

the ALJ will forward the record of the proceeding to the authority head.

§ 2554.44 What happens if an initial decision is appealed?

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 2554.45 Are there any limitations on the right to appeal to the authority head?

(a) A defendant has no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing defendant demonstrates to the satisfaction of the authority head that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for consideration of the additional evidence.

§ 2554.46 How does the authority head dispose of an appeal?

(a) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The authority head will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 2554.47 What judicial review is available?

31 U.S.C. 3805 authorizes judicial review by the appropriate United States District Court of any final Corporation decision imposing penalties or assessments, and specifies the procedures for such review. To obtain judicial review, a defendant must file a petition with the appropriate court in a timely manner.

§ 2554.48 Can the administrative complaint be settled voluntarily?

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or

settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case from the date of the ALJ's initial decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head or the Attorney General, as appropriate.

§ 2554.49 How are civil penalties and assessments collected?

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions.

§ 2554.50 What happens to collections?

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 2554.51 What if the investigation indicates criminal misconduct?

(a) Any investigating official may:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this part limits the requirement that the Corporation employees report suspected violations of criminal law to the Corporation's Office of Inspector General or to the Attorney General.

§ 2554.52 How does the Corporation protect the rights of defendants?

These procedures separate the functions of the investigating official, reviewing official, and the ALJ, each of whom report to a separate organizational authority in accordance with 31 U.S.C. 3801. Except for purposes of settlement, or as a witness or a representative in public

proceedings, no investigating official, reviewing official, or Corporation employee or agent who helps investigate, prepare, or present a case may (in such case, or a factually related case) participate in the initial decision or the review of the initial decision by the authority head. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for the Corporation may be employed in the offices of either the investigating official or the reviewing official.

Dated: January 26, 2006.

David Eisner,

Chief Executive Officer.

[FR Doc. E6-1220 Filed 1-31-06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03-123; FCC 05-196]

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

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether it should adopt rules requiring Video Relay Service (VRS) and Internet-Protocol (IP) Relay providers to adopt a means to ensure that, when the provider receives emergency calls made via these services, the provider can make an outbound call to the appropriate Public Safety Answering Point (PSAP). More specifically, the Commission seeks comment on whether it should adopt a registration process whereby VRS and IP Relay service providers are required to establish, in advance, the primary location from which the VRS and IP Relay service providers will be making calls, so the provider can identify the appropriate PSAP to contact.

DATES: Comments are due on or before February 22, 2006. Reply comments are due on or before March 8, 2006. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before April 3, 2006.

ADDRESSES: You may submit comments, identified by [CG Docket number 03–123 and/or FCC Number 05–196], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, a copy of any comments on the PRA information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to Kristy_L._LaLonde@omb.eop.gov, or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT:

Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at Thomas.Chandler@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking (NPRM), *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Access to Emergency Services*; CG Docket No. 03–123, FCC 05–196, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. This is a summary of the Commission's NPRM, FCC 05–196, adopted November 18, 2005, and

released November 30, 2005, in CG Docket No. 03–123.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03–123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together

with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a "permit-but-disclose" proceeding in which *ex parte* communications are subject to disclosure. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The NPRM contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comment are due April 3, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,

Public Law 107–198, see 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–XXXX.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Access to Emergency Services.

Form No.: N/A.

Type of Review: New collection.

Number of Respondents: 8—(6 of which provides VRS and IP Relay service; 2 of which provides VRS).

Number of Responses: 5,001,022.

Respondents: Business and other for-profit entities; State, Local or Tribal Government.

Estimated Time per Response: 4 to 1,000 hours.

Frequency of Response: Annual and on occasion reporting requirement; Recordkeeping; Third party disclosure.

Total Annual Burden: 21,504 hours.

Total Annual Costs: \$0.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On November 30, 2005, the Commission released a Notice of Proposed Rulemaking (*NPRM*), CG Docket No. 03–123, which addresses the issue of access to emergency services for Internet-based forms of Telecommunications Relay Services (TRS), namely Video Relay Service (VRS) and Internet-Protocol (IP) Relay Service. The Commission seeks to adopt a means to ensure that such calls promptly reach the appropriate emergency service provider. By doing so, the *NPRM* seeks comment on various issues: (1) Whether the Commission should require VRS and IP Relay service providers to establish a registration process in which VRS and IP Relay service users provide, in advance, the primary location from which they will be making VRS or IP Relay service calls (the Registered Location), so that a communication assistant (CA) can identify the appropriate Public Safety Answering Point (PSAP) to contact; (2) Should VRS and IP Relay providers be required to register their customers and obtain a Registered Location from their customers so that they will be able to make the outbound call to the appropriate PSAP; (3) whether there are other means by which VRS and IP Relay service providers may obtain Registered Location information, for example, by linking the serial number of the customer VRS or IP Relay service terminal or equipment to their registered location; (4) any privacy considerations that might be raised by

requiring VRS and IP Relay service users to provide location information as a prerequisite to using these services; (5) whether, assuming some type of location registration requirement is adopted, the Commission should require specific information or place limits on the scope of information that providers should be able to obtain; (6) whether the Commission should require VRS and IP Relay providers to provide appropriate warning labels for installation on customer premises equipment (CPE) used in connection with VRS and IP Relay services; (7) whether the Commission should require VRS and IP Relay providers to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood the advisory that E911 service may not be available through VRS and IP Relay or may be in some way limited by comparison to traditional E911 service; and (8) how the Commission may ensure that providers have updated location information, and the respective obligations of the providers and the consumers in this regard.

Synopsis

In the *NPRM*, the Commission addresses the issue of access to emergency services for VRS and IP Relay services. TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability. See 47 U.S.C. 225(a)(3) (defining TRS); 47 CFR 64.601(14). As the Commission has often recognized, 911 service is critical to our nation’s ability to respond to a host of crises. See, e.g., *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94–102, RM–8143, FCC 96–264, First Report and Order, 11 FCC Rcd 18676, 18679, paragraph 5 (July 26, 1996); published at 61 FR 40348 (August 2, 1996), (*E911 First Report and Order*); *IP-Enabled Service, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04–36, 05–196, FCC 05–116, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, at 10247–10248, paragraph 4 (June 3, 2005) (*VoIP E911 Order*); published at 70 FR 43323 (July 27, 2005). In the four decades since 911 service was established, Americans largely take for granted, that in the event of an emergency, they can use the telephone to quickly reach the proper authorities and that the first responders will be able

to accurately locate them. See *VoIP E911 Order*, 20 FCC Rcd at 10248–10249, paragraph 6. Because wireline telephones are generally linked to a particular address, emergency calls placed over the traditional Public Switched Telephone Network (PSTN), including direct TTY calls, can usually be routed to the proper PSAP where location information is automatically displayed. When a user dials 911 with a TTY to contact a PSAP, it is not a TRS call and therefore a relay provider is not involved. Such a call is automatically routed to the appropriate PSAP in the same manner as any other 911 PSTN call, and contains the same location and callback information as a voice call to 911. Under Title II of the ADA, PSAPs must be capable of directly receiving TTY calls. See 28 CFR 35.162 (United States Department of Justice regulations implementing Title II of the ADA and requiring telephone emergency services, including 911 services, to provide “direct access to individuals who use [TTY’s]”). This is the most reliable way for persons with hearing or speech disabilities to reach emergency services. *VoIP E911 Order*, 20 FCC Rcd at 10250–10254, paragraphs 12–18. Such direct, automatic access to emergency services through VRS and IP Relay services, however, does not currently exist and, accordingly, solutions must be developed.

Emergency calls made via TRS, rather than by directly calling 911, present unique challenges, because they are connected through a communications assistant (CA), rather than routed directly and automatically to the appropriate PSAP over a network, and the CA must make an outbound voice telephone call to the appropriate PSAP. The CA, therefore, must have a means of determining both (1) where the relay caller is physically located, and (2) the appropriate PSAP that corresponds to that geographic location so the CA can make the outbound telephone call to the PSAP. Because Internet-based calls do not originate on the PSTN, location and callback information is not transmitting and CAs must use other methods to ascertain the callers’ location. The Commission accordingly seeks comment on ways in which we may ensure that the CA will be able to call the appropriate PSAP when a VRS or IP Relay service user calls the relay provider and asks the CA to call emergency services. The Commission also seeks comment on whether, and if so, how, requirements ensuring that persons using VRS and IP Relay service will have access to emergency services might affect the TRS funding

mechanism. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12482–12483, paragraphs 7–8 (June 30, 2004) (*2004 TRS Report and Order*); published at 69 FR 53346 (September 1, 2004) and 69 FR 53382 (September 1, 2004) (overview of TRS funding mechanism).

Background

Telecommunications Relay Service

Title IV of the Americans with Disabilities Act of 1990 (ADA), adding Section 225 to the Communications Act of 1934, requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to persons with hearing or speech disabilities in the United States. 47 U.S.C. 225(b)(1). The statute requires that TRS offer persons with hearing and speech disabilities telephone transmission services that are “functionally equivalent” to voice telephone services. 47 U.S.C. 225(a)(3).

Initially, TRS was provided via a TTY (text telephone) and the PSTN. In such a “traditional” TRS call, a person with a hearing or speech disability initiates the call by dialing (*i.e.*, typing) a telephone number for a TRS facility using a TTY, and then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the “link” in the conversation, converting all typed TTY messages from the caller into voice messages for the called party, and all voice messages from the called party into typed messages for the TTY user. *See generally 2004 TRS Report and Order*, 19 FCC Rcd at 12480, paragraph 3, note 18.

In March 2000, the Commission recognized VRS as a form of TRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152–5154, paragraphs 21–27 (March 6, 2000); published at 65 FR 38432 (June 21, 2000) and 65 FR 38490 (June 21, 2000) (Improved TRS Order and FNPRM) (recognizing VRS as a form of TRS); 47 CFR 64.601(17) (defining VRS). VRS requires the use of a broadband Internet connection between the VRS user and the CA, which allows

them to communicate in sign language via a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in American Sign Language (ASL) with the deaf person and by voice with the hearing person. Presently, all VRS and IP Relay service calls are compensated from the Interstate TRS Fund. The question of whether the Commission should adopt a mechanism for the jurisdictional separation of costs for these services is pending before the Commission. *2004 TRS Report and Order*, 19 FCC Rcd at 12561–12564, paragraphs 221–230 (IP Relay), at 12567, paragraphs 241–242 (VRS). Although the Commission has not made VRS a mandatory service, it has encouraged its development. In the past few years use of VRS has grown tremendously. In January 2002, the first month VRS was generally offered, there were 7,215 minutes of use; in January 2003, there were 128,114 minutes of use; in January 2004, there were 477,538 minutes of use; and in January 2005, there were 1,634,316 minutes of use. There were over 2.2 million minutes of use of VRS in July 2005.

In April 2002, the Commission recognized a second Internet-based form of TRS—IP Relay service. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (April 22, 2002); published at 67 FR 39863 (June 11, 2002) and 67 FR 39929 (June 11, 2002) (*IP Relay Declaratory Ruling and FNPRM*). IP Relay service calls are text-based calls, but the user connects to the TRS facility via a computer (or other similar device) and the Internet, rather than via a TTY and the PSTN. A user establishes a local connection to an Internet service provider using a computer, web phone, personal digital assistant, or other IP-enabled device, selects the Internet address of an IP Relay service provider, and is connected to a CA who handles the call in the same way that TTY-based calls are handled. *See generally Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order on Reconsideration, 18 FCC Rcd 4761, at 4762, paragraph 3, note 11 (March 14, 2003). IP Relay service, like VRS, has become very popular, because the user can make a relay call with any computer (or similar device) connected to the

Internet, rather than only with a dedicated TTY.

911/E911 Service

Basic 911 service is a forwarding arrangement in which 911 calls are transmitted, based on the caller's location, to a geographically appropriate PSAP. *See VoIP E911 Order*, 20 FCC Rcd at 10250–10251, paragraph 12. These calls are therefore routed based on the calling party's number, not the called number. *See VoIP E911 Order*, 20 FCC Rcd at 10251, paragraph 13, note 32. The service does not provide the PSAP, however, with the caller's location information. E911 systems do provide the call taker with the caller's call back number, referred to as Automatic Numbering Information (ANI), and, in many cases, the caller's location information, a capability referred to as Automatic Location Identification (ALI). *VoIP E911 Order*, 20 FCC Rcd at 10251, paragraph 13. Virtually all wireline local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) carriers now provide at least basic 911 service, and in many localities E911 service. *VoIP E911 Order*, 20 FCC Rcd at 10249–10251, paragraphs 8, 13.

New communications technologies have posed technical and operational challenges to the 911 system. *VoIP E911 Order*, 20 FCC Rcd at 10249, paragraph 8. For example, the mobility of wireless telephones renders the use of permanent street addresses as a location indicator useless. The person using the telephone could be anywhere in the country, notwithstanding that the wireless telephone number is associated with a particular physical address. Under the Commission's rules, wireless telephone service providers must employ a means of providing real-time location updates to the PSAP. *VoIP E911 Order*, 20 FCC Rcd at 10252–10253, paragraph 17. Thus, wireless carriers have developed various techniques to provide ANI and ALI to the PSAPs that involve enhancements to the existing wireless E911 network. *See generally VoIP E911 Order*, 20 FCC Rcd at 10252–10254, paragraphs 16–18 (addressing wireless E911 technical and operational issues).

TRS and Emergency Call Handling

In 1991, the Commission, pursuant to Congress's direction in Section 225 of the Communications Act, adopted the TRS regulations. *See Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, FCC 91–213, Report and Order and Request for Comments, 6 FCC Rcd

4657 (July 26, 1991); published at 56 FR 36729 (August 1, 1991) (*TRS I*). These regulations include mandatory minimum standards that govern the provision of TRS. See 47 CFR 64.604. The purpose of these standards is to ensure that TRS users have the ability to access the telephone system in a manner that approximates, as closely as possible, the experience of a voice telephone user consistent with the functional equivalency mandate. One of the mandatory minimum standards requires TRS CAs to handle emergency calls. See 47 CFR 64.604(a)(4); see also, *TRS I*, 6 FCC Rcd at 4659, paragraph 10. The Commission requires CAs to handle emergency calls like any other TRS calls. See 47 CFR 64.604(a)(4); see also, *TRS I*, 6 FCC Rcd at 4659, paragraph 10. At the same time, the Commission has “strongly encourage[d] * * * TRS users to access emergency 911 services directly.” See 47 CFR 64.604(a)(4) of the Commission’s rules; see also, *TRS I*, 6 FCC Rcd at 4659, paragraph 10. In other words, the Commission recognized that although TRS users should call 911 on their TTY in the event of an emergency, so that they would be directly connected to a PSAP, TRS providers also were required to handle emergency calls if a person chose to make an emergency call through the TRS center. The final rule provided: “CAs shall handle emergency calls in the same manner as they handle any other TRS calls.” 47 CFR 64.604(a)(3) (1993).

In 1998, the Commission proposed amendments to the TRS mandatory minimum standards and sought comment on various issues to enhance the quality of TRS and broaden the potential universe of TRS users. *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, FCC 98–90, Notice of Proposed Rulemaking, 13 FCC Rcd 14187 (May 20, 1998) (*1998 TRS NPRM*). One of the issues the Commission addressed was access to emergency services. *1998 TRS NPRM*, 13 FCC Rcd at 14203, paragraphs 40–41. The Commission noted that despite regulations requiring state and local governments to make emergency services directly accessible to TTY users (for direct TTY to TTY calls), many individuals with hearing and speech disabilities use TRS to contact emergency services. *1998 TRS NPRM*, 13 FCC Rcd at 14203, paragraph 41. The Commission also expressed concern that there was “inconsistency and confusion among the states and TRS providers as to how such calls should be handled.” *1998 TRS NPRM*, 13 FCC Rcd at 14203,

paragraph 40. Accordingly, the Commission sought comment on how TRS providers were handling emergency calls and, more specifically, whether TRS providers should be required to pass a caller’s ANI to an emergency services operator. *1998 TRS NPRM*, 13 FCC Rcd at 14203, para. 41.

In the *Improved TRS Order*, the Commission recognized that because some persons continue to make emergency calls via TRS (rather than directly TTY to TTY), it had an “obligation to make relay calls to 911 functionally equivalent to a direct call to 911.” *Improved TRS Order and FNPRM*, 15 FCC Rcd at 5182–5183, paragraphs 99–100. The Commission modified the TRS emergency call handling rule in two respects. First, the Commission required providers to be able to match the incoming caller’s telephone number with the appropriate PSAP electronically, so that the CA can quickly make the outbound call to the PSAP. *Improved TRS Order and FNPRM*, 15 FCC Rcd at 5182–5184, paragraphs 99–102. Second, the Commission required CAs to pass along the caller’s telephone number to the PSAP orally when the caller disconnects before being connected to emergency services. *Improved TRS Order and FNPRM*, 15 FCC Rcd at 5183–5184, paragraph 101. As a result of these additional requirements, TRS service providers found it necessary to develop new databases of all PSAPs in the country. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 16 FCC Rcd 4662, 4666, paragraph 12 (February 23, 2001) (*TRS 911 Waiver Order*).

In June 2003, the Commission again addressed TRS access to emergency services. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, CG Docket No. 03–123, FCC 03–112, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, at 12407, paragraph 42 (June 17, 2003); published at 68 FR 50973 (August 25, 2003) and 68 FR 50993 (August 25, 2004) (*TRS Second Improved Report and Order*). The Commission clarified that TRS providers must route emergency TRS calls to the “appropriate” PSAP and required TRS providers to adjust their databases accordingly. *TRS Second Improved Report and Order* 18 FCC Rcd at 12406–12408, paragraphs 40–42. Because of jurisdictional boundaries, the “appropriate” PSAP is not always

the geographically closest PSAP to the calling party. The Commission also addressed handling of wireless emergency TRS calls, noting the difficulty in tracing the location of the wireless caller, and sought comment on how to make such calls functionally equivalent to wireless voice calls. *TRS Second Improved Report and Order* 18 FCC Rcd at 12408, paragraphs 43–46, and 12433–12434, paragraphs 108–109. In a subsequent order, the Commission further clarified that the “appropriate” 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.” *2004 TRS Report and Order*, 19 FCC Rcd at 12559, paragraph 216. The Commission also revisited the issue of routing wireless emergency TRS calls. The Commission determined that implementation of rules in this context would be premature and that it would reconsider the issue at a later time once other E911 requirements had been implemented. *2004 TRS Report and Order*, 19 FCC Rcd at 12501–12502, paragraphs 52–54.

Waiver of Emergency Call Handling for VRS and IP Relay

As noted above, in March 2000 the Commission recognized VRS as a form of TRS. In December 2001, the Commission granted a two-year waiver of emergency call handling requirements for VRS providers. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 17 FCC Rcd 157, at 161–162, paragraphs 11–14 (December 31, 2001) (*VRS Waiver Order*). The Commission recognized that VRS providers needed additional time to establish PSAP databases, and to adjust new and developing VRS technologies to effectively handle emergency calls made via VRS. *VRS Waiver Order*, 17 FCC Rcd at 162, paragraph 13. At the same time, VRS providers were required to clearly explain in their promotional materials and on their Web sites the shortcomings of using VRS to place an emergency call. *VRS Waiver Order*, 17 FCC Rcd at 162, paragraph 14. Subsequently, the Commission has twice extended this waiver, which presently expires on January 1, 2006. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, DA 03–4029, Order, 18 FCC Rcd 26309 (December 19, 2003) (extending waiver until June 30, 2004); *2004 TRS Report*

and Order, 19 FCC Rcd at 12520–12521, paragraphs 111–112 (extending waiver until January 1, 2006). Most recently, the Commission emphasized that because VRS users gain access to VRS via the Internet, rather than a telephone, VRS providers do not receive the automatic number identification (ANI) of the calling party. As a result, VRS providers cannot identify the caller's location to relay that information to the PSAP. 2004 TRS Report and Order, 19 FCC Rcd at 12522, paragraph 117.

The initial order recognizing IP Relay service as a form of TRS also waived the emergency call handling requirement. *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7789, paragraph 30. The Commission noted that IP Relay service providers do not receive the ANI of the calling party (because the call is via the Internet), and therefore do not have that information to pass on to a PSAP. *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7789, paragraph 30. The Commission encouraged providers to work on developing a method to rapidly obtain location information from emergency callers and pass that information on to the appropriate PSAP emergency response center. *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7789, paragraph 30. In March 2003, the Commission extended this waiver until January 1, 2008, again noting that the technology was not currently available to accurately relay emergency IP Relay service calls to emergency service providers, and to automatically provide the emergency services providers with location information. See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, FCC 03–46, Order on Reconsideration, 18 FCC Rcd. 4761, at 4766, paragraph 12, and 4770–4771, paragraph 28 (March 14, 2003); published at 68 FR 18826 (April 16, 2003) (*IP Relay Reconsideration Order*).

The VoIP E911 Order

On June 3, 2005, the Commission required interconnected VoIP providers, by November 28, 2005, to “transmit all 911 calls, as well as a call back number and the caller’s ‘Registered Location’ for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller’s Registered Location.” *VoIP E911 Order*, 20 FCC Rcd at 10266, paragraph 37; see also *OMB Grants Emergency Approval of New VoIP E911 Rules Adopted in IP-Enabled Services First Report and Order; Effective Date is July 29, 2005*,

WC Docket No. 04–36, Public Notice (July 12, 2005). The Commission also required that all E911 calls be routed through the existing “Wireline E911 Network,” and not to 10-digit NPA-NXX numbers (administrative numbers), and that location or call back information be provided only to the extent that the PSAP, designated statewide default answering point, or appropriate local emergency authority designated to serve a Registered Location is capable of receiving and utilizing the data (such as ALI or ANI). See *VoIP E911 Order*, 20 FCC Rcd at 10269–10270, paragraph 42 and note 142. Even in those areas where the PSAP is not capable of receiving or processing location or call back information, the Commission concluded that interconnected VoIP providers must transmit all 911 calls to the appropriate PSAP via the Wireline E911 Network. See *VoIP E911 Order*, 20 FCC Rcd at 10269–10270, paragraph 42. The “Wireline E911 Network” is defined as a “dedicated wireline network that (1) is interconnected with but largely separate from the public switched telephone network, (2) includes a selective router, and (3) is utilized to route emergency calls and related information to PSAPs, designated statewide default answering points, appropriate local emergency authorities or other emergency answering points.” 47 CFR 9.3. Recognizing that “it currently is not always technologically feasible for providers of interconnected VoIP services to automatically determine the location of their end users without end users’ active cooperation,” *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46, the Commission stated that interconnected VoIP providers must obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46. The Commission ordered interconnected VoIP providers to obtain from each existing customer, by November 28, 2005, the physical location at which the customer is using the service. *VoIP E911 Order*, 20 FCC Rcd at 10271, at paragraph 46, note 147. The Commission also required providers of interconnected VoIP services that can be utilized from more than one physical location to provide their end users with a method of updating information regarding the user’s physical location. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46. The most recent location provided to an interconnected VoIP provider by a customer is the “Registered Location.” *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph

46. The Commission expected that customers of interconnected VoIP service providers would, in almost all cases, be able to provide their Registered Location in the form of a valid street address. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46, note 148. The Commission also emphasized that although it was not requiring interconnected VoIP providers to automatically determine the location of their end users, nothing in the *VoIP E911 Order* prevents an interconnected VoIP provider from automatically obtaining an accurate location if it is capable of doing so. *VoIP E911 Order*, 20 FCC Rcd at 10271, at paragraph 46, note 146.

The Commission further found that allowing customers of interconnected VoIP providers to opt in or opt out of E911 service is inconsistent with its obligation to “encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs.” See *VoIP E911 Order*, 20 FCC Rcd at 10271–10272, paragraph 47 (quoting Wireless Communications and Public Safety Act of 1999, Public Law Number 106–81, 113 Statute 1286, § 3(b) (1999)). In addition, in order to ensure that customers of interconnected VoIP services are aware of their interconnected VoIP service’s actual E911 capabilities, the Commission required that all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, of the circumstances under which E911 service may *not* be available through the interconnected VoIP service, or may in some way be limited in comparison to traditional E911 service. See *VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48. The Commission also required VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood this advisory. See *VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48. Finally, in order to ensure that the advisory is available to all potential users of an interconnected VoIP service, the Commission required interconnected VoIP service providers to distribute to their subscribers stickers or labels warning if E911 service may be limited or unavailable, and to instruct subscribers to place them on or near the equipment used in conjunction with the interconnected VoIP service. See *VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48.

Discussion

The *NPRM* seeks comment on the means by which providers of VRS and

IP Relay services may determine the appropriate PSAP to contact when they receive an emergency call. As noted above, the Commission has waived the TRS emergency call handling mandatory minimum standard for VRS until January 1, 2006, and for IP Relay service until January 1, 2008. These waivers reflect the recognition that it is not currently technologically feasible for VRS or IP Relay service providers to automatically determine the location of the calling party because the Internet address associated with the incoming "call" to the relay center does not contain identifying information. Because VRS calls can be answered by a CA located in another city or state, if the CA simply dials 911, the CA would reach a PSAP for the area in which the CA (the VRS center) is located, not a PSAP for the area in which the caller is located.

Currently the most reliable way for persons with hearing or speech disabilities to reach emergency services is through the use of TTY directly, rather than through a relay service. Because PSAPs are required to be able to receive direct TTY calls, and such calls contain ANI, the PSAP can determine the location of the caller, even if the caller is unable to communicate after establishing the connection with the PSAP. At the same time, the Commission recognizes that many TRS users now solely rely on VRS, or IP Relay services, which require a broadband Internet connection, or and therefore such users may not have access to a telephone line or a TTY. Such users cannot make a direct call to a PSAP in the event of an emergency. The Commission recognizes that VRS and IP Relay service users, may need to make emergency calls through those services, and will rely on the VRS and IP Relay service providers to relay their calls (*i.e.*, make an outbound call) to a PSAP that can respond to the emergency. The Commission seeks to adopt a means of ensuring that such calls promptly reach the appropriate emergency service provider.

User Registration. As noted above, under the new rules for interconnected VoIP services, providers must obtain the primary location from which calls will be placed prior to initiating a customer's service. VoIP providers must also provide a way for users to update that location information. The Commission seeks comment on whether VRS and IP Relay service providers should be required to similarly register their customers—and obtain a Registered Location—so that they will be able to make the outbound call to the appropriate PSAP. The Commission also

seeks comment on how such a registration requirement might work for first time users of a particular provider's VRS or IP Relay service. Further, the Commission seeks comment on whether there are other means by which VRS and IP Relay service providers may obtain Registered Location information, for example, by linking the serial number of the customer's VRS or IP Relay service terminal or equipment to that customer's registered location. Because each terminal has a unique identifying number, known as a Media Access Control (MAC) address, this could be used to identify or verify a user profile which contains the registered address. Finally, the Commission seeks comment on whether the same rules should apply to both VRS providers and IP Relay service providers, or whether the different natures of these services warrant different solutions.

The Commission recognizes that, in the past, some TRS users have expressed opposition to registration, noting that because voice telephone users did not have to "register" to obtain telephone service, and any such requirement would impose an additional burden on relay users alone. The *VoIP E911 Order* should allay that concern, since it imposes a similar registration requirement on voice telephone subscribers. The Commission also notes that many VRS and IP Relay service users currently create profiles to assist providers in handling and expediting their calls. *See, e.g., http://www.hamiltonrelay.com/internet/ip/profile.html* (an example of an IP Relay service provider's profile page that allows users to indicate their preferences concerning matters such as speed dialing and greetings). Accordingly, making similar profiles mandatory through registration, as a condition of using VRS and IP Relay service, may not be unduly intrusive or burdensome. The Commission seeks comment on whether the use of a registration system for VRS and IP Relay service is appropriate and consistent with Section 225's functional equivalency mandate. 47 U.S.C. 225(a)(3). The Commission seeks comment, generally, on any privacy considerations that might be raised by requiring VRS and IP Relay service users to provide location information as a prerequisite to using these services. The Commission also seeks comment on whether the Commission's TRS confidentiality rules are sufficient to address potential concerns related to providing personal information through the Internet. *See* 47 CFR 64.604(a)(2). The Commission seeks further comment

on what measures providers have taken to ensure the privacy and security of relay calls. *See, e.g., 2004 TRS Report and Order*, 19 FCC Rcd at 12522, paragraph 51; *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7791, paragraph 38. The Commission also seeks comment on whether, assuming some type of location registration requirement is adopted, the Commission should require specific information or place limits on the scope of the information that providers should be able to obtain.

VRS equipment, because it requires a video screen or television monitor, tends to remain at the same location, while IP Relay service may be accessed through any laptop computer or similar device that connects to the Internet, including handheld wireless devices. The Commission therefore seeks comment on how we might ensure that IP Relay service providers have current location information, *i.e.*, that the Registered Location is the actual location of the user when making a particular call. In the *VoIP E911 Order*, the Commission required providers to offer their customers a method of updating their location information. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46. The Commission seeks comment on how it may ensure that VRS and IP Relay service providers have updated location information and the respective obligations of the providers and the customers in this regard. Should, for example, users be required to affirmatively acknowledge whether they are at their Registered Location each time they initiate a call, and if they are not at their Registered Location, be prompted or required to provide their present location?

The Commission currently requires TRS providers to include "a clear and bold written statement on their Web sites and any VRS promotional materials explaining the shortcomings and potential dangers of using VRS to place an emergency call using 911," *see* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, Order, 17 FCC Rcd 157, at 162, paragraph 14 (December 31, 2001) (temporarily waiving mandatory minimum standards); *see also 2004 TRS Report and Order*, 19 FCC Rcd at 12522-3, paragraphs 116-118 (extending waivers and confirming warning requirement), so that those making a 911 call over TRS facilities understand the implications of placing such a call, particularly in the context of the Commission's encouragement to TRS users to access emergency services

directly. As discussed above, the Commission imposed obligations on interconnected VoIP service providers to advise customers of the limitations on E911 service, obtain customer's acknowledgements of such advice, and distribute warning labels to be placed on equipment used in conjunction with interconnected VoIP service. *VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48. In light of these requirements, the Commission seeks comment on whether, and if so, how the Commission's current requirements for VRS and IP Relay service providers should be revised. Should the Commission, for example, require that VRS and IP Relay service providers specifically advise new and existing subscribers of the circumstances under which E911 service may not be available through VRS and IP Relay service or may be in some way limited by comparison to traditional E911 service? Should VRS and IP Relay service providers be required to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood this advisory? Should the Commission require VRS and IP Relay service providers to provide appropriate warning labels for installation on CPE used in connection with VRS and IP Relay services? Should receipt of compensation from the interstate TRS Fund be conditioned on compliance with such requirements? What, if any, other requirements should be imposed on VRS and IP Relay service providers in this regard?

In the *VoIP E911 Order*, the Commission made clear that interconnected VoIP providers must use the Wireline E911 Network in transmitting E911 calls to the appropriate PSAP, and may not use a 10-digit number (so called "administrative numbers"). The Commission seeks comment on whether the same rule should apply to VRS and IP Relay service providers handling emergency calls.

Finally, the Commission seeks comment on whether VRS and IP Relay service calls could be routed in such a way that they necessarily include a VoIP call, therefore allowing registration for interconnected VoIP calls to satisfy the registration requirement for users of VRS and IP Relay service. Because outbound VRS, IP Relay service, and VoIP calls all use the Internet, the Commission seeks comment on whether, if VRS and IP Relay service users were also VoIP subscribers, their emergency VRS or IP Relay service calls could simultaneously be directed to both the VRS or IP Relay service

provider and the emergency service tied to their Registered Location with the VoIP provider. The Commission also seeks comment on any other ways in which the requirements of the *VoIP E911 Order* may be applied to the use of VRS and IP Relay service to ensure access to emergency services.

PSAP Database. The Commission requires TRS providers to use PSAP databases to determine the appropriate PSAP to call in relaying an emergency call, and in the *2004 TRS Report and Order*, the Commission continued to require providers to maintain and update these databases. *TRS Second Improved Report and Order*, 18 FCC Rcd at 12407–12408, paragraph 42; *2004 TRS Report and Order*, 19 FCC Rcd at 12559–12560, paragraph 217. The Commission declined, however, to mandate a single national PSAP database that would be available to all TRS providers, noting that no national database exists for routing 911 calls. *2004 TRS Report and Order*, 19 FCC Rcd at 12560, paragraph 218. Are these existing requirements concerning the use of PSAP databases sufficient for VRS and IP Relay service providers handling emergency calls, or should they be modified? The Commission also seeks comment on whether a national database is feasible and appropriate for VRS and IP Relay service providers handling emergency calls. If so, how could such a database be implemented and maintained?

Priority Access to Emergency Calls. During busy periods, the CA may not be immediately available to handle an incoming VRS or IP Relay service call and, as a result, the caller may be put in a queue to wait for the next available CA. Because the "85/10" speed of answer rule applies to IP Relay service, such delays are less of a concern for IP Relay service. *See* 47 CFR 64.604(b)(2); *2005 VRS Order*, 20 FCC Rcd at 10254–10258, paragraphs 19–24. The Commission seeks comment on whether and how VRS and IP Relay service providers may identify incoming calls as emergency calls so that such calls can promptly be directed to a CA without waiting in a queue. The Commission also seeks comment on whether equipment can be modified to permit users to make an emergency call that will be promptly recognized as such by the providers, so that a VRS or IP Relay service user has the ability to make a call that is the equivalent of a 911 voice telephone call.

Multiple Providers. Several VRS and IP Relay service providers currently offer service, giving customers a choice of providers. In contrast, traditional TRS consumers must make intrastate TRS

calls through the provider(s) selected by the state as part of the certified state TRS program. The Commission seeks comment on whether VRS and IP Relay service users should be required to register with each provider that they use, or whether a shared database could be established that could be accessed by all providers. The Commission also seeks comment on the advantages or disadvantages of using such a shared database.

Registration and Jurisdictional Separation of Costs. As a general matter, Section 225 of the Communications Act provides that states are responsible for compensating providers for the costs of intrastate TRS, and the Interstate TRS Fund is responsible for compensating providers for the costs of interstate TRS. *See* 47 U.S.C. 225(d)(3)(B). For traditional TRS calls made via the PSTN, providers can automatically determine if a particular call is interstate or intrastate, and bill either the appropriate state or the Interstate TRS Fund accordingly. For VRS and IP Relay service calls, however, because one leg of the call is via the Internet, it is presently not possible for a provider to determine if a particular call is interstate or intrastate. As a result, presently all VRS and IP Relay service calls are compensated from the Interstate TRS Fund.

In the *FNPRM* of the *2004 TRS Report and Order*, the Commission sought comment on possible means for applying jurisdictional separation of costs to VRS and IP Relay service calls. *See* *2004 TRS Report and Order*, 19 FCC Rcd at 12561–12564, paragraphs 221–230 (IP Relay), 12567, paragraphs 241–242 (VRS). The Commission now seeks comment on whether a registration requirement for emergency call handling could also be used as a mechanism to allocate TRS costs between the interstate and intrastate jurisdictions. *See* *2004 TRS Report and Order*, 19 FCC Rcd at 12567, paragraph 242. The Commission also seeks comment on whether, assuming all VRS and IP Relay service calls continue to be compensated from the Interstate TRS Fund, an exception should be made for emergency VRS and IP Relay service calls, so that they are paid for by the states or the Interstate TRS Fund, depending on the jurisdictional nature of the call. Further, the Commission seeks comment on any other alternatives for funding emergency VRS and IP Relay service calls.

Timelines. The Commission seeks comment on how much time it may reasonably take for providers to implement the solutions proposed in this *NPRM*. The Commission also seeks

comment on whether there continues to be any reason to have separate deadlines for complying with waived mandatory minimum standards for emergency call handling for VRS and IP Relay services. Finally, the Commission asks parties to provide any further information that may illuminate the issues raised in this *NPRM*.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). 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 Number 104–121, 110 Statute 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

Under the Commission's regulations, providers of telecommunications relay services (TRS), mandated by Title IV of the Americans with Disabilities Act of 1990, see 47 U.S.C. 225, are required to handle emergency calls from service their customers. 47 CFR 64.604(a)(4). To do so, TRS providers must know the appropriate PSAP to call based on the location of the calling party. Because VRS and IP Relay service use the Internet rather than the PSTN for the leg of the call coming into the relay center, the relay center does not have a means of automatically detecting the location of the calling party. As a result, the emergency call handling requirement is presently waived for VRS and IP Relay service providers. Because of the importance of being able to call emergency services, the *NPRM* seeks comment on rules the Commission should adopt to ensure that VRS and IP Relay service providers can handle calls seeking access to emergency services and make an outbound call to an appropriate PSAP.

More specifically, the *NPRM* seeks comment on whether the Commission should adopt a registration process whereby VRS and IP Relay service

providers would be required to establish, in advance, the primary location from which the VRS and IP Relay service users will be making calls, so the provider can identify the appropriate PSAP to contact. The *NPRM* addresses a number of issues concerning how a registration process for VRS and IP Relay service users might be implemented and whether imposing such a requirement would be consistent with Section 225 of the Communications Act. In addition, the *NPRM* addresses several related issues, including: (1) Whether VRS and IP Relay service calls could be structured in such a way that they necessarily include a VoIP call, so that the registration that is required by the *VoIP E911 Order* for users of interconnected VoIP service would satisfy the registration requirement for users of VRS and IP Relay service; (2) whether the Commission should adopt new requirements for providers to warn their customers of the limitations of using VRS and IP Relay service to make emergency calls and/or provide warning labels to be placed on equipment; (3) whether the Commission should adopt requirements that establish a national PSAP database; (4) whether it is possible for VRS and IP Relay service providers to recognize incoming calls as emergency calls so that such calls do not have to wait in a queue to be handled; (5) whether customer registration could be accomplished through a shared database, rather than individually databases for each provider; (6) whether the registration requirement could be used to determine whether calls are intrastate or interstate for purposes of jurisdictional separation of costs; and (7) how long it might take for providers to implement a registration process.

Legal Basis

The authority for the actions proposed in this *NPRM* may be found in Sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–205, 218 and 225, and §§ 64.601–64.608, 47 CFR 64.601–64.608 of the Commission's rules.

Description and Estimate of the Number of Small Entities To Which the Proposed 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 proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). 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**." 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

As noted above, the TRS rule requiring providers to handle emergency calls (*i.e.*, to be able to make the outbound call to an appropriate PSAP) is presently waived for VRS and IP Relay service providers. The *NPRM* seeks comment on whether the Commission should adopt a registration process, or some other means, by which VRS and IP Relay service providers can ensure that can be routed to the appropriate PSAP. The Commission believes that the entities that may be affected by the proposed rules are only those TRS providers that offer IP Relay service and VRS. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201 of the Commission's rules, NAICS Code 517110. Currently, there are eight TRS providers that offer VRS and/or IP Relay service, which consist of interexchange carriers, local exchange carriers, other common carriers, and non-profit organizations. Approximately five or fewer of these entities are small businesses under the SBA size standard. See National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *NPRM*'s proposed registration requirement, if adopted, would require VRS and IP Relay service providers to

obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized (*i.e.*, the "Registered Location"), and to provide customers a way to update this information. The *NPRM* also asks whether VRS and IP Relay service calls could be routed in such a way that they necessarily include a VoIP call so that the registration that is required by the *VoIP E911 Order* for users of interconnected VoIP service would satisfy the registration requirement for users of VRS and IP Relay service. Third, the *NPRM* asks whether the Commission should impose new or additional requirements on providers to warn their customers of the limitations of using VRS and IP Relay service to make emergency calls, and to provide warning labels to be placed on equipment. Fourth, the *NPRM* asks whether the Commission should adopt new or additions for PSAP databases and/or require a national PSAP database. Fifth, the *NPRM* asks whether customer registration can be accomplished through a shared database, rather than individual database for each provider. Finally, the *NPRM* asks whether registration requirement could be used to determine whether calls are intrastate or interstate for purposes of jurisdictional separation of costs.

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

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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." 5 U.S.C. 603(c)(1) through (4).

This *NPRM* seeks comment on whether the Commission should adopt a registration process, or some other means, by which VRS and IP Relay service providers can ensure that emergency calls can be routed to the appropriate PSAP to contact. The *NPRM*, however, contemplates alternative means by which the Commission might ensure that VRS and IP Relay service providers can handle

emergency calls. As noted, the Commission seeks comment on what ways VRS and IP Relay service providers currently seek to provide emergency services to their customers. Thus, there may be alternatives to direct regulation to achieve the Commission's public policy goals of ensuring the availability of 911 and E911 capability for VRS and IP Relay service users. Accordingly, the Commission seeks comment on such alternatives.

The *NPRM* asks whether VRS and IP Relay service calls could be routed in such a way that they necessarily include a VoIP call, so that the registration that is required by the *VoIP E911 Order* for interconnected VoIP users would satisfy the registration requirement for users of VRS and IP Relay service. Because outbound VRS, IP Relay service, and VoIP calls all use the Internet, if VRS and IP Relay service users that were also VoIP subscribers their emergency VRS or IP Relay service calls could simultaneously be directed to both the VRS or IP Relay service provider and the emergency service tied to their Registered Location with the VoIP provider. This alternative approach to ensuring access to emergency services could mitigate any burdens the proposed registration requirement might have on small businesses.

Third, the *NPRM* asks whether the Commission should impose new or different requirements on providers to warn their customers of the limitations of using VRS and IP Relay service to make emergency calls and/or provide warning labels to be placed on equipment. As noted in the *NPRM*, TRS providers already are required to advise user to make a direct call to a PSAP in the event of an emergency, rather than use VRS or IP Relay service. Because VRS or IP Relay service may sometimes be the only way for a user to make emergency calls, VRS or IP Relay service providers must be prepared to handle such calls (unless the emergency call handling requirement is waived). There may be a number of alternative ways providers can ensure that VRS and IP Relay service users are informed about the limitations of using these services for emergency calls, and the *NPRM* broadly seeks comment about such alternatives.

Fourth, the *NPRM* asks whether the Commission should require a national PSAP database. A single, national PSAP database might be preferable to multiple provider-maintained databases. One alternative under consideration is the creation of voluntary agreements among public safety trade associations, VRS and IP Relay service stakeholders, customers, and state and local E911

coordinators and administrators for VRS and IP Relay service to received enhanced 911 functionality. Promulgation of best practices or technical guidelines ensure that providers could determine an appropriate PSAP for a particular VRS or IP Relay service emergency call. The Commission therefore requests comment on the viability of such alternatives, especially with regard to the impact of each alternative on small businesses.

Fifth, the *NPRM* asks whether it is possible for providers to recognize incoming calls as emergency calls so that such calls do not have to wait in a queue. Providing such priority access to emergency calls would ensure that VRS and IP Relay service users would promptly reach a CA able to handle their emergency call. The Commission requests comment on alternative options for accomplishing this goal.

Sixth, because VRS and IP Relay service customers can choose from among several VRS and IP Relay service providers, and often use more than one, the *NPRM* seeks comment on whether any customer registration could be accomplished through a shared database, rather than individual databases for each provider. A shared database would likely be less onerous for providers because every provider would not have to register every customer.

Seventh, the *NPRM* asks whether registration could be used to determine whether calls are intrastate or interstate for purposes of jurisdictional separation of costs. If so, registration would solve the current compensation problem, the inability to determine if a VRS or IP Relay service call is intrastate or interstate, without putting additional burdens on the providers.

Finally, the *NPRM* asks how long it might take for providers to implement registration and whether registration could or should be implemented at the same time for VRS and IP Relay service. This question is asked to ensure that providers are not unduly burdened by having to comply with new rules for both services at the same time.

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

None.

Ordering Clauses

Pursuant to Sections 1, 4(i) and (o), 225, 255, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 255, 303(r), 403, 554(g), and 606,

this Notice of Proposed Rulemaking *is adopted.*

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of

this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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