

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64**

[CC Docket No. 98-67; FCC 02-121]

Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rules.

SUMMARY: This document inquires into whether providers of Internet protocol relay services (IP Relay) should be permitted to recover their costs from the Interstate Telecommunications Relay Services (TRS) Fund on a permanent basis, or whether and how a methodology can be devised to allocate cost recovery between the Interstate TRS Fund and the states. The Commission solicits comment on cost recovery for IP Relay, including potential methods for allocating costs between the Interstate TRS Fund and the states.

DATES: Comments are due on or before July 11, 2002 and reply comments are due on or before July 26, 2002.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Washington, DC 20554. For more information on filing comments, see

SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Sean O'More, of the Consumer and Government Affairs Bureau at (202) 418-2453 (voice), (202) 418-7870 (TTY) or e-mail scomore@fcc.gov.

SUPPLEMENTARY INFORMATION: The requirement for collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(H)). Persons wishing to comment on this collection of information should direct their comments to Judy Boley, Office of the Managing Director, Federal Communications Commission, The Portals, Room 1C-804, 445 12th Street, SW., Washington, DC 20554, tel. 202-418-0214, e-mail jboley@fcc.gov. This is a summary of the Commission's *Second Further Notice of Proposed Rule Making*, adopted April 18, 2002, and released April 22, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, 1998. Comments filed through the ECFS

can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Room 5-A741, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an

IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98-67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Copies of this document in other alternative formats (computer diskette, large print and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau at (202) 418-7426 (voice), (202) 418-7365 (TTY), or e-mail bmillin@fcc.gov. This *Second Further Notice of Proposed Rule Making* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

Synopsis

In this *Second Further Notice of Proposed Rule Making*, the Commission notes that there is no automatic means of determining the origination of IP Relay calls. In the absence of this information, TRS providers cannot determine, or report to the TRS Fund Administrator, whether a call is interstate or intrastate. We request comment on whether we should attempt to devise a method for allocating calls as intrastate or interstate, and if so, suggestions for how we may accomplish this goal. We seek comment on whether section 225 of the Communications Act requires us to develop a cost allocation methodology for IP relay calls, or whether the statute gives us the discretion to conclude that all costs for IP relay shall be reimbursable from the Interstate TRS Fund. To the extent that commenters believe that costs must be

allocated between the interstate and intrastate jurisdictions for purposes of recovery from the Interstate TRS Fund, we request that they consider what methods may exist, or could be developed, to determine the location of a caller using IP Relay. Further, we ask commenters to consider whether the use of a fixed allocator would satisfy the statutory requirement that costs caused by interstate relay services be recovered from all subscribers for every interstate service, and if so, how such a fixed allocator could best be derived. We also ask commenters to address whether the Commission should be responsible for devising a fixed allocator for dividing the reimbursement for IP Relay costs between the Interstate TRS Fund and the states, or whether we should charge some other party with this responsibility.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking*. 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), Public Law No. 104–121, Title II, 110 Stat. 857 (1996). We expect that we could have complied with the RFA by completing an Initial Regulatory Flexibility Certification on this issue; however, we have chosen instead to complete this Initial Regulatory Analysis for more complete record. 5 U.S.C. 605(b). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice of Proposed Rulemaking* provided in paragraph 51 of the item. The Commission will send a copy of the *Second Further Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a). In addition, the *Second Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**. See 5 U.S.C. 603(a).

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

Telecommunications Relay Service (TRS), which is provided through the public switched telephone network

(PSTN), enables persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities. 47 CFR 64.601(5)(7). TRS facilities have special equipment and are staffed by communications assistants (CAs) who relay conversations between people who use text telecommunications devices and people who communicate by voice. WorldCom, Inc. (WorldCom) indicates that its Internet Protocol (IP) Relay service is used in a manner similar to the PSTN-based TRS system. The user establishes a local connection to an Internet Service Provider using a computer, web phone, personal digital assistant, or any other IP-capable device. The user clicks on the relay operator icon, and when the call reaches the Internet platform a connection is automatically established, via an 800 number, to the WorldCom relay center. The call is then routed to a CA and a regular relay session is initiated. WorldCom, *Petition for Clarification, CC Docket No. 90–571, Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Dec. 22, 2000, at 2.

WorldCom's *Petition for Clarification (Petition)* asked the Commission to clarify (1) that IP Relay falls within the definition of TRS and (2) that it is entitled to recover its operating costs under section 225 of the Communications Act. WorldCom, *Petition for Clarification, CC Docket No. 90–571, Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Dec. 22, 2000. 47 U.S.C. 225. WorldCom further requested that the Commission allow it to recover all of the costs of its IP Relay service from the Interstate TRS Fund. Calls come to IP relay via the Internet, and there is currently no automatic method by which the IP Relay center can tell whether a given call is intrastate or interstate, given that Internet addresses have no geographic correlates. This is in contrast to PSTN-based TRS, in which the TRS center uses the caller's Automatic Numbering Identification (ANI) to identify the location of the caller.

The Commission briefly addressed the potential impact of the Internet on TRS earlier in this proceeding when the Commission requested comment on the provision of improved TRS and on WorldCom's *Petition*. We solicited comment on the use of the World Wide Web for TRS voice communications in the *Improved Service Report and Order and Further Notice of Proposed Rulemaking*. "We also seek comment on improved transmission speed, wireless messaging services, use of the World

Wide Web for voice communications, Internet telephony, and any other technologies or changes to technology that may improve relay services or should be available via TRS." See *Improved Service Report and Order and Further Notice of Proposed Rulemaking, Report and Order and Further Notice of Proposed Rulemaking*, 65 FR 38490, Jun. 21, 2000, 15 FCC Rcd 5140, 5197 (2000) (*Improved Service Report and Order and Further Notice of Proposed Rulemaking*). Consumer Information Bureau Seeks Additional Comment on the Provision of Improved Telecommunications Relay Service, DA 01–1555, *Public Notice*, 16 FCC Rcd 13100, Jun. 29, 2001; published at 66 FR 37631, Jul. 19, 2001. The Public Notice asked for public comment on the benefits of IP Relay, the appropriate means for allowing WorldCom to recover the costs of providing IP Relay, the minimum standards that should apply to IP Relay, and the security of IP Relay calls. See *Public Notice*, 16 FCC Rcd 13103. The Public Notice also sought comment on IP capabilities and outreach regarding TRS. While we do not reach these issues in our consideration of WorldCom's *Petition*, we will consider these comments along with the other comments received in response to our *Improved Service Report and Order and Further Notice of Proposed Rulemaking*. The Commission received 12 comments and five reply comments from carriers, organizations representing the deaf community, and public officials, along with hundreds of e-mail comments and letters from individuals who use IP Relay. Comments were filed by AT&T, Inc. (AT&T), the California Public Utilities Commission (California), Katherine Keller, Dana Mulvany, the National Association for the Deaf (NAD), Self Help for Hard of Hearing People (SHHH), Sprint Corporation (Sprint), Charles Sterling, Telecommunications for the Deaf, Inc. (TDI), The United States Telecommunications Association (USTA), Ronald Vickery, and WorldCom. Additionally, individuals sent over a hundred e-mails. California, Dana Mulvany, TDI, USTA, and WorldCom filed reply comments. In the *Second Notice of Proposed Rule Making* aspect of this item, we request comment on whether recovery of costs from the Interstate TRS Fund for IP Relay should be a temporary or a permanent measure. If this should be a temporary measure, we seek comment from the public on how IP Relay TRS providers can develop the capability to determine whether a call is intrastate or interstate. If a permanent measure, we seek

comment on the bases for such proposed action. Finally, we seek comment on the mechanisms for applying the process of reimbursement for all affected IP TRS Relay providers, including any small entities providing TRS.

B. Legal Basis

The proposed action is authorized under sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definition of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the TRS. FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (Aug. 2001). TRS Providers. Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to TRS providers. The closest applicable definitions under the SBA rules are for wired telecommunications carriers and telecommunications resellers. 13 CFR

120.201, North American Industry Classification System (NAICS) Code 513310 and 513330. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. See 13 CFR 121.201, NAICS Code 513310 and 513330. According to our most recent data, there are 11 interstate TRS providers, which consist of entities whose core businesses are as interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. This is recent data from National Exchange Carriers Association, which administers the Interstate TRS Fund. We note that currently there are no wireless IP Relay TRS providers. However, we welcome comments on the proposals in our *Second Notice of Proposed Rulemaking* from wireless service providers. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 11 small TRS providers that may be affected by the proposed changes. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for RFA purposes, that any TRS providers are small entities. There is currently one provider of IP Relay TRS, WorldCom, Inc. WorldCom, Inc. is not a small entity. AT&T Corp. and Sprint, Inc. have indicated their intention to provide IP Relay TRS. These two corporations are not small entities. Therefore they are outside the statutory mandated scope of this IRFA.

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

If rules establishing a reimbursement system for IP Relay providers are promulgated pursuant to this proceeding, all providers of IP Relay, including small entities, will be required to report to the TRS Administrator data needed to calculate their reimbursement amount. This data would be provided on an existing Interstate TRS Fund Administrator's form. This form is straightforward and simple to complete. In addition, the form represents data that is already collected by TRS providers.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities." 5 U.S.C. 603(c)(1)-(c)(4).

The proposals in the *Second Further Notice of Proposed Rulemaking*, and the comments the Commission seeks regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principle shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. See 47 U.S.C. 225(d)(2). Easily the majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers. The majority of IP Relay TRS is likely to be provided by these same carriers. Currently, WorldCom, which is a large entity, is the only provider of IP Relay. We believe that the number of small entities impacted by these proposals, apparently 11, would be potentially very small. With respect to proposals in the *Second Further Notice of Proposed Rulemaking*, common carriers providing voice transmission services that are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through competitively selected vendors, or in concert with other carriers. See 47 U.S.C. 225(c). Because of the array of options available to TRS providers when complying with these requirements, the Commission expects that the proposals contained in the *Second Further Notice of Proposed Rulemaking* will have minimal impact on small entities. We tentatively conclude that our proposals in the *Second Further Notice of Proposed*

Rulemaking would impose minimum burdens on small entities. We seek comment on our tentative conclusion.

At this time, there is no mechanism available that would allow differentiation between intra- and interstate calls made through the Internet. The *Second Further Notice of Proposed Rulemaking* identifies and requests comment on establishing a mechanism for reimbursing IP Relay providers based on the use of a fixed allocator. If an allocator were to be established, all TRS providers, including small entities, would be able to determine the appropriate amount for reimbursement. Such an approach would satisfy the statutory requirement that costs caused by interstate relay service be recovered from all subscribers for every interstate service. An alternative the Commission is considering is making the interim arrangement of cost recovery from the Interstate TRS Fund for *all* calls permanent. We recognize that this alternative may benefit small TRS providers, by simplifying reporting requirements and clarifying reimbursement amounts. We seek comment on the statutory basis for such a decision.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

It is further ordered that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 225, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C 151, 154(i), 154(j), 225, 303(r), and 403, the *Notice of proposed rulemaking is adopted*. Comments regarding the *Notice of proposed rulemaking are requested* as described.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-14678 Filed 6-10-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-1280, MB Docket No. 02-130, RM-10438]

Digital Television Broadcast Service; Des Moines, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Frank Duross, Kaleidoscope Partners, Caroline K. Powley, JJJH, LLP, Stead Communications, and ValueVision International, Inc., applicants for a new television station at Des Moines, Iowa, proposing the substitution of DTV channel 56 for analog channel 69 at Des Moines. DTV Channel 56 can be allotted to Des Moines at reference coordinates 41-38-05 N. and 93-34-46 W. with a power of 1000, a height above average terrain HAAT of 151 meters.

DATES: Comments must be filed on or before July 29, 2002, and reply comments on or before August 13, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC,

interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Esquire, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209-3801.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02-130, adopted May 29, 2002, and released June 5, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail: qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Iowa is amended by removing channel 69 at Des Moines.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under