AT&T Petition.

III. ORDER

26. In this Order, we clarify, *sua sponte*, certain provisions of the *iTRS Certification Order* related to on-site visits to the premises of applicants and certified providers. In the *iTRS Certification Order*, we adopted 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. Specifically, we reserved the right to include, as part of the iTRS certification process, an on-site visit to the applicant's headquarters, offices or call centers, to verify the information provided in the application for certification. We also reserved the right to make subsequent, unannounced on-site visits to iTRS providers' premises once they receive certification, for the purpose of ensuring continued compliance with certification requirements.⁷⁷

27. We did not specify in the rule we adopted regarding on-site visits to applicants' premises whether such visits would occur with prior notice or unannounced.⁷⁸ Consistent with our stated objective of verifying compliance with our rules, we clarify that such visits to both applicants for certification and certified providers may be announced or unannounced,⁷⁹ which will further the goals of verifying the information provided in a certification application, and help us to better assess the ability of the applicant to provide, or performance of certified provider in providing, service in compliance with

⁷³ See *iTRS Certification Order*, 26 FCC Rcd at 10898-99, 10905-06, paras. 1, 15-16.

⁷⁴ See *id.* at 10905, para. 15.

⁷⁵ *VRS Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5551, para. 6.

⁷⁶ See, e.g., *id.* at 5552, para. 8 (rules adopted in the *VRS Practices R&O* designed to "preserve the integrity of the VRS program").

⁷⁷ See *iTRS Certification Order*, 26 FCC Rcd at 10914, para. 36.

⁷⁸ See *id.* at 10937, App. D (codifying on-site visits rule at 47 C.F.R. § 64.606(a)(3)).

⁷⁹ Where the Commission conducts inspections of facilities subject to a Commission authorization in any service, it is general practice to conduct such inspections on an unannounced basis. See, e.g., *Greenwood Acres Baptist Church*, Memorandum Opinion and Order, 22 FCC Rcd 1442, 1444, para. 8 (EB 2007) (no advance notice or appointment is necessary for the Commission to conduct an inspection), citing *Norfolk Southern Railway Company*, Order, 11 FCC Rcd 519 (CIB 1996) (any delay in an inspection can shelter a serious violation). See also *Mark N. Lipp, Esquire and Christopher D. Imlay, Esquire*, Letter, 25 FCC Rcd 2588, 2589 (MB 2010); Enforcement Bureau Fact Sheet: Inspection Authority (Mar. 2005), found at <http://transition.fcc.gov/eb/otherinfo/inspect.html>.

our rules.⁸⁰ In this regard, we will consider on-site visits to be equivalent to requests to examine, verify and audit data received from eligible TRS providers under our rules.⁸¹ For both applicants and certified providers, on-site visits may incorporate the examination of all aspects of iTRS service provision, including, but not limited to, inspection of any documents related to the provision of iTRS, and the monitoring of live iTRS calls. In the case of applicants for certification, we may seek to verify the information contained in the application through an on-site visit, and may further opt, if necessary, to grant certification only conditionally until an on-site visit has been completed.

28. Applicants for certification and certified providers must comply with a request by an authorized representative of the Commission to conduct either announced or unannounced on-site visits. In the case of applicants, the failure to allow complete access to inspect areas of the premises and documents related to the provision of iTRS, and to observe live iTRS calls, at the time of an authorized on-site visit will be cause for application denial. In the case of certified providers subject to an on-site visit to ensure continued compliance with our rules and requirements, such failure will result in the suspension of payments from the Fund until such access to iTRS-related areas, documents and activities is allowed.⁸² In addition, a certified provider's failure to cooperate with an announced or unannounced on-site visit will be deemed a violation of our rules governing provider audits⁸³ and thus, may also lead to a Commission proceeding imposing appropriate sanctions, including the suspension or revocation of the provider's certification or forfeiture proceedings.⁸⁴

⁸⁰ See *iTRS Certification Order*, 26 FCC Rcd at 10914, para. 36. Such visits to iTRS providers may occur during their business hours. For instance, as discussed above, section 64.604(b)(4) of the Commission's rules requires that VRS providers operate 24 hours per day. See ¶ 10, *supra*. Accordingly, inspections of the premises, documents and operations of any iTRS provider operating 24 hours per day may be made at any time of day or night. A nighttime inspection may be very useful, for instance, to the extent we suspect that certain entities plan to rely substantially on subcontracting and other arrangements for their call center functions and/or CA services, during late night hours. See ¶ 31, *infra*.

⁸¹ In the *VRS Practices R&O*, the Commission stated that all TRS providers must submit to audits annually or, if necessary, at any other time deemed appropriate by the Commission, the Fund administrator, or by the Commission's Office of Inspector General, that such audits may, as necessary, include on-site visits, and that failure to fully cooperate in such audits, including failure to provide documentation upon reasonable request, will result in automatic suspension of TRS payments until sufficient documentation is provided. See *VRS Practices R&O*, 26 FCC Rcd at 5584, para. 84 and n.228; 47 C.F.R. § 64.604(c)(5)(iii)(C)(6).

⁸² See *iTRS Certification Order*, 26 FCC Rcd at 10937, App. D (codifying 47 C.F.R. § 64.606(a)(3)) (specifying that "the Commission may conduct one or more on-site visits of the applicant's premises, to which the applicant must consent"). We also expressed our intention to "make subsequent, unannounced on-site visits of iTRS providers once they receive certification for the purpose of ensuring continued compliance with certification requirements." *Id.* at 10914, para. 36.

⁸³ See ¶ 27, *supra*.

⁸⁴ The Commission may conduct audits, including on-site visits, and require a certified VRS providers to submit documentation demonstrating ongoing compliance with the Commission's minimum standards, "at times determined appropriate by the Commission." 47 C.F.R. § 64.604(c)(5)(iii)(C)(6); see *VRS Practices R&O*, 26 FCC Rcd at 5584, para. 84 and n.228. 47 C.F.R. § 64.606(e) provides authority for the Commission to suspend or revoke the certification of a VRS provider if, after notice and opportunity for a hearing, the Commission determines that such certification is no longer warranted. In addition, section 503 of the Communications Act and section 1.80 of the Commission's rules authorizes the Commission to impose monetary forfeitures for failure to comply with the rules or Commission orders. 47 U.S.C. § 503, 47 C.F.R. § 1.80.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

29. In Section II.A.2. of the *MO&O*, above, we clarify that certified VRS providers may roll-over VRS traffic to another eligible provider when unable to handle an unexpected and temporary surge in call traffic due to exigent circumstances. In that discussion, we recognize that the Commission, in the *VRS Practices R&O*, adopted a rule prohibiting an eligible provider from contracting with or otherwise authorizing any third party from providing interpretation services or call center functions on its behalf, unless that party is also eligible for compensation from the Fund.⁸⁵ We also clarify in the *MO&O*, however, that non-certified applicants for certification may not rely on a plan to subcontract with an eligible provider for, or otherwise authorize, the provision of CA services or call center functions on their behalf, to demonstrate their eligibility for certification.⁸⁶ In this *Further Notice*, we propose to modify our rules to provide that a certified provider may subcontract with another certified provider for, or otherwise authorize the provision by another certified provider of, CA services or call center functions only in the event of an unexpected and temporary surge in call traffic due to exigent circumstances, and seek comment on this proposal.

30. In the *VRS Practices R&O*, the Commission amended its rules in order to reduce fraud and establish better oversight of the VRS program, and to address the unauthorized revenue sharing arrangements that have proliferated in the VRS program.⁸⁷ Among the rules that the Commission adopted to effectuate those goals was section 64.604(c)(5)(iii)(N)(1)(iii), adopted to “ensure that an eligible provider is responsible for providing the core components of VRS.”⁸⁸ To that same end, in the accompanying *Certification FNPRM*, the Commission sought comment on a number of proposed modifications to its certification process, to ensure that all iTRS entities seeking certification, including VRS providers, are fully qualified to provide iTRS in compliance with the Commission’s rules.⁸⁹ In the resulting *iTRS Certification Order*, we required 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.⁹⁰ In so acting, we explained that “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.”⁹¹

31. While our intention in the *iTRS Certification Order* was thus to promote qualified, stand-alone providers⁹² operating their own call centers and employing their own CAs, we now recognize that the rule, as adopted in the *VRS Practices R&O*, has resulted in conflicting interpretations among

⁸⁵ See ¶ 9, *supra* (citing 47 C.F.R. § 64.604(c)(5)(iii)(N)(1)(iii)).

⁸⁶ See ¶ 12, *supra*.

⁸⁷ *VRS Practices R&O and Certification FNPRM*, 26 FCC Rcd at 5574, para. 57.

⁸⁸ *Id.* at para. 58.

⁸⁹ *Id.* at 5589, para. 95.

⁹⁰ *iTRS Certification Order*, 26 FCC Rcd at 10905, para. 15.

⁹¹ *iTRS Certification Order*, 26 FCC Rcd at 10905, para. 16 (emphasis added).

⁹² See *id.* at 10906, para. 17 (allowing an eligible provider to lease an ACD platform – one of the core call center functions -- from another eligible provider only on a “stand-alone basis,” and prohibiting revenue sharing as a term of the lease).

currently certified and would-be certified providers. For instance, as discussed above, Sprint was motivated to seek Commission “confirm[ation] of [Sprint’s] understanding” that under the rules adopted in the *iTRS Certification Order*, certified VRS providers will be able to send traffic to other certified VRS providers when they are unable to immediately handle that traffic due to factors outside of their control, and still be able to bill and receive compensation from the Fund for such traffic.⁹³ In addition, AT&T read the *iTRS Certification Order* as “allowing only the facilities-based provision of VRS rather than allowing subcontracting between certified VRS providers for the core functions of VRS, as enunciated in the *VRS Practices R&O*.”⁹⁴ Given these conflicting interpretations, we are increasingly concerned that parties may seek to rely substantially on subcontracting and other arrangements for their own VRS functions once they have become certified by the Commission as eligible providers. We acknowledge that in the *VRS Practices R&O*, we observed that subcontracting of core VRS components to other eligible providers, whose operations are under the direct supervision of the Commission, “pose[s] less risk to the integrity of the [VRS] program.”⁹⁵ Nevertheless, in light of our above-noted concerns, we believe that reliance by providers on subcontracting arrangements may perpetuate the types of revenue sharing schemes that we sought to put an end to in the *VRS Practices R&O*.⁹⁶

32. Therefore, to better ensure that we foster the provision of VRS by qualified, stand-alone providers operating their own call centers and employing their own CAs, we tentatively conclude that we should modify section 64.604(c)(5)(iii)(N)(1)(iii) to allow an eligible VRS provider to contract with or otherwise authorize another eligible provider to provide CA services or call center functions on its behalf *only* when such arrangements are necessitated by an unexpected and temporary surge in call traffic due to exigent circumstances, such as in the event of a natural disaster or other comparable emergency that is outside the provider’s control. In all other circumstances, certified providers must provide the core components of VRS using their owned facilities and their full- or part-time employees. We find this proposed modification to be consistent with our stated VRS program goals.⁹⁷ We further find this proposed modification to be reasonable and in the public interest, as it will facilitate redundancy, and thus reliability, of VRS services.⁹⁸

33. We seek comment on this tentative conclusion. We also seek comment on the specific types of exigent circumstances that would warrant subcontracting or similar arrangements between eligible providers. We seek to ensure that this proposed rule modification does not open a window for the routine transfer of call traffic between eligible VRS providers, for example, in order to avoid violation of our VRS speed of answer rule.⁹⁹ Transfer of call traffic between eligible providers should not routinely occur, but rather should be the rare exception that occurs only in exigent circumstances.

34. In addition, we tentatively conclude that, when a provider seeks to be reimbursed from the Fund for minutes transferred to another eligible VRS provider as a result of exigent circumstances, it should submit such minutes in its monthly submission to the Fund administrator for reimbursement in

⁹³ Sprint Petition at 5. *See id.* at 1; *see also* ¶¶ 8-11, *supra* (addressing Sprint’s requested clarification regarding roll-over VRS traffic).

⁹⁴ AT&T Petition at 3 (citing *VRS Practices R&O*, 26 FCC Rcd at 5574, para. 58).

⁹⁵ *VRS Practices R&O*, 26 FCC Rcd at 5574, para. 158 n.164.

⁹⁶ *See id.* at 5570-75, paras. 47-61.

⁹⁷ *See, e.g., iTRS Certification Order*, 26 FCC Rcd at 10905, paras. 15-16.

⁹⁸ *See* ¶ 11, *supra*.

⁹⁹ *See* 47 C.F.R. § 64.604(b)(4)(i).

the normal course, but must identify any such minutes as having been handled by another provider and identify the other provider. The Fund administrator shall determine whether exigent circumstances exist as part of its normal processes for verifying monthly submissions, and may request additional information regarding the specifics of the exigent circumstances for purposes of determining whether, in fact, exigent circumstances existed and whether reimbursement is warranted. The Fund administrator may withhold reimbursements for minutes where it finds that no exigent circumstances existed, or otherwise finds that the request for reimbursement is not sufficiently substantiated.¹⁰⁰ The Fund administrator shall reimburse the transferring eligible provider for compensable minutes resulting from transferred call traffic. We seek comment on these tentative conclusions. We also seek comment on whether there are any other types of documentation that providers should be required to furnish to the TRS Fund administrator, with their monthly submissions of data to support reimbursement from the Fund, in order to demonstrate that exigent circumstances necessitated the transfer of call traffic, and on the specific information they should be required to provide regarding the minutes handled under such circumstances.

35. Furthermore, we seek comment on how the transferring eligible provider may compensate the transferee for handling such call traffic without violating our rule against VRS revenue-sharing agreements. We tentatively conclude that such compensation may not be based on per-minute revenue sharing,¹⁰¹ and seek comment on this tentative conclusion. We also seek comment on whether, in the event the Fund administrator or the Commission determines that no exigent circumstances existed, the Fund administrator should withhold payment for the transferred traffic, or the Fund administrator should be authorized to directly pay the eligible provider that handled the traffic; and whether, in the latter scenario, directly paying the eligible provider that handled the traffic might provide incentives for eligible providers to engage in unauthorized revenue sharing arrangements.

36. Finally, we seek comment on whether there are any other amendments that we should make to our rules to facilitate the transfer of call traffic between eligible providers in exigent circumstances. Furthermore, we seek comment on whether there are any other limited exemptions we should recognize to our general prohibition on an eligible provider contracting with or otherwise authorizing any third party from providing interpretation services or call center functions on its behalf, in light of our intention to promote qualified, stand-alone providers operating their own call centers and employing their own CAs.¹⁰²

V. PROCEDURAL MATTERS

37. *Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,¹⁰³ interested parties may file comments on or before 30 days after the date of publication of the *Further Notice* in the Federal Register, and reply comments on or before 60 days after the date of publication of the *Further Notice* in the Federal Register. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket number of this proceeding, CG Docket No. 10-51.

¹⁰⁰ See 47 C.F.R. § 64.604(c)(5)(iii)(E).

¹⁰¹ See *VRS Practices R&O*, 26 FCC Rcd at 5570-75, paras. 47-61.

¹⁰² See ¶ 31, *supra*.

¹⁰³ 47 C.F.R. §§ 1.415 and 1.419.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 10-51.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of *before* entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

38. *Paperwork Reduction Act of 1995 Analysis.* This document contains new and modified information collection requirements. The Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 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. As discussed at note 7, *supra*, the Commission received comments on the information collection requirements contained in the *iTRS Certification Order*, under OMB Control No. 3060-1150.¹⁰⁴ By the above *MO&O*, the Commission addresses OMB's and Sorenson's concerns by revising the language in the rules to require that providers that operate five or more domestic call centers only submit copies of proofs of purchase, leases or license agreements for technology and equipment used to support their call center functions for five of their call centers that constitute a representative sample of their centers, rather than requiring copies for all call centers. Further, the Commission clarifies that the rule requiring submission of a list of all sponsorship arrangements relating to iTRS only requires that a certification applicant include on the list associated written agreements, and does not require the applicant to provide copies of all written agreements. We believe that these two rule modifications significantly alleviate the burdens associated with the subject information collections requirements, and address the concerns Sorenson raised in its PRA comments filed with OMB.

39. *Initial Paperwork Reduction Act of 1995.* This *Further Notice* seeks comment on potential new or revised information collection requirements or may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995.¹⁰⁵ In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission will seek specific

¹⁰⁴ Paperwork Reduction Act Comments of Sorenson Communications, Inc. (filed Sept. 6, 2011).

¹⁰⁵ See Pub. L. 104-13, 44 U.S.C. § 3501 *et. seq.*

comment from the public on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”¹⁰⁶

40. *Congressional Review Act.* The Commission will send a copy of this *MO&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁰⁷

41. *Initial Regulatory Flexibility Analysis.* With respect to this *Further Notice*, an Initial Regulatory Flexibility Certification (IRFA) is contained in Appendix A. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in the *Further Notice*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹⁰⁸

42. *Final Regulatory Flexibility Certification.* With respect to this *MO&O*, a Final Regulatory Flexibility Certification (FRFC) is contained in Appendix B. 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 *MO&O*. The Commission will send a copy of the *MO&O*, including the FRFC, to the Chief Counsel for Advocacy of the Small Business Administration.

43. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

¹⁰⁶ See Pub. L. 107-198, 47 U.S.C. § 3506(c)(4).

¹⁰⁷ See 5 U.S.C. § 801(a)(1)(A).

¹⁰⁸ See 5 U.S.C. § 603(a). In addition, the *Further Notice* and IRFC (or summaries thereof) will be published in the *Federal Register*.

¹⁰⁹ See 47 C.F.R. §§ 1.1200 *et seq.*

44. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

VI. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED that, pursuant to the authority contained in 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 1.429 of the Commission's rules, 47 C.F.R. § 1.429, this Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking IS hereby ADOPTED.

46. IT IS FURTHER ORDERED that Sprint's Expedited Petition for Clarification IS GRANTED IN PART and DENIED IN PART, to the extent provided herein.

47. IT IS FURTHER ORDERED that Sorenson's Petition for Reconsideration IS GRANTED, to the extent provided herein.

48. IT IS FURTHER ORDERED that AT&T's Petition for Reconsideration IS DENIED.

49. IT IS FURTHER ORDERED that the Memorandum Opinion and Order shall be effective upon publication of a summary of it in the *Federal Register*.

50. IT IS FURTHER ORDERED that Part 64 of the Commission's rules is amended as set forth in Appendix C.

51. IT IS FURTHER ORDERED that the amendments of Part 64 of the Commission's rules set forth in Appendix C will be effective upon Commission publication in the *Federal Register* of a notice announcing the approval of those amendments by the Office of Management and Budget under the Paperwork Reduction Act of 1995.¹¹⁰

52. IT IS FURTHER ORDERED that the Order shall be effective upon release.

¹¹⁰ See ¶ 21, *supra*.

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

54. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

CG Docket No. 10-51

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments to this *Further Notice*. The Commission will send a copy of this *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

Need for, and Objectives of, the Proposed Rules

2. In this *Further Notice*, the Commission proposes to modify its rules to provide that a certified VRS provider may subcontract with another certified VRS provider for, or otherwise authorize the provision by another certified provider of, CA services or call center functions only in the event of an unexpected and temporary surge in call traffic due to exigent circumstances, and seeks comment on this proposal. The Commission notes that its intention in the *iTRS Certification Order*⁴ was to promote qualified, stand-alone providers operating their own call centers and employing their own CAs, and in so doing to limit the subcontracting of core components of VRS between eligible providers to unusual instances necessitated by exigent circumstances. The Commission now recognizes that the related rule adopted in the *VRS Practices R&O*⁵, which preceded the *iTRS Certification Order*, has resulted in conflicting interpretations among currently certified entities and entities involved in applying for certification. The Commission is increasingly concerned with the apparent plans of numerous entities to rely substantially on subcontracting and other arrangements for their core VRS functions if they become eligible providers. The Commission believes that such reliance will perpetuate the types of revenue sharing schemes that we sought to put an end to in the *VRS Practices R&O*.⁶

3. Therefore, to better ensure the provision of VRS by qualified, stand-alone providers operating their own call centers and employing their own CAs, the Commission tentatively concludes that it should modify section 64.604(c)(5)(iii)(N)(1)(iii) to allow an eligible VRS provider to contract with or otherwise authorize another eligible provider to provide CA services or call center functions on its behalf only when necessitated by an unexpected and temporary surge in call traffic due to exigent circumstances, such as in

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

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ 26 FCC Rcd 10898.

⁵ 26 FCC Rcd 5545.

⁶ See *id.* at 5570-75, paras. 47-61.

the event of a natural disaster or other comparable emergency that is outside the provider's control. In all other circumstances, certified providers must provide the core components of VRS using their owned facilities and their full- or part-time employees. The Commission finds this proposed modification to be consistent with its stated VRS program goals, and finds this proposed modification to be reasonable and in the public interest, as it will facilitate redundancy, and thus reliability, of VRS services.

Legal Basis

4. The legal basis for any action that may be taken pursuant to the Further Notice is contained in 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 1.429 of the Commission's rules, 47 C.F.R. § 1.429.

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

5. *Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."⁷

6. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.⁸ Census data for 2007 shows 3,188 firms in this category.⁹ Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms within the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the wired telecommunications carriers are small.¹⁰

7. *All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category "All Other Telecommunications (NAICS Code 517919)" comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite

⁷ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/econ/industry/def/d517110.htm>.

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

⁹ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁰ *Id.*

systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”¹¹

8. In this category, the SBA deems a provider of “all other telecommunications” services to be small if it has \$25 million or less in average annual receipts.¹² For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year.¹³ Of those 2,383 firms, 2,346 (approximately 98%) had \$25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers in this category are small.

9. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.¹⁴ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”¹⁵ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.¹⁶ For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.¹⁷ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (“PCS”), and Specialized Mobile Radio (“SMR”) Telephony services.¹⁸ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.¹⁹ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

10. The Commission notes that under the standards listed above some current VRS providers and potential future VRS providers would be considered small businesses. There are currently ten eligible VRS

¹¹ U.S. Census Bureau, 2007 NAICS Definitions, 517919 All Other Telecommunications, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

¹² 13 C.F.R. § 121.201, NAICS Code 517919.

¹³ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.

¹⁴ U.S. Census Bureau, 2007 NAICS Definitions, 517210 Wireless Telecommunications Carriers (Except Satellite), <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

¹⁵ U.S. Census Bureau, 2002 NAICS Definitions, 517211 Paging, <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁶ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

¹⁷ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁸ See *Trends in Telephone Service*, at tbl. 5.3.

¹⁹ *Id.*

providers, five of which may be considered small businesses. In addition, there are several pending applications from entities seeking to become certified to provide VRS that may be considered small businesses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. There are no new record keeping or reporting requirements proposed in this *Further Notice*.

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

12. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²⁰

13. In order to minimize the adverse economic impact on small entities, the Commission seeks comment on the alternative types of exigent circumstances that would warrant subcontracting or similar arrangements between eligible providers. The Commission’s goal, in order to prevent small entities from sustaining unwarranted and unjustifiable costs, is to ensure that this proposed rule modification does not open a window for the routine transfer of call traffic between eligible VRS providers, for example, in order to avoid violation of our VRS speed of answer rule.

14. Also, in order to minimize the adverse economic impact on small entities, the Commission seeks comment on various ways to implement and compensate for the proposed rule modification. Specifically, the Commission seeks comment on three alternatives: (1) whether, in the event the Fund administrator or the Commission determines that no exigent circumstances existed, the Fund administrator should withhold payment for the transferred traffic; or (2) the Commission should directly pay the eligible provider that handled the traffic; and (3) whether, in the latter scenario, directly paying the eligible provider that handled the traffic might provide incentives for eligible providers to engage in unauthorized revenue sharing arrangements.

15. In conclusion, the Commission seeks comment on the alternatives discussed above for such transfer of traffic. The Commission also seeks comment on whether any specific reimbursement policy would minimize the adverse impact on a substantial number of small entities if any small entities would in fact be impacted by this rule modification.

Federal Rules that May Duplicate, Overlap, or Conflict with Proposed Rules

16. None.

²⁰ 5 U.S.C. § 603(c)(1)-(4).

APPENDIX B

Final Regulatory Flexibility Certification

CG Docket No. 10-51

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 “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 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).⁵

2. In this *MO&O*, in response to a VRS provider’s petition, the Commission amends its rules to modify the documentation requirements for eligible iTRS providers for proofs of purchase, leases, or license agreements for technology and equipment used to support call center functions, to apply only to the technologies and equipment for a representative sampling of five of a provider’s domestic call centers, where the provider has more than five such centers. In addition, the Commission amends its rules to clarify that applicants need only to submit a list of all sponsorship arrangements, and to include on that list any associated written agreements relating to iTRS – applicants need not furnish the actual copies of the arrangements and associated agreements. The Commission will revise section 64.606(a)(2)(ii)(E) of its rules accordingly.⁶

3. These amendments result in a significant reduction in costs and other burdens on any iTRS provider, large or small, to comply with section 64.606(a)(2)(ii)(E) to be significantly lessened. Thus, the discussion of whether there is a significant economic impact on a substantial number of small entities is moot.

4. Therefore, the Commission certifies that the requirements of this *MO&O* will not have a significant adverse economic impact on a substantial number of small entities, because there will be no adverse impact on any entities, large or small.

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 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.”

⁵ Small Business Act, § 15 U.S.C. S 632.

⁶ See App. C, *infra*.

5. The Commission will send a copy of the *MO&O*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.⁷ In addition, the *MO&O* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.⁸

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

⁷ See 5 U.S.C. § 801(a)(1)(A).

⁸ See 5 U.S.C. § 605(b).

APPENDIX C**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. 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 64.606 is amended by revising paragraphs (a)(2)(ii)(A)(4),(5) and (a)(2)(ii)(E); and by adding paragraphs (a)(2)(ii)(A)(6)-(8) to read as follows:

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

(a)***

(2)***

(ii)***

(A)***

(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 function of each call center for which the applicant must provide a copy of technology and equipment proofs of purchase, leases or license agreements in accordance with paragraphs (a)(2)(ii)(A)(5)-(7) of this section, a statement whether such technology and equipment is owned, leased or licensed (and from whom if leased or licensed);

(5) Operating five or fewer call centers within the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions for each call center operated by the applicant within the United States;

(6) Operating more than five call centers within the United States, a copy of each proof of purchase, lease or license agreement for technology and equipment used to support their call center functions 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; a copy of each proof of purchase,

lease or license agreement for technology and equipment used to support their call center functions for all call centers operated by the applicant within the United States must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request;

(7) Operating call centers outside of the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions for each call center operated by the applicant outside of the United States; and

(8) A complete copy of each lease or license agreement for automatic call distribution.

(E) For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including on that list a description of any associated written agreements; copies of all such arrangements and agreements must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request;

APPENDIX D**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. 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. Revise § 64.604(c)(5)(iii)(N)(I)(iii) to read as follows:

(c)***

(5)***

(iii)***

(N)***

(I)***

(iii) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless necessitated by an unexpected and temporary surge in call traffic due to exigent circumstances and the authorized third party also is an eligible provider. Exigent circumstances shall be deemed to include a natural disaster or other comparable emergency that is not reasonably foreseeable and is outside the provider's control, but shall not include events that in the ordinary course of business could reasonably have been anticipated, such as a surge in traffic occurring during a holiday period. When a provider seeks to be reimbursed from the Fund for minutes transferred to another eligible VRS provider as a result of exigent circumstances, it should submit such minutes in its monthly submission to the Fund administrator for reimbursement in the normal course, but must identify any such minutes as having been handled by another provider and identify the other provider. The Fund administrator shall determine whether exigent circumstances exist as part of its normal processes for verifying monthly submissions, and may request additional information regarding the specifics of the exigent circumstances for purposes of determining whether, in fact, exigent circumstances existed and whether reimbursement is warranted. The Fund administrator may withhold reimbursements for minutes where it finds that no exigent circumstances existed, or otherwise finds that

the request for reimbursement is not sufficiently substantiated. The Fund administrator shall reimburse the transferring eligible provider for compensable minutes resulting from transferred call traffic, and the transferring eligible provider may compensate the transferee for handling such call traffic so long as such compensation is not on a per-minute basis.