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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Petition for Rulemaking of Sprint Corporation	)	RM-11820
	)	

NOTICE OF PROPOSED RULEMAKING

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Comment Date: [30 Days after Date of Publication in the Federal Register]
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By the Commission: Acting Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we propose to modify the methodology for setting compensation for Internet Protocol Relay Service (IP Relay), a form of Telecommunications Relay Service (TRS).

II. BACKGROUND

2. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Federal Communications Commission (Commission) to ensure the availability of relay services to eligible individuals that are functionally equivalent to voice communication services used by persons without hearing and speech disabilities "to the extent possible and in the most efficient manner."[1] IP Relay, authorized by the Commission in 2002, is the Internet-based successor to the original form of TRS, which requires the use of a text telephone (TTY), a device designed for use with legacy circuit-switched networks.[2] With IP Relay, an individual with a hearing or speech disability can communicate with voice telephone users by transmitting text via the Internet.[3] The text transmission is delivered to an IP Relay call center, where a communications assistant (CA) converts the user's text to speech for the hearing party and converts that party's speech to text for the IP Relay user.[4]

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[1] 47 U.S.C. § 225(a)(3), (b)(1).

[2] *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (2002) (*IP Relay Declaratory Ruling*).

[3] *See* 47 CFR § 64.601(a)(23) (definition of IP Relay).

[4] *See IP Relay Declaratory Ruling*, 17 FCC Rcd at 7780-81, paras. 3-4.

3. IP Relay is supported by the TRS Fund in accordance with a methodology approved by the Commission.[5] The current methodology for determining IP Relay provider compensation was adopted in 2007, when the Commission revised the compensation rules for all relay services supported by the TRS Fund.[6] Prior to 2007, per-minute support levels for each form of Internet-based TRS, as well as for interstate calls using relay services offered through state programs, were set annually based on computations of weighted-average "reasonable costs" of the companies providing the services.[7] In 2007, the Commission adopted a revised, price-cap-like methodology for IP Relay. Under this methodology, a base level of per-minute compensation is approved based on the weighted average of providers' reasonable costs and remains effective for a three-year period.[8] In addition, an adjustment factor is set to be applied to the base amount to determine per-minute compensation for the second and third years. The adjustment factor reflects an increase due to inflation, offset by a decrease due to cost efficiencies.[9] The base compensation amount also is subject to upward adjustment to account for exogenous costs, i.e., those costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment.[10] At the end of each three-year period, the base compensation level is reset based on average provider costs.[11] The first three-year period under this methodology began July 1, 2007. The current compensation period runs from July 1, 2019, to June 30, 2022.

4. Since 2007, the Commission has reevaluated the compensation methodologies applicable to video relay service (VRS) and Internet Protocol Captioned Telephone Service (IP CTS)—the other two authorized forms of Internet-based TRS.[12] In adopting a revised compensation approach for these

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[5] *See* 47 CFR § 64.604(c)(5)(ii), (iii)(E). Before the Commission authorized Internet-based relay services, intrastate TRS was funded through state programs, and only interstate and international TRS calls were supported by the TRS Fund. To speed the development of the service, the Commission decided that both interstate and intrastate IP Relay would be supported entirely by the TRS Fund. *See IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786, para. 20; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 13-28, Notice of Proposed Rulemaking, 35 FCC Rcd 13370 (2020) (proposing to continue supporting all IP Relay calls through the Interstate TRS Fund and to expand the contribution base to include intrastate providers).

[6] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007) (*2007 TRS Compensation Methodology Order*).

[7] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12490-495, paras. 25-36 (2004) (*2004 TRS Compensation Order*).

[8] *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20162-63, paras. 42-45. The TRS Fund administrator, Rolka Loube Associates LLC, recommends a base amount based on relevant cost and demand data, which are reported annually by TRS providers. 47 CFR § 64.604(c)(5)(iii)(D)(*1*), (E)(*1*).

[9] *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20163, para. 43. The current inflation factor is the Gross Domestic Product – Price Index (GDP-PI). *Id*.

[10] *See id*. at 20160, para. 44.

[11] *See id.* at 20164, para. 45; *id*. at 20164-65, para. 46 n.141 (noting that IP Relay providers will continue to file annual cost and demand data, and that the Commission will "need this information to evaluate the new base rate every three years").

[12] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8692-706, paras. 181-216 (2013) (*2013 VRS Reform Order*); *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Order, 32 FCC Rcd 5891 (2017) (*2017 VRS Compensation Order*); *Misuse of Internet Protocol (IP) Captioned*

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services, among other things, the Commission adopted a cost-based approach for determining compensation,[13] addressed the criteria for determining reasonable costs for each service,[14] and permitted recovery of an operating margin (a designated percentage of annual provider expenses) in lieu of return on investment in physical plant.[15] However, the Commission has not yet revisited the methodology for IP Relay compensation.[16]

5. Since 2007, there have been substantial changes in the circumstances relevant to TRS Fund support of IP Relay. Demand for IP Relay peaked in 2006 at 82.1 million minutes, declining to 52.8 million minutes by 2010.[17] However, much of this demand reflected misuse of the service on a large scale, by callers who posed as eligible users and were not effectively screened by service providers.[18] In 2013 and 2014, after the Commission commenced investigations of several providers' user registration practices,[19] four of the five IP Relay providers exited the market,[20] and IP Relay demand declined precipitously.[21] After November 2014, Sprint Corporation (now T-Mobile) was the sole provider of IP

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Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5807-23, paras. 15-37 (2018) (*2018 IP CTS Compensation Order*); *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10870-92, paras. 10-53 (2020) (*2020 IP CTS Compensation Order*).

13 *2018 IP CTS Compensation Order,* 33 FCC Rcd at 5807-19, paras. 15-32; *2020 IP CTS Compensation Order,* 35 FCC Rcd at 10870-73, paras. 10-17.

14 *2013 VRS Reform Order,* 28 FCC Rcd at 8696-97, paras. 192-94; *2017 VRS Compensation Order,* 32 FCC Rcd at 5895-903, paras. 10-22; *2018 IP CTS Compensation Order,* 33 FCC Rcd at 5819-22, paras. 33-35; *2020 IP CTS Compensation Order,* 35 FCC Rcd at 10873-80, paras. 18-28; *see generally* 47 CFR § 64.604(c)(5)(iii)(E)(*1*) (payment formulas shall be designed to compensate TRS providers for reasonable costs of providing service).

15 *2017 VRS Compensation Order,* 32 FCC Rcd at 5903-05, paras. 23-26; *2018 IP CTS Compensation Order,* 33 FCC Rcd at 5813-14, para. 23; *2020 IP CTS Compensation Order,* 35 FCC Rcd at 10880-81, paras. 28-29.

16 In 2013, in a rulemaking focused primarily on VRS, the Commission prohibited TRS Fund support of outreach expenses incurred by IP Relay providers as well as VRS providers. *2013 VRS Reform Order,* 28 FCC Rcd at 8696, para. 192.

17 National Exchange Carrier Association, Interstate Telecommunications Relay Service Fund: Payment Formula and Fund Size Estimate, CC Docket No. 03-123, Exh. 3-3 (filed Apr. 29, 2011), https://ecfsapi.fcc.gov/file/7021341474.pdf.

18 *See generally Misuse of Internet Protocol (IP) Relay Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 12-38 and 03-123, First Report and Order, 27 FCC Rcd 7866, 7867-69, paras. 2-6 (2012) (describing steps taken to combat fraud in the IP Relay service).

19 *See AT&T Inc.*, File No.: EB-TCD-12-00000337, Order, 28 FCC Rcd 5994 (EB 2013) (adopting consent decree settling investigation of TRS user registration practices for $18.25 million); *Sorenson Communications, Inc.*, File No.: EB-TCD-12-00000370, Order, 28 FCC Rcd 7841 (EB 2013) (adopting consent decree settling investigation of TRS user registration practices for $15.75 million); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892 (2015) (imposing $11.9 million fine on Purple for wrongfully billing TRS Fund by failing to submit accurate call data and failing to use reasonable user registration practices).

20 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 29 FCC Rcd 16273, 16274, para. 3 (CGB 2014) (*2014 IP Relay Compensation Adjustment Order*).

21 *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-

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Relay service,[22] and demand stabilized at slightly less than 6 million minutes annually.[23] In 2020, with the onset of the COVID-19 pandemic, IP Relay demand increased somewhat, and for Fund Year 2021-22, the TRS Fund administrator projects approximately 6.7 million minutes of IP Relay usage.[24]

6. In response to these developments, the Consumer and Governmental Affairs Bureau (CGB or Bureau) has taken a number of steps to ensure that TRS Fund support for IP Relay was sufficient to sustain the service and allow the remaining provider to ascertain and meet the needs of consumers relying on it for functionally equivalent telephone service. For example, in December 2014, recognizing that the consequences of a complete cessation of IP Relay service would be severe for such consumers, the Bureau determined that the possible departure of the sole remaining service provider presented "special circumstances" justifying a partial waiver of the compensation methodology and a mid-year, mid-cycle modification of the IP Relay compensation level.[25] The Bureau increased per-minute compensation from $1.0607 to $1.37 per minute for monthly minutes up to 300,000. In addition, to support T-Mobile's effort to ramp up its capacity to serve the expected influx of new customers migrating from departing providers, the Bureau approved a temporary compensation level of $1.67 per minute for monthly minutes in excess of 300,000.[26]

7. In 2016, at the beginning of the next three-year compensation period, the Bureau partially waived the Commission rule prohibiting TRS Fund support of IP Relay provider-directed outreach activities to allow T-Mobile to effectively educate deafblind consumers about its service and solicit feedback on how to improve it.[27] The Bureau renewed this waiver in subsequent years.[28]

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123, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 691, 697-98, para. 15 n.43 (2019) (explaining that, after four of the five IP Relay providers exited the market in 2013-14, demand for IP Relay service declined by 75%, suggesting that a very high percentage of previously registered IP Relay users may have been ineligible for the service).

[22] On April 1, 2020, Sprint Corporation became a wholly owned subsidiary of T-Mobile USA, Inc., and its name was changed to Sprint Communications Company, L.P. *See* Letter from Scott R. Freiermuth, Sprint, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 1, 2020). In this item, we will refer to the IP Relay provider as T-Mobile. T-Mobile offers Internet connection to its IP Relay call center through its website and on a mobile application available for Android and iOS devices. *See T-Mobile Accessibility*, https://www.sprintrelay.com/sprintiprelay (last visited July 12, 2021). The T-Mobile IP Relay application also supports the most commonly used braille displays for persons who are deafblind.

[23] Rolka Loube Associates, LLC, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate Supplemental Filing, CG Docket Nos. 03-123 and 10-51, Exh. 2 (filed May 1, 2015) (projecting approximately 6 million IP Relay minutes for Fund Year 2015-16).

[24] *See* Rolka Loube Associates, LLC, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, 7-8 & Exh. 2 (filed May 1, 2020), https://ecfsapi.fcc.gov/file/105013048227177/2020%20Annual%20TRS%20Fund%20Report.pdf (2020 TRS Report) (projecting 7 million minutes for Fund Year 2020-2021, to reflect increased IP Relay usage during the COVID-19 pandemic); Rolka Loube Associates, LLC, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 2 (filed May 3, 2021), https://ecfsapi.fcc.gov/file/10503519213438/2021%20TRS%20Fund%20Annual%20Report.pdf (2021 TRS Report) (projecting 6.7 million minutes for Fund Year 2021-22).

[25] *2014 IP Relay Compensation Adjustment Order*, 29 FCC Rcd at 16276-77, para. 9.

[26] *Id.* at 16277-78, para. 12.

[27] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03-123 and 10-51, Order, 31 FCC Rcd 7246, 7251-52, para. 19 (CGB 2016) (*2016 TRS Compensation Order*) (granting waiver to allow compensation for deafblind outreach).

8. In 2019, at the beginning of the current three-year compensation cycle, the Bureau approved some additional changes in IP Relay compensation. To harmonize IP Relay compensation with recent Commission decisions on compensation methodology for other services, the Bureau allowed recovery of an operating margin, determined as a percentage of annual expenses, in lieu of the rate of return on capital investment previously allowed.[29] In addition, in renewing the previously granted waiver permitting provider recovery of expenses for outreach to the deafblind community, the Bureau found good cause to expand the scope of that waiver to include outreach to other potential users of this relatively lightly used service.[30] As a result of these and other adjustments, per-minute compensation for IP Relay is currently $1.7149 per-minute.[31]

9. In November 2018, Sprint (now T-Mobile) filed a petition for rulemaking requesting a new compensation methodology.[32] Concurring with the Bureau's prior finding that "certain categories of consumers currently rely upon IP Relay service as their sole or primary means of communicating by telephone,"[33] the company urged the Commission to "initiate a rulemaking proceeding to adopt a new approach to setting the rates for IP Relay services that will ensure the long-term viability and availability of IP Relay."[34] The company contended that "the current compensation methodology . . . fails to account for all of the costs that Sprint reasonably incurs in providing IP Relay service."[35] The company proposed that the Commission adopt a new approach based substantially on the Multi-State Average Rate Structure

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[28] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, 32 FCC Rcd 5142, 5145-46, paras. 11-13 (CGB 2017); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 33 FCC Rcd 6300, 6303-304, paras. 8-11 (CGB 2018) (*2018 TRS Compensation Order*).

[29] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Services Program,* CG Docket No. 03-123 and 10-51, Order, 34 FCC Rcd 5171, 5176, paras. 11-12 (CGB 2019) (*2019 TRS Compensation Order*). For similar reasons, the Bureau applied to IP Relay the Commission's practice of determining VRS and IP CTS compensation based on a mix of projected and historical costs, rather than only projected costs. *Id.* at 5177, para. 14.

[30] *2019 TRS Compensation Order*, 34 FCC Rcd at 5179-80, paras. 17-18. The Bureau renewed the expanded-scope outreach waiver in 2020 and 2021. *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*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 6649, 6654-55, paras. 12-14 (CGB 2020) (*2020 TRS Compensation Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 21-779, paras. 10-14 (2021) (*2021 TRS Compensation Order*).

[31] *2021 TRS Compensation Order*, paras. 7-9.

[32] Petition of Sprint Corporation for Rulemaking to Reform the Commission's Ratemaking Methodology for IP Relay Service (filed Nov. 1, 2018), https://ecfsapi.fcc.gov/file/1101203244827/Sprint%20IP%20Relay%20Rate%20Petition%20-%20REDACTED%20%5BAS%20FILED%5D%20-%2011.1.2018.pdf (T-Mobile 2018 RM Petition). T-Mobile redacted portions of the petition for which it requests confidential treatment. Access to the redacted material is governed by the *Third Protective Order* in this proceeding. *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*; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 03-123, 10-51, and 13-24, Order and Third Protective Order, 33 RCC Rcd 6802 (CGB 2018) (*Third Protective Order*).

[33] *2014 IP Relay Compensation Adjustment Order*, 29 FCC Rcd at 16276, para. 7, quoted in T-Mobile 2018 RM Petition at 1.

[34] T-Mobile 2018 RM Petition at 1.

[35] *Id.* at 1-2.

(MARS) compensation plan for TTY-based TRS offered through state TRS programs.[36] The Bureau placed the petition on public notice and invited comments.[37] In reply comments on the petition, the Consumer Groups and Accessibility Researchers emphasized that, regardless of the specific compensation methodology, "TRS users must have a wide selection of choices regarding equipment and software interfaces as well as hardware options, TRS program services and methods of making or receiving relay calls."[38]

III. NOTICE OF PROPOSED RULEMAKING

10. In light of the dramatic changes affecting this service over the last decade, it is appropriate to revisit how we determine TRS Fund support for IP Relay. The current methodology relies on periodic determinations of the "reasonable costs" of providing the service.[39] The TRS Fund administrator, Rolka Loube Associates LLC, recommends a "base" amount based on "reasonable" provider costs, which are determined based on annual provider reporting of historical and projected costs and demand, in accordance with applicable accounting rules.[40] For the purpose of determining "reasonable costs," the Commission has adopted a number of criteria defining whether various categories of costs are "allowable."[41]

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[36] *Id.* at 5-7. Under the MARS methodology, adopted in the *2007 TRS Compensation Methodology Order*, per-minute compensation for interstate calls using TTY-based TRS is determined by averaging the per-minute compensation paid by state TRS programs for intrastate calls using that service. *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20151-61, paras. 16-38.

[37] *See Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Rulemaking by Sprint Corporation to Establish a New Ratemaking Methodology for IP Relay Service*, CG Docket No. 03-123 and RM-11820, Public Notice, 33 FCC Rcd 11076 (CGB 2018). Comments were filed by T-Meeting Global AB. See Letter from Paul Buckrell, T-Meeting, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 and RM-11820 (filed Nov. 19, 2018) (T-Meeting RM Comments). A group of consumer groups and accessibility researchers filed reply comments. *See* Reply Comments of Consumer Groups and RERC, Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, Cerebral Palsy and Deaf Organization, American Association of the DeafBlind, Universal Interface & Information Technology Access-RERC, CG Docket No. 03-123 and RM-11820 (filed Dec. 21, 2018) (Consumer Groups RM Reply).

[38] Consumer Groups RM Reply at 2 (citing Consumer Groups' TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act at 2 (Apr. 12, 2011), https://ecfsapi.fcc.gov/file/7021748016.pdf).

[39] 47 CFR § 64.604(c)(5)(iii)(E)(*1*) (payment formulas shall be designed to compensate TRS providers for reasonable costs of providing service). The Commission has long recognized that, in general, relay service costs "cannot be passed on to consumers of TRS, since doing so would result in TRS users paying rates greater than those for similar voice telephone calls," contrary to section 225. *2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20144, para. 3, citing 47 U.S.C. § 225(d)(1)(D). Therefore, the Commission's longstanding policy is to compensate TRS providers for "reasonable costs," i.e., "those direct and indirect costs necessary to provide the service consistent with all applicable regulations governing the provision of the service, *i.e.,* the TRS mandatory minimum standards." *2004 TRS Compensation Order*, 19 FCC Rcd at 12543-44, para. 181.

[40] *See 2007 TRS Compensation Methodology Order,* 22 FCC Rcd at 20163, para. 45; *id*. at 20163-64, para. 46 n.141 (noting that IP Relay providers will continue to file annual cost and demand data, and that the Commission will "need this information to evaluate the new base rate every three years"); *see also* 47 CFR § 64.604(c)(5)(iii)(D)(*1*), (E)(*1*); *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300, 5305, para. 30 (1993) (requiring TRS providers to provide true and adequate data including total TRS investment in general accordance with Part 32 and the TRS Fund administrator to "fashion a form that is consistent with Parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers who would otherwise not be subject to part 32 of the rules").

[41] *See, e.g.*, *2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20175-77, paras. 73-82.

11. The resulting per-minute compensation level is effective for a three-year period, subject to annual adjustments for inflation and efficiency, in accordance with preset factors, as well as ad hoc adjustment in the event that a provider incurs eligible "exogenous" costs.[42] After three years, a new reasonable-cost-based compensation level is determined for the next period. In recent years, however, CGB has found it necessary to waive certain aspects of the compensation methodology to ensure sufficient TRS Fund support to sustain the service.[43]

12. We propose to amend the compensation rules for IP Relay to take account of the changed environment in which this service is provided and to avoid providers routinely seeking ad hoc compensation adjustments in the future. We believe we should continue the practice of periodically re-setting the compensation level based on determinations of reasonable provider cost. As the Commission explained last year when setting compensation for IP CTS, over a long period "the Commission has developed a consistent approach to determining the reasonable costs of providing TRS, which can be applied without imposing undue administrative burdens on either providers or the Commission."[44] Further, "[a]lthough any ratemaking method is subject to imprecision, provider cost data, which is subject to audit, has been reasonably reliable and consistent," and "the Commission's determinations regarding allowability of costs are solidly reasoned and have been upheld on judicial review."[45] We seek comment on whether these general observations continue to hold true for IP Relay.

13. We also propose to continue setting the compensation level for a multi-year period, subject to annual adjustment based on predetermined factors. However, we propose a number of changes in how reasonable costs are determined, and we seek comment on whether to change the specific duration of the compensation period (i.e., how often the base compensation level is redetermined) and on the appropriate criteria for annual adjustment of the compensation level, as well as other aspects of the methodology. More generally, we seek comment on which specific aspects of the cost-based approach have been problematic in the IP Relay context and how they could be improved. We also seek additional comment on the MARS-based alternative proposed in T-Mobile's petition for rulemaking, and we invite commenters to suggest additional alternative compensation methodologies.

A. Benefits of IP Relay

14. As an initial matter, we seek updated information on the circumstances in which IP Relay is used and who primarily uses the service. Since 2007, when the Commission established the current compensation scheme, demand for IP Relay has declined more than 90%, and all but one provider has terminated service. Although it is apparent that much of the prior high level of demand for this service represented misuse by ineligible users, the Bureau has more recently found that "certain categories of consumers currently rely upon IP Relay service as their sole or primary means of communicating by telephone."[46] As explained in T-Mobile's 2018 petition for rulemaking, "IP Relay frequently is used by those who lose hearing later in life" because it "does not require the user to know American Sign Language ('ASL'), a feature that makes the service especially useful for those with hearing loss who lack the ASL skills to use [VRS]."[47] T-Mobile adds that IP Relay "is uniquely beneficial to DeafBlind users" because it "does not require the ability to see an interpreter on a screen, and the service can be enhanced with adaptive technologies such as Braille or screen readers."[48]

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[42] *Id.* at 20162-63, paras. 42-45.

[43] *Cf*. T-Mobile 2018 RM Petition at 4, n.8 ("Sprint has continued providing service pursuant to a series of temporary rates based on multiple assurances that the Commission would restructure the IP Relay compensation structure to be sustainable over the longer term").

[44] *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10871-72, para. 14.

[45] *Id.*

[46] *2018 TRS Compensation Order*, 33 FCC Rcd at 6303, para. 10.

[47] T-Mobile 2018 RM Petition at 2.

15. We seek more granular information on which segments of the TRS-eligible population primarily use and benefit from this service. For example, how many deafblind individuals use IP Relay and how many minutes of use do they represent? We seek comment on the best way to determine or estimate these numbers. What features of IP Relay are critical for this customer segment? What proportion of IP Relay users represent people who became deaf or hard of hearing early in life, and are unable to use VRS because they do not know ASL? To what extent is IP Relay used to make 911 calls, and what advantages does it offer in this regard?[49] Conversely, to what extent do other forms of TRS (or other communications services, such as real-time text) provide an effective substitute to IP Relay for individuals who might otherwise rely on the service as their sole or primary means of telephone communication? For example, to what extent do people who lose hearing later in life find IP Relay beneficial, despite the availability of other options, such as IP CTS? Would a person with close to 100% hearing loss find IP Relay preferable to IP CTS? Would such a preference depend on how much an individual's speech is affected, or other factors? We also seek comment on whether there has been enough outreach and education to the deafblind community by the Commission and TRS providers and whether more is needed. Would increased outreach and education to the deafblind community regarding the availability and merits of each type of TRS increase legitimate demand for IP Relay?

B. Allowable Expenses

16. Over the years, the Commission has made a number of determinations, both for TRS generally and for specific relay services, as to whether various categories of costs are allowable for recovery from the TRS Fund as reasonable costs of providing TRS.[50] To ensure that providers have a fair opportunity to recover all reasonable costs of providing IP Relay service, we seek comment on possible amendments to our allowable cost rules.

17. *Outreach.* We propose to rescind the current prohibition on outreach recovery by IP Relay providers. The Commission adopted this policy in 2013, prohibiting TRS Fund support of provider outreach for both VRS and IP Relay, based on a finding that most provider-directed "outreach" campaigns "focus primarily on efforts to win back TRS users from competitors."[51] Concluding that such activity is "ineffective as a means to effectively educate the public about the purpose and functions of TRS,"[52] the Commission mandated that all TRS Fund-supported outreach for VRS and IP Relay be conducted through a Commission-supervised program.[53] By contrast, in a more recent decision on compensation for IP CTS providers, the Commission did *not* "find it necessary to prohibit or cap TRS Fund recovery of IP CTS outreach costs at this time," noting that "provider outreach for IP CTS likely serves a reasonable purpose, by educating potential IP CTS users and their families about the nature of the service."[54] The Commission further noted that the kind of outreach that the Commission previously found was better conducted through a national contractor is intended to raise public awareness about how TRS works and why members of the public should accept TRS calls, rather than to educate eligible TRS users.[55]

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[48] *Id.*

[49] *See id.*, quoting Letter from Andrew S. Phillips, National Association of the Deaf, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 12-38 and 03-123, at 1 (filed Aug. 23, 2012).

[50] *See, e.g.*, *2017 VRS Compensation Order*, 32 FCC Rcd at 5895-5903, paras. 10-22 (discussing allowability of certain categories of costs and prior Commission decisions on those cost categories).

[51] *2013 VRS Reform Order*, 28 FCC Rcd at 8634-35, para. 31.

[52] *Id*.

[53] *Id.* at 8634-39, 8696, paras. 31-39, 192.

[54] *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10875, para. 21.

[55] *Id.*

18. Further, after most TRS providers exited the IP Relay business and misuse of IP Relay had been curtailed, CGB found good cause to waive the ban on IP Relay outreach cost recovery for the remaining IP Relay provider, increasing T-Mobile's per-minute compensation to allow cost recovery initially for outreach to the deafblind community, and subsequently for outreach to other existing and potential users of IP Relay.[56] As discussed below, we believe that the considerations underlying the Bureau's waiver determinations support amending our rules to permit TRS Fund support of outreach and education by IP Relay providers. We seek comment on this proposal, its costs and benefits, and the underlying rationale stated below.

19. First, CGB has found that in the absence of competition, providing economic incentive for outreach and education by the sole service provider may be critical to effectively educate consumers—including consumers who are deafblind and others—regarding the availability of and improvements to the service.[57] We invite specific comment on the extent to which outreach for this purpose continues to be needed and the resulting benefits.

20. Second, with only one IP Relay provider, we believe that provider outreach expenditures in this context are more likely to be focused appropriately on educating existing and potential IP Relay users about the service rather than on encouraging or preventing "churn" among existing customers, would therefore would be more effective for their intended purpose than when the outreach ban was adopted, and would not likely duplicate other outreach efforts.[58] Finally, a review of the outreach reports submitted in response to the resumption of compensated outreach activity has not shown that they are misdirected toward ineligible users. Therefore, we do not believe such efforts would contribute to a recurrence of the kind of misuse of IP Relay that occurred prior to 2015. We seek comment on these assumptions.

21. We also seek comment on whether to limit allowable outreach expenses to a specified percentage or amount, and, if so, what percentage or amount should be allowed. How should we measure the effectiveness of outreach efforts—based on the number of new users or on some other basis? Should we continue to require the filing of regular reports to ensure that outreach expenses are beneficial and effectively educating consumers about IP Relay service, and if so, on what schedule?[59] And should we continue to require separate reporting of general and deafblind outreach activities and the associated costs?

22. *Indirect Overhead.* We also seek comment on whether to modify, with respect to IP Relay, the Commission's rule allowing recovery for only those overhead costs directly related to and directly supporting the provision of relay service. In adopting this rule in 2007, the Commission concluded that, when a company provides both TRS and non-TRS services, general overhead costs—i.e., "'those indirect costs that are neither cost-causative nor definable'"—should not be supported by the TRS

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[56] *See 2019 TRS Compensation Order*, 34 FCC Rcd at 5179-80, paras. 17-19; *2020 TRS Compensation Order*, 35 FCC Rcd at 6654-55, paras. 12-14.

[57] *See 2016 TRS Compensation Order*, 31 FCC Rcd at 7250, para. 14; *2019 TRS Compensation Order*, 34 FCC Rcd at 5179-80, paras. 17-19.

[58] *See 2019 TRS Compensation Order,* 34 FCC Rcd at 5179, para. 18. In the event of certification of additional IP Relay providers, there could be some duplication. However, there is only one provider at present. Any risk of waste or abuse that may result from certification of additional providers can be addressed in a later proceeding.

[59] For example, the Commission requires Speech-to-Speech (STS) service providers to file annual reports on their outreach efforts directly attributable to support received for STS outreach. *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20166, para. 61.

Fund.[60] Therefore, overhead costs cannot be allocated to TRS based on a formula such as the percentage of total revenues derived from TRS.[61]

23. In adopting the rule, the Commission reasoned that because "Congress placed the obligation to provide TRS on common carriers that were already offering voice telephone service," the rule is necessary for consistency with the statute and to avoid having the TRS Fund subsidize non-TRS services.[62] In addition, the Commission was "concerned, for example, that allocating overhead costs on the basis of revenues may result in a provider submitting indirect costs that are grossly disproportionate to its direct TRS costs."[63]

24. While we continue to be concerned that the TRS Fund should not become a vehicle for subsidizing non-TRS lines of business engaged in by TRS providers, we also wish to ensure a carrier or other enterprise with multiple lines of business is not inappropriately deterred from offering IP Relay by an inability to recover an appropriate contribution toward overhead costs, given that no other provider is currently certified and no party has recently applied to offer the service.[64] Therefore, we seek comment on the continuing need for this rule in the IP Relay context. First, is the current rule effectively mandated by section 225, as the Commission previously suggested? Or, given that only some current providers of TRS are common carriers,[65] does the Commission have more flexibility in determining what costs are reasonable?

25. Second, we seek comment on the cost-effectiveness of the current rule, relative to alternatives, notably allowing a reasonable contribution toward overhead costs.[66] Such cost-effectiveness analysis would explain the benefits from allowing a contribution to overhead, the implementation costs such an allowance would produce, and any harms or risk of harm such an allowance would bring. For example, the current rule allows recovery of administrative expenses that can be directly attributed.[67] To what extent is it feasible for a multi-service provider to track administrative costs directly, to the extent they are attributable to the provision of TRS? Is it unduly burdensome to require a demonstration of cost

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[60] *Id.* at 20175, para. 74 (quoting *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379, 8395-96, para. 38 (2006) (*2006 TRS Cost Recovery FNPRM*)).

[61] *Id.* at 20175, para. 75.

[62] *Id.*; *see also 2006 TRS Cost Recovery FNPRM*, 21 FCC Rcd at 8395-96, para. 38; Committee on Energy and Commerce, H.R. Rep. 101-485 Pt. 4 at 67 (May 15, 1990) (FCC is to prescribe regulations that allow carriers "to recover the costs incurred in the provision of interstate relay service").

[63] *2006 TRS Cost Recovery FNPRM*, 21 FCC Rcd at 8396, para. 39.

[64] The rule does not affect cost recovery by a company that provides only TRS, because such companies can attribute all reasonable overhead costs to the provision of TRS (and allocate such costs among multiple relay services, if more than one is provided). *2007 TRS Compensation Methodology Order,* 22 FCC Rcd at 20175, para. 75 n.197.

[65] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577, 20586-88, paras. 17-21 (2005) (allowing any entity to seek certification from the Commission to receive compensation from the TRS Fund for the provision of VRS or IP Relay).

[66] *See* T-Mobile, Request for Interim Waivers, CG Docket No. 03-123 and RM-11820, at 8 (filed May 3, 2021), https://ecfsapi.fcc.gov/file/1050310600939/IP%20Relay%20Waiver%20Request%20-%202021%20FINAL.pdf (T-Mobile 2021 Waiver Request) (contending that all profitable companies must recover indirect overhead costs and that if one product or service is not assigned any of those costs, the other products and services must be priced to recover a higher portion of such costs).

[67] *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20175, para. 75 ("For example, executive salaries, or a portion thereof, may be attributed to the provision of TRS to the extent that it can be shown that a particular executive actually supported the provision of TRS.").

causation for such costs, e.g., by maintaining time records for staff time attributable to IP Relay? What specific kinds of administrative costs that are not currently recoverable would be recovered if allocation of overhead were permitted? We also seek comment on whether there are circumstances specific to the current context of IP Relay, such as the presence of only one provider, that make the rule more burdensome or less appropriate for application to this service, compared to other forms of TRS? How much would allowing support for such costs increase per-minute IP Relay compensation? Is there any risk T-Mobile would abandon TRS if it continued to receive no contribution to overheads but continued to be fully compensated for all costs attributed to TRS?

26. If we were to allow recovery of overhead costs, i.e., administrative costs not directly attributable to TRS, how should such costs be allocated—based on the percentage of total revenues derived from IP Relay,[68] percentage of total company costs, or by some other method? How could the Commission or Fund administrator effectively audit such allocations?

27. *Other Allowable Costs*. Notwithstanding the Commission's history of comprehensive consideration of allowable cost issues,[69] are there other costs incurred in the provision of IP Relay that the Commission's methodology should allow? If such comments are submitted, we urge commenters to state specifically in what respects the considerations underlying the Commission's prior determinations are no longer valid (or are inapplicable to the present context of IP Relay), describe in detail any respects in which relevant circumstances have changed in the intervening period, describe how the Commission or Fund administrator would effectively audit such costs, and explain how the outcome they seek is consistent with and furthers the purposes of section 225 of the Act.[70]

C. Operating Margin

28. We propose to amend our compensation rules to affirm that the IP Relay compensation level should include an operating margin—i.e., an allowance for recovery of a designated percentage of allowed expenses, in lieu of return on investment. In the *2017 VRS Compensation Order*, responding to VRS providers' claims that a percentage return on booked costs for investment in fixed plant was insufficient to compensate them for the cost of raising capital to operate a labor-intensive business like VRS, the Commission amended its compensation rules to specify a percentage of allowable expenses as a reasonable operating margin for providers.[71] For IP CTS compensation, as well, the Commission has adopted this approach.[72] Based on these Commission decisions, as noted earlier, the Bureau in 2019 approved a base compensation amount for IP Relay that included a percentage operating margin of 12.35%, which is within the "zone of reasonableness" the Commission had recognized as applicable to VRS and IP CTS.

29. Like IP CTS and VRS, IP Relay requires providers to invest relatively little in physical plant.[73] Therefore, we believe that for IP Relay, as well as IP CTS and VRS, "allowing providers a reasonable margin over expenses, which is not tied to the relatively low investment in physical plant that

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[68] T-Mobile 2021 Waiver Request at 8.

[69] *See 2020 IP CTS Compensation Order*, 35 FCC Rcd at 10873-81, paras. 18-29; *2017 VRS Compensation Order*, 32 FCC Rcd at 5895-903, paras. 10-22, and prior Commission decisions cited therein.

[70] *Cf. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, FCC 21-61, para. 30 (2021) (*2021 VRS Compensation NPRM*).

[71] *2017 VRS Compensation Order*, 32 FCC Rcd at 5903-05, paras. 24-26 (adopting operating margin for VRS compensation).

[72] *2018 IP CTS Compensation Order*, 33 FCC Rcd at 8813-14, para. 23 (applying operating-margin approach in setting interim IP CTS compensation); *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10880-81, paras. 28-29 (adopting operating-margin approach for determining cost-based IP CTS compensation level).

[73] *See 2019 TRS Compensation Order*, 34 FCC Rcd at 5176, para. 11 n.26.

is needed for the provision of [this service,] will help ensure sufficient investment in the provision of this service."[74] We seek comment on this proposal and its cost-effectiveness.

30. We also seek comment on what percentage of allowable expenses constitutes a reasonable operating margin for IP Relay. By what criteria should the allowed operating margin be determined? For example, is business risk assessment an appropriate measure for setting the operating margin for IP Relay?[75] Due to the level of business risk, or for other reasons, should the operating margin for IP Relay be different from that for other forms of TRS? For example, is the operating margin of 12.35%, determined by the Bureau in 2019,[76] a reasonable margin going forward, or should a different allowed margin be selected? Have there been recent changes in capital markets that would support increasing or decreasing this margin? We also seek comment on whether future determinations of an operating margin for IP Relay should be made by the Commission itself or could be delegated to the Bureau.[77]

D. Projected Vs. Historical Costs

31. We propose to return to the pre-2019 practice of using only projected costs and demand as the basis for calculating the base compensation level for IP Relay.

32. Before 2010, in determining reasonable costs for the provision of any relay service, the TRS Fund administrator determined an average of projected costs and demand for the first Fund Year of the new compensation period.[78] In 2010, however, the Commission found that VRS providers' projections of cost and demand had consistently produced unreliable estimates of per-minute VRS cost, resulting in overcompensation of providers.[79] Therefore, in determining the VRS compensation formula for the 2010-11 Fund Year, the Commission chose to rely instead on a different cost data set, averaging

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[74] *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10880, para. 28; *see also 2017 VRS Compensation Order*, 32 FCC Rcd at 5903, para. 23 (citing same rationale for VRS). In replacing return on investment with operating margin as the criterion for determining an appropriate level of TRS Fund support, we do not purport to dictate what kinds of arrangements TRS providers make with their capital investors. That is primarily a matter between a provider and its investors.

[75] In setting the operating margin at 12.35%, CGB cited the "business risk" of providing IP Relay because of its fluctuating demand and much lower demand than VRS and IP CTS. *2019 TRS Compensation Order*, 34 FCC Rcd at 5176, para. 11; *see also* Sprint Corporation, Supplement to Request for Interim Waivers, CG Docket Nos. 03-123 and 10-51, at 5 (filed Apr. 9, 2019) (T-Mobile 2019 Waiver Supplement) ("higher-risk businesses necessitate higher operating margins").

[76] *See 2019 TRS Compensation Order*, 34 FCC Rcd at 5176, para. 12.

[77] In the *2017 VRS Compensation Order*, the Commission concluded that "it is unnecessary at this time to select a specific number within [the zone of reasonableness] because the tiered rates we set today will allow all VRS providers to recover their compensable expenses (i.e., the average of historical 2016 expenses and projected 2017 expenses) plus a reasonable operating margin." *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, para. 26.

[78] *See, e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, 8700, para. 25 (2010) (*2010 TRS Compensation Order*) (adopting, for Fund Year 2010-11, an IP Relay compensation level calculated by the TRS Fund administrator based on average provider-projected costs and demand for calendar years 2010 and 2011). To estimate costs and demand for the initial Fund Year, the administrator averaged the projected costs and demand for the calendar years in which the Fund Year would begin and end. For example, in calculating a base amount for the three-year period beginning with Fund Year 2016-17, Rolka Loube considered projected costs and demand for calendar years 2016 and 2017. *See* Rolka Loube Associates, LLC, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 23 (filed May 4, 2016).

[79] *See 2010 TRS Compensation Order*, 25 FCC Rcd at 8694, para. 9 (expressing concern over differences in VRS providers projected and actual costs and demand).

VRS providers' projected costs for 2010 and historical costs for 2009.[80] Because the Commission later found that this blended approach using historical and projected costs was consistently a more accurate predictor of actual costs for both VRS and IP CTS, it continued using this approach in setting VRS compensation[81] and adopted the same approach for IP CTS in 2018 and 2020.[82]

33. To align IP Relay compensation with these developments, when setting the base amount of IP Relay compensation for the current period, the Bureau (for the first time in the IP Relay context) averaged the IP Relay provider's projected costs for 2019 with its historical costs reported for 2018.[83]

34. Although the Commission previously determined that the blended approach was more reliable than the projected-costs-only approach in predicting actual costs for VRS and IP CTS, neither the Commission nor the Bureau has made such a factual determination with respect to IP Relay. Further, a comparison of T-Mobile's cost projections with the actual cost per minute reported over the last five years indicates that, in the case of IP Relay, the results of the projected-only approach would have been no less accurate than those of the blended approach.

35. We seek comment on this proposal and its cost-effectiveness relative to the current approach or other approaches. For example, we invite the submission of evidence regarding the likelihood that the current level of cost increases in IP Relay are likely to continue or to prove to be a temporary phenomenon.

E. Compensation Period and Adjustments

1. Duration of Compensation Period

36. We propose to continue setting IP Relay compensation for a multi-year period. The Commission has found multi-year rate periods to be beneficial. In 2017, the Commission determined that multi-year compensation periods are "long enough to offer a substantial degree of rate stability, thereby (1) giving providers certainty regarding the future applicable rate, [and] (2) providing [a] significant incentive for providers to become more efficient without incurring a penalty,"[84] as cost reductions would not result in a reduced compensation level during the remainder of the multi-year compensation period.

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[80] *Id,* at 8694-96, paras. 8-13.

[81] *2013 VRS Reform Order*, 28 FCC Rcd at 8694-96, paras. 189-91; *2017 VRS Compensation Order*, 32 FCC Rcd at 5927-28, para. 69.

[82] *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5813, para. 23 & n.75; *2020 IP CTS Compensation Order,* 35 FCC Rcd at 10871-73, para. 13-17.

[83] *See 2019 TRS Compensation Order*, 34 FCC Rcd at 5177, para. 14; *cf. 2017 VRS Compensation Order*, 32 FCC Rcd at 5927-28, para. 69; *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5813-14, para. 23. In the 2020 TRS compensation proceeding, T-Mobile objected to this approach and argued that averaging its projected costs for 2020 and 2021 is more consistent with the approach to IP Relay compensation setting in prior years and will better enable T-Mobile to recover its actual costs. *See 2020 TRS Compensation Order,* 35 FCC Rcd at 6652-53, para. 9; T-Mobile USA, Inc., Reply Comments, CG Docket Nos. 03-123 and 10-51, RM-11820, at 3-4 (filed June 5, 2020), https://ecfsapi.fcc.gov/file/1060505551806/IP%20Relay%20Reply%20Comments%20%20-%20Redacted%20-%2006.05.pdf (T-Mobile 2020 Compensation Reply Comments). The Bureau denied the request on procedural grounds. *See 2020 TRS Compensation Order*, 35 FCC Rcd at 6656, para. 17.

[84] *2017 VRS Compensation Order*, 32 FCC Rcd at 5921-22, para. 58. The Commission also found that a multi-year period "mitigat[es] any risk of creating the 'rolling average' problem previously identified by the Commission." *Id.* The "rolling average" problem concerns the determination of compensation levels based on average provider costs, which, if recalculated every year, could leave some providers without adequate compensation, even if they are reasonably efficient. *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, para. 25 (1993). The "rolling average" problem, however, is less relevant here, as it only arises when there are multiple providers of a relay service.

A multi-year rate period can thus reduce the risk of rewarding inefficiency, discouraging innovation, and incentivizing providers to incur unnecessary costs, all potential effects of annual cost-of-service compensation setting.[85] We seek comment on whether continuing to use a multi-year compensation period will provide such benefits in the IP Relay context.

37. Assuming that we continue setting compensation for a multi-year period, should the duration continue to be three years? A longer compensation period, such as four or five years, would potentially offer a provider greater certainty for the purpose of long-term planning and allow retention of a larger portion of any profits produced by efficiency improvements—as well as reducing the administrative burden for the provider and the Commission. Would these benefits outweigh the risks posed by the potential for unpredicted cost increases or fall-off in demand? Alternatively, would a shorter period be preferable, to address the cost predictability concerns raised below, while retaining some of the benefit of a multi-year plan? Suppliers of these kinds of services, including the current IP Relay supplier, T-Mobile, tend to be telecommunications providers, i.e., firms with experience in operating modern communications and computational technologies, and typically operate in dynamic environments where demand, services, and competitive forces change rapidly, and sometimes forcefully. In that context, we seek comment on the extent to which a compensation period of longer than three years would make a material difference to such firms' capacity to provide and improve IP Relay service. Recognizing that if over a given compensation period costs were to rise substantially, and providers would have strong incentives to present a robust petition explaining their need, and thus obtain relief, to what extent would any benefits of a longer compensation period justify the risks of overcompensation that would occur if costs were to fall significantly over the period?

38. Are IP Relay costs sufficiently predictable to warrant setting a base compensation amount for a multi-year period? Since 2013, the compensation level for IP Relay has undergone a number of substantial changes. While most of these were occasioned by special circumstances or methodological adjustments that are unlikely to repeat,[86] some were responses to significant, unpredicted changes in service costs.[87] Is the variability in IP relay costs sufficiently unpredictable that the Commission should depart from the precedent set in 2007 and reassess the IP Relay compensation level annually? Under this approach, the TRS Fund administrator would annually recommend for approval a compensation adjustment for the new Fund Year, under the same process followed for all relay services prior to 2007, i.e., based on provider-reported cost and demand and the application of the Commission's rules for determination of reasonable costs, as modified in this proceeding. We seek comment on the cost-effectiveness of this alternative approach relative to the current approach or alternative approaches. Would the resulting year-to-year uncertainty and reduced incentives for efficiency and innovation be outweighed by the greater flexibility to ensure full cost recovery in response to unpredicted cost and demand changes? Are there net benefits of this alternative that would outweigh any increased administrative burden on the provider and the Commission?

39. We also seek comment on whether compensation decisions based on cost determinations, whether made annually or at longer intervals, should be made by the full Commission, or by the Bureau under delegated authority. Further, should other compensation decisions—e.g., approval of annual

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[85] *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5817, para. 28

[86] *See 2014 IP Relay Compensation Adjustment Order*, 29 FCC Rcd at 16277-78, para. 12 (increasing per-minute compensation from $1.0607 to $1.37 (and to $1.67 for monthly minutes in excess of 300,000), based on average-cost changes and customer influx resulting from departure of all but one service provider); *2016 TRS Compensation Order*, 31 FCC Rcd at 7250, para. 14 (increasing per-minute compensation to $1.40 due to waiver permitting recovery of deafblind outreach costs); *2019 TRS Compensation Order*, 34 FCC Rcd at 5175, para. 10 (increasing per-minute compensation to $1.67 due to adoption of operating margin approach and enlargement of the scope of previously granted outreach waiver).

[87] *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10871-73, paras. 13-17 (increasing per-minute compensation to $1.7149 based on unforeseen increase in labor costs).

changes based on preset adjustment factors, determinations regarding exogenous cost claims, and grant or denial of requests for waiver of compensation rules—be made at the Commission or Bureau level?

2. Compensation Adjustments During a Multi-Year Period

40. If we continue setting IP Relay compensation for a multi-year period, we seek comment on whether to continue the current practice of adjusting the compensation level in subsequent years of the cycle, and if so, whether to modify the criteria for such adjustments.[88]

41. *Inflation Adjustment.* Should we continue to apply an annual inflation adjustment to the base compensation level, and if so, how should the adjustment be determined? The current methodology uses an inflation factor based on the Gross Domestic Product – Price Index (GDP-PI) to adjust the compensation level upward.[89] Is the GDP-PI a reasonably accurate predictor of inflation in IP Relay costs? Would another price index provide a better measure? For example, because IP Relay is currently a labor-intensive service, service costs appear to be substantially affected by changes in labor costs.[90] In lieu of GDP-PI, should the Commission select a measure from the Bureau of Labor Statistics' (BLS) Employment Cost Index,[91] which tracks measures of labor cost for various industry segments—for example, the seasonally-adjusted "office and administrative support,"[92] "service-providing industries,[93] "other services except public administration,"[94] or the non-seasonally-adjusted "office and administrative support" indices?[95] Which measure or measures of inflation in this index would be most appropriate for IP Relay? Is there another general or sector-specific cost index that would more accurately predict changes in IP Relay cost?

42. *Efficiency Adjustment.* In the *2007 TRS Compensation Order*, the Commission also established an efficiency factor, used to adjust the compensation level in a downward direction to reflect expected productivity improvements.[96] This efficiency factor was initially set equal to the inflation factor, "less 0.5 percent."[97] (In other words, if the inflation factor was 3%, the efficiency factor would be -3.5%, netting out to an adjustment of -0.5%.)[98] In recent years, in part because of the inherent difficulty of achieving a reliable measure of efficiency for this service, the efficiency factor has been set exactly equal to the inflation factor, meaning they produce no net compensation adjustment.[99] The historical underpinnings of this approach, as applied in price cap regulation of local exchange carriers, included the premise that a service provider's per-minute costs ordinarily decline somewhat from year to year, due to

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[88] *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20163, para. 43.

[89] *See id.*

[90] *See, e.g.,* T-Mobile 2020 Compensation Reply Comments at 4-6 (discussing labor costs) (confidential version).

[91] *See* Bureau of Labor Statistics, Employment Cost Index: Historical Listing Volume III (April 2021), available at https://www.bls.gov/web/eci/echistrynaics.pdf.

[92] *Id.* at 10-11, Table 1.

[93] *Id.* at 16, Table 1.

[94] *Id.* at 26, Table 1.

[95] *Id.* at 82, Table 5.

[96] *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20163, para. 43.

[97] *See id.*

[98] For example, in 2008, pursuant to these offsetting adjustments, the IP Relay compensation level was reduced by 0.5%, from $1.2930 per minute to $1.2865 per minute. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 23 FCC Rcd 9976, 9979-80, para. 8 (2008).

[99] *See, e.g., 2019 TRS Compensation Order*, 34 FCC Rcd at 5175, para. 10 n.24.

improved productivity or increased traffic on its existing plant.[100] However, usage of IP Relay has been relatively stable for the last six years, and recently, per-minute costs have generally increased.[101] We seek comment on how best to measure expected efficiency gains for this particular service. What are the potential sources of annual efficiency gains in IP Relay, and how should the extent of annual efficiency gains be estimated? Alternatively, should we eliminate the efficiency factor?

43. *Exogenous Costs.* Under the current methodology, the IP Relay base compensation level can be adjusted upward to permit recovery of exogenous costs, which are "costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment,"[102] such as a new service requirement adopted by the Commission.[103] Should we retain this aspect of the methodology? If so, are there other types of exogenous costs that warrant inclusion? Should we broaden the definition of exogenous costs? Should we apply the allowable cost criteria adopted in the *2017 VRS Compensation Order*, which allow upward compensation adjustment for well-documented exogenous costs that (1) belong to a category of costs that the Commission has deemed allowable, (2) result from new TRS requirements or other causes beyond the provider's control, (3) are new costs that were not factored into the applicable compensation rates, and (4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues?[104]

44. *Other Adjustments.* In addition to adjustments for inflation, efficiency, and exogenous costs, are there other types of adjustments to the IP Relay compensation level that the Commission should be making in subsequent years of a multi-year rate cycle? We ask commenters to provide specific and substantial information in support of their assertions.

F. Alternative Compensation Methodologies

45. *Hybrid MARS Approach.* In its Petition for Rulemaking, T-Mobile recommends that the Commission replace the current IP Relay compensation methodology with a hybrid of the Multi-State Average Rate Structure (MARS) approach and a cost-based methodology. Noting the similarities in functionality between the two services—which are handled by the same CAs in the same call centers—T-Mobile proposes that in setting a new IP Relay compensation level, the Commission should take as a starting point the per-minute compensation for interstate TTY-based TRS, which is currently set using the MARS method.[105] In T-Mobile's view, because the MARS compensation methodology is based on the results of competitive bidding to obtain service contracts for state TRS programs, the resulting per-minute compensation levels reflect the lowest compensation levels at which service providers are willing to incur the costs of providing TTY-based TRS.[106] Next, the Commission would multiply the average per-minute rate of TTY-based TRS compensation by the projected number of IP Relay minutes, subtract those provider costs that are incurred only in providing TTY-based TRS, and add costs that are incurred only in providing IP Relay.[107] The resulting funding requirement would be divided by projected IP Relay demand

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[100] *See Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6787, paras. 2-4 (1990) (*1990 LEC Price Cap Order*).

[101] *See* Rolka Loube, *2018-2019 TRS Administration Presentation – September 2018*, http://www.rolkaloube.com/wp-content/uploads/2017/11/2018-NASRA-Council-in-MN.pdf (last visited June 3, 2021) (showing reported and projected IP Relay demand near 5 million from December 2012 through June 2018 at slide 8); 2021 TRS Report, Exh. 2 (estimating IP Relay demand at 6.9 million minutes for TRS Fund year 2021-22.

[102] *2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20163, para. 44.

[103] *See id.*

[104] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5925, para. 66.

[105] T-Mobile 2018 RM Petition at 5-6.

[106] *Id.* at 6.

[107] *See id.* at 7-8. T-Mobile lists as examples of state-specific costs: "costs associated with state equipment distribution programs and other state requirements (*e.g.*, requiring an in-state account manager, a certain amount of

(continued….)

to determine the per-minute compensation level.[108] T-Mobile asserts that this approach will provide sufficient compensation certainty to ensure that T-Mobile can continue offering IP Relay.[109]

46. We invite advocates of this approach to identify the specific categories of costs they believe would be appropriate to add and subtract to achieve an appropriate per-minute compensation level using such a hybrid MARS methodology. Which categories of TTY-based TRS costs, specifically, are not incurred to provide IP Relay, which categories of IP Relay costs are not incurred to provide TTY-based TRS, and what are the estimated current costs in each of those categories?

47. Regardless of the specifics, however, we are so far unpersuaded that it would be appropriate to use a MARS compensation approach as a starting point for setting IP Relay compensation, for the following reasons.[110] First, notwithstanding the functional and operational similarities of IP Relay and TTY-based TRS, it seems clear that the current cost difference between the services must be very large. Although the Commission originally set IP Relay compensation equal to TTY-based TRS compensation due to the similarities in the services,[111] it abandoned that approach in 2005 after finding that IP Relay's costs were significantly lower than those of TTY-based TRS.[112] Since then, per-minute compensation levels for TTY-based TRS have greatly increased, while IP Relay costs (as reflected in IP Relay compensation levels) have remained relatively stable by comparison (see Table 1).

(Continued from previous page)
outreach within the state, and that [T-Mobile] contract[s] with entities to collect state TRS fees)." *Id*. at 8. T-Mobile lists as examples of IP Relay-specific costs: "the cost of the Internet portal and website, the costs of IP Relay outreach, the costs of ten-digit telephone numbers, as well as costs for customer registration and 911 fees." *Id*.

[108] *See id.* at 7-8.

[109] *Id.* at 7.

[110] In comments on T-Mobile's petition for rulemaking, T-Meeting, a technology company specializing in relay service technology, argues that "the MARS methodology is irrelevant in a single provider environment and that its use is therefore not sensible as an input to setting IP Relay compensation." T-Meeting RM Comments at 2. The only other commenters took no position on the rate methodology. *See* Consumer Groups RM Reply at 3-4.

[111] *See IP Relay Declaratory Ruling,* 17 FCC Rcd at 7786, para. 22 (accepting the assertion that IP Relay and traditional TRS calls exhibited "very similar cost and demand characteristics" and in the interim using the TTY-based TRS compensation rate for IP Relay); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, CC Docket No. 98-67, Order, 19 FCC Rcd 12224, 12232, para. 19 (CGB 2004) (combining the projected costs and demand for TTY-based TRS and IP Relay to determine the compensation rate for both services).

[112] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67 and CG Docket Nos. 03-123, Order, 20 FCC Rcd 12237, 12243-45, paras. 16-20 (2005) (*2005 TRS Compensation Order*).; *see also 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20162, para. 41.

Table 1

TTY-based TRS and IP Relay Compensation From 2007[113]

Fund Year	TTY-based TRS Per-Minute	IP Relay Per-Minute
2007-08	$1.291	$1.293
2008-09	$1.5938	$1.2865
2009-10	$1.8311	$1.2801
2010-11	$2.0256	$1.2985
2011-12	$1.8611	$1.2920
2012-13	$2.0304	$1.2855
July 1-August 31, 2013	$2.1647	$1.0607[114]
Sept. 1, 2013-June 30, 2014		$1.0309[115]
July 1, 2014-Nov. 14, 2014	$2.1170	$1.0309
Nov. 15, 2014-June 30, 2015		$1.37[116]
2015-16	$2.2904	$1.37
2016-17	$2.6245	$1.30
2017-18	$2.9186	$1.3350
2018-19	$3.2592	$1.40
2019-20	$3.1107	$1.67
2020-21	$3.7526	$1.7146
2021-22	$4.1944	$1.7146

48. To the extent that this very large and widening gap in per-minute compensation reflects actual differences in per-minute cost, it does not appear reasonable to treat TTY-based TRS as a comparable service to IP Relay for these purposes—notwithstanding the similarities in function and the

[113] Unless otherwise stated, these per-minute amounts are restated from the annual Commission- or Bureau-level orders approving provider compensation levels for each Fund Year.

[114] Per-minute compensation for Fund Year 2013-2014 was adjusted upward on reconsideration to the levels shown. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 29 FCC Rcd 8044, 8048, para. 11 (CGB 2014) (*2014 TRS Compensation Order*).

[115] A lower rate applied beginning September 1, 2013, to reflect the removal of outreach expenses from allowable costs pursuant to the *2013 VRS Reform Order*. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03-123 and 10-51, Order, 28 FCC Rcd 9219, 9224, para. 18 (CGB 2013); *2014 TRS Compensation Order,* 29 FCC Rcd at 8049, para. 14.

[116] *See 2014 IP Relay Compensation Adjustment Order*, 29 FCC Rcd at 16275-78, paras. 6-12 (mid-cycle compensation adjustment when T-Mobile became the sole provider of IP Relay). For monthly minutes exceeding 300,000, a special rate of $1.67 per minute applied from November 15, 2014, through May 15, 2015. *Id.*

nature of the inputs used for each.[117] Therefore, we believe that attempting to revert to a version of the MARS methodology would likely result in significant overcompensation for IP Relay, wasting TRS funds.[118]

49. Further, the difficulty of deriving an appropriate level of compensation from TTY-based TRS compensation is likely to become even greater in the future, as the telecommunications industry continues to replace copper lines with fiber-based IP networks,[119] the use of TTY-based TRS continues to diminish, and the per-minute cost of providing TTY-based TRS continues to increase. According to Rolka Loube, the average compensation levels for TTY-based TRS, as well as other state TRS program services, are increasing as demand for the service declines and more states transition to a flat-rate payment for service, increasing the compensation paid per minute in those states.[120] Indeed, with fewer and fewer users, TTY-based TRS may eventually cease to be available.

50. Second, we are not persuaded that T-Mobile's proposed methodology would be any less difficult to apply or subject to inaccuracy than the current methodology. Indeed, the potential for error with a hybrid MARS approach could be multiplied because rather than calculating costs for one service, IP Relay, T-Mobile's proposal would entail calculating *both* IP Relay-specific costs and state program TTY-specific costs.

51. Third, T-Mobile's proposal to revert to reliance on the MARS methodology as a starting point appears inconsistent with recent Commission precedent. In deciding to abandon reliance on the MARS methodology for setting IP CTS compensation in favor of a cost-based approach, the Commission found that it was no longer appropriate to use average state-program CTS compensation as a proxy because there was such a substantial difference between per-minute costs for IP CTS and those claimed by inference from the average weighted compensation rate for state program CTS.[121] T-Mobile's proposal provides no persuasive reason why a similarly large cost difference between the proxy service and the target service should be more acceptable for IP Relay than for IP CTS.

52. We seek comment on the concerns stated above. Are there other factors that merit consideration of T-Mobile's proposal? Would the hybrid MARS approach better serve the compensation-setting policy goals articulated above?

53. *Other Methodologies.* Are there other compensation methodologies that we should consider for IP Relay to achieve our policy goals? To the extent that commenters wish to suggest alternative approaches that could simplify or otherwise improve the IP Relay compensation-setting process, we invite the submission of specific proposals, along with an explanation of how each proposal would successfully align IP Relay compensation with actual provider costs and otherwise advance the objectives of section 225.

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[117] *See 2018 IP CTS Compensation Order*, 33 FCC Rcd at 5809-10, paras. 17-18 (finding that, due to major cost disparities based on widely different demand levels, CTS and IP CTS are not comparable for purposes of the MARS methodology, notwithstanding other similarities).

[118] *See 2005 TRS Compensation Order*, 20 FCC Rcd at 12243-45, paras. 16-20.

[119] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11141-60, paras. 31-79 (2017) (adopting regulatory reforms to facilitate retirement of copper networks).

[120] 2021 TRS Report at 12-14 & Exhs. 1-1, 1-2; *see also* T-Mobile 2019 Waiver Supplement at 4-5 (T-Mobile achieves certain efficiencies with TTY-based TRS and IP Relay sharing the same platform, but "traditional TRS traffic continues to decline").

[121] *See 2018 IP CTS Compensation Order*, 33 FCC Rcd at 5809-10, paras. 17-18.

IV. PROCEDURAL MATTERS.

54. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document.[122] The IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[123] In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.[124]

55. *Paperwork Reduction Act Analysis – Notice*. The Notice seeks comment on proposed rule amendments that may result in new or modified information collection requirements. If the Commission adopts any new or modified information collection requirements, the Commission will publish another notice in the *Federal Register* inviting the public to comment on the requirements, as required by the PRA.[125] In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.[126]

56. *Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[127]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/filings.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent, 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.
  - Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.[128]
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

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[122] Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[123] *See* 5 U.S.C. § 603(a).

[124] *Id.*

[125] 44 U.S.C. §§ 3501-3520.

[126] *Id.* § 3506(c)(4).

[127] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

[128] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closesheadquarters-open-window-and-changes-hand-delivery-policy.

- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

57. *People with Disabilities*: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

58. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[129] 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). In proceedings governed by section 1.49(f) 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.

V. ORDERING CLAUSES

59. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, the foregoing Notice of Proposed Rulemaking IS ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[129] 47 CFR § 1.1200 *et seq.*

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), [1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided in the item. The Commission will send a copy of the entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need For, and Objectives of, the Proposed Rules

2. In the NPRM, the Commission proposes to reform the compensation methodology for Internet Protocol (IP) Relay service (IP Relay). To develop a complete record the Commission seeks comment on whether and how to modify the process for setting projected-cost-based IP Relay compensation, including whether certain costs that are currently not allowed should compensable, the methodology for calculating the compensation amount, and alternative approaches. The Commission takes these steps to allow recovery of reasonable provider costs and ensure that functionally equivalent IP Relay is provided in the most efficient manner. In the NPRM, the Commission is seeking comment on these proposals, which include various policy questions and alternatives for consideration.[4]

B. Legal Basis

3. The authority for this proposed rulemaking is contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225.

C. Description and Estimate of the Number of Small Entities Impacted

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] 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 SBA.[8]

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

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] *See generally supra*, NPRM paras. 11, 12, 16, 22, 25, 26, 29, 34, 35.

[5] *Id*. § 603(b)(3).

[6] *Id*. § 601(6).

[7] *Id*. § 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."

[8] 15 U.S.C. § 632.

5. The proposals in the NPRM will affect the obligations of IP Relay providers. These services can be included within the broad economic category of All Other Telecommunications.

6. *All Other Telecommunications*. The **"**All Other Telecommunications" category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[9] 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 systems.[10] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[11] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $35 million or less.[12] For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year.[13] Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[14] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

7. The proposed compensation methodology will not create new reporting, recordkeeping, or other compliance requirements.

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

8. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[15]

9. Throughout the NPRM, the Commission is (1) taking steps to minimize the impact on small entities by proposing reforms to the IP Relay compensation methodology that would ensure that providers of IP Relay are fairly compensated for the provision of IP Relay, including considering significant alternatives by identifying and seeking comment on multiple methodologies for compensation; and (2) considering various options to determine the best compensation methodology for ensuring functionally equivalent service and maintaining an efficient IP Relay market over the long term in

[9] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[10] *Id.*

[11] *Id.*

[12] *See* 13 CFR § 121.201, NAICS Code 517919.

[13] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

[14] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[15] 5 U.S.C. § 603(b).

accordance with the Commission's statutory obligations. The NPRM seeks comment on the effect these proposals will have on all entities that have the potential to provide IP Relay, including small entities.

10. The NPRM seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and acting in this proceeding.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

11. None.

STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Petition for Rulemaking of Sprint Corporation*, RM-11820.

In 2007, technology was having a moment. The iPhone was introduced. Big advancements took place in cloud storage and cognitive computing. And back in 2007, the Federal Communications Commission developed a methodology to support Internet Protocol Relay Services—or IP Relay—a technology to assist those with hearing and speech disabilities use text to communicate through the traditional phone system.

In the intervening years, there have been more iterations of the smartphone than we can count and more expansion of cloud computing and machine learning than we can quantify, but our framework for IP Relay compensation has stayed the same.

It's time for an update. Because with the passage of time, we know technology changes and the systems we use at this agency to support services like IP Relay would benefit from a fresh look. That's just what we do here. We ask questions about the current costs an IP Relay provider incurs when it provides service. We ask about the continuing viability of a multi-year compensation scheme. And we ask what changes may be necessary to ensure IP Relay service continues to provide a functionally equivalent service for those with disabilities—because this is required under the law.

Thank you to the staff of the Consumer and Governmental Affairs Bureau for their work on this rulemaking, including Bob Aldrich, Diane Burstein, Drake Darrah, Eliot Greenwald, Halie Peacher, Michael Scott, Bill Wallace, and Patrick Webre; Belford Lawson from the Office of Communications Business Opportunities; Susan Lee, Virginia Metallo, Eric Ralph, and Emily Talaga from the Office of Economics and Analytics; and Terry Cavanaugh, Richard Mallen, and Bill Richardson from the Office of General Counsel.