

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

In the Matter of)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Misuse of Internet Protocol Relay Service)	CG Docket No. 12-38
)	

REPORT AND ORDER

Adopted: June 26, 2022

Released: June 30, 2022

By the Commission:

I. INTRODUCTION

1. In this Report and Order, the Federal Communications Commission (Commission) modifies the cost recovery rules for funding two forms of Internet-based telecommunications relay services (TRS)—video relay service (VRS) and Internet Protocol Relay Service (IP Relay). We expand the Interstate TRS Fund (TRS Fund or Fund) contribution base for support of those services to include intrastate as well as interstate end-user revenues of TRS Fund contributors, ensuring fair treatment of intrastate and interstate communications services and users in the funding of relay services.

II. BACKGROUND

2. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that both “interstate and intrastate” TRS are available “to the extent possible and in the most efficient manner.”¹ The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS,² including rules on cost separation, which “shall generally provide” that interstate TRS costs are recovered from all subscribers for every interstate service and intrastate TRS costs are recovered from the intrastate jurisdiction.³ Section 225 also authorizes, but does not require, the establishment of state-administered TRS programs, subject to approval by the Commission.⁴

¹ 47 U.S.C. § 225(b)(1).

² *Id.* § 225(d); *see also id.* § 225(b)(2) (providing that, for the purposes of administering and enforcing TRS rules, “the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has . . . with respect to any common carrier engaged in interstate communication”).

³ *Id.* § 225(d)(3)(B). Providers of international as well as interstate services are currently required to contribute to the TRS Fund. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 21 FCC Rcd 5247, 5250, para. 8, *recon.*, 21 FCC Rcd 5962, 5963, para. 2 (CGB 2006). For ease of reference, we use the term “interstate” to mean “interstate and international.”

3. To provide for the recovery of interstate TRS costs, the Commission established the interstate TRS Fund in 1993.⁵ Telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service, are required to contribute to the TRS Fund, on a quarterly basis, a specified percentage of their end-user revenues for the prior year.⁶

4. Although initially limited to supporting interstate TRS, the scope of the TRS Fund changed beginning in 2000, as the Commission authorized Internet-based forms of TRS—VRS, IP Relay, and Internet Protocol Captioned Telephone Service (IP CTS).⁷ When the Commission first authorized use of Internet-based forms of TRS, it decided, as an interim measure to speed the development of these services, that all of the costs of providing Internet-based TRS should be paid by contributors to the TRS Fund, based only on their interstate end-user revenues.⁸ This approach was deemed preferable to “burdening state relay programs” with the responsibility to fund and supervise, on a state-by-state basis, the provision of intrastate relay services via these nascent technologies.⁹ In those proceedings, the Commission did not consider the alternative, adopted here, of expanding the TRS Fund contribution base to include intrastate end-user revenues. However, the Commission stated an intention to revisit these interim funding arrangements in the future.¹⁰ In 2015, IDT filed a petition for rulemaking requesting that

(Continued from previous page)

⁴ 47 U.S.C. § 225(f). Currently, all 50 states, the District of Columbia, and several United States territories have TRS programs approved by the Commission. See *Notice of Certification of State Telecommunications Relay Services (TRS) Programs*, CG Docket No. 03-123, Public Notice, 33 FCC Rcd 6741 (CGB 2018). For ease of reference, we refer to all state and territory TRS programs as state TRS programs. The Commission requires that state TRS programs include text-based TRS and speech-to-speech relay (STS). See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5149, para. 15 (2000) (*2000 TRS Order*) (determining that STS should be a mandatory form of TRS); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 98-67 and 03-123, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 12379, 12396, para. 26 (2003) (noting that the Commission’s TRS regulations require text-based TRS and STS).

⁵ *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993) (*1993 TRS Third Report and Order*); see also 47 CFR § 64.604(c)(5)(iii).

⁶ 47 CFR § 64.604(c)(5)(iii)(A)-(B).

⁷ VRS is a form of TRS that enables people with hearing or speech disabilities who use sign language to make telephone calls over broadband with a videophone. *Id.* § 64.601(a)(50). IP Relay is a form of TRS that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet. *Id.* § 64.601(a)(23). IP CTS is a form of TRS “that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying.” *Id.* § 64.601(a)(22).

⁸ See *2000 TRS Order*, 15 FCC Rcd at 5152-54, paras. 22-27; *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7784-87, paras. 15-26 (2002) (*2002 IP Relay Declaratory Ruling*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 390, para. 25 (2007) (*2007 IP CTS Declaratory Ruling*).

⁹ *2000 TRS Order*, 15 FCC Rcd at 5153-54, para. 24; see also *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7784-87, para. 18 (noting commenter’s assertion that recovering intrastate costs would require a service provider “to go through the very difficult and lengthy process of negotiating contracts with all 50 states”).

¹⁰ *2000 TRS Order*, 15 FCC Rcd at 5154, para. 27; *2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7786-87, paras. 20-22; *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 390, para. 25.

the Commission end the interim arrangements.¹¹ IDT advocated that the TRS Fund contribution base for support of Internet-based TRS be expanded to include intrastate revenues.¹²

5. In 2019, the Commission revisited the funding arrangement for one form of Internet-based TRS, IP CTS.¹³ Recognizing that the “interim” funding mechanism for IP CTS disproportionately burdens providers and users of interstate services, the Commission concluded it was no longer justifiable.¹⁴ Therefore, the Commission amended its rules to expand the TRS Fund contribution base for that service to include intrastate as well as interstate end-user revenues.¹⁵

6. In 2020, the Commission adopted a Notice of Proposed Rulemaking proposing to make the same change, for the same reasons, in the funding of VRS and IP Relay—expanding the TRS Fund contribution base for support of those services to include *intrastate* end-user revenues of telecommunications carriers and VoIP service providers.¹⁶ Seven parties filed comments¹⁷ and three parties filed reply comments.¹⁸ TRS providers, as well as IDT, support the proposed change.¹⁹ No party opposes the Commission’s proposal. However, groups representing some TRS Fund contributors urge that any change in funding be implemented on an extended timeline.²⁰ In addition, NTCA urges the Commission to alleviate the impact of such a change by modifying the contribution formula applicable to rural service providers and allowing them greater flexibility in recovering their TRS contributions from rate payers.²¹

III. DISCUSSION

7. We amend our rules to provide that TRS Fund contributions for the support of VRS and IP Relay shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and VoIP service provider. We thereby complete the project begun in 2018 to update the funding of Internet-based TRS, replacing “interim” funding measures adopted nearly two decades ago. The record supports our conclusion that the rules we adopt will provide a fair allocation of

¹¹ Petition of IDT for Rulemaking, CG Docket No. 03-123, at 1, 14 (filed Nov. 25, 2015), <https://ecfsapi.fcc.gov/file/60001345008.pdf> (IDT Petition).

¹² *Id.*

¹³ *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, 34 FCC Rcd 11265 (2019) (*2019 IP CTS Contributions Order*).

¹⁴ *Id.* at 11265, para. 1.

¹⁵ *Id.* at 11268, para. 7.

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; Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 12-38, Notice of Proposed Rulemaking, 35 FCC Rcd 13370, 13373-78, paras. 8-22 (2020) (*Notice*).

¹⁷ California Public Utilities Commission (CPUC Comments); IDT Telecom, Inc. (IDT Comments); NCTA – The Internet & Television Association (NCTA Comments); NTCA – The Rural Broadband Association (NTCA Comments); Sorenson Communications, LLC (Sorenson Comments); Uniti Group, Inc. (Uniti Comments); USTelecom – the Broadband Association (USTelecom Comments); and ZP Better Together, LLC (ZP Comments).

¹⁸ ASL Services Holdings, LLC d/b/a GlobalVRS (GlobalVRS Reply); Convo Communications, LLC (Convo Reply); and INCOMPAS (INCOMPAS Reply).

¹⁹ See Sorenson Comments at 1; ZP Comments at 1; Convo Reply at 1-2; GlobalVRS Reply at 3; see also IDT Comments at 2.

²⁰ See NCTA Comments at 1-2; NTCA Comments at 4-5; Uniti Comments at 1-6; USTelecom Comments at 1-3; INCOMPAS Reply at 1-3.

²¹ NTCA Comments at 3-5.

TRS Fund contribution obligations among those entities subject to our TRS funding authority.²² The total contributions needed to support the TRS Fund will not be affected, but we anticipate that (assuming there is no unrelated change in the TRS Fund budget for supporting these services) TRS Fund contributions paid as a percentage of *interstate* end-user revenues for the support of VRS and IP Relay will decline by approximately 55%.²³

8. We adopt this rule change for the reasons set forth in the *Notice*.²⁴ *First*, the current funding arrangements for VRS and IP Relay were authorized some 20 years ago as interim measures to speed the development of these services,²⁵ and that purpose has been achieved. VRS is the second largest TRS program, and IP Relay's annual minutes exceed the annual TRS Fund-supported minutes of all state TRS programs combined.²⁶

9. *Second*, our action corrects the inherent inequity of the current funding arrangements. VRS and IP Relay, which cumulatively require close to \$540 million in TRS Fund backing,²⁷ are supported entirely from interstate end-user telecommunications and VoIP revenues, with 0% contribution from intrastate revenues. By contrast, approximately 76% of the costs of relay services provided through state TRS programs are funded from intrastate sources,²⁸ and, since our 2019 IP CTS funding reforms were implemented, approximately 55% of IP CTS costs are funded from intrastate end-user revenues.²⁹

10. As a result, the burden of supporting VRS and IP Relay has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. For TRS Fund Year 2022-23, for example, the administrator has recommended a contribution factor of 0.01125, meaning that a provider of interstate-only services must contribute approximately 1.11% of its total

²² See Sorenson Comments at 1; IDT Comments at 2; ZP Comments at 1; GlobalVRS Reply at 3; Convo Reply at 1-2; see also 47 U.S.C. § 225(c) (requiring common carriers to support TRS); *id.* § 616 (requiring providers of interconnected and non-interconnected VoIP service to participate in and contribute to the TRS Fund).

²³ See Federal-State Joint Board on Universal Service, Universal Service Monitoring Report – 2021, CC Docket No. 96-45 et al., at 11, Table 1.2, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf> (2021 USF Monitoring Report) (showing the most recent data for the percentage of reported end-user revenues that are reported as interstate and international revenues).

²⁴ See *Notice*, 35 FCC Rcd at 13373-75, paras. 8-13.

²⁵ 2000 TRS Order, 15 FCC Rcd at 5152, 5156, paras. 22, 27; 2002 IP Relay Declaratory Ruling, 17 FCC Rcd at 7786-87, paras. 20-22.

²⁶ 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, 36 FCC Rcd 10194, 10201, para. 18 (CGB 2021) (2021 TRS Compensation Order); Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at Exh. 2 (filed May 2, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/1050381129531> (2022 TRS Annual Report).

²⁷ 2022 TRS Annual Report at Exh. 2.

²⁸ See 2022 TRS Annual Report at Exhs. 1.1, 1.2, 2.

²⁹ Contributions to support IP CTS are divided between interstate and intrastate sources in the same percentages as the reported end-user revenue. According to the 2021 USF Monitoring Report, approximately 55% of total end-user telecommunications and interconnected VoIP revenues are intrastate, and 45% are interstate. 2021 USF Monitoring Report at 11, Table 1.2. Although the contribution base for TRS includes *non-interconnected* VoIP end-user revenues, while the USF contribution base does not, the inclusion of this relatively small category is unlikely to have a major impact on our estimate of the relative percentages of intrastate and interstate end-user revenues in the TRS contribution base. Compare, e.g., 2021 USF Monitoring Report, Table 1.2 (showing total interstate end-user revenues of \$43,236,000,000 for 2020) with 2022 TRS Annual Report Supplement, Exh. 3 (showing a total interstate TRS contribution base of \$45,263,218,059 for 2020).

annual end-user revenues to support VRS and IP Relay.³⁰ By contrast, the average TRS Fund contributor pays only 0.50% of its total annual end-user revenues to support those services.³¹ And providers of intrastate-only services contribute nothing, despite the availability of VRS and IP Relay for intrastate as well as interstate calling.³²

11. *Third*, recovering VRS and IP Relay costs based on total end-user revenues reduces the likelihood of distortions in the pricing of interstate and intrastate voice services due to inaccurate market signals regarding their relative costs.³³

12. *Fourth*, the total amount of end-user revenues from which TRS Fund contributions can be drawn has been steadily decreasing over time, worsening the impact of the current funding arrangement on interstate service providers and users and increasing any resulting distortions in the pricing of intrastate and interstate service.³⁴ Expanding contributions to support VRS and IP Relay to encompass intrastate as well as interstate revenues may strengthen the sustainability of these services.³⁵

13. *Fifth*, no state TRS program offers VRS or IP Relay, and there continue to be impediments to any state successfully administering and funding intrastate VRS and IP Relay.³⁶ Accordingly, we have no reason to believe that encouraging or mandating state program support of VRS and IP Relay would be a practical alternative.³⁷ We note that our action today does not preclude any state from seeking certification to provide VRS or IP Relay, but given the lack of indication in the record that any state agency intends to do so, we need not address at this time what changes in funding arrangements that could be appropriate in the event of such a change in state policies.³⁸

³⁰ The current contribution factor for TRS Fund contributions derived solely from interstate end-user revenue is 0.01125, or approximately 1.13%, 2022 TRS Annual Report at 20, and 98.1% of the TRS Fund payments funded from interstate-only revenue are for the provision of VRS and IP Relay. *See* 2022 TRS Annual Report Supplement at Exh. 2. 98.1% of 1.13% is 1.11%.

³¹ 2021 USF Monitoring Report at 11, Table 1.2 (showing that the average percentage of end-user revenue that is interstate is 45%). 45% of 1.11% is 0.50%.

³² *See* Sorenson Comments at 1; ZP Comments at 2; Convo Reply Comments at 1-2; GlobalVRS Reply Comments at 2 (all acknowledging that VRS users and TRS users in general use these services for intrastate calls).

³³ As the Commission has recognized in various contexts, applying artificial regulatory distinctions or other disparate treatment to providers of similar services may create unintended market distortions, which can reduce the effectiveness of competition in ensuring efficient pricing of telecommunications services. *See, e.g., Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5359, para. 4 (2012) (explaining that some aspects of universal service contributions may cause competitive distortions by imposing different contribution obligations on similar services).

³⁴ *See* 2022 TRS Annual Report Supplement, Supp. Exh. 3.

³⁵ *See* Sorenson Comments at 1-2; ZP Comments at 1-2; Convo Reply Comments at 1-2; GlobalVRS Reply Comments at 1-2.

³⁶ *See Notice*, 35 FCC Rcd at 13376-77, para. 19; *Cf.* CPUC Comments at 3-8 (filed Jan. 13, 2021) (CPUC *Ex Parte*) (acknowledging that “no state presently includes IP enabled services in its TRS programs,” but contending that “the shift to state administration of these services grows increasingly feasible”).

³⁷ *See 2000 TRS Order*, 15 FCC Rcd at 5152-54, paras. 22-24, 27 (suggesting that state TRS programs might eventually support VRS).

³⁸ Citing a change in its governing statute, the CPUC asserts that state administration of Internet-based TRS programs “grows increasingly feasible.” CPUC *Ex Parte* at 6-7. Be that as it may, the record does not indicate an intention or inclination on the part of the CPUC or any other state regulatory authority to seek Commission approval to add any form of Internet-based TRS to the state TRS program. We can address any necessary changes in funding if and when the Commission receives a request from a state for certification to provide Internet-based TRS.

14. Finally, no party has identified any differences between VRS and IP Relay, on the one hand, and IP CTS, on the other, that would support maintaining different funding arrangements for these services.³⁹

A. Legal Authority

15. For the reasons stated in the *Notice* and the *2019 IP CTS Contributions Order*,⁴⁰ we find that the Commission has statutory authority to include the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support VRS and IP Relay. Section 225 expressly directs the Commission to ensure that both interstate and intrastate TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including TRS cost recovery.⁴¹ Further, section 225 affords the Commission, without limitation, “the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.”⁴² We also note that Congress expressly carved section 225 out from the Act’s general reservation of state authority over intrastate communications,⁴³ and that responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such authority.⁴⁴ We conclude that, where a form of TRS is not offered in state TRS programs, the Commission’s may adopt reasonable measures to ensure equitably distributed contributions from all interstate and intrastate service providers subject to the Commission’s authority under sections 225 and 715 of the Act.⁴⁵ No party opposed our statutory interpretation, nor does the record identify any differences between the provision of IP CTS and the provision of VRS and IP Relay that would affect our interpretation.⁴⁶

B. Implementation

16. Consistent with our proposal in the *Notice*,⁴⁷ to collect TRS Fund contributions for VRS and IP Relay from intrastate and interstate end-user revenues, the administrator will follow the same procedure currently used for IP CTS, except that a single contribution factor will be used to determine the total level of support required for all three services.⁴⁸ Except for NTCA—whose request for the Commission to adjust its contribution formulas for the benefit of certain contributors is addressed

³⁹ See *Notice*, 35 FCC Rcd at 13375, para. 14 (seeking comment on additional aspects or differences between VRS and IP Relay and IP CTS to support maintaining the current funding mechanism). No party commented on these questions.

⁴⁰ *Id.* at 13375, para. 15; *2019 IP CTS Contributions Order*, 34 FCC Rcd at 11270-71, paras. 13-16.

⁴¹ 47 U.S.C. § 225(b)(1), (2), (d)(3)(B); *2019 IP CTS Contributions Order*, 34 FCC Rcd at 11270, para. 13.

⁴² 47 U.S.C. § 225(b)(2). In addition, section 715 of the Act requires that VoIP service providers “participate in and contribute to the Telecommunications Relay Services Fund . . . in a manner prescribed by the Commission . . . consistent with and comparable to the obligations of other contributors to such Fund.” *Id.* § 616.

⁴³ *Id.* § 152(b); *2019 IP CTS Contributions Order*, 34 FCC Rcd at 11270, para. 13.

⁴⁴ See 47 U.S.C. § 225(c), (f), (g); see also *2019 IP CTS Contributions Order*, 34 FCC Rcd at 11270-71, paras. 14-16 (concluding that a state’s undertaking to make *some* relay services available in a Commission-certified TRS program does not deprive the Commission of authority to ensure that other forms of TRS are available and adequately funded).

⁴⁵ 47 U.S.C. §§ 225, 616.

⁴⁶ *Notice*, 35 FCC Rcd at 13375, para. 15.

⁴⁷ *Id.* at 13375-76, paras. 16-18.

⁴⁸ The interstate-only contribution factor will continue to be used, but only to support the interstate costs of services provided in state TRS programs (currently TTY-based TRS, STS, and non-Internet-based CTS).

below⁴⁹—no commenter objects to following this procedure.⁵⁰ The TRS Fund administrator will determine a revenue requirement for the three services, based on the applicable compensation formulas and projected demand for each service. Next, the TRS Fund administrator will compute a TRS Fund contribution factor for the three services, by dividing the revenue requirement by the total intrastate and interstate end-user revenues reported by TRS Fund contributors on Forms 499-A.

17. As explained in the *2019 IP CTS Contributions Order*, this approach is simple and feasible to administer, requires only minor modification of our rules, and distributes the funding obligation among TRS Fund contributors in a reasonably equitable manner, with each contributor paying the same percentage of its total interstate and intrastate end-user revenues for support of Internet-based TRS.⁵¹ Further, as explained in the *2019 IP CTS Contributions Order*, this approach does not require jurisdictional separation of TRS costs.⁵² As under the current funding mechanism for VRS and IP Relay, no cost separation is needed because all costs of the service will be supported by the TRS Fund, and the amounts paid by each Fund contributor are unaffected by the proportion of TRS costs that might be deemed interstate or intrastate.⁵³ Accordingly, we find it unnecessary to refer this matter to a Federal-State Joint Board.

18. We direct the Wireline Competition Bureau to revise the instructions for Form 499-A, if necessary, to conform to this Report and Order.

C. Economic Impact

19. We adopt our tentative conclusion that the benefits of more efficient production and consumption exceed the costs of the proposed rule change.⁵⁴ Broadening the TRS funding base will tend to reduce any current distortions in the relative prices of intrastate and interstate telecommunications and VoIP services, increasing economic efficiency by more accurately signaling relative costs to purchasers, which in turn will generate more efficient provider investment signals.⁵⁵

20. Further, this transfer results in no net increase in contributions for TRS Fund contributors as a whole. Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate revenues will reduce the TRS funding contributions paid by providers of interstate telecommunications and VoIP services and concomitantly increase the contributions paid by providers of intrastate services.⁵⁶ As an example, based on the administrator's recommended budget for TRS Fund Year 2022-23,⁵⁷

⁴⁹ *Infra* para. 21; NTCA Comments at 4-5.

⁵⁰ The CPUC agrees that, at present, "it is reasonable for the FCC to apply the proposed a single contribution factor to a contributor's total end-user revenues, regardless of the proportion of VRS and IP Relay minutes and costs that might be deemed interstate or intrastate," but urges the Commission to reassess this approach in the event that a state commission seeks authorization to add a form of Internet-based TRS in a state TRS program. CPUC Comments at 3. As explained above, we defer a determination of how TRS funding might be altered in such a scenario, which at present remains entirely hypothetical. *See supra* para. 13.

⁵¹ *2019 IP CTS Contributions Order*, 34 FCC Rcd at 11274, para. 22.

⁵² *See* 47 U.S.C. § 225(d)(3)(A) (requiring that the Commission's rules governing separation of TRS costs must be consistent with section 410 of the Act).

⁵³ *See 2019 IP CTS Contributions Order*, 34 FCC Rcd at 11273, para. 19.

⁵⁴ *See Notice*, 35 FCC Rcd at 13377, para. 21.

⁵⁵ *Id.*

⁵⁶ To the extent this would occur, it is not a cost of our proposed rule change, but a transfer of the contribution burden from some providers and their customers to other providers and their customers. Our proposal would not change total required contributions.

⁵⁷ 2022 TRS Annual Report at Exh. 2.

approximately 55% of TRS Fund expenditures on VRS and IP Relay in 2022-23, or \$297 million—which under the existing rules would be collected from contributors’ interstate end-user revenues—will be collected from intrastate end-user revenues instead.⁵⁸ This represents a \$297 million transfer in the incidence of TRS Fund contributions from the interstate to the intrastate jurisdiction, but the total funding requirement is unaffected. In addition, the record does not indicate that any transitional costs of this transfer, which we mitigate by extending the implementation timeline, as discussed further below, could be so substantial as to outweigh the long-lasting efficiency benefits described above.

21. *Impact on Specific Providers.* We are cognizant that this change will have disparate impacts on carriers and service providers,⁵⁹ as each provider’s contribution may be adjusted up or down depending on the percentage of their end-user revenues that is classified as intrastate.⁶⁰ NTCA suggests that such changes may have “inequitable” effects on some rural service providers and customers,⁶¹ pointing out that the analogous change in IP CTS funding adopted in 2019 led to significant increases in contribution obligations for rural providers.⁶² However, NTCA does not dispute that such changes are necessary to correct more pervasive, longstanding inequities in TRS funding,⁶³ or that those service providers who now face increased costs—as a result of our action to equalize each contributor’s percentage contribution from total end-user revenues—have derived offsetting benefits over the preceding two decades, by paying a much *lower than average* share of their total end-user revenues to support TRS. While we are mindful of the increased contribution cost that some entities must bear, we do not consider such increases inequitable. Therefore, we deny NTCA’s request to adjust the contribution formula for rural service providers to limit their required contributions from intrastate end-user revenues.⁶⁴ We also note that NTCA has not provided specific evidence that any provider would be unable to recover such increased costs.⁶⁵ Further, given that the cost of TRS Fund support for VRS and IP Relay is approximately 25% lower than for IP CTS,⁶⁶ we expect the net effect on any provider’s total TRS Fund contribution to be less burdensome than the impact of the analogous rule change adopted in 2019 with regard to IP CTS funding.

22. We do not address NTCA’s request for unspecified changes in access charge cost recovery rules, which is outside the scope of this proceeding and, in any event, does not provide a specific

⁵⁸ See 2021 USF Monitoring Report at 11, Table 1.2 (showing that approximately 55% of reported end-user revenues are intrastate revenues).

⁵⁹ NTCA Comments at 2-5; NCTA Comments at 1-2; Uniti Comments at 1-2; INCOMPAS Reply Comments at 1-2.

⁶⁰ NTCA Comments at 2-3; NCTA Comments at 1-2.

⁶¹ NTCA Comments at 2-3 (suggesting that, when the Commission broadened the base of IP CTS contributions, “smaller rural providers and their customers may have borne an inequitable portion of the changes in methodology”).

⁶² *Id.* at 2-3 (citing increases in contribution obligations as high as 100%); see also NCTA Comments at 1 (stating that “one member company reported that the inclusion of intrastate revenue increased its IP CTS contribution amount by 67 percent and another company reported a 75 percent increase”); INCOMPAS Reply Comments at 2 (“Like other associations, INCOMPAS members report that the Commission’s expansion of the TRS base for [IP CTS] led to unexpected and significant increases to the size of their contributions.”).

⁶³ See Notice, 35 FCC Rcd at 13377, para. 21.

⁶⁴ NTCA Comments at 4-5.

⁶⁵ See *id.* at 4 (noting it cannot evaluate the net impact of the changes of the cost recovery rules on a company-by-company basis until cost studies are updated, but questions whether providers will have an opportunity to recover costs).

⁶⁶ See 2022 TRS Annual Report Supplement, Exh. 2.

description of either the perceived problem or a proposed solution.⁶⁷ After the Commission adopted a cap on all switched access rate elements in the *USF/ICC Transformation Order*, the Wireline Competition Bureau clarified, pursuant to its delegated authority, how incumbent local exchange carriers may recover increases in TRS Fund contribution costs and waived applicable rules to facilitate such cost recovery.⁶⁸ To the extent that any service provider believes the access charge rules unreasonably hinder its recovery of TRS Fund contribution costs, we note that specific concerns may be brought to the Commission's or Wireline Competition Bureau's attention for further clarification, waiver, or other action consistent with the *USF/ICC Transformation Order* and the Commission's rules.⁶⁹

D. Compliance Timeline

23. Telecommunications carriers and VoIP service providers shall be required to contribute a percentage of intrastate as well as interstate end-user revenues to fund VRS and IP Relay beginning July 1, 2023. Based on the record, we find good cause to establish a more extended compliance timeline than the seven months allowed in the *2019 IP CTS Contribution Order*. We are persuaded by commenters that a transition period of substantially less than one year could subject some TRS Fund contributors to undue economic stress.⁷⁰ A longer period will allow additional time for carriers and providers facing changes in required contributions to adjust budgets, proposals, billing and compliance systems, and other planning processes.⁷¹ Setting a compliance date of July 1, 2023, will afford contributors close to one year from the effective date of this Report and Order to prepare for compliance.⁷² In addition, it is administratively efficient to tie the compliance date to the start of a new TRS Fund year.⁷³ Although IDT argues that administrative efficiency should not be our primary concern,⁷⁴ to avoid unnecessarily complicating the TRS Fund contribution process and the cost recovery adjustments that must be made by affected contributors,⁷⁵ we find it appropriate to align the implementation of this change with the beginning of TRS Fund Year 2023-24 on July 1, 2023.⁷⁶

⁶⁷ See NCTA Comments at 3 (discussing complications affecting some service providers' recovery of TRS Fund contributions).

⁶⁸ *Id.*; *Material to be Filed in Support of 2012 Annual Access Tariff Filing*, WCB/Pricing File No. 12-08, Order, 27 FCC Rcd 3960, 3962-63, paras. 6-7 (WCB 2012) (*2012 Annual Access Tariff Filing Support Materials*).

⁶⁹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18149, para. 1404 (2011) (*USF/ICC Transformation Order*) (delegating authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau, as appropriate, to make any further rule revisions as necessary to ensure that the reforms are properly reflected in the rules. This authority includes correcting any conflicts between rules, as well as addressing any omissions or oversights).

⁷⁰ See Uniti Comments at 1-5 (explaining that a 12-month implementation timeline is the minimum necessary to avoid potentially significant undue disruption to E-Rate customers and their service providers); NCTA Comments at 2; INCOMPAS Reply at 2.

⁷¹ Uniti Comments at 1-5; NCTA Comments at 2; INCOMPAS Reply at 2.

⁷² The effective date for this Report and Order is 30 days from the date of publication of this item in the Federal Register. See 47 U.S.C. § 553(d).

⁷³ *Notice*, 35 FCC Rcd at 13377-78, para. 22. USTelecom notes the additional administrative benefit that a July 1 compliance date aligns with the filing date for ILECs annual tariffs. USTelecom Comments at 2.

⁷⁴ IDT Comments at 3. As explained in the text, our decision takes account of other factors in addition to administrative efficiency.

⁷⁵ See Uniti Comments at 1-5; NCTA Comments at 2; USTelecom Comments at 2; INCOMPAS Reply at 2.

⁷⁶ For similar reasons, the *2019 IP CTS Contributions Order* was implemented at the beginning of the 2020-21 Fund year. *2019 IP CTS Contributions Order*, 34 FCC Rcd at 11275, para. 27. In addition, contrary to IDT's assertion, IDT Comments at 3, implementation of the statutory mandate for TRS Fund contributions by non-interconnected VoIP service providers was aligned with the start of a funding period. *Contributions to the Telecommunications*

(continued....)

IV. PROCEDURAL MATTERS

24. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁷⁷ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Report and Order on small entities. The FRFA, where we assess the effects on small entities of expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate end-user revenues, is set forth in Appendix C.

25. *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.⁷⁸ The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office.⁷⁹

26. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA).⁸⁰ In addition, 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 2002.⁸¹

27. *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 & Governmental Affairs Bureau at 202-418-0530 (voice).

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 225 and 616 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, 616, the foregoing Report and Order IS ADOPTED, and the Commission's rules are hereby amended, as set forth in Appendix B.

29. IT IS FURTHER ORDERED that this Report and Order SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register.

30. IT IS FURTHER ORDERED that the compliance date for TRS Fund contributors to contribute to the support of intrastate VRS and IP Relay is July 1, 2023.

31. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Report & 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).

(Continued from previous page) _____
Relay Services Fund, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14533, 14545-46, para. 31 (2011) (requiring non-interconnected VoIP service providers to make TRS Fund contributions “for the 2012-2013 funding period”). By contrast, the mid-year implementation of the Commission's 2007 decision requiring *interconnected* VoIP service providers to contribute to the TRS Fund entailed the revision of the applicable contribution factor and the contribution requirements for all Fund contributors. See *IP-Enabled Services et al.*, WC Docket No. 04-36 et al., Report and Order, 22 FCC Rcd 11275, 11293-96, paras. 36-40 (2007); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 23 FCC Rcd 1680 (CGB 2008).

⁷⁷ 5 U.S.C. § 604. The RFA, 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).

⁷⁸ 5 U.S.C. § 804(2).

⁷⁹ *Id.* § 801(a)(1)(A).

⁸⁰ 44 U.S.C. §§ 3501-3521.

⁸¹ *Id.* § 3506(c)(4).

32. 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****Comments**

California Public Utilities Commission (CPUC) (filed Jan. 14, 2021)
IDT Telecom, Inc. (IDT)
NCTA – The Internet & Television Association (NCTA)
NTCA – The Rural Broadband Association (NTCA)
Sorenson Communications, LLC (Sorenson)
United States Telecom Association (USTelecom)
Uniti Group, Inc. (Uniti)
ZP Better Together, LLC (ZP)

Reply Comments

ASL Services Holdings, LLC d/b/a GlobalVRS (GlobalVRS)
Convo Communications, LLC (Convo)
Incompas

2015 IDT Petition Comments

Hancock, Jahn, Lee & Puckett, LLC
Sprint Corporation
Sorenson Communications, Inc. and Capital Call, LLC
Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., Cerebral Palsy and Deaf Organization, Deaf Seniors of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing
Voice on the Net Coalition (VON Coalition)
United States Telecom Association (USTelecom)

APPENDIX B

Final Rules

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. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend section 64.604 by revising paragraphs (c)(5)(ii) and (c)(5)(iii)(A) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(ii) *Cost recovery.* □ Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph (c)(5)(ii), costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate IP CTS, and (beginning July 1, 2023) for VRS and IP Relay, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) * * *

(A) *Contributions.* □ Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund, as described herein, (1) for the support of TRS other than IP CTS, VRS, and IP Relay, on the basis of interstate end-user revenues, and (2) for the support of IP CTS, and (beginning July 1, 2023) for VRS and IP Relay on the basis of interstate and intrastate end-user revenues. Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international, and resale services.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Notice of Proposed Rulemaking.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 A copy of 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 modifies the cost recovery rules for Video Relay Service (VRS) and Internet Protocol Relay Service (IP Relay) to provide a fair and reasonable allocation of the funding burden for Telecommunications Relay Services (TRS). Specifically, providers of intrastate as well as interstate telecommunications and Voice over Internet Protocol (VoIP) services must contribute to the TRS Fund for the support of VRS and IP Relay, based on a percentage of their total annual end-user revenues from intrastate, interstate, and international services. Requiring that contributions to support VRS and IP Relay include contributions from intrastate end-user revenues removes contribution asymmetry and ensures intrastate revenue is available to support intrastate VRS and IP Relay. This action addresses the interim cost recovery rules for VRS and IP Relay and better aligns the cost recovery rules with the terms of section 225 of the Communications Act, as amended (Act). It also both reduces the inequitable burden on providers of interstate telecommunications and VoIP services and strengthens the funding base for these critical services.

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

5. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

¹ See 5 U.S.C. § 603. The RFA, 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; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 12-38, Notice of Proposed Rulemaking, 35 FCC Rcd 13370, 13378, para. 23 (2020) (*Notice*).

³ *Id.* at 13382-385, paras. 1-15, Appx. B.

⁴ 5 U.S.C. § 604.

⁵ See *id.* § 604(b).

⁶ *Id.* § 604(a)(3).

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

6. 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 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

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹¹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹² These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹³

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁴ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁵ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁶

⁷ *Id.* § 603(b)(3).

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 *See* 5 U.S.C. § 601(3)-(6).

¹² *See* SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

¹³ *Id.*

¹⁴ *See* 5 U.S.C. § 601(4).

¹⁵ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁶ *See* Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO

(continued....)

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁷ U.S. Census Bureau data from the 2017 Census of Governments¹⁸ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁹ Of this number there were 36,931 general purpose governments (county²⁰, municipal and town or township²¹) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²² with enrollment populations of less than 50,000.²³ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁴

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁵ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network

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BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁷ See 5 U.S.C. § 601(5).

¹⁸ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁹ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts).

²⁰ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²¹ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²² See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also *id.* at tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²³ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁴ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²⁵ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services.²⁶ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁷ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁸

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁰ Of this number, 2,964 firms operated with fewer than 250 employees.³¹ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.³² Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.³³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers³⁴ is the closest industry with a SBA small business size standard.³⁵ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁷ Of this number, 2,964 firms operated with fewer than 250 employees.³⁸

²⁶ *Id.*

²⁷ *Id.*

²⁸ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

²⁹ See 13 CFR § 121.201, NAICS Code 517311.

³⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³¹ *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.

³² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld/lic/attachments/DOC-379181A1.pdf>.

³³ *Id.*

³⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁵ See 13 CFR § 121.201, NAICS Code 517311.

³⁶ *Id.*

³⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁸ *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.

Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.³⁹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

13. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁴⁰ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁴¹ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁴² Mobile virtual network operators (MVNOs) are included in this industry.⁴³ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁴⁴ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁴⁵ Of that number, 1,375 firms operated with fewer than 250 employees.⁴⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.⁴⁷ Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.⁴⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁴⁹ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they

³⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁴⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See 13 CFR § 121.201, NAICS Code 517911.

⁴⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

⁴⁶ *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.

⁴⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁴⁸ *Id.*

⁴⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

do not operate transmission facilities and infrastructure.⁵⁰ Mobile virtual network operators (MVNOs) are included in this industry.⁵¹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁵² U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁵³ Of that number, 1,375 firms operated with fewer than 250 employees.⁵⁴ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.⁵⁵ Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.⁵⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁵⁷ is the closest industry with a SBA small business size standard.⁵⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁶⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁶¹ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.⁶² Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.⁶³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See 13 CFR § 121.201, NAICS Code 517911.

⁵³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁵⁴ *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.

⁵⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/d.lic/attachments/DOC-379181A1.pdf>.

⁵⁶ *Id.*

⁵⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁸ See 13 CFR § 121.201, NAICS Code 517311.

⁵⁹ *Id.*

⁶⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁶¹ *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.

⁶² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/d.lic/attachments/DOC-379181A1.pdf>.

⁶³ *Id.*

16. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁶⁴ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁶⁵ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁶⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁶⁷ Of that number, 2,837 firms employed fewer than 250 employees.⁶⁸ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.⁶⁹ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.⁷⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Satellite Telecommunications*. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."⁷¹ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$35 million or less in annual receipts as small.⁷² U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.⁷³ Of this number, 242 firms had revenue of less than \$25 million.⁷⁴ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.⁷⁵ Of these providers, the Commission estimates that approximately

⁶⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁶⁵ *Id.*

⁶⁶ See 13 CFR § 121.201, NAICS Code 517312.

⁶⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁶⁸ *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.

⁶⁹ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2021)*, <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

⁷⁰ *Id.*

⁷¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁷² See 13 CFR § 121.201, NAICS Code 517410.

⁷³ 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: EC1700SIZEREVFIEM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIEM&hidePreview=false>.

⁷⁴ *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.

⁷⁵ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2021)*, <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

48 providers have 1,500 or fewer employees.⁷⁶ Consequently using the SBA's small business size standard, a little more than of these providers can be considered small entities.

18. *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.⁷⁷ 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.⁷⁸ 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.⁷⁹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁸⁰ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁸¹ Of those firms, 1,039 had revenue of less than \$25 million.⁸² Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

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

19. The rules adopted in the *Report and Order* do not impose new or additional reporting, recordkeeping, or other compliance requirements on small entities. Because TRS Fund contributors' intrastate end-user revenues are currently included in the contribution base for Internet Protocol Captioned Telephone Service (IP CTS), the Commission's existing rules require telecommunications and VoIP providers that provide intrastate telecommunications services to register with the TRS Fund administrator and submit contribution payments to the TRS Fund. Contributors to the TRS Fund will see two contribution rates, one for IP CTS, VRS and IP Relay and another for all other forms of TRS, but there will not be a change to how entities report their revenues on the FCC Form 499-A for purposes of contributing to the TRS Fund.

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

20. 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."⁸³ Such alternatives may include the following four alternatives (among others): (1) the

⁷⁶ *Id.*

⁷⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See 13 CFR § 121.201, NAICS Code 517919.

⁸¹ 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>.

⁸² *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.

⁸³ 5 U.S.C. § 604(a)(6).

establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁸⁴

21. Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate end-user revenues will cause a corresponding reduction in the contributions required from interstate and international end-user revenues. As a result, while small entities with mostly intrastate revenue will be required to make increased payments to the TRS Fund, other small entities with mostly interstate revenue will experience a reduction in TRS Fund contributions. This change will not increase the total contributions required. The additional costs incurred by some small entities are justified by the benefits of appropriately allocating the funding of the provision of VRS and IP Relay among all telecommunications carriers and VoIP providers. By including intrastate end-user revenues in the contribution base, the VRS and IP Relay programs, including the providers and users, will be supported by a broader, more sustainable contribution base.

22. The Commission considered whether to revise the contribution formula or the cost recovery mechanisms available to small rural carriers and providers as suggested by NTCA. The Commission determined that the record did not contain sufficient evidence to justify modifying the existing requirements or making appropriate changes to the contribution formula or cost recovery mechanism. The Commission left open the ability for an adversely affected carrier or provider to petition the Commission for waiver with specific evidence showing that current rules inhibited said carrier or provider from fully recovering contribution costs. The Commission also modified the proposed compliance deadline in response to comments filed in the proceeding to provide affected entities close to one year to comply with the modified contribution obligations. This should allow small entities sufficient time to adjust budgets, proposals, billing and compliance systems, and other planning processes for meeting their funding obligations.

G. Report to Congress

23. 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.⁸⁵ 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

24. None.

⁸⁴ 5 U.S.C. § 603(b).

⁸⁵ *See id.* § 801(a)(1)(A).