

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
Petition for Rulemaking of Sprint Corporation
CG Docket No. 03-123
RM-11820

REPORT AND ORDER

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By the Commission:

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I. INTRODUCTION

1. In this Report and Order, we adopt a compensation plan for Interstate Telecommunications Relay Services (TRS) Fund support of Internet Protocol Relay Service (IP Relay)

for the period from July 1, 2022, through June 30, 2026. This compensation plan will ensure that IP Relay continues to be available to people who rely on it for functionally equivalent communication and that the service is provided in the most efficient manner.

II. BACKGROUND

2. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Federal Communications Commission (FCC or Commission) to ensure the availability of relay services to individuals who are deaf, hard of hearing, deafblind, or have a speech disability 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 an Internet-based text-to-voice relay service.² With IP Relay, instead of using a text telephone (TTY), a device designed for use with legacy circuit-switched networks, 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

3. *Current Compensation Methodology.* IP Relay is supported entirely by the Interstate TRS Fund.⁵ Under the current methodology for determining IP Relay provider compensation, adopted in 2007,⁶ a base level of per-minute compensation is determined every three years, based on the weighted average of providers’ reasonable costs.⁷ For the purpose of determining “reasonable costs,” the Commission established a number of criteria defining whether various categories of costs reported by providers are “allowable.”⁸ The base compensation level approved by the Commission is subject to annual adjustments for inflation and efficiency based on pre-approved factors, as well as ad hoc adjustment in the event that a provider incurs eligible “exogenous” costs.⁹ After three years, a new

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) (*2002 Declaratory Ruling*).

³ 47 CFR § 64.601(a)(23) (definition of IP Relay).

⁴ *Id.*; *2002 Declaratory Ruling*, 17 FCC Rcd at 7780-81, paras. 3-4.

⁵ See 47 CFR § 64.604(c)(5)(ii), (iii)(E); *2002 Declaratory Ruling*, 17 FCC Rcd at 7786, para. 20 (authorizing TRS Fund support for both intrastate and interstate IP Relay to speed development of the service); 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 for IP Relay to include intrastate revenues of TRS Fund contributors).

⁶ 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 Declaratory Ruling, 22 FCC Rcd 20140 (2007) (*2007 TRS Compensation Order*).

⁷ See 47 CFR § 64.604(c)(5)(iii)(D)(1), (E)(1) (payment formulas shall be designed to compensate TRS providers for reasonable costs of providing service); *2007 TRS Compensation Order*, 22 FCC Rcd at 20159-60, paras. 42-46.

⁸ See *2007 TRS Compensation Order*, 22 FCC Rcd at 20168-72, paras. 73-82; see also *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 Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8696, para. 192 (2013) (*2013 VRS Reform Order*) (prohibited TRS Fund support of outreach expenses incurred by IP Relay providers as well as VRS providers).

⁹ See *2007 TRS Compensation Order*, 22 FCC Rcd at 20159-60, paras. 42-45. The current inflation factor is the Gross Domestic Product – Price Index (GDP-PI). *Id.* at 20159-60, para. 43.

reasonable-cost-based compensation level is determined for the next period. The current compensation period began July 1, 2019, and ends June 30, 2022.¹⁰

4. *Changes to IP Relay Market.* Since 2007, there have been substantial changes in the circumstances relevant to TRS Fund support of IP Relay. Formerly, demand for IP Relay was much higher than today, reaching 82.1 million minutes in 2006.¹¹ There is evidence that much of this demand was due to misuse of the service on a large scale by callers who posed as eligible users and were not effectively screened by service providers.¹² IP Relay demand declined precipitously in 2013 and 2014, after four of the five authorized IP Relay providers terminated service.¹³ Demand then stabilized in a range of 5.8 to 6.5 million annual minutes.¹⁴

5. The inflation of IP Relay demand, its subsequent decline, and the departure of several providers complicated the Commission's determinations of IP Relay compensation after 2013. In response to these developments, the Consumer and Governmental Affairs Bureau (CGB or Bureau) waived certain aspects of the compensation methodology to ensure that TRS Fund support for IP Relay was sufficient to sustain the service. In 2016, the Bureau partially waived the Commission ruling prohibiting TRS Fund support of IP Relay provider-directed outreach activities, to allow Sprint (now T-Mobile) to effectively educate deafblind consumers about its service and solicit feedback on how to improve it.¹⁵ In 2019, the Bureau renewed that waiver and expanded its scope to include outreach to other potential users of this relatively lightly used service.¹⁶ In addition, to harmonize IP Relay compensation with recent Commission decisions on compensation methodologies for Video Relay Service (VRS) and Internet Protocol Captioned Telephone Service (IP CTS), and consistent with the

¹⁰ 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, 34 FCC Rcd 5171, 5174-75, para. 8 (CGB 2019) (*2019 TRS Compensation Order*).

¹¹ See National Exchange Carrier Association, *Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate*, CC Docket No. 03-123, Exh. 3-3 (filed Apr. 29, 2011), https://www.fcc.gov/ecfs/file/download/7021341474.pdf?file_name=7021341474.pdf.

¹² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Rulemaking of Sprint Corporation*, CG Docket No. 03-123 and RM-11820, Notice of Proposed Rulemaking, FCC 21-95, para. 5 (Aug. 6, 2021) (*Notice*).

¹³ 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 03-123, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 691, 697-98, para. 15 n.43 (2019).

¹⁴ Compare 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, 2016) (projecting approximately 979,113 minutes for May and June 2016 and 4,852,050 minutes for July 2016 to April 2017, for a total of 5,831,163 IP Relay minutes for Fund Year 2016-17) with 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 (posted by CGB May 3, 2022) (*2022 TRS Compensation Report*) (projecting 988,994 minutes for May and June 2022 and 5,531,141 minutes for July 2022 through April 2023, for a total of 6,520,135 IP Relay minutes for Fund Year 2022-2023). (Due to the time lag between provision of service and payment of compensation, TRS Fund budgets are calculated based on projected demand for the last two months of the current Fund Year plus the first ten months of the next Fund Year.)

¹⁵ 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, 31 FCC Rcd 7246, 7251-52, para. 19 (CGB 2016) (*2016 TRS Compensation Order*) (granting waiver to allow recovery of costs for outreach to the deafblind community); *2019 TRS Compensation Order*, 34 FCC Rcd at 5178-80, paras. 16-19 (expanding outreach cost recovery waiver to include costs of outreach to other eligible users).

¹⁶ See *2019 TRS Compensation Order*, 34 FCC Rcd at 5178-80, paras. 16-19.

labor-intensive nature of these 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.¹⁷ As a result of these and other adjustments, per-minute compensation for IP Relay increased from \$1.0147 in 2013-14 to \$1.7146 per-minute in 2021-22.¹⁸

6. *Petition for Rulemaking.* In November 2018, Sprint (hereafter T-Mobile) filed a petition for rulemaking requesting adoption of a new compensation methodology.¹⁹ 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.”²⁰ The company contended that “the current compensation methodology . . . fails to account for all of the costs that [T-Mobile] reasonably incurs in providing IP Relay service.”²¹ The company proposed that the Commission adopt a new approach based substantially on the Multi-State Average Rate Structure (MARS) compensation plan for TTY-based TRS offered through state TRS programs.²² The Bureau placed the petition on public notice and invited comments.²³

7. On August 6, 2021, the Commission released a *Notice of Proposed Rulemaking (Notice)* proposing 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.²⁴ The Commission proposed to continue setting the compensation level for a multi-year period, based on a determination of reasonable provider cost.²⁵ The Commission also proposed changes in how reasonable cost is determined, including rescinding the prohibition on outreach cost recovery and replacing the allowed rate of return on capital investment with an allowed operating margin, determined

¹⁷ See *id.* at 5176, paras. 11-12. 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.

¹⁸ *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, 9219, para. 2 (CGB 2013); *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, 36 FCC Rcd 10194, 10197, paras. 7-9 (CGB 2021) (*2021 TRS Compensation Order*).

¹⁹ Petition of Sprint Corporation for Rulemaking to Reform the Commission’s Ratemaking Methodology for IP Relay Service (filed Nov. 1, 2018), [https://www.fcc.gov/ecfs/file/download/DOC-59b44e7e3b400000-A.pdf?file_name=Sprint%20IP%20Relay%20Rate%20Petition%20-%20REDACTED%20\[AS%20FILED\]%20-%202011.1.2018.pdf](https://www.fcc.gov/ecfs/file/download/DOC-59b44e7e3b400000-A.pdf?file_name=Sprint%20IP%20Relay%20Rate%20Petition%20-%20REDACTED%20[AS%20FILED]%20-%202011.1.2018.pdf) (T-Mobile 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 FCC Rcd 6802 (CGB 2018) (*TRS Third Protective Order*).

²⁰ T-Mobile RM Petition at 1.

²¹ *Id.* at 1-2.

²² *Id.* at 5-7. Under the MARS methodology, 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 Order*, 22 FCC Rcd at 20151-61, paras. 16-38.

²³ 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, RM-11820, Public Notice, 33 FCC Rcd 11076 (CGB 2018).

²⁴ See *Notice*, FCC 21-95.

²⁵ *Id.*, paras. 12-13.

as a percentage of allowable expenses.²⁶ In addition, the Commission sought comment on other possible changes in how reasonable cost is determined and on whether to continue annually adjusting the base level of compensation based on predetermined factors. Finally, the Commission sought comment on alternative compensation methodologies, including the MARS-based methodology proposed in T-Mobile's petition for rulemaking.

8. Comments on the *Notice* were filed by T-Mobile, USTelecom—The Broadband Association, and the Telecommunications Equipment Distribution Program Association (TEDPA), and a coalition of consumer accessibility advocates.²⁷ All commenters support continuing TRS Fund support for IP Relay. T-Mobile expanded on its MARS-based compensation methodology and offers a price-cap methodology as an alternative if the Commission declines to adopt the MARS methodology.²⁸ T-Mobile, the consumer advocates, and TEDPA urge the Commission to fund T-Mobile's outreach and marketing of the service to eligible individuals.²⁹ T-Mobile, US Telecom, and the consumer advocates encouraged the Commission to ensure sufficient funding for research into improved technology for IP Relay.³⁰

III. REPORT AND ORDER

9. *Summary.* We adopt a four-year compensation plan for IP Relay, for the period from July 1, 2022, through June 30, 2026. We set a base compensation level of \$1.9576 per minute, which is also the compensation formula for Fund Year 2022-23.³¹ For each subsequent Fund Year, this amount will be adjusted by: (1) multiplying the previous year's compensation level by an inflation factor linked to the Bureau of Labor Statistics' Employment Cost Index for professional, scientific, and technical services; and (2) adding an appropriate amount, if necessary, to compensate a provider for exogenous costs. This compensation formula is applicable to the provision of IP Relay by T-Mobile, the currently certified provider, and by any other company that may be granted certification to provide IP Relay during the compensation period.

10. As proposed in the *Notice*, we will continue the practice whereby the Commission periodically resets the base level of IP Relay compensation based on a determination of reasonable provider cost.³² However, we find that certain criteria for determining reasonable IP Relay costs need

²⁶ *Id.*, paras. 17-21, 28-30.

²⁷ See Comments of T-Mobile Accessibility (filed Dec. 20, 2021) (T-Mobile Comments); Comments of USTelecom (filed Dec. 20, 2021) (USTelecom Comments); Letter from Telecommunications Equipment Distribution Program Association (TEDPA) Board to Marlene H. Dortch, Secretary, FCC (filed Dec. 17, 2021) (TEDPA Comments); Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Association of Late-Deafened Adults (ALDA), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cerebral Palsy and Deaf Organization (CPADO), Deaf Seniors of America (DSA), Gallaudet University Alumni Association (GUAA), Hearing Loss Association of America (HLAA), Helen Keller National Center (HKNC), and National Association of the Deaf (NAD) (filed Dec. 20, 2021) (Consumer Groups Comments). The Commission received no reply comments.

²⁸ See T-Mobile Comments.

²⁹ See *id.* at 22-24; Consumer Groups Comments at 4; TEDPA Comments at 1-2.

³⁰ See T-Mobile Comments at 24-25; USTelecom Comments at 2; Consumer Groups Comments at 3-4.

³¹ Unlike VRS, which experienced a substantial increase in demand after the outbreak of the COVID-19 pandemic, demand for IP Relay remained fairly stable during the pandemic. See 2022 TRS Compensation Report, Exh. 1-5. Therefore, we are relatively unconcerned about the reliability of the cost and demand data underlying the compensation formula for IP Relay. Cf. *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. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802, 8810-11, paras. 17-22 (2021) (2021 VRS Compensation Notice) (seeking comment on whether to defer modification of VRS compensation formulas due to pandemic-related concerns about the reliability of cost and demand data).

³² See 2007 TRS Compensation Order, 22 FCC Rcd at 20160, paras. 45, 46 n.141.

adjustment in light of subsequent experience. First, we expand the allowable cost categories to include the reasonable costs of outreach and acquisition of 10-digit telephone numbers. Second, based on the record indicating that projected IP Relay costs have been relatively accurate, we calculate reasonable IP Relay costs based on two years of projected costs and demand. Third, in lieu of return on capital investment, we allow an operating margin, analogous to those allowed for VRS and IP CTS. For IP Relay, we allow an operating margin of 12%. In addition, we increase the duration of the compensation period from three to four years. We also modify the factors for annual compensation adjustments, linking the inflation factor to a different price index, foregoing the use of a productivity factor for the next period, and harmonizing the criteria for recovery of exogenous costs with those applied to VRS and IP CTS.

11. The record does not support more radical changes in our IP Relay compensation methodology. As discussed in a previous order, “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.”³³ 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.”³⁴ T-Mobile fails to support its claim that the current methodology “precludes any increase in compensation regardless of the extent to which the costs of supplying the service may have risen.”³⁵ To the contrary, over the last eight years, compensation has risen from \$1.0147 to \$1.7146 per minute, due to rising costs and waivers of certain allowable-cost criteria.³⁶ Further, T-Mobile’s proxy-based proposal has major flaws that render it unsuitable, as explained in Part III.F below.

A. IP Relay User Community

12. In the *Notice*, the Commission invited the submission of information on who primarily uses IP Relay.³⁷ Although the record does not permit a detailed quantitative analysis, it indicates that, despite the relatively low level of current demand for the service (compared to other forms of Internet-based TRS),³⁸ several segments of the TRS-eligible population benefit from the availability of IP Relay.

13. First, consumers who lose hearing later in life may prefer IP Relay to VRS because, unlike VRS, American Sign Language (ASL) is not required.³⁹ Second, IP Relay can be enhanced with adaptive technologies such as refreshable Braille displays and screen readers, making it particularly useful to many consumers who are deafblind.⁴⁰ According to recent research, the deafblind population in the United States numbers between 45,000 and 50,000 individuals, about 20% of whom are children.⁴¹ Third,

³³ *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, 10871-72, para. 14 (2020) (*2020 IP CTS Compensation Order*).

³⁴ *Id.*

³⁵ T-Mobile Comments at 5.

³⁶ *See supra* para. 5.

³⁷ *See Notice*, paras. 14-15.

³⁸ *See 2022 TRS Compensation Report*, Exh. 2 (projecting about 6.5 million minutes of use for IP Relay, about 156 million minutes for VRS, and about 552 million minutes for IP CTS for Fund Year 2022-23); *2021 TRS Compensation Order*, 36 FCC Rcd at 10201, para. 18 (adopting funding requirements of \$11,910,556 for IP Relay, \$579,320,133 for VRS, and \$851,014,202 for IP CTS).

³⁹ T-Mobile Comments at 3; T-Mobile 2018 RM Petition at 2; Consumer Groups Comments at 2 (noting benefits to individuals who cannot use other forms of TRS).

⁴⁰ T-Mobile Comments at 4; Consumer Groups Comments at 2 (citing benefits to DeafBlind community).

some people with speech disabilities may prefer to use IP Relay, a text-based service that does not involve any voice communications by registered users, rather than speech-to-speech relay service (STS).⁴² Fourth, because IP Relay does not require a high-quality broadband connection for video and can be easily used on a mobile application, it provides VRS users with an alternative means of communication when ASL video communication is not feasible or convenient.⁴³ For traveling and mobile TRS users, T-Mobile makes IP Relay available as an application for computers and mobile devices on both iOS and Android operating platforms.⁴⁴

B. Allowable Expenses

1. Outreach

14. As proposed in the *Notice*,⁴⁵ we revise our allowable-cost criteria to provide that reasonable costs associated with IP Relay provider outreach are recoverable from the TRS Fund. We conclude that the concerns underlying the Commission’s 2013 decision to terminate TRS Fund support for IP Relay outreach are no longer applicable.

15. In general, the purpose of TRS outreach has a dual focus: (1) educating the general public about relay services so that hearing individuals are aware of the availability of TRS and how to use it to communicate by telephone with individuals who are deaf or hard of hearing, as well as to prevent the uninformed rejection of TRS calls by a called party;⁴⁶ and (2) providing “non-branded” information to individuals who are deaf or hard of hearing about various forms of TRS, to explain the benefits and how to access and use the service.⁴⁷

16. Although provider-directed outreach was supported by the TRS Fund for more than 20 years,⁴⁸ concerns were frequently raised that it was not very effective as a means of educating the public, or even the TRS-eligible community, about the benefits of TRS.⁴⁹ There was evidence that provider expenses attributed to outreach were incurred primarily for branded marketing to encourage already-

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⁴¹ See Center for Parent Information and Resources, “Deaf-Blindness” (updated September 2020), <https://www.parentcenterhub.org/deafblindness/>; see also National Center on Deaf-Blindness, “The 2020 National Child Count of Children and Youth Who Are Deaf-Blind,” at 2 (February 2022), https://www.nationaldb.org/media/doc/2020_National_Deaf-Blind_Child_Count_Report_FINALEDITED_a.pdf.

⁴² T-Mobile Comments at 4. STS is a form of TRS “that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.” 47 CFR § 64.601(a)(40). In 2016, approximately 17.5 million people in the United States had difficulty using their voices, and, by the first grade, about 5% of children exhibit a speech disorder. National Institute on Deafness and Other Speech Disorders, “Statistics on Voice, Speech, and Language” (July 11, 2016), <https://www.nidcd.nih.gov/health/statistics/statistics-voice-speech-and-language>.

⁴³ T-Mobile Comments at 4; see also TEDPA Comments at 1 (stating that “the ability to access IP Relay via a computer, smartphone, or tablet, increases access to consumers in need of such service whether at home or within the community”).

⁴⁴ See T-Mobile Comments at 4-5; T-Mobile Accessibility, “T-Mobile IP Relay,” <https://www.tmobileaccess.com/> (last visited May 16, 2022).

⁴⁵ *Notice*, paras. 17-21.

⁴⁶ See *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, 8394-95, para. 36 (2006) (*2006 TRS Cost Recovery Further Notice*).

⁴⁷ See *2013 VRS Reform Order*, 28 FCC Rcd at 8632-33, paras. 27-28.

⁴⁸ See *id.* at 8632, para. 27 (“[O]utreach on TRS has been an important component of this program since . . . 1991.”).

⁴⁹ *Id.* at 8632-33, para. 28.

registered TRS users to change their service provider.⁵⁰ Therefore, the Commission directed the establishment of a pilot program, run by a non-provider, to provide coordinated nationwide outreach for both VRS and IP Relay.⁵¹ To prevent wasteful duplication of this effort, the Commission determined that the TRS Fund should no longer support outreach activity by VRS and IP Relay providers.⁵²

17. However, the pilot National Outreach Program expired in 2017⁵³ and has not been reauthorized. In the absence of a Commission-directed outreach program, IP Relay provider outreach activity no longer represents wasteful duplication of effort. Further, while it may still be the case that provider outreach is not particularly effective in educating the *general public* about TRS, in the case of IP Relay, at least, the company providing the service appears to be reasonably well positioned to communicate with *potential users*, including subgroups that may lack awareness of the availability of the service or how it can meet their needs.⁵⁴ In overseeing T-Mobile's outreach activity pursuant to recent waivers of the outreach prohibition,⁵⁵ the Bureau has found that T-Mobile's deafblind outreach efforts "have been beneficial and continue to be needed to effectively educate deaf-blind consumers regarding IP Relay service"⁵⁶ and that its broader outreach activities were "appropriately targeted" to "ensure that all potential users are aware of the availability of the service."⁵⁷ In addition, the concern that TRS providers tend to focus on competitive marketing of their own brand, rather than outreach to new users,⁵⁸ is not applicable to the current IP Relay context, in which only one company offers the service.

18. For IP Relay, we also find that there is an affirmative need for TRS Fund support of outreach. Given the limited current use of the service, our rules should not discourage providers from making efforts to effectively educate consumers—especially relatively narrow subgroups of eligible users, such as consumers who are deafblind—regarding the availability of and improvements to the service.⁵⁹ Indeed, all parties commenting on this issue support allowing T-Mobile to recover the costs of outreach.⁶⁰ Further, with only one IP Relay provider, we believe that provider outreach expenditures are

⁵⁰ *Id.* at 8632-35, paras. 28-30.

⁵¹ *Id.* at 8634-39, paras. 31-39.

⁵² *Id.* at 8696, para. 192.

⁵³ The National Outreach Program was launched in 2015 by the MITRE Corporation, and was funded for two TRS Fund Years with a potential extension of one year. *See id.* at 8637-38, paras. 31-34.

⁵⁴ *Cf.* 2020 IP CTS Compensation Order, 35 FCC Rcd at 10875, para. 21 (stating 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").

⁵⁵ *See* 2021 TRS Compensation Order, 36 FCC Rcd at 10198-99, paras. 12-14; *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); 2019 TRS Compensation Order, 34 FCC Rcd at 5178-79, para.16; *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, 6303-04, paras. 10-11 (CGB 2018) (2018 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, 32 FCC Rcd 5142, 5146, para. 13 (CGB 2017) (2017 TRS Compensation Order).

⁵⁶ 2017 TRS Compensation Order, 32 FCC Rcd at 5146, para. 13.

⁵⁷ 2020 TRS Compensation Order, 35 FCC Rcd at 6654-55, para. 13.

⁵⁸ *See* 2020 IP CTS Compensation Order, 35 FCC Rcd at 10875, para. 21.

⁵⁹ *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.

⁶⁰ *See* Consumer Groups Comments at 4; TEDPA Comments at 1-2; T-Mobile Comments at 22-24.

more likely to be focused on educating potential new users about the service rather than on encouraging or preventing “churn” among existing customers.⁶¹ Finally, we acknowledge the Bureau’s conclusion that a review of the outreach reports submitted by T-Mobile indicates that its outreach activity since 2016 has not shown that it is misdirected toward ineligible users.⁶² Therefore, we conclude that the Commission’s concerns in enacting the ban in 2013 are not applicable to IP Relay today.

19. We do not find it necessary at this time to impose a quantitative limit on allowable outreach costs or require specific reporting to the Commission on IP Relay outreach activity.⁶³ The TRS Fund administrator requires detailed reporting of costs in TRS providers’ annual reports⁶⁴ to facilitate its review of providers’ expenses. When the Commission periodically resets the base compensation level based on a determination of reasonable cost, the administrator’s review of reported expenses will help the Commission to assess whether outreach expenses are reasonable and directed toward permissible purposes.⁶⁵

2. Indirect Overhead

20. We conclude that the record does not support modifying, for IP Relay, the current prohibition on TRS Fund support of general overhead costs, where a company has both TRS and non-TRS lines of business and it is not possible to assign such costs directly to the company’s TRS.⁶⁶

21. In 2007, the Commission concluded that, when a company provides both TRS and non-TRS services, general overhead costs should not be supported by the TRS Fund.⁶⁷ Therefore, overhead costs cannot be allocated to TRS based on a formula, e.g., by multiplying a company’s total overhead costs by the percentage of the company’s total revenues that are derived from TRS.⁶⁸ 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.⁶⁹ 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.”⁷⁰

⁶¹ See *2019 TRS Compensation Order*, 34 FCC Rcd at 5179-80, 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.

⁶² See *2021 TRS Compensation Order*, 36 FCC Rcd 10199, para. 13; *2020 TRS Compensation Order*, 35 FCC Rcd at 6655, para. 14.

⁶³ See *Notice*, para. 21 (seeking comment on such measures); T-Mobile Comments at 23-24 (in opposition). We received no comments supporting such measures.

⁶⁴ See, e.g., *2022 TRS Compensation Report*, Appx. B (Fund administrator’s instructions for filing cost reports by Interstate TRS providers).

⁶⁵ See T-Mobile Comments at 23-24 (recommending review by TRS Fund administrator for reasonableness of expenses in lieu of reporting requirements).

⁶⁶ See *Notice*, paras. 22-26 (seeking comment on this question).

⁶⁷ *2007 TRS Compensation Order*, 22 FCC Rcd at 20168-69, paras. 74-75 (quoting *2006 TRS Cost Recovery Further Notice*, 21 FCC Rcd at 8395-96, para. 38).

⁶⁸ *Id.* at 20168-69, para. 75. 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). *Id.* n.197.

⁶⁹ *Id.*; see also *2006 TRS Cost Recovery Further Notice*, 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”).

⁷⁰ *2006 TRS Cost Recovery Further Notice*, 21 FCC Rcd at 8396, para. 39.

22. The comments do not persuade us that this rationale is flawed. Although the Commission sought comment on a number of questions relevant to this issue, none of the comments addresses in any detail: (1) whether the rule is mandated by section 225 of the Act, as the Commission suggested in 2007; (2) whether alternatives to the current rule would be more cost effective, taking into account the benefits of allowing a contribution to overhead, the implementation costs, and any harms or risk of harm; (3) the extent to which it is feasible to track directly those administrative costs attributable to TRS, e.g., by maintaining time records for executives or staff who devote a portion of their time to managing TRS; (4) the specific kinds of the administrative costs that would be recoverable if overhead allocations were permitted; and (5) the amount by which overhead allocations, if allowable, would increase the per-minute costs attributable to IP Relay.

23. We recognize that, in theory, a TRS provider with non-TRS lines of business might be disadvantaged, compared to its non-TRS competitors, by the inability to allocate to TRS any portion of company-wide overhead costs.⁷¹ But the comments do not provide any explanation of what kinds of costs fall into this category, the amount of such costs that would be allocated to TRS, were such allocation allowed, and why overhead costs attributable to TRS could not be directly assigned.⁷² In the latter regard, we note that multiple businesses and government operations have implemented cost-causative accounting systems to enable precisely what the Commission seeks to achieve for TRS, i.e., to allow those costs that are attributable to a certain account or organizational sub-group to be separately identified for the purpose of seeking recompense for those costs from the appropriate source.⁷³

3. Other Allowable Cost Criteria

24. In the *Notice*, we sought comment generally on whether other criteria for allowability of IP Relay costs should be revised. Based on the comments received, we revise our allowable-cost criteria for IP Relay to allow TRS Fund support of an IP Relay provider's reasonable costs of acquiring North American Numbering Plan (NANP) telephone numbers. We agree with T-Mobile that there is no valid rationale for prohibiting support of such costs.⁷⁴ We note that several categories of numbering and E911 costs are currently recoverable from the TRS Fund, including expenses directly related to: (1) updating and maintaining information in the TRS Numbering Directory; (2) processing and transmitting calls made to TRS telephone numbers; (3) routing emergency TRS calls to an appropriate public safety answering point (PSAP); and (4) other implementation tasks directly related to facilitating ten-digit numbering and emergency call handling.⁷⁵ However, the costs associated with acquiring a TRS telephone number and assigning it to a customer are not currently compensable.⁷⁶ In the 2008 TRS numbering decisions, the

⁷¹ See T-Mobile Comments at 26-27 (claiming that not recovering indirect overhead for IP Relay results in pricing products in other lines of business higher, thereby weakening its ability to compete).

⁷² The ban on recovery of indirect overhead costs does not prohibit a provider from recovering those corporate and administrative costs that are directly attributable to the oversight and operation of TRS. See *2007 TRS Compensation Order*, 22 FCC Rcd at 20169, 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.”). Such direct assignment could be achieved, e.g., by either tracking or estimating the portion of a T-Mobile employee's time that is attributable to TRS.

⁷³ See, e.g., TrackingTime, “Reports for Billing and Payroll to Reduce Administrative Work,” <https://trackingtime.co/features/billing-and-payroll-reports> (last visited Apr. 4, 2022) (application that allows user to “see how your team is distributing their time between projects or how many hours their clients are really costing them by measuring and evaluating data in depth”); Time Analytics, “19 Best Billable Hours Tracking Software in 2022,” <https://timeanalyticssoftware.com/19-best-billable-hours-tracker-software-in-2021/> (last visited Apr. 4, 2022); 2 CFR § 200, Subpart E (federal contract award cost accounting principles).

⁷⁴ T-Mobile Comments at 25-26. No party opposes support for such costs.

⁷⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, et al.*, CG Docket No. 03-123, et al., Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 812, para. 46 (2008) (*Second Internet-Based TRS Numbering Order*).

Commission reasoned that such costs are not attributable to the use of a relay service to facilitate a call, noting that analogous costs incurred by voice service providers are typically passed through to their customers.⁷⁷

25. Given that the Commission's rules *require* IP Relay providers to issue telephone numbers,⁷⁸ we find it illogical to treat number acquisition costs as “not attributable to the use of relay to facilitate a call.”⁷⁹ Further, we agree with T-Mobile that the circumstances relevant to recovery of such costs by voice service providers and IP Relay providers are not equivalent.⁸⁰ While voice service providers have a billing relationship with their consumers, IP Relay providers typically do not, and there would be little point in creating such a relationship for the sole purpose of passing through what likely would be a *de minimis* monthly charge for any particular IP Relay user.⁸¹

26. Several commenters support revising the Commission's allowable-cost criteria to permit TRS Fund support for the reasonable cost of research and development to enhance the functional equivalency of IP Relay.⁸² Currently, the TRS Fund supports research and development conducted by a TRS provider to ensure that its service meets the Commission's minimum TRS standards, but it does not support the cost of developing TRS enhancements that exceed this criterion.⁸³ We note that the record regarding costs currently incurred and projected for IP Relay research and development does not indicate that resolution of this matter will appreciably affect the level of IP Relay compensation.⁸⁴ Further, the question of whether to modify the criterion for allowing TRS Fund support of provider research and development affects other forms of TRS and is currently at issue in a parallel proceeding on VRS compensation.⁸⁵ For these reasons, we defer resolution of this question to a later time.

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⁷⁶ *Id.* at 813-16, paras. 47-54.

⁷⁷ *Id.*

⁷⁸ See 47 CFR § 64.611(a)(1) (IP Relay providers must allow registered users to port in a 10-digit telephone number or “[a]ssign that user a geographically appropriate North American Numbering Plan telephone number”).

⁷⁹ *Second Internet-Based TRS Numbering Order*, 24 FCC Rcd at 813, para. 48.

⁸⁰ T-Mobile Comments at 25-26. T-Mobile was the only party who commented on recovery of the costs of numbering.

⁸¹ In this regard, there is an important difference between traditional TTY-based TRS and IP Relay. To place a call using a TTY, a consumer must subscribe to traditional telephone service for which a telephone number is automatically issued to the subscriber (and the number acquisition cost is bundled into the service rate). To place a call using IP Relay, a consumer must subscribe to broadband service, for which no telephone number is automatically provided (unless the consumer also subscribes to VoIP service—which an IP Relay user would have no reason to do).

⁸² See Consumer Groups Comments at 3-4; T-Mobile Comments at 24-25; USTelecom Comments at 2 (“research of newer technologies for efficiencies in all Telecommunications Relay Services within the TRS Fund, is welcome and prudent”).

⁸³ See *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, 12547-48, paras. 189-90 (2004) (*2004 TRS Cost Recovery Order*).

⁸⁴ Letter from Eliot Greenwald, Consumer and Governmental Affairs Bureau, FCC, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123, 12-38, Attach. (filed June 27, 2022) (IP Relay Provider Expenses) (confidential version).

⁸⁵ See *2021 VRS Compensation Notice*, 36 FCC Rcd 8815, para. 33; *cf.*, *e.g.*, Comments of Sorenson Communications, LLC, CG Docket Nos. 10-51 and 03-123, at 34 (filed July 29, 2021) (criticizing restricted cost recovery for VRS research and development); Comments of ZP Better Together, LLC, CG Docket Nos. 03-123 and 10-51, at 17-18 (filed July 29, 2021) (arguing for recovery of research and development costs in VRS compensation).

C. Operating Margin

27. We adopt our proposal to allow an IP Relay provider a reasonable operating margin—i.e., an allowance for recovery of a designated percentage of allowed expenses, in lieu of return on capital investment. In the *2017 VRS Compensation Order*, we acknowledged 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. Accordingly, the Commission amended its compensation rules to specify a percentage of allowable expenses as a reasonable operating margin for VRS providers.⁸⁶ The Commission also adopted this approach for IP CTS compensation.⁸⁷

28. Like VRS and IP CTS, IP Relay requires providers to invest relatively little in physical plant.⁸⁸ Therefore, for the same reasons as described above, we conclude that allowing an IP Relay “provider a reasonable margin over expenses, which is not tied to the relatively low investment in physical plant that is needed for the provision of [this service,] will help ensure sufficient investment in the provision of this service.”⁸⁹ Taking the step appropriately harmonizes the Commission's general approach to compensation methodology for all forms of Internet-based TRS.

29. When setting the operating margin for VRS, the Commission reviewed the operating margins for various interpretation and translation services and government contractors who are paid for services mandated by law and supervised by the government.⁹⁰ The Commission selected the range from 7.6% to 12.35% as a reasonable range of operating margins for VRS.⁹¹ The cost structure of IP Relay is similar to that of VRS in that an IP Relay provider also relies on communications assistants to relay

⁸⁶ *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, 5903-05, paras. 24-26 (2017) (*2017 VRS Compensation Order*) (adopting operating margin for VRS compensation).

⁸⁷ *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 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5813-14, para. 23 (2018) (*2018 IP CTS Compensation Order*) (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).

⁸⁸ See *2019 TRS Compensation Order*, 34 FCC Rcd at 5176, para. 11 n.26.

⁸⁹ *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.

⁹⁰ See *2017 VRS Compensation Order*, 32 FCC Rcd at 5904, para. 25. The Commission found that quarterly pre-tax operating margins for non-legal professional, scientific, and technical services averaged 4.6% in the 2013-16 period and that operating margins for the subsector that includes translation and interpretation services averaged 7.4% in the 2013-16 period and 7.6% in 2016. The *2017 VRS Compensation Order* also cited surveys of government contractors conducted by Grant Thornton LLP between 2009 and 2015, in which the majority of respondents consistently reported profit rates before interest and taxes between 1% and 10%, with the median profit rate in the neighborhood of 6%. Finally, the Commission also considered information submitted by a commenting party regarding operating margins in the information technology consulting sector, for which the median operating margin was 12.35%. *Id.* at 5903-05, paras. 24-26.

⁹¹ *Id.* at 5904-05, para. 26. In 2018, the Commission established the same reasonable range of operating margins for IP CTS. See *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5813-14, para. 23.

conversations between a hearing party and a non-hearing party.⁹² Given these similarities, the range of operating margins deemed reasonable for VRS is also a reasonable range for IP Relay.⁹³

30. In setting a margin within this range, we recognize that, because there is currently only one IP Relay provider, the Commission's risk-benefit analysis is different for IP Relay than for VRS and IP CTS. If the operating margin we allow should turn out to be significantly lower than margins that currently can be earned in comparable lines of business, the current provider might exit the business, leaving consumers stranded. To guard against this risk, we set the IP Relay operating margin at 12%, near the high end of the reasonable range.

31. We do not agree with T-Mobile's argument that an operating margin *above* the current range is needed.⁹⁴ The benchmark advocated by T-Mobile is based on "the average operating margin obtained by T-Mobile and comparable communications providers" such as Verizon, AT&T, CCO Holdings, LLC (Charter Communications), and Comcast Corporation.⁹⁵ These large telecommunications companies offer a variety of communications services and are not "sufficiently analogous to VRS providers so that their operating margins can serve as a reasonable proxy."⁹⁶ Such businesses are capital intensive rather than labor intensive, requiring more long-term capital investment to build and maintain physical plant.⁹⁷ Indeed, the essential *dissimilarity* in capital requirements between such companies and TRS providers is what led the Commission to adopt an operating-margin approach for TRS in the first place.⁹⁸

32. Given these significant differences between TRS and the more capital-intensive market segments in which T-Mobile otherwise operates, we are unpersuaded by T-Mobile's argument that providing an operating margin somewhat lower than those earned by more capital intensive operations would force T-Mobile "to redirect resources currently allocated to that service to other service offerings," or even to exit the IP Relay business altogether.⁹⁹ The logic of T-Mobile's argument is not sound. Although the allowed *operating margin* for IP Relay may be lower than the actual operating margin for more capital-intensive lines of business, the *return on investment*—given the relatively small proportion of capital investment needed for TRS—is likely to be *higher*. Therefore, the capital resources allocated to IP Relay are likely to be well rewarded.

33. We also do not agree that the recent surge of inflation dictates a higher operating margin "to provide some cushion against the cost increases T-Mobile Accessibility would have to absorb before

⁹² See T-Mobile, Reply Comments, CG Docket Nos. 03-123 and 10-51, RM-11820, at 4-6 (filed June 5, 2020) (T-Mobile 2020 Compensation Reply Comments) (discussing labor costs). Further, as the Commission found with respect to VRS, *2017 VRS Compensation Order*, 32 FCC Rcd at 5904, para. 25, currently a large portion of IP Relay costs are labor costs, primarily salaries and benefits for CAs. See T-Mobile Comments, Attach. C (confidential version).

⁹³ The record does not indicate that the average operating margin for these benchmark industry segments has changed significantly since 2017.

⁹⁴ T-Mobile Comments at 27-28 (recommending an operating margin of 15.2%). No party other than T-Mobile has opposed the approach we adopt.

⁹⁵ *Id.* at 28 n.80.

⁹⁶ *Cf.* *2017 VRS Compensation Order*, 32 FCC Rcd at 5904, para. 25 (declining to use IT consulting company operating margins as a proxy).

⁹⁷ See, e.g., *Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers to Entrepreneurs and Other Small Businesses*, Report, 31 FCC Rcd 12038, 12081 (2016) (Statement of Chairman Tom Wheeler) ("The 1996 Act did not change the basic economics of building and running large communications networks. Whether they are wireless or fixed, operating these networks is a capital intensive undertaking.")

⁹⁸ See *2017 VRS Compensation Order*, 32 FCC Rcd at 5903-05, paras. 24-26.

⁹⁹ T-Mobile Comments at 28.

the next annual adjustment.”¹⁰⁰ As discussed below, the compensation formula includes an inflation adjustment factor linked to an appropriate index. We do not find a valid reason to include an additional inflation factor in the operating margin. Inflation affects all businesses, and the record does not contain evidence showing such a unique impact on IP Relay as to warrant special treatment in setting the allowed operating margin. Further, if, due to an increase in the inflation rate, the annual adjustment index applicable to a given year lags behind actual inflation in that year, any resulting losses are likely to be offset by windfall gains in a future year, when the actual inflation rate subsides below the applicable adjustment index derived from the previous year’s higher rate.¹⁰¹

D. Projected vs. Historical Costs

34. We adopt the Commission’s proposal to use projected costs and demand as the basis for calculating the base compensation level for IP Relay.¹⁰² Historically, this was the Commission’s practice in setting cost-based compensation for any form of TRS.¹⁰³ However, the Commission found that VRS and IP CTS providers’ projections of cost and demand proved unreliable, resulting in overcompensation of providers.¹⁰⁴ For those services, therefore, the Commission has adopted a different approach, averaging providers’ projected per-minute costs for the current calendar year and historical per-minute costs for the preceding calendar year.¹⁰⁵ The Commission found that this blended approach was consistently a more accurate predictor of actual costs for both VRS¹⁰⁶ and IP CTS.¹⁰⁷

35. Until 2019, however, the base level for IP Relay compensation was still set based on projected costs only.¹⁰⁸ In that year, the Bureau switched to the blended approach, to align the IP Relay methodology with those for VRS and IP CTS.¹⁰⁹

¹⁰⁰ *Id.*

¹⁰¹ Because we use projected costs to set the base compensation formula for the first year of the new cycle, the revised formula takes account of the recent unusually high inflation.

¹⁰² 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) (*2016 TRS Compensation Report*).

¹⁰³ See, e.g., *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, 12245, para. 22 (2005) (*2005 TRS Compensation Order*); National Exchange Carrier Association, *Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate*, CG Docket No. 03-123, at 15 (filed May 1, 2007).

¹⁰⁴ 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); *2013 VRS Reform Order*, 28 FCC Rcd at 8694-96, paras. 189-91; *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10871-73, para. 13-17.

¹⁰⁵ *2017 VRS Compensation Order*, 32 FCC Rcd at 5927-28, para. 69; *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10871-73, paras. 13-17.

¹⁰⁶ See *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.

¹⁰⁷ *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, paras. 13-17.

36. As explained in the *Notice*, provider projections of IP Relay costs have proved to be substantially more accurate than those for VRS and IP CTS.¹¹⁰ A comparison of T-Mobile's cost projections with the actual cost per minute reported between 2015 and 2019 demonstrates that, in the case of IP Relay, the results of the projected-only approach have proven to be reasonably accurate.¹¹¹ We conclude that this difference with our findings regarding VRS and IP CTS justifies a return to the practice of using projected-only costs and demand when setting IP Relay compensation levels. As in the past, projected costs and demand will be reviewed for reasonableness by the administrator and the Commission.

E. Compensation Period and Adjustments

1. Duration of Compensation Period

37. We find that the IP Relay compensation formula established in this Report and Order should remain in place for a four-year period. As the Commission has previously recognized, multi-year compensation periods are generally beneficial in the TRS context.¹¹² Longer periods give providers more certainty regarding future compensation and provide a significant incentive for increased efficiency,¹¹³ as cost reductions during a multi-year period do not immediately result in reduced compensation the following year. A multi-year compensation 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.¹¹⁴

38. We conclude that current conditions justify increasing the compensation period from three to four years. IP Relay costs and demand have been relatively stable and accurate in recent years, and T-Mobile does not anticipate any significant changes to the service in the near future.¹¹⁵ A four-year

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¹⁰⁸ See 2016 TRS Compensation Report at 23 (stating that “the cost based recommendation [for IP Relay compensation] is usually based on the average of the two projected year’s costs”).

¹⁰⁹ See 2019 TRS Compensation Order, 34 FCC Rcd at 5177, para. 14.

¹¹⁰ See *Notice*, para. 34.

¹¹¹ See Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund: Payment Formulas and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 1-5 (filed May 1, 2019) (confidential). The only party commenting on this issue, T-Mobile, agrees, arguing that forecasting costs in a market such as IP Relay, where there is only one provider, is a more predictable process than doing so in a market with multiple providers such as VRS, where “unexpected marketplace developments during a rate year can cause significant changes in a provider’s demand and costs.” Letter from Scott R. Freiermuth, T-Mobile, to Marlene H. Dortch, FCC, CG Docket No. 03-123 and RM-11820, at 3 (filed May 12, 2022); see also T-Mobile Comments at 14-15; *id.*, Attach. A, Declaration of David E.M. Sappington at 10 (Sappington Declaration).

¹¹² See 2017 VRS Compensation Order, 32 FCC Rcd at 5921, para. 58; 2013 VRS Reform Order, 28 FCC Rcd at 8703-04, para. 212.

¹¹³ 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.

¹¹⁴ 2018 IP CTS Compensation Order, 33 FCC Rcd at 5817, para. 28. Commenters agree that setting a multi-year compensation period can “provide IP Relay providers consistency and predictability.” Consumer Groups Comments at 3; see also T-Mobile Comments at 21-22 (recommending 4-5 year period); USTelecom Comments at 2 (“multi-year compensation for IP Relay reduces inefficiencies and cost overruns by providing rate certainty to providers”).

period will provide T-Mobile a substantial degree of predictability in its reimbursements from the Fund, improving its ability to plan future operations.¹¹⁶ Although T-Mobile recommends a longer compensation period,¹¹⁷ we have not previously set a period longer than four years for any form of Internet-based TRS. Given the inherent uncertainty of setting compensation formulas in the absence of price competition, we decline at this time to extend the compensation term beyond previous precedent.

39. We note that the Commission retains the ability to extend the compensation period if circumstances warrant.¹¹⁸ We delegate authority to the Chief, Consumer and Governmental Affairs Bureau, to extend the compensation period by Order, should such extension prove to be necessary to prevent the termination of TRS Fund support for IP Relay (e.g., if, due to unanticipated data issues or other delays, a situation arises where there is insufficient time remaining for the Commission to complete a determination of a revised compensation formula for the next compensation period).

2. Compensation Adjustments

40. We adopt a number of changes to the current method for adjusting IP Relay compensation during the four-year compensation period. Under the current methodology, an inflation factor is set at the beginning of the period, based on the Gross Domestic Product-Price Index (GDP-PI), and is used to adjust the IP Relay compensation level upward for inflation in years following the first year of the cycle.¹¹⁹ The inflation factor is paired with an efficiency factor, which adjusts compensation downward to reflect likely productivity increases.¹²⁰ In addition, adjustments may be made if a provider incurs exogenous costs.¹²¹

41. *Inflation Adjustment.* We will continue to apply an annual adjustment to IP Relay compensation to account for inflation after the first year of the cycle.¹²² As the adjustment factor, we adopt the Bureau of Labor Statistics' Employment Cost Index for professional, scientific, and technical services.¹²³ We conclude that, because IP Relay is a labor-intensive service,¹²⁴ this seasonally adjusted index, which includes translation and interpreting services, will more accurately reflect changes in relevant costs.

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¹¹⁵ Sappington Declaration at 11; T-Mobile Comments at 17.

¹¹⁶ T-Mobile's expert concludes that the benefits of a longer compensation period are highly likely to outweigh the risk of unexpected cost increases or falling demand if the appropriate framework for recovery of exogenous costs is available. Sappington Declaration at 14.

¹¹⁷ T-Mobile Comments at 17. T-Mobile's expert recommends a period of "five or six years." Sappington Declaration at 15, 17.

¹¹⁸ See, e.g., *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, 26 FCC Rcd 9972, 9980-81, paras. 22-23 (2011) (extending VRS compensation period pending completion of rulemaking); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 21 FCC Rcd 7018, 7027, paras. 28-29 (CGB 2006) (extending the VRS compensation plan for up to one year pending a Commission decision pursuant to new cost recovery rules).

¹¹⁹ See *2007 TRS Compensation Order*, 22 FCC Rcd 20159-60, para. 43.

¹²⁰ See *id.*

¹²¹ See *id.*

¹²² See *id.*

¹²³ Bureau of Labor and Statistic, BLS Data Viewer, Employment Cost Index, <https://beta.bls.gov/dataViewer/view/timeseries/CIU20154000000001>.

¹²⁴ See *Notice*, para. 41. As discussed above, T-Mobile's labor costs represent a large percentage of its overall IP Relay expenses.

42. Although T-Mobile urges continued use of GDP-PI, as the appropriate inflation factor,¹²⁵ it fails to justify the use of such a broad-gauged index, which tracks price increases throughout the economy, including businesses with proportionately lower labor costs, in light of the availability of a more narrowly focused index that is more likely to reflect actual TRS cost changes.¹²⁶

43. We delegate authority to the Chief of CGB to approve annual inflation adjustments for IP Relay, beginning with Fund Year 2023-24. We direct the TRS Fund administrator to specify in its annual TRS Fund report, beginning with the report due May 1, 2023, the index values for each quarter of the previous calendar year and the last quarter of the year before that.¹²⁷ We also direct the TRS Fund administrator to propose the compensation level for IP Relay that is adjusted from the previous year by a percentage equal to the percentage change in the index between the first and fifth quarters specified in the report. For example, if the percentage change in the index is +10%, the administrator would propose a compensation level equal to the current level times 1.10. After notice and opportunity for comment, the Chief of CGB, acting under delegated authority, shall review the administrator's proposed adjustment and approve it, or make any necessary modifications to ensure consistency with the Commission's rules and orders.

44. *Efficiency Adjustment.* At this time, we do not find it necessary to offset the inflation factor with an efficiency factor analogous to those of price-cap regulation. The paired inflation and efficiency adjustments are a feature of price-cap regulation designed to reflect the likelihood that a regulated company will become more productive or efficient.¹²⁸ In 2007, when the Commission made the decision to apply an efficiency factor to this service, IP Relay was a relatively new service, for which substantial efficiency improvements might be expected.¹²⁹ In recent years, by contrast, usage of this 20-year-old service has been relatively stable, and per-minute costs have not decreased.¹³⁰ Without the presence of multiple competing providers, there is less likelihood of a competitive incentive to achieve annual efficiency gains. This determination does not preclude the Commission from adopting an efficiency adjustment in setting IP Relay compensation for a future period.

45. We decline to adopt a *negative* efficiency factor, as recommended by T-Mobile based on the assertion that IP Relay labor costs are rising at a rate higher than other segments of the economy.¹³¹ In adopting the Employment Cost Index for professional, scientific, and technical services as the inflation adjustment factor, we have directly addressed T-Mobile's concern regarding rising labor costs in the TRS sector.

¹²⁵ T-Mobile Comments at 16; Sappington Declaration at 10-11. T-Mobile is the only party to comment on this issue.

¹²⁶ T-Mobile's economics expert, Dr. Sappington, merely states, without elaboration, that "GDP-PI is the correct measure of inflation to employ in a price cap regulation plan. The inflation measure should reflect the rate at which output prices are increasing throughout the entire U.S. economy." Sappington Declaration at 11.

¹²⁷ For example, in the annual report due May 1, 2023, the administrator shall specify the index values for the 4th quarter of 2021 and the 1st through 4th quarters of 2022.

¹²⁸ See, e.g., *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6796, para. 75 (1990) (discussing the purpose of a "productivity offset"); see also *2007 TRS Compensation Order*, 22 FCC Rcd 20159-60, para. 43 ("The Efficiency Factor will be set . . . to account for productivity gains.").

¹²⁹ The Commission had authorized this form of TRS only five years earlier. *2002 Declaratory Ruling*, 17 FCC Rcd 7779.

¹³⁰ See 2022 TRS Compensation Report, Exh. 1-5 (showing demand trend from January 2018 to March 2022); IP Relay Provider Expenses (confidential version).

¹³¹ Sappington Declaration at 11-12; T-Mobile Comments at 18.

46. *Exogenous Costs.* Under the current methodology, the IP Relay compensation level can be adjusted to permit recovery of exogenous costs. These are defined as “costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment,”¹³² such as costs necessitated by a new service requirement adopted by the Commission.¹³³ In the *Notice*, we asked whether we should align the criteria for exogenous costs in the IP Relay compensation regime with those adopted in the *2017 VRS Compensation Order*.¹³⁴ Under the VRS criteria, which also apply to IP CTS compensation,¹³⁵ an upward compensation adjustment for well-documented exogenous costs is available for 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 formula, and (4) if unrecovered, would cause a provider’s current costs (allowable expenses plus operating margin) to exceed its revenues.¹³⁶

47. We find that these exogenous cost criteria are also appropriate for IP Relay. Although T-Mobile urges deletion of the last criterion, contending that exogenous cost should be recoverable even if recovery would add to the provider’s revenues,¹³⁷ we find that this criterion is appropriate to ensure that exogenous cost recovery is warranted, i.e., necessary for a provider to recover its reasonable costs.¹³⁸ Any exogenous cost claims should be submitted to the TRS Fund administrator with the provider’s annual cost report, so that the administrator can review such claims and make appropriate recommendations.¹³⁹ We delegate authority to the Bureau to make determinations regarding timely submitted exogenous cost claims, following notice and opportunity for comment.

F. Alternative Compensation Methodology

48. We remain unpersuaded that we should derive IP Relay compensation by proxy, from the MARS-based compensation formula for interstate traditional (TTY-based) TRS, as advocated by T-Mobile.¹⁴⁰ Given the major flaws of that alternative, as discussed below, we conclude that it would be unreasonable to adopt this proxy-based approach.

49. *T-Mobile’s Proposed Methodology.* According to T-Mobile, tying IP Relay compensation to average compensation for traditional TRS is justified because the two services have similar cost structures, due to their operational similarities.¹⁴¹ T-Mobile argues further that because compensation for traditional TRS is determined through competitive bidding at the state level, using such compensation as a proxy would impose “competitive discipline” on the process of setting IP Relay

¹³² *2007 TRS Compensation Order*, 22 FCC Rcd at 20160, para. 44.

¹³³ *See id.*

¹³⁴ *See Notice*, para. 43.

¹³⁵ *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10886, para. 39.

¹³⁶ *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5925, para. 66.

¹³⁷ T-Mobile Comments at 19-20; Sappington Declaration at 13-14.

¹³⁸ *2017 VRS Compensation Order*, 32 FCC Rcd at 5925, para. 66 n.204.

¹³⁹ Rolka Loube currently requires submission of annual cost reports by February 22 (*see, e.g.* 2022 TRS Compensation Report, Appx. B, at 22 (requesting cost reports by Feb. 22, 2022)), to ensure that it has an opportunity to analyze provider costs before submitting its annual report, due May 1. *See* 47 CFR § 64.604(c)(5)(iii)(H).

¹⁴⁰ *See* T-Mobile Comments at 6-13; Sappington Declaration at 1-7. T-Mobile also advocated this approach in its petition for rulemaking. *See* T-Mobile RM Petition at 5-8. In the *Notice*, while asking for additional comment on this proposal, the Commission indicated skepticism about the merits. *Notice*, paras. 45-51.

¹⁴¹ *See* T-Mobile Comments at 6-8; Sappington Declaration at 3-4. T-Mobile notes that it provides both services using the same call centers and largely the same group of CAs.

compensation.¹⁴²

50. To implement its proposed approach, T-Mobile explains, the Commission would take as a starting point the current MARS-based formula for interstate traditional TRS, which is calculated annually as a weighted average of the per-minute compensation levels for intrastate traditional TRS (and STS) in each state TRS program.¹⁴³ Next, the Commission would (1) multiply the interstate traditional TRS formula by projected IP Relay minutes for the next Fund Year, (2) subtract from that figure those annual costs that are incurred by T-Mobile in providing traditional TRS but not IP Relay, and (3) add in those annual costs that are incurred in providing IP Relay but not traditional TRS.¹⁴⁴ The resulting funding total would be divided by projected IP Relay demand to determine the per-minute compensation level.¹⁴⁵

51. *Flaws in T-Mobile's Proposal.* We conclude that reliance on T-Mobile's proposed MARS-based methodology would not result in compensation that is commensurate with the reasonable costs of IP Relay.¹⁴⁶ Notwithstanding some functional and operational similarities between IP Relay and traditional TRS, the record does not support T-Mobile's claim that the services have similar cost structures.¹⁴⁷ Indeed, T-Mobile itself acknowledges that there are substantial differences between the costs of the two services, as illustrated by the substantial subtractions and additions included in its proposal. The record shows that a cost-based compensation level for IP Relay (including a reasonable operating margin), as determined in this Report and Order,¹⁴⁸ is \$1.9576, *less than half* the recommended compensation level for traditional TRS (\$4.5098).¹⁴⁹ This disparity may be due, in part, to economies of scale, as annual demand for traditional TRS is approximately 4.5 million minutes,¹⁵⁰ and is split between

¹⁴² See T-Mobile Comments at 6-8; Sappington Declaration at 2-4 (“The threat of losing the contract to a rival compels potential suppliers of TRS to work diligently to minimize their production costs and to submit bids that track realized costs.”).

¹⁴³ See T-Mobile Comments at 8-9; Sappington Declaration at 4-5.

¹⁴⁴ See T-Mobile Comments at 10-11 & Attach. B (providing illustrative example of this calculation); Sappington Declaration at 4.

¹⁴⁵ See T-Mobile Comments at 10-11.

¹⁴⁶ The following discussion assumes, but does not decide, that the MARS methodology still produces compensation formulas for traditional TRS that correlate with the reasonable cost of traditional TRS *itself*. In adopting the MARS methodology for compensating interstate TRS offered in state TRS programs, the Commission reasoned that, due to competition among rival bidders to secure state TRS program contracts, average compensation under such contracts was correlated with the reasonable cost of providing state-program services. See *2007 TRS Compensation Order*, 22 FCC Rcd 20149-50, paras. 16-18. We need not revisit that underlying assumption in this Report and Order, which only addresses the appropriate methodology for IP Relay compensation.

¹⁴⁷ We note that in 2005, after a few years of experience using the compensation formula for interstate traditional TRS as a proxy for IP Relay compensation, the Commission abandoned that approach, concluding that IP Relay's costs were significantly lower than those for traditional TRS. See *2005 TRS Compensation Order*, 20 FCC Rcd at 12243-45, paras. 16-20; see also *2007 TRS Compensation Order*, 22 FCC Rcd at 20162, para. 41. More recently, in 2018, the Commission abandoned a proxy-based 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 Captioned Telephone Service (CTS) compensation as a proxy for average IP CTS costs, largely because the record showed there was a substantial and increasing difference between average per-minute compensation for state-program CTS and the actual per-minute costs of IP CTS. See *2018 IP CTS Compensation Order*, 33 FCC Rcd at 5809-10, paras. 17-18.

¹⁴⁸ See *infra* para. 54.

¹⁴⁹ See 2022 TRS Compensation Report at 7.

two providers, while annual demand for IP Relay is about 6.5 million minutes.¹⁵¹ In addition, per-minute administrative costs for traditional TRS are likely greater than for IP Relay, which is offered through 54 state TRS programs,¹⁵² the majority of which handle less than 100,000 minutes of traditional TRS annually.¹⁵³ Given these factors, the disparity between per-minute IP Relay costs and traditional TRS compensation has increased over time,¹⁵⁴ and it is reasonable to assume that it will continue increasing.¹⁵⁵

52. Further, even if there were not such a large disparity between the proposed proxy and actual costs, T-Mobile's proposed formula must be rejected, as it would be substantially *more* difficult to apply than the current methodology and less likely to result in a compensation formula that aligns with reasonable provider costs. As explained above, T-Mobile acknowledges that a substantial portion of the compensation for traditional TRS reflects costs unique to state-program TRS, including sales staff, account management/support staff, equipment distribution programs, outreach programs, and state-mandated call centers, none of which apply to IP Relay.¹⁵⁶ To avoid over-compensation for IP Relay, all these costs (which are not currently reported to the TRS Fund administrator) must be estimated and then subtracted from total compensation for traditional TRS.¹⁵⁷ T-Mobile also asserts that IP Relay includes additional costs not included in state-program TRS—for outreach, website operation, and regulatory compliance.¹⁵⁸ Verifying the accuracy of these complex calculations would require a level of effort much

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¹⁵⁰ See *id.*, Exh. 1-1 (showing a total of 3,286,825 *intrastate* conversation minutes of traditional TRS were handled by state TRS programs in 2020-21); *id.*, Exh. 2 (projecting 203,799 *interstate* minutes of traditional TRS for May and June 2022 and 985,976 *interstate* minutes of traditional TRS for July 2022 through April 2023).

¹⁵¹ See *id.*, Exh. 2 (projecting 988,994 minutes of IP Relay for May and June 2022 and 5,531,141 minutes of IP Relay for July 2022 through April 2023).

¹⁵² This number includes United States territories, which also have “state” TRS programs. See *Notice of Certification of State Telecommunications Relay Services (TRS) Programs*, CG Docket No. 03-123, Public Notice, 33 FCC Rcd 6741 (CGB 2018).

¹⁵³ See 2022 TRS Compensation Report, Exh. 1.1.

¹⁵⁴ Average per-minute compensation for interstate traditional TRS has doubled in the last 10 years. See Rolka Loube Saltzer 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 2, 2012) (2012 TRS Compensation Report) (setting interstate traditional TRS compensation at \$2.0304); 2022 TRS Compensation Report at 7 & Exh. 2 (recommending interstate traditional TRS compensation of \$4.5098 per minute, and projecting 985,976 interstate minutes). In the same period, IP Relay compensation increased by only 25%—even though current compensation includes various cost categories—plus an operating margin—that were not included ten years earlier.

¹⁵⁵ TTYs were designed for operation on copper-based, switched networks, while IP Relay transmits text over the Internet. To the extent that the disparity described above reflects differences in demand, we note that demand for TTY-based TRS, which has declined approximately 65% in the last 10 years (see 2012 TRS Compensation Report, Exh. 2) (projecting 3,525,597 interstate minutes of traditional TRS); 2022 TRS Compensation Report, Exh. 2) (projecting 985,976 interstate minutes of traditional TRS)), is likely to continue declining. See, e.g., *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); California Public Utilities Commission, *Deaf and Disabled Telecommunication Program Annual Report* at 12-13, 16 (2020-2021), available at https://ddtp.cpubc.ca.gov/uploadedFiles/New_Navigation_Structure/About_Us/2020-2021%20DDTP%20Annual%20Report.pdf (California relay (analog) service usage is declining as consumers switch to Internet-based technologies). By contrast, demand for IP Relay has been relatively stable from 2015 to the present. See *supra* para. 4.

¹⁵⁶ See T-Mobile Comments, Attach. B.

¹⁵⁷ See *id.*

¹⁵⁸ See *id.* We note that T-Mobile's estimates of those costs unique to traditional TRS appear to be based on its own operations only, even though T-Mobile is only one of two providers currently offering traditional TRS through

(continued....)

greater than that currently required to review IP Relay costs alone.¹⁵⁹ There would be two services, instead of one, for which costs must be analyzed. Further, the record does not indicate that T-Mobile's costs for providing traditional TRS are currently reviewed by state regulatory authorities. Therefore, the costs identified by T-Mobile as unique to traditional TRS would need to be collected, reported, and audited by the TRS Fund administrator—even though none of those costs is actually relevant to providing IP Relay. And because these costs are to be *subtracted* in establishing the compensation formula, the provider would have no special incentive to ensure that it has identified all relevant traditional TRS costs. Instead, the burden would be on the TRS Fund administrator, who would have no access to the underlying raw data, to ensure that no costs unique to traditional TRS have been omitted or underreported. Such a process would not be conducive to producing accurate cost estimates.

53. T-Mobile claims that the calculation could be simplified after the first year by continuing indefinitely to apply the percentage cost difference initially calculated. In subsequent years, T-Mobile suggests, the MARS formula (IP Relay projected demand for the Fund Year times the determined traditional TRS per-minute compensation) simply could be adjusted by a constant percentage factor, which represents the initially calculated ratio of (1) the net difference in the costs of the two services (i.e., costs specific to traditional TRS minus costs specific to IP Relay) to (2) total traditional TRS compensation.¹⁶⁰ While such a simplified approach may be less burdensome than repeatedly recalculating the relevant costs, it would remove IP Relay compensation even further from any plausible relationship to actual IP Relay costs. Indeed, such reliance on the initially calculated cost difference to set compensation for future years would be especially misleading given the record evidence that the cost difference between the services is continually increasing.¹⁶¹ By contrast, the methodology we adopt relies on readily available data collected by Rolka Loube from providers of IP Relay with reasonable adjustments based on BLS statistics. The Commission does not need to engage in the unusually complicated calculations entailed by T-Mobile's proposal when a simpler and more accurate methodology is readily available.

G. Compensation Level for 2022-23

54. TRS Fund Year 2022-23 will be the first year of a new compensation cycle for IP Relay, which will extend for four years, through June 30, 2026. Based on the most recent submissions of cost and demand data to the Fund administrator, the average of T-Mobile's projected per-minute costs for calendar years 2022 and 2023 is $\{ [\quad] \}$.¹⁶² With the addition of a 12% operating margin, the resulting base compensation formula is \$1.9576 per minute, a 14.2% increase from the current compensation level of \$1.7146 per minute. This base level of compensation shall be applicable during Fund Year 2022-23. For the second, third, and fourth years, compensation for IP Relay shall be adjusted in accordance with the inflation and exogenous cost adjustment factors adopted in Part III.E above.

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various state programs. *See id.* The traditional TRS compensation formula, by contrast, is based on a per-minute average of the total compensation paid to both providers.

¹⁵⁹ Although T-Mobile claims that the state-program-specific costs are included in a separate Monthly Recurring Charge (MRC), which is separately reported to the Fund administrator, T-Mobile cautions that some costs relevant to IP Relay are included in some states' MRCs, and therefore argues that the MRCs cannot be subtracted in their entirety. T-Mobile Comments at 10 n.18. As a further complication, some of the state-program compensation that is used to calculate the interstate traditional TRS formula represents compensation for state-program STS. *See, e.g.,* 2022 TRS Compensation Report at 7-8 (combining state program dollar amounts paid for traditional TRS and STS and traditional TRS and STS minutes of use); 2007 TRS Compensation Order, 22 FCC Rcd at 20165-66, paras. 57, 61. Since the actual costs of STS may be different from those for providing traditional TRS, ensuring that such differences do not distort the estimates for traditional TRS could require yet another calculation, further increasing the complexity of T-Mobile's proposed methodology.

¹⁶⁰ *See* T-Mobile Comments at 11-12; Sappington Declaration at 6.

¹⁶¹ *See supra* para. 51.

¹⁶² IP Relay Provider Expenses (confidential version).

IV. PROCEDURAL MATTERS.

55. *Effective Date.* Because the current compensation formula for IP Relay expires June 30, 2022, we find good cause to make the rules adopted herein effective on less than 30 days' notice to avoid any gap in compensation for providing IP Relay.¹⁶³ Accordingly, the revised compensation formula shall be effective July 1, 2022, or on the date of Federal Register publication of the Final Rules, whichever is later.

56. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁶⁴ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA, where we assess the effects on small entities of adopting a new methodology for setting compensation from the TRS Fund for the provision of IP Relay, is set forth in Appendix C.

57. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).¹⁶⁵

58. *Paperwork Reduction Act Analysis.* This document does not contain new or modified or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA).¹⁶⁶ Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.¹⁶⁷

59. *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.

V. ORDERING CLAUSES

60. 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, and 225, the foregoing Report and Order IS ADOPTED, and the Commission's rules ARE AMENDED as set forth in Appendix B.

61. IT IS FURTHER ORDERED that this Report and Order and the amendments to the Commission's rules SHALL BE EFFECTIVE July 1, 2022, or on the date of Federal Register publication of the Final Rules, whichever is later.

62. IT IS FURTHER ORDERED that for the period from July 1, 2022, through June 30, 2023, IP Relay shall be compensated from the TRS Fund at the level of \$1.9576 per minute.

63. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

¹⁶³ See 5 U.S.C. § 553(d) (requiring that the effective date of a rule shall not be less than 30 days after publication in the Federal Register), (d)(3) (allowing a shorter time period for good cause found and published with the rule).

¹⁶⁴ *Id.* § 601 *et seq.*

¹⁶⁵ *Id.* § 801(a)(1)(A).

¹⁶⁶ Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520 (2016).

¹⁶⁷ 44 U.S.C. § 3506(c)(4).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenting Parties

Petition for Rulemaking of Sprint Corporation

Comments

T-Meeting Global AB

Reply Comments

Telecommunications for the Deaf and Hard of Hearing, Inc.(TDI), National Association of the Deaf (NAD), Association of Late-Deafened Adults, Inc. (ALDA), Hearing Loss Association of America (HLAA), Cerebral Palsy and Deaf Organization (CPADO), American Association of the DeafBlind (AADB), Universal Interface & Information Technology Access-RERC

Notice of Proposed Rulemaking

Comments

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Association of Late-Deafened Adults (ALDA), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cerebral Palsy and Deaf Organization (CPADO), Deaf Seniors of America (DSA), Gallaudet University Alumni Association (GUAA), Hearing Loss Association of America (HLAA), Helen Keller National Center (HKNC), and National Association of the Deaf (NAD)

T-Mobile Accessibility

USTelecom—The Broadband Association

Telecommunications Equipment Distribution Program Association (TEDPA)

APPENDIX B

Final Rules

The Federal Communications Commission amends Title 47 of the Code of Federal Regulations as follows:

Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. [to be completed prior to publication in the Federal Register], unless otherwise noted.

2. Amend subpart F by adding a new section 64.640 to read as follows:

§ 64.640 Compensation for IP Relay.

(a) For the period from July 1, 2022, through June 30, 2026, TRS Fund compensation for the provision of IP Relay shall be as described in this section.

(b) For Fund Year 2022-23, comprising the period from July 1, 2022, through June 30, 2023, the Compensation Level for IP Relay shall be \$1.9576 per minute.

(c) For each succeeding Fund Year through June 30, 2026, the per-minute Compensation Level (L_{FY}) shall be determined in accordance with the following equation:

$$L_{FY} = L_{FY-1} * (1 + IF_{FY})$$

where IF_{FY} is the Inflation Adjustment Factor for that Fund Year, determined in accordance with paragraph (d) of this section.

(d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is 1/100 times the difference between the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

- (1) the fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and
- (2) the fourth quarter of the preceding Calendar Year.

(e) In addition to L_{FY} , an IP Relay provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June 30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected minutes for the Fund Year. Exogenous cost adjustments, if any, are not included in the previous Fund Year's per-minute Compensation Level (L_{FY-1}) for purposes of paragraph (c) of this section.

(f) An exogenous cost adjustment shall be paid if an IP Relay provider incurs well-documented 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 formula; and
- (4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues.

APPENDIX C

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980,¹ as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Notice of Proposed Rulemaking (*Notice*).² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA.³ No comments were received in response to the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴ The Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁵

A. Need For, and Objectives of, the Rules

2. The Report and Order addresses how telecommunications relay service (TRS) providers receive compensation from the Interstate TRS Fund for the provision of Interstate Protocol Relay Service (IP Relay). The Commission adopts a new compensation formula using a cost-based methodology with the initial year's compensation level based on an average of providers' projected costs and demand for the next two years. The new methodology allows IP Relay providers to recover for the costs of outreach and acquisition of telephone numbers and to receive a 12% operating margin. The initial base rate will be in effect for four years, but the methodology allows the compensation level to be adjusted upward for inflation with respect to rising labor costs over the following three years and also allows for recovery of unanticipated exogenous costs. This methodology ensures that IP Relay providers are compensated for the reasonable costs of providing the service and increases the assurance that IP Relay is made available in the most efficient manner.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. No comments were filed in response to the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁶ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to which the Rules will Apply

5. 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 rule changes.⁷ The RFA generally defines the

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

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Rulemaking of Sprint Corporation*, CG Docket No. 03-123 and RM-11820, Notice of Proposed Rulemaking, FCC 21-95 (2021).

³ *Id.*, para. 54.

⁴ See 5 U.S.C. § 604.

⁵ See *id.* § 604(b).

⁶ *Id.* § 604(a)(3).

⁷ *Id.* § 603(b)(3).

term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰

6. The amendments to rules adopted in the Report and Order will affect the obligations of providers of IP Relay. IP Relay can be included within the broad economic category of All Other Telecommunications. There is currently one provider of IP Relay: T-Mobile USA, Inc.¹¹

7. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹² 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.¹³ Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.¹⁴ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁵ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁶ Of those firms, 1,039 had revenue of less than \$25 million.¹⁷ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

⁸ *Id.* § 601(6).

⁹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). 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.” *Id.*

¹⁰ 15 U.S.C. § 632.

¹¹ Previously, Sprint Corporation was the sole provider of IP Relay. On May 1, 2020, Sprint notified the Commission that it had completed a merger with T-Mobile USA, Inc. See Letter from Scott R. Freiermuth, Sprint Communications Company L.P., to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 1, 2020). Sprint became an indirect, wholly-owned subsidiary of T-Mobile.

¹² See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications,”* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See 13 CFR § 121.201, NAICS Code 517919.

¹⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁷ *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. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

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

8. Adoption of a new compensation methodology for IP Relay does not result in any new or modified reporting, recordkeeping, or other compliance requirements on IP Relay providers.

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

9. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”¹⁸ Such alternatives 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 entities¹⁹

10. By reforming the compensation methodology for IP Relay, the Commission is (1) taking steps to ensure that providers of IP Relay are fairly compensated for the provision of IP Relay; and (2) to ensure that functionally equivalent service and an efficient IP Relay market are maintained over the long term in accordance with the Commission’s statutory obligations. Reforming the compensation methodology for IP Relay will not affect the burdens on IP Relay providers or other small entities.

G. Report to Congress

11. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁰ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

H. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission’s Proposals

12. None.

¹⁸ 5 U.S.C. § 604(a)(6).

¹⁹ *Id.* § 603(b).

²⁰ *See id.* § 801(a)(1)(A).