

health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2004.

Michael O. Leavitt,
Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 170—[AMENDED]

1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136a, 136w.

2. Section 170.112 is amended by revising paragraph (c)(4)(vii) to read as follows:

§ 170.112 Entry restrictions.

* * * * *

(c) * * *
(4) * * *

(vii)(A) Gloves shall be of the type specified on the pesticide product labeling. Gloves made of leather, cotton, or other absorbent materials must not be worn for early-entry activities, unless gloves made of these materials are listed as acceptable for such use on the product labeling. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, leather gloves may be worn on top of chemical-resistant gloves. However, once leather gloves have been worn for this use, they shall not be worn thereafter for any other purpose, and they shall only be worn over chemical-resistant gloves.

(B) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(C) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.

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3. Section 170.240 is amended by revising paragraphs (c)(5) and (d)(6)(i) to read as follows:

§ 170.240 Personal protective equipment.

* * * * *

(c) * * *

(5)(i) Gloves shall be of the type specified on the pesticide product labeling. Gloves made of leather, cotton, or other absorbent materials may not be worn while mixing, loading, applying, or otherwise handling pesticides, unless gloves made of these materials are listed as acceptable for such use on the product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.

* * * * *

(d) * * *

(6) *Aerial application*—(i) *Use of gloves.* The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 90-571 and 98-67; FCC 04-137]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses cost recovery and other matters relating to the provision of telecommunications relay services (TRS) pursuant to Title IV of the Americans with Disabilities Act of 1990 (ADA). This document is intended to improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.

DATES: Effective October 1, 2004 except for the amendment to § 64.604 (a)(4) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due November 1, 2004. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith.B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at (202) 395-5167.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Governmental Affairs Bureau at (202) 418-2284 (voice), (202) 418-0416 (TTY), or e-mail *Cheryl.King@fcc.gov*. For additional information concerning the PRA information collection

requirements contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: *This Report and Order, Order on Reconsideration* contains new or modified information collection requirements subject to the PRA of 1995, Public Law 104-13. These will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. *The Report and Order* addresses issues arising from *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Cost Recovery Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, (TRS Cost Recovery MO&O & FNPRM)*, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22948, December 21, 2001; published at 67 FR 4203, January 29, 2002 and 67 FR 4227, January 29, 2002; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling and Further Notice of Proposed Rulemaking, (IP Relay Declaratory Ruling & FNPRM)*, CC Docket No. 98-67, FCC 02-121, 17 FCC Rcd 7779, April 22, 2002; published at 67 FR 39863, June 11, 2002 and 67 FR 39929, June 11, 2002; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Second Report and Order and Notice of Proposed Rulemaking, (Second Improved TRS Order & NPRM)*, CC Docket 98-67, CG Docket 03-123, FCC 03-112, 18 FCC Rcd 12379, June 17, 2003; published at 68 FR 50973, August 25, 2003 and 68 FR 50993, August 25, 2003; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (VRS Waiver Order)*, CC Docket 98-67, DA 01-3029, 17 FCC Rcd 157, December 31, 2001; *Sprint Petition for Declaratory Ruling, (711 Petition)*, CC Docket 98-67, filed May 27, 2003; *Hands on Sign Language Services, Inc., Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification During Processing (Hands on Application)*, CC Docket 98-67, filed August 30, 2002; and *Communication Services for the Deaf, Petition for Limited Waiver and Request for*

Expedited Relief, (CSD Petition), CC Docket 98-67, filed June 12, 2003. The *Order on Reconsideration* resolves petitions filed against the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (Bureau TRS Order)*, CC Docket 98-67, DA 03-2111, 18 FCC Rcd 12823, June 30, 2003; *Second Improved TRS Order & NPRM*; and the *Telecommunications Relay Services and the Americans with Disabilities Act of 1990, (Coin Sent-Paid Fifth Report and Order)*, CC Docket 90-571, FCC 02-269, 17 FCC Rcd 21233, October 25 2003; published at 68 FR 6352, February 7, 2003 and 68 FR 8553, February 24, 2003. 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 duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: <http://www.bcpiweb.com> or call 1-800-378-3160. 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) or (202) 418-0432 (TTY). This *Report and Order, Order on Reconsideration* can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

Paperwork Reduction Act of 1995 Analysis

This *Report and Order, Order on Reconsideration* contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Report and Order, Order on Reconsideration* as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. Public and agency comments are due November 1, 2004. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how to Commission might "further reduce the information collection burden for small business concerns with

fewer than 25 employees." In this present document, we have assessed the effects of the new rule changes that clarify many of the current requirements for TRS providers which impose new and/or modified reporting requirements for TRS providers, and find that most TRS providers are not small entities, and are either interexchange carriers or incumbent local exchange carriers, with very few exceptions. The Commission refrained from requiring features such as interrupt functionality and talking return call because comments expressed concern that such features might be cost prohibitive, and might be unduly burdensome to the TRS provider and the TRS user. This *Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation. Because such cost-prohibitive and unduly burdensome measures were rejected by the Commission, no arbitrary and unfair burdens are thereby imposed on smaller entities.

Synopsis

In this *Report and Order, Order on Reconsideration*, the Commission addresses cost recovery and other matters relating to the provision of telecommunications relay services (TRS) pursuant to Title IV of the Americans with Disabilities Act of 1990 (ADA). *The Report and Order* addresses: (1) Cost recovery issues arising from the *TRS Cost Recovery MO&O & FNPRM*; (2) cost recovery issues arising from the *IP Relay Declaratory Ruling & FNPRM*; (3) issues arising from the Notice of Proposed Rulemaking contained in the *Second Improved TRS Order & NPRM*; (4) petitions seeking extension of the waivers set forth in the *VRS Waiver Order*; (5) the *711 Petition*; (6) the petition by a provider of VRS for "certification" as a TRS provider eligible to receive compensation from the Interstate TRS Fund; and (7) the petition for limited waiver concerning Video Relay Service (VRS) and interpreting in state legal proceedings. The *Order on Reconsideration* addresses petitions for reconsideration of three TRS matters: (1) the petitions for reconsideration of the June 30, 2003 *Bureau TRS Order* with respect to the per-minute compensation rate for VRS; (2) the *Second Improved TRS Order & NPRM*; and (3) the *Coin Sent-Paid Fifth Report & Order*.

Final Regulatory Flexibility Analysis (CG Docket No. 03-123)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), (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 14-121, Title II, 110 Statute 857 (1996)), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking (NPRM) to which this *Report and Order* responds. *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order & NPRM*). The Commission sought written public comment on the proposals in the NPRM section of the *Second Improved TRS Order & NPRM*, including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. See 5 U.S.C. 604. We also expect that we could certify the *Report and Order* under 5 U.S.C. 605 because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there are not a substantial number of small entities that may be affected by our action.

Need for, and Objective of, This Report and Order

This proceeding was generally initiated to establish technological advancements that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. This proceeding would ensure compliance with the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS.

The Commission issued the *NPRM* in the *Second Improved TRS Order & NPRM* to seek public comment on technological advances that could

improve the level and quality of service provided through TRS for the benefit of TRS users. In doing so, the Commission sought to enhance the quality of TRS and broaden the potential universe of TRS users, consistent with Congress's direction under 47 U.S.C. 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology. The Commission sought comment on: (1) Whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements were necessary for ensuring the security of IP Relay transmissions; (3) how TRS facilities might determine the appropriate PSAP to call when receiving an emergency 711 call via a wireless device; (4) whether wireless carriers should be required to transmit Phase I or Phase II E-911 information to TRS facilities; (5) whether certain additional features, services, or requirements should be required, namely non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, LEC offerings, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (6) issues concerning increasing public access to information and outreach; and (7) procedures for determining eligibility payments from the Interstate TRS Fund. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS.

In this *Report and Order*, the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225. First, the Commission adopts the per minute reimbursement methodology for IP Relay. Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC. Third, the Commission grants VRS waiver requests of the following TRS

mandatory minimum requirements: (1) Types of calls that must be handled; (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; (5) pay-per-call services; (6) voice initiated calls—VCO and HCO; (7) provision of STS and Spanish Relay. Fourth, the Commission amends the definition of "711" by deleting the words "all types of" from the definition, in order to clarify its meaning. Fifth, in the *Order on Reconsideration*, the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay and STS that were established in the *Bureau TRS Order*. See *Bureau TRS Order*. The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order*. Sixth, the Commission has amended the definition for an "appropriate" PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner. These amended and new rules will improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress. No changes were made to the following items proposed in the *NPRM*: (1) Whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements are necessary for ensuring the security of IP Relay transmissions; (3) whether wireless carriers should be required to transmit Phase I or Phase II E-911 information to TRS facilities; (4) whether certain additional features, services or requirements should be required for non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (5) issues concerning increasing public access to information and outreach; and (6) procedures for determining eligibility payments from the Interstate TRS Fund.

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

No comments were filed directly in response to the *IRFA* in this proceeding. Furthermore, no small business issues were raised in the comments. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on at least one small entity that is a TRS provider. Accordingly, in consideration of this small entity and other small entities that may be similarly situated, we issue this final regulatory flexibility analysis rather than issue a final regulatory flexibility certification.

Description and Estimate of the Number of Small Entities to Which the Rules 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 rules adopted herein. 5 U.S.C. 604(a)(3). The RFA 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 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4).

Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends*

in *Telephone Service* Report. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately 1,032 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's. Therefore, the majority of entities in these categories are small entities.

Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and

determinations in other, non-RFA contexts.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 261 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 223 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The Commission estimates that at least one TRS provider is a small entity under the applicable size standard. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI (WorldCom), for example, provides TRS in only a few states but is not a small business. Consequently, the FCC estimates that at least one TRS provider is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Reporting and Recordkeeping. This *Report and Order* may involve new mandatory reporting requirements. First, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred

call-forwarding to the extent that such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC. However, the Commission does not adopt specific requirements for the functionality of these features. We anticipate that TRS providers will offer these features to the extent, and in a manner, that is best suited to their facilities. Second, the Commission granted waiver requests of the Commission's mandatory minimum standards for VRS, providing that VRS providers submit annual reports to the Commission. The report must be in narrative form detailing: (1) the provider's plan or general approach to meeting the waiver standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standard; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waivers should continue in effect. The report may be combined with the existing VRS/IP Relay reporting requirements scheduled to be submitted annually to the Commission on April 16th of each year. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

Other Compliance Requirements. The rules adopted in this *Report and Order* require that TRS facilities route emergency TRS calls to either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner to the designated PSAP to which a direct voice call from a non-TRS number would be delivered. Furthermore, the rules require that TRS facilities provide certain technological features including: anonymous call rejection, call screening, and preferred call-forwarding. These rules will affect TRS providers. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among

others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. See 5 U.S.C. 603(c)(1)–(c)(4).

One of the main purposes of this *Report and Order* and *Order on Reconsideration* is to clarify many of the current requirements for TRS providers. The *Report and Order* and *Order on Reconsideration* impose new and/or modified reporting requirements for TRS providers. In addition, they impose new service requirements. Because these new service requirements are similar to services currently being offered, the Commission expects a minimal impact on small business. First, the Commission permanently adopts the per minute reimbursement methodology for IP Relay. The per-minute reimbursement methodology simplifies the compliance and reporting requirements for small entities by permanently adopting the interim methodology. Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and to the extent that the TRS facility will possess the necessary technology to pass through the subscriber's Caller ID information to the LEC. This new requirement does not adversely impact small business entities because these features are only required where it is technologically feasible to do so; the Commission does not require providers to purchase new equipment or upgrade their equipment to accommodate these new requirements. Third, the Commission grants waiver requests of several TRS mandatory minimum requirements for VRS service. These standards were waived because the Commission determined that they were either technologically infeasible, extremely difficult to comply with given the infancy of the service, or they were more closely related to verbal communication, as opposed to a visual service. Furthermore, these waivers consolidate the reporting requirements for providers, and ensure that VRS facilities are only responsible for those rules that are technologically feasible. Therefore, these waivers have no adverse impact on small businesses.

Fourth, the Commission amends the definition of "711" by deleting the words "all types of" from the definition, in order to clarify its meaning. This rule clarifies the definition of 711, thereby simplifying the application of the rule for TRS providers. This clarification has no adverse impact on small entities but, on the contrary, will benefit all entities equally. Fifth, in the *Order on Reconsideration*, the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay, and STS for the 2003–2004 fund year that were established in the *Bureau TRS Order*, and are effective from June 30, 2003, through the June 30, 2004, end of fund year. The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order*; the new rate is effective from September 1, 2003, through June 30, 2004. The new VRS compensation rate was established after review of supplemental expense and service data filed with the TRS administrator. The per-minute reimbursement methodology takes into account the projected cost and demand data of all TRS providers for a given service. Therefore, it does not unduly burden small businesses. Sixth, the Commission has amended the definition for an "appropriate" PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner. The revision of this rule simplifies the ability of TRS providers to comply with the Commission's emergency call handling requirement for TRS. The revision has no adverse impact on small entities.

Currently, most TRS providers are not small entities, and are either interexchange carriers or incumbent local exchange carriers, with very few exceptions. The Commission refrained from requiring features such as interrupt functionality and talking return call because commenters expressed concern that such features might be cost prohibitive, and might be unduly burdensome to the TRS provider and the TRS user. This *Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation. Because such cost-prohibitive and unduly burdensome measures were rejected by the Commission, no arbitrary and unfair burdens are thereby imposed on smaller entities.

Report to Congress

The Commission will send a copy of the *Report and Order, Order on Reconsideration*, including this *FRFA*, in a report to be sent to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). 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. A copy of the *Report and Order, Order on Reconsideration* and *FRFA* (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, pursuant to the authority contained in sections 1,2, 4(i), 4(j), 201–205, 218, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 218, and 225, this *Report and Order, Order on Reconsideration* are adopted, and part 64 of Commission’s rules is amended as set forth in the rule changes.

Hamilton’s Petition for Waiver Extension is granted to the extent indicated herein.

Hands On’s Petition for Waiver is granted to the extent indicated herein.

Sprint’s Petition for Declaratory Ruling, CC Docket No. 98–67 (filed May 27, 2003) (711 Petition) is granted as provided herein.

Hands On’s Application for Certification as an Eligible VRS Provider (filed August 30, 2002) (Hands On Application) is dismissed without prejudice.

Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief, CC Docket 98–67 (filed June 12, 2003) (CSD Petition) is denied as provided herein.

The petitions of AT&T, CSD, Hands On, Sorenson, and Sprint for reconsideration of the *Bureau TRS Order* are denied.

The Interstate TRS Fund shall compensate VRS providers at the rate of \$8.854 per completed interstate or intrastate conversation minute, which rate shall apply to the provision of eligible VRS services by eligible VRS providers effective September 1, 2003.

Interim per-minute compensation rates set forth in the *Bureau TRS Order* for traditional TRS, IP Relay, and STS are hereby adopted as the final compensation rates for such services for the period July 1, 2003, through June 30, 2004. These rates are \$1.368 per completed interstate conversation minute for traditional TRS and per completed interstate or intrastate

conversation minute for IP Relay; and \$2.445 per completed interstate conversation minute for STS.

Except as otherwise specifically provided herein, the *Bureau TRS Order* is affirmed.

Petitions for reconsideration of *Telecommunication Relay Services and the Americans with Disabilities Act of 1990, Fifth Report and Order*, CC Docket No. 90–571, FCC 02–269, 17 FCC Rcd 21233 (Oct. 25, 2002) (*Coin Sent-Paid Fifth Report & Order*) are denied as provided herein.

Petitions for reconsideration of *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Second Report and Order*, CC Docket No. 98–67, FCC 03–112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order*) are granted to the extent indicated herein.

Amendments to §§ 64.601 through 64.605 of the Commission’s rules are adopted, effective October 1, 2004 except § 64.604 (a)(4) of the Commission’s rules which contains information collection requirement under the Paperwork Reduction Act (PRA), that are not effective until approved by Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

The Commission’s Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order, Order on Reconsideration*, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications, Individuals with disabilities, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.601 is amended by revising paragraph (1) to read as follows:

§ 64.601 Definitions.

* * * * *

(1) 711. The abbreviated dialing code for accessing relay services anywhere in the United States.

* * * * *

■ 3. Section 64.604 is amended by revising paragraphs (a)(4), (c)(5)(iii)(B) and (c)(5)(iii)(I) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(4) *Handling of emergency calls.*

Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to the nearest Public Safety Answering Point (PSAP). An appropriated PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) *Contribution computations.*

Contributors’ contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years’ contributions. Each subject carrier must contribute at least \$25 per year. Carriers whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a “Telecommunications Reporting Worksheet” (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an

officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer & Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

* * * * *

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer & Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*See* 47 CFR 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*See* 47 CFR 52.16 of this chapter), and the long-term local number portability cost recovery (*See* 47 CFR 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

* * * * *

■ 4. Section 64.605 is amended by revising paragraph (a) to read as follows:

§ 64.605 State certification.

(a) *State documentation.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the **Federal Register**.

* * * * *

[FR Doc. 04-19955 Filed 8-31-04; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 01-75; FCC 02-298]

Broadcast Auxiliary Service Rules

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: On November 13, 2002, the Commission released a Report and Order in the matter of Broadcast Auxiliary Service Rules. This document contains corrections to the final regulations that appeared in the **Federal Register** of March 17, 2003 (68 FR 12744). A "correcting amendment" also appeared in the **Federal Register** of July 22, 2004 (69 FR 43772).

DATES: Effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418-2803.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relate to Broadcast Auxiliary Service Rules under § 73.3598 of the rules.

Need for Correction

As published, the final regulations contain an error, which requires immediate correction.

List of Subjects in 47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

■ Accordingly, 47 CFR part 73 is corrected by making the following correcting amendment:

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.

■ 2. Section 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-19894 Filed 8-31-04; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA-00-7762 (HM-206C)]

RIN 2137-AD29

Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Interim Final Rule; extension of compliance date.

SUMMARY: This interim final rule extends the compliance date of the notification and record retention