

## Ordering Clauses

Pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, this *Order on Reconsideration* is hereby adopted.

The Petition for Partial Reconsideration filed by Hands On is granted in part, as provided herein; the Petition for Reconsideration filed by CSD is granted in part, as provided herein; and the Petition for Reconsideration filed by NVRSC is granted, as provided herein.

This *Order on Reconsideration* shall be effective September 30, 2005.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Order on Reconsideration*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Jacqueline R. Coles,**

*Associate Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 98-67 and CG Docket No. 03-123; FCC 05-140]

### 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 concludes that because speed of answer is central to the provision of "functionally equivalent" telecommunications relay service (TRS), and video relay service (VRS) is now widely used—if not the preferred form of TRS, VRS providers must provide service in compliance with the speed of answer rule adopted to be eligible for compensation from the Interstate TRS Fund. The rule establishes for the first time, mandatory speed of answer requirement for VRS, requires VRS to be officered 24/7, and permit VRS providers to be compensated for providing VRS mail. Also, in this document, the Commission closes TRS Docket No. CC 98-67.

**DATES:** Effective September 30, 2005.

### FOR FURTHER INFORMATION CONTACT:

Thomas Chandler, Consumer & Government Affairs Bureau, Disability Rights Office at (202) 418-1475 9 (voice), (202) 418-0597 (TTY), or e-mail at [Thomas.Chandler@fcc.gov](mailto:Thomas.Chandler@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, FCC 05-140, adopted July 14, 2005, and released July 19, 2005, in CC Docket 98-67 and CG Docket 03-123. The Commission addresses three issues related to the provision of Video Relay Services, a form of telecommunications relay service (TRS): (1) The adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail. This *Report and Order* does not contain new or modified information collections requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, 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, Public Law 107-198, see 44 U.S.C. 3506 (c)(4). The full text of the *Report and Order* and 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, NW., CY-A257, Washington, DC 20554. The *Report and Order* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contract, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI at their Web site [www.bepiweb.com](http://www.bepiweb.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 [fee504@fcc.gov](mailto:fee504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). The *Report and Order* can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

### Synopsis

Title IV of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 401, 104 Statute 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Communications Act), as amended, 47 U.S.C. 225; implementing regulations at

47 CFR 64.601 *et seq.*), requires common carriers offering telephone voice transmission services to provide TRS throughout the area in which they offer service so that persons with disabilities will have access to telecommunications services, and provides that they will be compensated for their just and reasonable costs of doing so. Title IV is intended to further the universal service goal set out in the Communications Act of 1934 (Act), as amended, by providing to individuals with hearing or speech disabilities telephone services that are "functionally equivalent" to those available to individuals without such disabilities. Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.

The advent of VRS as a form of TRS has been one of the most important developments in the short history of TRS. VRS allows a deaf person whose primary language is ASL to communicate in ASL with the CA, a qualified interpreter, through a video link; the CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. As a result, the conversion between the two end users, deaf and hearing, flows in near real time and in a faster and more articulate manner than with a TTY or text-based TRS world. The use of VRS reflects this reality. In April 2005 the monthly minutes of use were approximately 1.8 million, a ten-fold increase in the past two years, and more than the number of interstate traditional TRS minutes. (See TRS Fund Performance Status Report as of May 31, 2005, <http://www.neca.org> (under Resources, then TRS Fund)).

### Discussion

#### *Speed of Answer*

The TRS Speed of Answer Rule

TRS became available on a nationwide basis in July 1993. Initially, the Commission's regulations required the provision of only "traditional," or text (TTY)-based TRS, and the Commission adopted mandatory minimum standards to govern the provision of this service. Providers seeking compensation from the Interstate TRS Fund for providing any form of TRS must offer service in compliance with the applicable mandatory minimum standards, unless waived. In the initial Notice of Proposed Rulemaking following the adoption of Section 225, the Commission explained

that the statute requires the Commission to establish minimum federal standards to be met by all providers of intrastate and interstate telecommunications relay services to ensure that telephone service for [persons with hearing and speech disabilities] is functionally equivalent to voice service offered to hearing individuals. Guided by this principle, the Commission's proposed rules included a speed of answer performance standard requiring that a least 85 percent of all calls be answered within 10 seconds the "85/10" rule).

In July 1991, the Commission adopted the TRS mandatory minimum standards, including the speed of answer rule. The rule stated, in relevant part, that TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number. The rule did not address whether compliance would be measured daily, monthly, or on some other basis. The Commission stated that although some common carriers favored relaxing the proposed rule, no evidence had been presented to suggest that the proposed rule was neither feasible nor clear. The Commission concluded that the 85/10 standard will best meet our goal of providing relay services which are functionally equivalent to voice telephone services.

In 1998, the Commission proposed amendments to the TRS mandatory minimum standards to enhance the quality of TRS and broaden the potential universe of TRS users. (This NPRM followed a Notice of Inquiry. See *Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996*, CC Docket No. 90-571, Notice of Inquiry, 12 FC Red 1152, (1997)). These proposals included recognizing VRS as a form of TRS ("improved services"), and also changing the TRS rules, including the speed of answer rule. Specifically, the 1998 TRS NPRM proposed: (1) Revising the speed of answer rule to require TRS providers to answer 85% of all calls within 10 seconds by a CA prepared to place the TRS call at that time; (2) requiring that compliance with the 85/10 rule be calculated on a daily basis; (3) clarifying that the 10 second speed of answer time is triggered when a call initially arrives at the provider's network, and that once a call does so, regardless of how the provider's network handles the call, the call must be answered within 10 seconds by a CA prepared to place the call; and (4) finding that "abandoned" calls—i.e., calls that are abandoned or successively redialed without being

completed because the caller does not reach a CA prepared to place the call—not be included in the speed of answer calculation. The Commission proposed amending the speed of answer rule to make the experience of persons using TRS in placing a telephone call through a TRS center more functionally equivalent to the experience of voice callers using the voice telephone network. The Commission stated that the ability to make a telephone call without delay is fundamental to our concept of a rapid, efficient, Nationwide communications system. The Commission further emphasized that the speed-of-answer requirements are a cornerstone of the Commission's TRS rules, and the ability of a TRS user to reach a CA prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of "functional equivalence."

In the March 2000 *Improved TRS Order*, the Commission expanded the scope of TRS by recognizing VRS as a form of TRS eligible for compensation from the Interstate TRS Fund. The Commission also modified the speed of answer rule to minimize the circumstances under which customers experience delays in placing their calls through relay services. In so doing, the Commission again emphasized that for a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer's ability to place a call through the relay center clearly compromises the functional equivalence of relay service.

The modified speed of answer rule: (1) Requires 85 percent of all calls to be answered in 10 seconds by any method that results in the TRS caller's call immediately being handled, not put in a queue or on hold; (2) clarifies that the 10-second limit begins at the time the call is delivered to the TRS center's network, and that the call is considered delivered when the relay center's equipment accepts the call from the LEC and the public switched network actually delivers the call to the TRS center; (3) requires that compliance with the speed of answer rule be measured on a daily basis; and (4) requires that abandoned calls be included in the speed of answer calculation. The Commission stated that these new rules will protect consumers from delays in placing calls through TRS services, and will ensure calls are received and answered by relay centers as quickly as possible, thereby giving TRS users functionally equivalent service.

However, the March 2000 order did not address the speed of answer rule for VRS. In December 2001, the Commission waived the speed of answer rule for VRS providers for two years in order to encourage more entrants into the VRS market and help provide more time for technology to develop. The Commission also stated that because demand for VRS was undetermined, the 85/10 rule might keep potential VRS providers out of the market, thereby hindering the development and growth of VRS. For this Internet-based service, the Commission stated that it would consider the call delivered to the IP Relay center when the IP Relay center's equipment accepts the call from the Internet. The Commission added that carriers providing IP Relay, in order to remain qualified to receive reimbursement from the Interstate TRS Fund, will have to maintain sufficient staffing to adhere to the Commission's speed of answer standard. In December 2003, the Commission extended the initial two-year waiver until June 30, 2004. In the June 30, 2004, *2004 TRS Report & Order* the Commission further extended the speed of answer waiver for VRS until January 1, 2006, or such time as the Commission adopts a separate rule addressing speed of answer for VRS, whichever is earlier. The Commission found that it was premature to require VRS providers to meet the speed of answer requirement (or to adopt a different speed of answer requirement for VRS), and noted comments that a lack of qualified interpreters would make it difficult to meet the standard.

At the same time, because of the importance of this issue to the notion of functional equivalency, the Commission sought comment in the *2004 TRS Report & Order's FNPRM* on whether a particular speed of answer requirement should be adopted for VRS. The Commission stated that consumers have expressed some frustration over long wait times in placing VRS calls, a result at least in part due to the rapidly growing use of VRS by consumers, and that long wait times undermine the notion of functional equivalency, mandated by Congress. The Commission therefore sought comment on what an appropriate speed of answer rule for VRS might be, whether it should be the same as the present rule for traditional TRS calls, when such a rule should become effective, whether there are a sufficient number of interpreters available to ensure that providers could meet a particular speed of answer rule,

and how a particular rule might affect the cost of providing VRS.

On February 8, 2005 after the close of the comment period on the speed of answer issue as raised in the *2004 TRS Report & Order's FNPRM*, the Commission released a Public Notice seeking additional comment on the adoption of a speed of answer rule for VRS. (*See Federal Communications Commission Seeks Additional Comment on the Speed of Answer Requirement for Video Relay Service (VRS)*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 2376, (2005), published at 70 FR 10930, March 7, 2005, (2005 Speed of Answer PN)). The Commission noted that the comments previously filed lacked specificity on certain elements of a speed of answer rule, and therefore requested comment on several specific points, including what the rule should be, whether different standards should be phased in over time, how speed of answer should be measured, how abandoned calls should be treated, how "call backs" should be treated, whether compliance should be measured on a daily, monthly, or some other basis, and whether the providers should be required to submit reports to the Commission detailing their compliance with the speed of answer rule.

#### The Comments on the Application of a Speed of Answer Rule to VRS

In response to the *2004 TRS Report & Order's FNPRM*, seven comments and five reply comments were filed; comments were filed by the State of California and the California Public Utilities Commission (CA PUC)(October 18, 2004); Communication Services for the Deaf, Inc. (CSD) (October 18, 2004); Hands On Video Relay Services, Inc. (Hands On) (October 15, 2004); National Video Relay Service Coalition (NVRSC) (October 18, 2004); Sorenson Media, Inc. (Sorenson) (October 18, 2004); Sprint Corporation (Sprint) (October 18, 2004); and one individual Karl Kosiorek (October 5, 2004). Reply comments were filed by CSD (November 15, 2004); Hands On (November 15, 2004); NVRSC (November 15, 2004); and two individuals, Sarah Blattburg (November 12, 2004) and Judith Jones (November 15, 2004). Several other commenters, although not specifically addressing the speed of answer requirement, expressed concern about the shortage of interpreters necessary to staff VRS centers as well as to provide services for the deaf and hard of hearing community. In response to the *2005 Speed of Answer PN*, 27 comments and 48 reply comments were filed. Comments were filed by CSD (February

25, 2005); Hands On (February 25, 2005); NVRSC (February 25, 2005); Sorenson (February 25, 2005); AT&T Corp. (AT&T) (February 25, 2005); MCI (February 25, 2005); NorCal Center on Deafness (NorCal) (February 8, 2005); Registry of Interpreters for the Deaf, Inc. (RID) (February 25, 2005); University of Minnesota, Disability Services (UMDS) (February 25, 2005); Utah State Office of Rehabilitation (USOR) (March 3, 2005); and 56 individuals. Reply comments were filed by CSD (March 4, 2005); MCI (March 5, 2005); Hands On (March 4, 2005); NVRSC (March 4, 2005); Arizona Commission for the Deaf and Hard of Hearing (ACDHH) (March 4, 2005); California Public Utilities Commission (CAPUC) (March 4, 2005); Hamilton Relay, Inc. (Hamilton) (March 4, 2005); Sprint Corporation (Sprint) (March 4, 2005); and Gallaudet University, Gallaudet Interpreting Service (Gallaudet) (March 3, 2005). The majority of commenting VRS providers and the organizations representing deaf and hard of hearing consumers support adopting a speed of answer rule for VRS. *Compare* AT&T Comments to PN at 2; Hands On Comments to PN at 1; CSD Comments to PN at 1-2; Sprint Reply Comments to PN at 2 (Supporting adoption of a speed of answer rule); NVRSC Comments to PN at 1; NorCal Comments to PN at 1 with Sorenson Comments to PN at 1; MCI Comments to PN at 1, and Hamilton Reply Comments to PN at 1; USOR Comments to PN at 1; UMDS Comments to PN at 2 and GIS Reply Comments to PN at 3 (opposing adoption of a speed of answer rule). (For the initial commenters supporting the adoption of a speed of answer rule, *see* CSD Comments at 29-39; Hands On Comments at 14-20; NVRSC Comments at 12; Sprint Comments at 11; CSD Reply Comments at 2-4). Several commenting parties assert that presently there are not a sufficient number of qualified interpreters in the labor pool to meet a mandatory answering standard and to have community interpreters available for other purposes. (Sorenson Comments at 11; MCI Comments to PN at 2; RID Comments to PN at 1; Sorenson Comments to PN at 3; UMDS Comments to PN at 2). Some commenters also assert that if a speed of answer rule were adopted it would result in a high quality service with a slower answer speed being replaced by a lower quality service with a faster answer speed. (Sorenson Comments to PN at 2; GIS Reply Comments to PN at 2). Sorenson argues that the Commission should not focus on just one element of functional equivalency (speed of answer). (Sorenson Comments

to PN at 4). CP PUC, UMDS, and USOR also oppose adoption of a speed of answer rule at this time. CA PUC Comments to PN at 16; UMDS Comments to PN at 2; USOR Comments to PN at 1. (MCI further contends that the adoption of a speed of answer rule would create an outcome that would unfairly disadvantage new entrants. MCI Comments to PN at 2-3). Supporting commenters stress that the functional equivalency mandate requires VRS providers to be able to answer a VRS call within a reasonable amount of time. (*See*, Sprint Comments at 11). However, the majority of the individual commenters to the PN express their opposition to adopting a speed of answer rule based on their general belief that such a rule would compel the VRS providers to hire less qualified interpreters in order to meet the speed of answer rule. Several commenters also maintain that VRS has become a sufficiently mature service to satisfy the speed of answer rule and that the Commission should either allow the existing speed of answer waiver to expire or adopt a speed of answer rule at this time. (CSD Comments at 29-30; Hands On Comments at 14-20; NVRSC Comments at 12; CSD Reply Comments at 2-4).

The commenters recommending a speed of answer requirement suggest proposals ranging from applying the current 85/10 rule to VRS, to requiring 85 percent of all calls to be answered within 30 seconds. (*See* AT&T Comments to PN at 2-3 (85 percent of all calls must be answered within 30 seconds (85/30)); Hands On Comments to PN at 2 (proposing 85/30 rule); NVRSC Comments to PN at 4 (proposing 85/10) rule; NorCal Comments to PN at 1 (proposing 85/10 rule); Sprint Reply Comments to PN at 2 (proposing initial 75/60 rule followed by 85/30 rule)).

Some commenters that oppose adoption of a speed of answer rule nevertheless offer standards if such rule were to be adopted. Sorenson, although opposing the adoption of a speed of answer requirement, asserts that if a speed of answer requirement is adopted, the rule should require 80 percent of calls to be answered within four minutes for the first year, and 80 percent of calls to be answered within three minutes for the second year. (Sorenson Comments to PN at 7). The commenters also generally propose that the rule should become effective within three to six months of the date of the order adopting a standard. (AT&T Comments to PN at 3 n.8 (6 months); CSD Comments to PN at 2 (3 months); Hands on Comments to PN at 4 (6 months); NVRSC Comments to PN at 4

(60 to 120 days); NorCal Comments to PN at 2 (“immediately”); Sprint reply Comments to PN at 3 (6 months); Sorenson Comments to PN at 7 (6 months)). Sorenson asserts that a transition period is essential given the existing shortage of qualified interpreters. (Sorenson Comments to PN at 7). Some commenters also support having various speed of answer requirements phased in over time. (CSD Comments to PN at 2 (phase-in of 75/60 within 3 months of date of order, and 85/30 within 6 months of date of order, with the goal of reaching 85/10 in 2 years); Sprint Reply Comments to PN at 2 (phase-in of 75/60 to 85/30)). Further, commenters generally agree that the speed of answer calculation should be measured, at least initially, on a monthly basis, and then in a few years on a daily basis. (AT&T Comments to PN at 2–3; CSD Comments to PN at 5; Hands On Comments to PN at 6; Sorenson Comments to PN at 8). NVRSC and ACDHH recommend that the calculation be made on a daily basis. (NVRSC Comments to PN at 8; ACDHH Reply Comments to PN at 3). MCI recommends that the calculation be made on a quarterly basis. (MCI Comments to PN at 4). CSD asserts, for example, “[a] monthly measurement will provide the flexibility to meet the ebbs and flows characteristic of VRS in this changing market.” (CSD Comments to PN at 5).

Commenters also address the appropriate starting and ending points for measuring speed of answer. (AT&T Comments to PN at 3–4; CSD Comments to PN at 3; Hands On Comments to PN at 4–5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7). Commenters generally agree that the measurement standard should be the same as the speed of answer measurement for IP Relay, where the measurement begins when the call is delivered to the provider’s server and ends when the call is assigned to a VRS CA to handle the call. (AT&T Comments to PN at 3–4; CSD Comments to PN at 3; Hands On Comments to PN at 4–5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7). AT&T and Hands On, however, caution that there may be a several seconds delay for the call to “synchronize” into the VRS system before an interpreter may answer the call. (AT&T Comments to PN at 4 n. 10; Hands On Comments to PN at 5). No commenters proposed an alternative method for this measurement.

Commenters also generally agree that abandoned calls (abandoned calls are those calls answered by a relay center

but never handled by a CA because the customer hangs up), should be included in the VRS speed of answer calculation, as they are in the speed of answer calculation for the other forms of TRS. (AT&T Comments to PN at 4; CSD Comments to PN at 3; Hands On Comments to PN at 5; NVRSC Comments to PN at 6; ACDHH Reply Comments to PN at 3. RID, however, does not support the inclusion of abandoned calls in the calculation because VRS calls are susceptible of being dropped in the Internet Protocol. RID Comments to PN at 2). CSD asserts, however, that calls that are abandoned within the permissible speed of answer time should not be included with the calculation. SCD states that when a call is abandoned shortly after the call is placed, it is generally because the consumer has decided either not to place the call, or to do so at another time, and not because the caller no longer wished to wait for an interpreter or because he or she has waited too long. (CSD Comments to PN at 3–4). In addition, commenters generally agree that “call backs”—*i.e.*, calls where the consumer elects to have the provider call the consumer back when a VRS CA becomes available to place the call, rather than have the consumer wait for the next available CA should not be allowed because it is not an element of functional equivalency. (AT&T Comments to PN at 4; CSD Comments to PN at 4–5; Hands On Comments to PN at 5–6; NVRSC Comments to PN at 7; NorCal Comments to PN at 1; CA PUC Reply comments to PN at 5). Hands On and NVRSC recommend that providers be permitted to call back the calling party when necessary to “re-connect” a call that has been disconnected for technical reasons. Hands On Comments to PN at 6; NVRSC Comments to PN at 7, note 15. Sorenson and RID, however, support the call back feature as an option to be offered to the caller. (RID Comments to PN at 3; Sorenson Comments to PN at 8). Sorenson recommends that the call backs be included in the speed of answer calculation. (Sorenson Comments to PN at 8). Finally, all commenters support having providers submit their speed of answer data to the TRS Fund administrator either on a monthly or quarterly basis. (AT&T Comments to PN at 4 (monthly basis); CSD Comments to PN at 5 (monthly basis); Hands On comments to PN at 6 (monthly basis); NVRSC Comments to PN at 8 (monthly basis); ACDHH Reply Comments to PN at 3 (monthly basis); CA PUC Reply Comments to PN at 7 (monthly basis);

Sorenson Comments to PN at 8 (quarterly basis)).

#### VRS Speed of Answer

We conclude that waiver of the speed of answer rule for VRS can no longer be justified. The record reflects that VRS providers have now had over three and a half years of experience in providing VRS, and with monthly minutes of use approaching two million (now more than interstate traditional TRS); it can no longer be said that the provision of VRS is in its infancy. We do not, however, require VRS providers to meet the 85/10 speed of answer rule in the TRS mandatory minimum standards at this time. Instead, we adopt the following speed of answer rule for VRS, and amend our rules accordingly: (1) By January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 0 percent of all VRS calls within 120 seconds, measured on a monthly basis. VRS providers must answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. VRS providers must meet these standards to be eligible for compensation from the Interstate TRS Fund.

*VRS Speed of Answer Standards and Phase-In Period.* From the inception of TRS mandated by Title IV of the ADA, speed of answer has been one of the fundamental components of ensuring that TRS users have functionally equivalent access to the telephone system. Substantial delays in reaching a CA who is ready to place the call cannot be reconciled with the ability of hearing persons to pick up the telephone and hear a dial tone. We therefore conclude that VRS must be subject to a speed of answer requirement so that consumers using this service will have prompt access to a CA ready to place their call. The Commission has repeatedly recognized that TRS service should mirror voice telephone service to the extent feasible, and that requires that a VRS user be able to promptly reach a CA.

At the same time, we recognize the concerns expressed by commenters that there may not presently be a sufficient number of qualified interpreters to permit VRS providers to meet a speed of answer rule that approaches the present rule applicable to the other forms of TRS. RID, for example, asserts that although it supports VRS calls being answered in a reasonable period of time, it is “concerned that the current

number of certified, qualified interpreters is well below the number required to adequately and safely provide quality VRS service.” (RIC Comments to PN at 1). RID states that the “crisis in the quantity, quality, and qualifications of interpreters dates back to the 1996 \* \* \* declaration \* \* \* that a national shortage of interpreters exists,” and that this “crisis affects all deaf citizens needing interpreting services for medical appointments, business meetings, court appearances, and now VRS.” (RIC Comments to PN at 1). (See also Sorenson comments at 8–11; CA PUC Comments at 16; Sorenson Comments to PN at 4–5; MCI Comments to PN at 1–3; Hamilton Reply comments at 1–2; CA PUC Reply Comments to PN at 7; ACDHH Reply Comments to PN at 1–2; UMDS Comments to PN at 2; USOR comments to PN at 1). Many individual commenters expressed a similar concern. We also recognize that as VRS providers hire interpreters in greater numbers to meet the demand of VRS users, there are fewer community interpreters available to meet the needs of persons with hearing disabilities in other circumstances (e.g., in schools, hospitals, business meetings, etc.). (See, Sorenson Comments 8–9; CA PUC Comments at 16; RID Comments to PN at 1; ACDHH Reply Comments to PN at 1–2; Hamilton Reply Comments to PN at 2; MCI Reply comments to PN at 3; UMDS Comments to PN at 2). Further, we recognize that providers will need some time to adjust their staffing levels to meet a speed of answer requirement. Therefore, as noted elsewhere, we will phase-in speed of answer requirements beginning January 1, 2006. (We note that when the Commission adopted the closed captioning rules, it adopted a transition period because of concerns that a limited number of captioners were available. See *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95–176, Report and Order, 13 FCC Rcd 3272, 3292–3293, paragraphs 41–42, (1997), published at 62 FR 48487, September 16, 1997)). We find that this should allow VRS providers adequate time to meet the requirements adopted herein. (We also note that the question whether end-user VRS equipment must be interoperable with the relay services of all VRS providers is presently pending before the Commission. See *Petition for Declaratory Ruling Filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) Concerning Video Relay Service (VRS) Interoperability*, CC Docket No. 98–67, CG Docket No. 03–123, Public Notice, 20 FCC Red 4162,

(2005), published at 70 FR 12884, March 16, 2005. We recognize that our resolution of the interoperability issue may also affect VRS providers’ speed of answer performance).

We conclude, based on the record before us, that providers shall be required to meet the following VRS speed of answer requirements: (1) By January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; (2) by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and (3) by January 1, 2007, VRS providers must answer 80 percent of all VRS calls with 120 seconds, measured on a monthly basis. We believe these requirements best balance the fundamental policy considerations underlying the TRS regime (e.g., that reaching a CA ready to place the call is the same as reaching a dial tone) and the concerns of some providers and consumers that there is a shortage of interpreters. (Because of the concerns we have noted about the shortage of interpreters, and comments in the record proposing a compliance standard of less than 85 percent, we find that the 80 percent threshold is appropriate in these circumstances). In this regard, we also recognize that call volume and the capacity of a provider to handle incoming Internet-based VRS calls may affect speed of answer performance. These issues are currently under review. For this reason as well, we require VRS speed of answer to be measured on a monthly basis, instead of a daily basis. We recognize that there may be some days when it is difficult to meet the speed of answer rule, particularly until the providers have determined, and are able to maintain, optimal VRS CA staffing levels to meet call demand. Because we are requiring VRS providers to offer service 24/7, a provider’s answer performance during periods of less demand (e.g., in the late night hours) may offset answer performance during periods of high demand.

We believe that this is a starting point that moves us toward the goal of functional equivalency without compromising: (1) The quality of interpreters; (2) the availability of community interpreting; and (3) the viability of open competition where inflexible requirements serve as an obstacle to new entrants. We, therefore, will carefully monitor compliance with these requirements, and will revisit them if necessary. We will also re-examine the VRS speed of answer rule after January 1, 2007, to determine if, and when, it might be appropriate to

further tighten the speed of answer requirement.

*Measuring Speed of Answer.* We conclude that the speed of answer measurement begins when the VRS provider’s equipment accepts the call from the Internet. In the *IP Relay Declaratory Ruling*, the Commission stated that it would consider the IP Relay call delivered to the IP Relay center the IP Relay center’s equipment accepts the call from the Internet. We adopt a similar rule for VRS. Further, the call is “answered” when either a CA or an automated system responds to the incoming call and begins taking instructions from the calling party about the outbound call the calling party wishes to make. We note that the commenters that addressed this issue generally support this approach. (AT&T Comments to PN at 3–4; CSD Comments to PN at 3; Hands On Comments to PN at 4–5; MCI Comments to PN at 4; NVRSC Comments to PN at 5; Sorenson Comments to PN at 7).

*Abandoned Calls.* We conclude that abandoned calls must be included in the VRS speed of answer calculation. As many commenters note, (AT&T Comments to PN at 4; CSD Comments to PN at 3; Hamilton Comments to PN at 5; NVRSC Comments to PN at 6; ACDHH Reply Comments to PN at 3), the treatment of abandoned calls for VRS should be the same as for the other forms of TRS. Sorenson asserts that sequential calls should be included in the speed of answer calculation, i.e., that multiple calls made by the calling party through the same CA should be counted as separate calls (which results in the subsequent calls having a speed of answer of zero). (Sorenson Comments to PN at 7; but see CSD Reply Comments to PN at 10; NVRSC Reply Comments to PN at 10 (both opposing this suggestion); see generally 47 CFR 64.604(a)(3)(i) (requiring providers to handle sequential calls)). Because the speed of answer measurement is intended to regulate the time it takes for the TRS user to reach a CA ready to place his or her call (i.e., answer speed for the first in-bound call to the TRS provider), it does not apply to sequential calls made by a caller through the same CA. (See CSD Reply Comments to PN at 10; NVRSE Reply Comments to PN at 10). Therefore, we reject Sorenson’s suggestion. The speed of answer rule presently provides that abandoned calls shall be included in the speed of answer calculation. (See 47 CFR 64.604(b)(2)(ii)(B)). As the Commission has explained, abandoned calls are those calls answered by a relay center, but never handled by a CA because the customer hangs up. As

noted above, although the Commission realized that some calls might be abandoned for reasons that have nothing to do with the length of time it takes for the call to reach a CA, such calls are included in the speed of answer measurement because excluding them would distort a provider's actual speed of answer performance by reducing the total number of calls from which speed of answer is calculated.

"*Call Backs.*" We conclude that, effective January 1, 2006, VRS (and TRS) provider may not use a call back arrangement, including one that gives the consumer the choice of waiting for a CA or having the provider call the consumer back when a CA is available. (We recognize a narrow exception to this rule in circumstances where because of reliance on the Internet the VRS equipment user and the CA become disconnected. In those circumstances, the VRS provider may initiate a call to the VRS user to try to reconnect the call with the called party so that the VRS user does not have to contact the VRS provider again and wait for an available CA to handle the call). In the *Call Handling Practices Public Notice*, the Commission stated that TRS providers may not offer their service in such a way so as to force a TRS consumer (deaf or hearing) to leave a message with the TRS provider asking the caller to provide call back information so that the provider can call the consumer back when a CA is available to handle the call. The Commission further stated that this type of "call back" arrangement was impermissible because it relieves the provider of its central obligation to be available when a caller desires to make a TRS call, and permits the provider, and not the caller, to be in control of when the TRS call is placed. The Commission distinguished that situation, however, from that where the consumer reaches a recording but is given the choice of either waiting for an available CA or having a CA call the consumer back when available. The Commission stated, however, that it was concerned that the use of a "call back" option in any context is inconsistent with the functional equivalency mandate, but also noted that use of a call back feature "will be an issue only for those forms of TRS not subject to a speed of answer rule."

We conclude that because in this *Report and Order* we have adopted a speed of answer requirement for VRS, VRS (and TRS) providers may not use a call back arrangement. We also conclude that call backs are inconsistent with functional equivalency and the notion that TRS is a service whereby a consumer, in reaching a CA, reaches the

equivalent of a "dial tone," and therefore the ability to immediately have his or her outgoing call placed.

*Filing Reports.* The *2005 Speed of Answer PN* also sought comment on whether the Commission should require providers to submit reports detailing call data reflecting their compliance with the speed of answer rule. (*2005 Speed of Answer PN* at 3). We decline to impose such a mandatory requirement at this time. We note, however, that NECA, in connection with its obligation to make payments from the Fund only "to eligible TRS providers operating pursuant to the mandatory minimum standards," and therefore to verify payment claims, may seek access to this data. (*See* 47 CFR 64.604(c)(5)(iii)(E)).

#### *Providing Service 24/7*

Title IV of the ADA directs the Commission to adopt regulations to implement TRS, including regulations that mandate that TRS services operate every day for 24 hours per day. 47 U.S.C. 225(d)(1)(C). As a result, the Commission's initial regulations similarly provided that TRS shall operate 24 hours per day, seven days per week ("24/7"). (*See TRS I*, 6 FCC Rcd 4669, Appendix B (adopting 47 CFR 64.604(b)(4)). When the Commission recognized VRs as a form of TRS, however, it stated that because it was not mandating the service it would not require providers to offer it 24/7. Therefore, the Commission amended its rules to state that relay services that are not mandated by this Commission need not be provided every day, 24 hours a day. (47 CFR 64.604(b)(4)(i)).

In the *2004 TRS Report & Order's FNPRM*, the Commission, noting the increasing popularity of VRS service, sought comment on whether VRS should be a mandatory service and whether it should be required to be offered 24/7, either as a mandatory service or even if not made a mandatory service. The Commission also sought comment on how the possible shortage of qualified interpreters might affect this issue.

Three VRS providers, one consumer organization, and eight individuals filed comments on this issue. (Comments were filed by Hands On (October 15, 2004); Sprint (October 18, 2004); Sorenson (October 18, 2004), and NVRSC (October 18, 2004); Robin Mills; (September 23, 2004); PJ Carberg (September 15, 2004); Paula Warner (September 16, 2004); Jan Humphrey (October 13, 2004); Karl Kosiorek (October 5, 2004); Candita Lewis (October 18, 2004); Jennifer Sweeney (October 20, 2004); and Risa Gottlieb

(October 14, 2004). NVRSC also filed reply comments on this issue (November 12, 2004)0. Hands On, Sprint, and NVRSC assert that VRS should be offered 24 hours a day and 7 days a week because the provision of VRS is sufficiently mature, its use is widespread, and there would be minimal costs associated with providing VRS on a 24/7 basis. (Hands On Comments at 21; NVRSC Comments at 12; Sprint Comments at 10). Hands On notes, for example, that according to its traffic usage data the usage rate for the first hour and the last hour of the service consists of only 3 percent of the total minute usage, which means that the provider would only need to staff three to four additional interpreters during the midnight hours. (Hands On Comments at 22). Sorenson, however, asserts that "there is a limited number of qualified individuals available to serve as interpreters for VRS and mandating that all providers staff [24/7] would put additional strains on this already limited pool." (Sorenson Comments at 11-12). We note, however, that since the filing of its comments, Sorenson has begun offering VRS 24/7. (*See* Sorenson Comments at 12; <http://www.sorensonvrs.com>). We also note that Hands On currently offers service 20 hours a day, 7 days a week, *see* <http://www.hovrs.com>, and the Communication Access Center for the Deaf and Hard of Hearing (CAC) currently offers service 21 hours a day Monday through Friday, and 18 hours a day Saturday and Sunday, *see* <http://www.cacvrs.org>. NVRSC asserts that the 24/7 requirement will create a market for VRS interpreters that will eliminate any shortages. (NVRSC Reply Comments at 4). All but one of the individual commenters support adopting a 24/7 requirement for VRS to make the service more functionally equivalent to voice telephone service, although some of the commenters (including the individual commenter opposed to the adoption of the 24/7 rule) express concern about the availability of interpreters necessary to meet this requirement.

We conclude that VRS providers must offer service 24/7 to be eligible for compensation from the Interstate TRS Fund. The record reflects the rapid growth in the use of VRS since provision of this service began in 2002. Presently, there are approximately two million minutes of use of VRS each month. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, it becomes imperative that consumers have access to this service 24/7. Indeed, Congress expressly

recognized that having TRS available 24/7 is central to the notion of functional equivalency; it included that requirement in the statute. Finally, we recognize that the adoption of a speed of answer rule for VRS would be less meaningful if providers can choose when they will offer service.

For these reasons, we conclude that VRS providers must offer this service 24/7 to be eligible for compensation from the Interstate TRS Fund. Because the regulations provide that non-mandatory forms of TRS need not be offered 24/7, (see 47 CFR 64.604(b)(4)(i)), we amend the rule so that it no longer applies to VRS. (We also note that the Commission raised the issue of whether VRS should be made a mandatory service at the same time it raised the issue of whether VRS should be required to be provided 24/7. We will address whether VRS should be a mandatory service in a separate order). The requirement that providers offer VRS 24/7 shall become effective on January 1, 2006, the same date that the VRS speed of answer rule adopted above is effective.

#### VRS Mail

##### The Petition for Declaratory Ruling

On March 31, 2004, Hands On filed a Petition for Declaratory Ruling requesting that the Commission declare that the provision of video VRS Mail to deaf and hard of hearing persons is eligible for compensation from the Interstate TRS Fund. (*VRS Mail Petition* at 1). Video VRS mail is used by a hearing person when she attempts to call a deaf or hard of hearing VRS user through a VRS CA, but the VRS user is not available to answer the call. In those circumstances, the hearing persons can have a VRS CA leave a message in video format ASL for the deaf or hard of hearing VRS user, so that the VRS user can retrieve the video message at a later time.

As Hands On notes, although the majority of VRS calls are initiated by a deaf or hard of hearing person using a video link to a CA, a hearing person may also initiate a VRS call. (*VRS Mail Petition* at 2). In the latter situation, the hearing person calls the VRS provider (usually via an 800 number) and gives either the IP address, or the name or proxy number (if the deaf or hard of hearing person is registered with the VRS service), of the deaf or hard of hearing person to be called. (*VRS Mail Petition* at 2). The VRS provider then attempts to place a VRS call to the deaf or hard of hearing person. If the deaf or hard of hearing person does not answer, VRS Mail gives the hearing calling party

the option of leaving VRS Video Mail message. If the calling party chooses to do so, the CA listens to the calling party's message and makes a video recording of the message in ASL. The CA then transmits (or otherwise makes available) the video message (the VRS Mail) to the deaf or hard of hearing person, who is able to retrieve the message on her video equipment at a later time. (*VRS Mail Petition* at 3). For example, the video message can be sent to the VRS user either via e-mail or, if the provider knows the IP address of the VRS user (e.g., through registration or some other arrangement with the particular provider), directly to the VRS user's hardware. Hands On asserts that, under the functional equivalency mandate, because a hearing person can receive a voice mail message from a CA who is relaying a VRS call initiated by a deaf or hard of hearing person, a deaf or hard of hearing person should also be able to receive a message from a hearing person who has initiated a VRS call. (*VRS Mail Petition* at 5). Hands On also notes that because a deaf or hard of hearing person can leave a voice message via VRS for a hearing person, a deaf or hard of hearing person should be able to receive a message in video from a hearing person. (*VRS Mail Petition* at 3). Regardless of how characterized, the thrust of Hands On's argument is that VRS must provide symmetry between the parties to a call and their ability to leave or receive a message from the other party to the call. Hands On also asserts that regardless of how the transmission of Video Mail is technically accomplished, i.e., how it is stored and retrieved, the VRS call ends when the hearing person hangs up after leaving the message for the deaf or hard of hearing person. (*VRS Mail Petition* at 3).

On July 9, 2004, the Commission released a Public Notice requesting comment on Hands On's petition. (*Petition for Declaratory Ruling Filed Regarding Provision of Video Relay Service (VRS) Video Mail*, CG Docket No. 03-123, Public Notice, DA 04-2062 (July 9, 2004), published at 69 FR 44534, July 26, 2004). Five VRS providers, a state administrator, three consumer organizations, and ten individuals filed comments, and ten individuals filed reply comments. Comments were filed by CSD (August 11, 2004); Hands On (August 16, 2004); MCI (August 16, 2004); Sorenson (August 16, 2004); Sprint (August 16, 2004); Deaf Counseling, Advocacy and Referral Agency California Center for Law and the Deaf (DCARA) (August 12, 2004), NorCal Center on Deafness (NorCal)

(August 13, 2004), Telecommunications for the Deaf, Inc. (TDI) (August 16, 2004); the Idaho Public Utilities Commission (Idaho PUC) (August 16, 2004). We note that the Consumer & Governmental Affairs Bureau received nine Congressional letters in response to constituents' inquiries about VRS Mail. All commenters generally support Hands On's petition. Commenters generally agree that under the functional equivalency mandate both hearing persons (voice users) and persons who are deaf or hard of hearing (video users) should be able to leave messages with the other party to the VRS call through the CA. (See, e.g., CSD Comments at 2; MCI Comments at 3; Hands On Comments at 7; Sorenson Comments at 3-4; NorCal Comments at 1; Sprint Comments at 2; DCARA Comments at 1; TDI Comments at 3-6). They state that how the ASL message is stored by the CA and retrieved by the called party is irrelevant, so long as the VRS Mail service provides the functionality of leaving a message for the called party. (See, e.g., CSD Comments at 1-8; MCI Comments at 1-3; Sorenson Comments at 2; Sprint Comments 2). Commenters note that presently CAs leave voice mail messages from deaf and hard of hearing VRS users on the called party's answering machine or voice mail system, and that this is considered a reimbursable TRS call. (See, e.g., CSD Comments at 1; Sorenson Comments at 2-3; NorCal Comments at 1). They assert that a deaf or hard of hearing VRS user should similarly be able to receive a message from the calling party, and that the VRS provider should be compensated for the conversation time in handling the call and creating the video message. (See, e.g., CSD Comments at 3; Hands On Comments at 9; Sorenson Comments at 1-2). Sorenson asserts, for example, that when a deaf or hard of hearing VRS user calls a hearing individual and the call is answered by an answering machine or is directed to voice mail, the TRS fund supports the portion of the call in which the [CA] leaves a voice message on behalf of the deaf user, translating the message from ASL into spoken language. The reverse scenario, in which the CA translates a hearing caller's spoken message into an ASL video message for a deaf user who has missed a call, is simply a variation of the one the Commission has already approved. There is no functional difference between a message being left in video format for a deaf user or in voice format for a hearing user; both allow the recipient of the message to retrieve the message in his or her native

language (ASL or spoken English).” (Sorenson Comments at 2).

Sorenson also emphasizes that the ability to leave a voice mail message is common and vital for both business and personal communications, and therefore that it is essential that VRS users also have the ability to retrieve messages when they are unavailable to receive a call. (Sorenson Comments at 3). Sorenson notes that it offers a service it calls “SignMail” that allows incoming video messages to be left for a VRS user when a hearing individual initiates a call and the VRS user is not available to answer the call. Sorenson asserts that this service has proved to be very popular with users, but that it has not been able to be compensated from the Interstate TRS Fund for the conversation minutes used to convert incoming voice messages into ASL video messages for VRS users. (Sorenson Comments at 1). CSD, noting that the Commission has an obligation “to ensure that regulations \* \* \* encourage \* \* \* the use of existing technology and do not discourage or impair the development of improved technology,” contends that Congress intended to bring voice mail and other enhanced services under the wing of TRS as soon as these services became technological possible. (CSD Comments at 5). Several comments assert that video VRS mail service is no different from the TTY answering machine or voice mail features of traditional TRS. (See, e.g., Idaho PUC Comments at 1–2; CSD Comments at 3–7).

Commenters assert that providers should be compensated from the Interstate TRS Fund for the CA’s conversational time with the calling party and recording the video message. (See, e.g., CSD Comments at 3; Sorenson Comments at 2; Hands On Comments at 9; Spring Comments at 2). CSD asserts, for example, that the Commission is simply being asked “to approve compensation for the *conversation minutes* needed to convert the message that the caller wishes to leave from voice to ASL.” (CSD Comments at 3 (emphasis in original)). Sorenson states that “[t]hose conversation minutes used by a CA to connect to the video screen, prompt the hearing caller to begin speaking his or her message and sign the message in ASL should be compensated, as these steps are functionally identically to those in the TRS/TTY context.” (Sorenson Comments at 2).

#### Compensation for VRS Mail From the Interstate TRS Fund

We conclude that VRS providers offering VRS Mail may be compensated from the Interstate TRS Fund for

handling VRS calls that result in leaving a video message for the VRS user. (VRS Mail, by definition, is used when a hearing person attempts to make a call through a VRS provider to a person who is deaf or hard of hearing (sometimes called a “reverse” VRS call). We remind VRS providers that, to be eligible for compensation from the Interstate TRS Fund, they must provide access for hearing persons to call the VRS provider (generally via an 800 number) so the hearing person can request that the provider make an outbound call via video to a person who is a deaf or hard of hearing using VRS equipment. (See 47 U.S.C. 225(a)(3) defining TRS as providing persons with hearing and speech disabilities the ability to engage in communication with persons without such disabilities, and not limiting it to calls initiated by the person with a hearing or speech disability). As commenters note, a deaf or hard of hearing user who attempts to make a VRS call (or any kind of TRS call) to a hearing person, but reaches an answering machine or voice mail system, may have the CA leave a voice message for the called party, which is then reimbursable from the Fund. We also conclude that in the reverse scenario—when a hearing person attempts to call a VRS user who is not available—the CA should similarly be able to leave a reimbursable message with the called party. Whether viewed as affording VRS users the ability to *receive* messages from hearing persons, or as affording hearing persons the ability to *leave* a message with the VRS user, the implication is the same: Regardless of which party to a VRS call initiates that call, each party should be able to leave messages with, and receive messages from, the other party. (Hands On and commenters make various arguments in support of the petition by analogizing to other services the TRS regulations require, including answering machine and voice mail retrieval, and the rules on calls placed through TRS that reach voice mail or interactive menus. See, e.g., Hands On Comments at 4–6; MCI Comments at 2–3; Sorenson Comments at 3–4; Spring Comments at 2; TDI Comments at 5; see generally 47 CFR 64.604(a)(3)(vii) and (viii). Although we do not necessarily agree that these requirements address situations directly analogous to VRS Mail, they do support our conclusion here by indicating that the use of, and access to, messages that are left by calling parties when the called party is not available is fundamental to the meaningful use of the telephone system).

We also find that the fact that the CA, in creating a VRS Mail message, records in ASL what the calling party desires to say, and the VRS user retrieves the message as a video message (and not as a voice message), is of no consequence. As commenters have noted, the end result is that regardless of which party to the VRS call is leaving or receiving a message, each party is retrieving the message in his or her primary language. We believe that this fundamental service cannot be denied to VRS users simply because they receive the message as a video message. We agree with commenters that the ability to leave and receive messages is vital in both business and personal communications, and therefore VRS Mail service should be reimbursable. (See, e.g., Sorenson Comments at 3). We also find that it is immaterial how the VRS provider stores the video message and how the VRS user retrieves the message. So long as the video message is created in real time—*i.e.*, the VRS CA records the video message at the same time that the hearing person is speaking the message during the VRS call, and not at some later time after the calling party has disconnected—the call is a VRS call that is compensable from the Interstate TRS Fund. In other words, the VRS providers may be compensated for the call from the beginning of the conversation time until the CA is done signing the message voiced by the calling party. (The Interstate TRS Fund compensates for conversation minutes, which begin when someone (usually the called party) answers the outbound telephone call from the CA, and ends when either party to the call hangs up. See generally 47 CFR 64.604(c)(5)(iii)(E)). Conversation minutes therefore do not include time for call set-up, ringing, waiting for an answer, and wrap-up, or calls that reach a busy signal or no answer. Therefore, for calls that result in VRS Mail, the VRS provider may be compensated for the time beginning when the hearing party begins to voice his or her message, and ending when the CA completes signing the message voice from the calling party or the calling party hangs up, whichever is earlier. Because the conversation time for such calls will generally be short, and there are presently relatively few inbound VRS calls, we do not believe compensating this service will have a significant impact on the Interstate TRS Fund. Further, nothing in the record suggests the contrary.

#### Other Issues: Terminating CC Docket No. 98–67

In the *Report and Order* we close the TRS docket—CC Docket No. 98–67,

which the Commission opened in 1998 when it released the 1998 TRS NPRM addressing improved TRS services, and incorporate its materials in the current docket, CG Docket No. 03-123 (materials submitted in CC Docket No. 98-67 need not be resubmitted). All filings addressing TRS matters should be filed in CG Docket No. 03-123.

### Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. (See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, Title II, 110 Statute 857 (1996)). 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 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). Nationwide, there are approximately 1.6 million small organizations. (Independent Sector, The New Nonprofit Almanac & Desk Reference (2002)).

This *Report and Order* addresses three issues related to the provision of Video Relay Service (VRS): (1) The adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week, (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail. The Commission

concludes that the public interest is best served by requiring providers of VRS to comply with a speed of answer rule in order to be compensated for such services. However, we do not require VRS providers to meet the new speed of answer rule in order to be compensated from the TRS Fund at this time. Instead, by January 1, 2006, VRS providers must answer 80 percent of all VRS calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80 percent of all VRS calls within 150 seconds, measured on a monthly basis; and by January 1, 2007, VRS providers must answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. As noted in paragraph 25 of this *Report and Order*, although the Commission sought comment on whether to require providers to submit reports detailing call data reflecting their compliance with the speed of answer rules, we declined to impose such a requirement at this time.

The Commission further concludes that it is in the public interest that VRS providers seeking compensation from the Interstate TRS Fund must provide VRS 24 hours a day, 7 days a week. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, it becomes imperative that consumers have access to their service 24/7.

Finally, the Commission concludes that VRS providers may be compensated from the Interstate TRS Fund for the conversation minutes devoted to creating VRS Mail, *i.e.*, for recording a video message in American Sign Language (ASL) that is sent to a deaf or hard of hearing person's VRS equipment, or is otherwise retrievable by such person, so that a hearing person attempting to call a VRS user can leave a message when the VRS user is not available to answer the call. As explained in paragraph 37 of this *Report and Order*, the Commission believes that this fundamental service cannot be denied to VRS users simply because they receive the message as a video message.

We do not believe that these actions will have a significant economic impact; however, in the event that they do, we also note that there are not a substantial number of small entities that will be affected by our actions. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. (13 CFR 122.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this

category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is Firms with 1,000 employees or more). Currently, only eight providers are providing VRS and are being compensated from the Interstate TRS Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson and Sprint. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of VRS the costs of providing interstate service. The Commission will send a copy of this *Report and Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA (5 U.S.C. 605(b)). This certification will also be published in the **Federal Register**. (5 U.S.C. 605(b)).

### Congressional Review Act

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see*, 5 U.S.C. 801(a)(1)(A).

### Ordering Clauses

Pursuant to the authority contained in Section 1, 2, and 225 of the Commissions Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, that this *Report and Order* is hereby *adopted* and Part 64 of the Commission's rules, 47 CFR 64.604 is *amended* as set forth in the Rule Changes.

Hands On's Petition for Declaratory Ruling on VRS Mail is *granted* to the extent indicated herein.

CC Docket No. 98-67 is *terminated*.

This *Report and Order* shall be effective September 30, 2005.

The Commission's Consumer & Government Affairs Bureau, Reference Information Center shall send a copy of this *Report and Order*, including the Regulatory Flexibility Certification, to

the Chief Counsel for Advocacy of the U.S. Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

**William F. Caton,**  
*Deputy Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission 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.

■ 2. Section 64.604 is amended by adding paragraph (b)(2)(iii) and revising paragraph (b)(4)(i) to read as follows:

**§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Speed of answer requirements for VRS providers are phased-in as follows: by January 1, 2006, VRS providers must answer 80% of all calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80% of all calls within 150 seconds, measured on a monthly basis; and by January 1, 2007, VRS providers must answer 80% of all calls within 120 seconds, measured on a monthly basis. Abandoned calls shall be included in the VRS speed of answer calculation.

\* \* \* \* \*

(4) \* \* \*

(i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

\* \* \* \* \*

[FR Doc. 05–17327 Filed 8–30–05; 8:45 am]

**BILLING CODE 6712–01–M**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[MB Docket No. 05–181; FCC 05–159]

**Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 To Amend Section 338 of the Communications Act**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts final rules implementing section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, which amends section 338(a)(4) of the Communications Act to require satellite carriage of the analog signals and digital signals of local stations in Alaska and Hawaii. Satellite carriers with more than five million subscribers must carry these signals to substantially all of their subscribers in each station’s local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals

**DATES:** Effective September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission’s Report and Order, FCC 05–159, adopted on August 22, 2005 and released on August 23, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Paperwork Reduction Act**

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission received approval for the information collection requirements contained in this Order from the Office of Management and Budget on June 14, 2005. There have been no changes to the information collection requirements since receiving OMB approval. 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, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). As described in the Final Regulatory Flexibility Certification, *supra*, the businesses affected by our action are not small.

**Summary of the Report and Order Introduction**

1. In this Report and Order (“Order”), we adopt rules to implement section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”). The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Public Law 108–447, section 210, 118 Stat 2809 (2004). SHVERA was enacted on December 8, 2004, as title IX of the “Consolidated Appropriations Act, 2005.” Section 210 of the SHVERA amends section 338(a) of the Communications Act of 1934, as amended, (“Communications Act” or “Act”). Section 338 of the Act governs the carriage of local television broadcast stations by satellite carriers; *see* 47 U.S.C. 338. In general, the SHVERA amends this section to require satellite carriers to carry the analog and digital signals of television broadcast stations in local markets in states that are not part of the contiguous United States, and to provide these signals to substantially all of their subscribers in each station’s local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals; *see* 47 U.S.C. 338(a)(4). Our rules will implement the SHVERA requirements for carriage of analog and digital signals in Alaska and Hawaii. This Order concludes that such carriage shall include high definition and multicast signals as broadcast by local stations in these states. We adopt a two-step carriage election process beginning with carriage elections for analog signals by October 1, 2005, and followed by carriage elections for digital signals by April 1, 2007.