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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03-123; FCC 06-87]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** In this document, the Commission addresses issues raised in a petition for reconsideration which include: the adoption of the final 2003-2004 Video Relay Service (VRS) rate of \$8.854; whether the VRS rate should be fully retroactive; the compensability of research and development expense incurred for telecommunications relay service (TRS) enhancements that go beyond the applicable TRS mandatory minimum standards from the Interstate TRS Fund (Fund); and the applicability of "rate of return" regulation to traditional TRS and speed of answer requirements to VRS.

**DATES:** Effective August 16, 2006.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington DC 20554.

**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](mailto:Thomas.Chandler@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This document does not contain new or modified information collection requirements subject to the PRA of 1995, 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). This is a summary of the Commission's document FCC 06-87, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech

Disabilities, Order on Reconsideration, CG Docket No. 03-123, adopted June 20, 2006, released July 12, 2006 addressing issues raised in the Communications Services for the Deaf, Inc. (CSD) September 30, 2004 petition for reconsideration; National Video Relay Service Coalition (NVRSC) October 1, 2004 petition for reconsideration; Hands On Video Relay Service, Inc. (Hands On) October 1, 2004 petition for partial reconsideration; and Hamilton Relay, Inc. (Hamilton) October 1, 2004 petition for reconsideration, arising from the Report and Order Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, (2004 TRS Report and Order), CC Docket No. 98-67, FCC 04-137; published at 69 FR 53346 (September 1, 2004) and Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order, (2003 Bureau TRS Order), CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd at 12835-12836, paragraphs 29-38 (June 30, 2003) (adopting TRS compensation rates for the 2003-2004 Fund Year). The full text of document FCC 06-87 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, SW., Room CY-A257, Washington, DC 20554. Document FCC 06-87 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site <http://www.bcpweb.com> or by calling 1-800-378-3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Document FCC 06-87 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

#### Synopsis

##### Background

Telecommunications Relay Service

Title IV of the Americans with Disabilities Act of 1990 (ADA) requires common carriers offering "telephone voice transmission services" to also provide TRS throughout the area in which they offer service, so that persons with hearing and speech disabilities can use the telephone system. 47 U.S.C. 225(c). The statute also mandates that eligible TRS providers be compensated for their costs of providing TRS. 47 U.S.C. 225(d)(3). As a general matter, states compensate providers for the costs of providing intrastate TRS, and the Interstate TRS Fund compensates providers for the costs of providing interstate TRS. *See generally 2004 TRS Report and Order*, 19 FCC Rcd at 12482-12483, paragraphs 7-8. The cost recovery framework—and the annual determination of the TRS compensation rates—is intended to cover the "reasonable" costs incurred in providing the TRS services mandated by Congress and Commission regulations. *2004 TRS Report and Order*, 19 FCC Rcd at 12543, paragraph 179; *see generally* 47 CFR 64.604(c)(5)(iii)(E) (providers shall be compensated for the "reasonable costs" of providing TRS). The intent of Title IV is to further the Communications Act's goal of universal service by ensuring that individuals with hearing or speech disabilities have access to telephone services that are "functionally equivalent" to those available to individuals without such disabilities. *See* 47 U.S.C. 225(a)(3). TRS became available on a nationwide basis in 1993. *See generally Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, Report and Order and Request for Comments, CC Docket No. 90-571; published at 56 FR 36729 (August 1, 1991), (TRS I).

VRS. In 2000, the Commission recognized VRS as form of TRS eligible for compensation from the Interstate TRS Fund. *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) (*Improved TRS Order and FNPRM*) (recognizing VRS as a form

of TRS), published at 65 FR 38432 (June 21, 2000) and 65 FR 38490 (June 21, 2000); 47 CFR 64.601(17). Presently, all VRS calls are compensated from the Interstate TRS Fund. *See Improved TRS Order and FNPRM*, 15 FCC Rcd at 5154, paragraphs 26–27. As most frequently used, VRS allows a deaf person whose native language is American Sign Language (ASL) to communicate in ASL with the CA 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. VRS calls reflect a degree of “functional equivalency” unimaginable in a solely text-based TRS world. As the following figures for approximate monthly minutes of use of VRS demonstrate, usage continues to rise: May 2003—189,422; July 2004—900,000; August 2005—2.7 million; April 2006—3.2 million.

*Cost Recovery.* Section 225 of the Communications Act provides that the costs of providing interstate TRS “shall be recovered from all subscribers for every interstate service.” 47 U.S.C. 225(d)(3)(B). This mandate requires both collecting contributions to establish a fund (the Interstate TRS Fund) from which TRS providers can be compensated, and paying money from the Fund to eligible providers for their provision of eligible TRS services. *See generally* 47 CFR 64.604(c)(5)(iii)(A) and (E) of the Commission’s rules. These duties are performed by the Interstate TRS Fund administrator, selected by, and under the direction of, the Commission. *See* 47 CFR 64.604(c)(5)(iii) of the Commission’s rules. The current Interstate TRS Fund administrator is the National Exchange Carrier Association (NECA).

The TRS Fund administrator presently makes payments to eligible providers based on per-minute compensation rates for traditional TRS and IP Relay, Speech-to-Speech (STS), and VRS. In the *2005 TRS Rate Order*, the Commission concluded that it would adopt separate rates for traditional TRS and IP Relay. Accordingly, beginning with the 2005–2006 Fund year.

*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, FCC 05–135, CC Docket No. 98–67, CG Docket No. 03–123; published at 70 FR 38134 (July 1, 2005) (*2005 TRS Rate Order*). The compensation rates are set on an annual basis. The TRS Fund administrator requests and collects projected cost and demand (*i.e.*, minutes of use) data from

the providers. *See* 47 CFR 64.604(c)(5)(iii)(C) of the Commission’s rules. After the Fund administrator reviews the submitted projected costs and minutes of use, it calculates proposed per-minute compensation rates based on data submitted (or modified, as necessary). As NECA has explained, NECA calculates a national average cost per minute of use. It does so by totaling projected costs and minutes of use for all providers for a two year period, and then dividing each sum (costs and minutes) by two. Then the average costs are divided by the average minutes to determine the average cost per minute. *See* NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, filed April 25, 2005, at 9 and Appendix 1E. The Fund administrator then files these proposed rates with the Commission, and they are placed on public notice. *See, e.g.*, *National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2005 Through June 2006*, CC Docket No. 98–67, Public Notice, DA 05–1175 (April 28, 2005); published at 70 FR 24790 (May 11, 2005) (*2005 TRS Rate Notice*). The Commission reviews the proposed rates and, in adopting compensation rates for the ensuing Fund year, may approve or modify the proposed rates. *See generally* *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, Third Report and Order, 8 FCC Rcd 5300, 5305, paragraph 30 (July 20, 1993); published at 58 FR 39671 (July 26, 1993) (the TRS rate calculated by the administrator “shall be subject to Commission approval”).

If either the Fund administrator or the Commission disallows any of a provider’s submitted costs, the provider has the opportunity to contest the disallowances before they are finalized. Because of confidentiality issues, this is generally done either in a telephone conversation or in an individual meeting with each provider. The precise process by which the providers’ challenges to cost disallowances have been handled has varied, depending in part on whether the Fund administrator or the Bureau has made the disallowance. The providers may further challenge the adopted rates, including any cost disallowances, by seeking review of the rate order. Since 1993, the Commission has released orders at least annually setting forth the per-minute compensation rates for the various forms of TRS. The Commission

released the first rate order on September 29, 1993. *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, Second Order on Reconsideration and Fourth Report and Order, 9 FCC Rcd 1637 (September 29, 1993); published at 58 FR 53663 (October 18, 1993). Subsequent rate orders have been released at the bureau level, with the exception of the *2005 TRS Rate Order*.

#### Discussion

The Final 2003–2004 VRS Compensation Rate was Based on Reasoned Analysis

*Background.* The *2003 Bureau TRS Order* rejected NECA’s proposed VRS rate of \$14.023 per minute and adopted an “interim” rate of \$7.751, subject to possible revision pending a more complete analysis of the providers’ cost data. *2003 Bureau TRS Order*, 18 FCC Rcd at 12835–12836, paragraphs 29–38. Five parties filed petitions for reconsideration, challenging the adoption of the interim VRS rate of \$7.751 and requesting that the Commission accept NECA’s proposed rate of \$14.023 retroactive to July 1, 2003 (the first day of the 2003–2004 Fund year). *See 2004 TRS Report and Order*, 19 FCC Rcd at 12538, paragraph 165 and note 474. These parties were Sprint, AT&T, Sorenson, Hands On, and CSD. The Commission concluded, based on its review of more complete cost data submitted by the providers, that it would adopt a final rate of \$8.854. Hands On now contends that the Commission failed to adequately explain how it arrived at the \$8.854 rate. Hands On Petition at 11–17. Hands On also asserts that the exclusion of “proprietary” software in the rate analysis was wrong. Hands On Petition at 20.

*Discussion.* The Commission denies Hands On’s petition to reconsider the \$8.854 final VRS rate. *See 2004 TRS Report and Order*, 19 FCC Rcd at 12545–12547, paragraphs 183–187. After the release of the interim 2003–2004 TRS compensation rates, the Commission reviewed additional cost data submitted by the providers. As the Commission explained, “because all of the providers filed for confidential treatment, the adjustments made [were] described in the aggregate.” The Commission noted that it added back various costs that were excluded in calculating the \$7.751 rate relating to salaries, engineering support, and return on capital investment, as well as the costs from one provider that had been excluded in their entirety. These

adjustments resulted in including an additional \$9,503,801 in costs, and a corresponding increase of 213,415 in reimbursable minutes.

These adjustments resulted both from the Commission's analysis of the providers' supplemental cost data, and individual meetings with the providers after the release of the *2003 Bureau TRS Order*. In these meetings, Commission staff discussed any adjustments to an individual provider's cost support with the provider in detail. The Commission met with Hands On (July 11, 2003), Hamilton (July 10, 2003), Sorenson (July 17, 2003), and Sprint and CSD (July 18, 2003). The Commission provided no specific dollar amounts and discussed adjustments in the aggregate because providers claimed that their cost data were confidential. See *2004 TRS Report and Order*, 19 FCC Rcd at 12548–12549, paragraph 191. For these reasons, the Commission finds that the Commission adequately summarized the cost adjustments to the VRS rate.

The Commission also rejects Hands On's argument that the Commission has failed to set forth in sufficient detail what costs are "reasonable" in certain cost categories. See, e.g., Hands On Petition at 14–16. Hands On takes issue with a lack of specific direction on certain standards for the provision of service, specifically the number of frames per second that should be used to ensure a clear picture and standards for compatibility between various computers, software, or video systems.

Providers are required to offer VRS in compliance with all applicable non-waived mandatory minimum standards, and entitled to be compensated for their reasonable costs of doing so. Each year the TRS Fund administrator, NECA, gives the providers instructions for the cost data request forms, which outline various cost categories and give examples of the types of costs that can be included. See, e.g., *NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, filed May 3, 2004, Appendix A. NECA provides these guidelines so that providers consistently report only costs incurred in providing compensable services. The providers follow these guidelines, and Commission staff review the submitted costs to determine whether they are "reasonable", see 47 CFR

64.604(c)(5)(iii)(E) of the Commission's rules, and consistent with the applicable TRS mandatory minimum standards. In some cases, a provider's submitted costs are compared to the costs of other providers of the same service, particularly if a provider's costs are substantially different from the other

providers' submitted costs. Commission staff subsequently review any disallowances with the individual providers. This method for determining "reasonable" costs gives providers flexibility to determine how best to provide service in compliance with the rules.

The reasonableness standard satisfies Hands On's concerns over the lack of specific frames per second or quality standards for VRS. Hands On Petition at 15–16. If, for example, a provider's VRS service uses so few frames per second that the picture is not clear and the VRS user cannot understand what the interpreter is signing, the provider is not offering VRS at all and the service is not compensable.

Hands On further asserts that the Commission erred in concluding that "proprietary" software is not a compensable cost. Hands On Petition at 20; see *2004 TRS Report and Order*, 19 FCC Rcd at 12547–12549, paragraphs 188–189, and 192. The Commission agrees that the categorical exclusion of such costs is not warranted, and clarifies that software developed and owned by a provider that is used for the provision of TRS may be a compensable cost: (1) to the extent it is used for the provision of TRS in compliance with non-waived mandatory minimum standards, and (2) if it is not sold or licensed to any other entity. Further, such costs should be capitalized, see *2004 TRS Report and Order*, 19 FCC Rcd at 12548, paragraph 190, note 543 (addressing capitalization of costs), and are subject to review under the general reasonableness standard. This approach ensures that the Fund does not become a source of funding for software or other products that the provider develops and uses to provide non-TRS services, TRS services beyond those required by applicable non-waived mandatory minimum standards, or to generate other income from research paid for by the Fund.

#### The Final VRS Rate Should Be Fully Retroactive

*Background.* When the Commission adopted the final VRS rate on June 30, 2004, the Commission concluded that the rate would not be fully retroactive to the July 1, 2003, beginning of the Fund year because it was based on cost data submitted after the July 1, 2003, adoption of the \$7.751 interim rate. *2004 TRS Report and Order*, 19 FCC Rcd at 12538–12539, 12549–12550, paragraphs 166, 193. The Commission concluded that the new compensation rate would apply to the provision of VRS services effective September 1, 2003. Hands On Petition at 21–23.

Hands On asserts that the modified rate should be fully retroactive because providers' costs were the same for July and August 2003 as they were after September 1, 2003. Hands On also asserts that the providers could not submit additional data until after July 1, 2003. CSD and Sprint filed comments supporting Hands On's petition on this issue. CSD Comments at 1–4; Sprint Comments at 1–3.

*Discussion.* The Commission agrees that it should have made the final 2003–2004 VRS rate of \$8.854 fully retroactive to July 1, 2003, rather than September 1, 2003. In adopting the interim rate, the Bureau stated that it would remain in force until the Bureau completed its examination of the providers' cost data, "after which time the Bureau will produce the final VRS cost recovery rate for the July 1, 2003, through June 30, 2004, fund year." *2003 Bureau TRS Order*, 18 FCC Rcd at 12836, paragraph 37 (emphasis added). Consistent with this statement, and in acceptance of Hands On's argument, the Commission now determines that the final 2003–2004 VRS rate of \$8.854 adopted in the *2004 TRS Report and Order* should be made fully retroactive to July 1, 2003, the beginning of the 2003–2004 Fund year. Accordingly, effective August 16, 2006, the Commission directs NECA to make appropriate supplemental payments to those VRS providers compensated for providing VRS in July and August 2003 that reflect the difference between the interim rate of \$7.751 per minute and the final rate of \$8.854 per minute.

#### Costs Directed at Meeting Waived Mandatory Minimum Standards

*Background.* Petitioners seek reconsideration of the Commission's conclusion that research and development costs directed at meeting waived mandatory minimum standards are not compensable. Hands On Petition at 17–20; CSD Petition at 18–22; see *2004 TRS Report and Order*, 19 FCC Rcd at 12523, 12547–12548, paragraphs 122, 188–190. For VRS, the following mandatory minimum standards are presently waived: providing STS; handling any type of call; emergency call handling; offering equal access to interexchange carriers; handling 900 calls; providing Voice Carry Over (VCO), Hearing Carry Over (HCO), VCO-to-TTY, HCO-to-TTY, VCO-to-VCO, HCO-to-HCO; call release; 3-way calling; and speed dialing. See *2004 TRS Report and Order*, 19 FCC Rcd at 12594–12596, Appendix E (waiver chart). They argue that when a mandatory minimum standard has been waived due to technological infeasibility, a provider

should be compensated for the expenses related to developing the technology to meet the waived standard. Hands On Petition at 18; *see also* CSD Petition at 18–22 (asserting that it is not reasonable to expect a provider to meet a standard by a certain date (*i.e.*, the date the waiver expires) if the provider cannot be compensated for the expenses associated with developing a means to meet the standard). CSD more specifically asserts that the Commission should permit the recovery of costs for research and development to enable VRS to meet the requirement that all TRS emergency calls be automatically and immediately transferred to an appropriate public safety answering point (PSAP). *See 2004 TRS Report and Order*, 19 FCC Rcd at 12521, paragraph 116. Because VRS is an Internet-based service, the VRS provider does not receive the automatic number identification (ANI) of the calling party, cannot identify the calling party's location, and therefore cannot automatically pass that information to the PSAP. *2004 TRS Report and Order* at 12522, paragraph 117. The Commission concluded that emergency call handling for VRS was technologically infeasible, and waived the requirement for VRS until January 1, 2006. *See 2004 TRS Report and Order* at 12522, paragraph 118. On November 30, 2005, the Commission released an NPRM seeking comment on rules for access to emergency services for the Internet-based forms of TRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, FCC 05–196, CG Docket No. 03–123, Further Notice of Proposed Rulemaking, FCC 05–196; published at 71 FR 5221 (February 1, 2006) (*2005 TRS 911 NPRM*)

*Discussion.* The Commission reaffirms the general principle that engineering and other expenses for research and development to meet waived mandatory minimum standards, or provide enhancements beyond applicable non-waived mandatory minimum standards, are not compensable from the Interstate TRS Fund. *2004 TRS Report and Order*, 19 FCC Rcd at 12523–12524, 12547–12548, paragraphs 122, 189. As the Commission explained, TRS providers are obligated to provide functionally equivalent service, and that functionality is defined by the applicable mandatory minimum standards. *2004 TRS Report and Order* at 12547–12548, paragraph 189. Title IV is intended to ensure that entities that offer telephone voice transmission services *also* offer TRS so that persons

with certain disabilities have access to the *functionality* of a voice telephone call. *See* 47 U.S.C. 225(a)(3) and (c). When “a provider offers eligible services that meet these standards it may recover its costs of doing so from the Interstate TRS Fund.” *2004 TRS Report and Order*, 19 FCC Rcd at 12547–12548, paragraph 189 (emphasis in original). As the Commission explained, “this conclusion best reconciles the Commission’s interest in avoiding placing undue burdens on the Interstate TRS Fund with the statutory mandate that the Commission’s regulations ‘do not discourage or impair the development of improved technology.’” *2004 TRS Report and Order*, 19 FCC Rcd 12548, paragraph 190 (quoting 47 U.S.C. 225(d)(2)).

The Commission recognized the “apparent ‘Catch-22’ that, so long as a mandatory minimum standard is waived, providers cannot be compensated for the costs of meeting the requirement, but that without additional compensation they cannot cover the costs of meeting the requirement to therefore justify the end of the waiver. *2004 TRS Report and Order*, 19 FCC Rcd at 12523–12524, paragraph 122. Nevertheless, the Commission took this approach because of the open-ended nature of the research and development that might be directed at a particular feature. The Commission stated that it would rely on the filing of annual reports for information indicating when the termination of a waiver may be appropriate and what additional costs may be necessary. In other words, the Commission concluded that it would require the providers to identify the manner in which the waived standard might be met, and the projected associated costs involved, *before* a provider devoted potentially unbounded resources to trying to find a way to meet the standard for a particular form of TRS.

The Commission continues to believe that, as a general matter, this approach is reasonable. First, to the extent that some waivers are the result of technological limitations presently inherent in Internet-based services generally, the Interstate TRS Fund should not be a source of funding to resolve these limitations. In addition, the Commission does not believe it can meaningfully determine what costs are reasonable when they are incurred to resolve technological issues that no one can resolve in the near term. Further, it may be impossible for some waived standards ever to apply to certain forms of TRS. Therefore, the Commission again concludes that, absent more specific direction from the Commission

resulting from the annual waiver reports or information otherwise brought to the Commission’s attention, providers may not be compensated from the Interstate TRS Fund for research and development to meet waived mandatory minimum standards. This principle applies to the waived emergency call handling requirement for VRS. Only in this way can the Commission prevent the Fund from becoming an open source of funding for research and development efforts over which the Commission, and the Fund Administrator, would have no control.

#### Other Issues

*MARS Plan.* Hamilton’s petition for reconsideration asserts that the Commission should not have applied “rate of return regulation” to traditional TRS, *i.e.*, regulation requiring that the providers are not entitled to compensation that constitutes profit (*e.g.*, a mark-up on expenses) but are limited to a rate of return on capital investment. Hamilton Petition at iii, 1; *see generally 2004 TRS Report and Order*, 19 FCC Rcd at 12542–12545, paragraphs 177–182. Hamilton asks the Commission to initiate a proceeding to adopt its proposed alternative cost recovery methodology (the Multi-state Average Rate Structure or MARS plan) for determining the compensation rate for traditional TRS. Hamilton Petition at 1–4. Under the MARS plan, the interstate traditional TRS rate would be calculated based on an average of the *intrastate* TRS rates paid by the states. According to Hamilton, this approach would be superior to the current cost recovery methodology because it is grounded in competition (because most states select an intrastate TRS provider through a competitive bidding process), it would be easier and less costly to administer, and would benefit consumers “by lowering interstate TRS rates to the competitively based market value.” Hamilton Petition at 2–3. In response to Hamilton’s petition, comments were filed by USTA, MCI, and Hands On, which generally support Hamilton’s request. USTA Comments at 1–4; MCI Comments at 2–4; Hands On Reply Comments at 3–4. Hamilton also filed reply comments, further urging the Commission to consider its MARS proposal. Hamilton Reply at 1–4. Because, however, the Commission construes Hamilton’s petition for reconsideration as a request that it adopts a new cost recovery methodology for traditional TRS, the Commission denies the petition for reconsideration to the extent it challenges the present cost recovery methodology for traditional TRS. *See generally 2004 TRS*

*Report and Order*, 19 FCC Rcd at 12542–12545, paragraphs 177–182. The Commission will treat this as a petition for rulemaking and request public comment on the MARS plan in a future notice of proposed rulemaking.

*VRS Speed of Answer*. Finally, several parties seek reconsideration of the extension of the waiver of the speed of answer requirement for VRS providers until January 1, 2006, or at such time the Commission adopts a speed of answer rule for VRS, whichever is earlier. See, e.g., CSD Petition at 13–18. See generally 2004 TRS Report and Order, 19 FCC Rcd at 12522–12524, paragraphs 119–123. On July 19, 2005, the Commission released the *VRS Speed of Answer Order*, which adopted speed of answer requirements for VRS providers, effective January 1, 2006. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, FCC 05–140, CC Docket No. 98–67 and CG Docket No. 03–123, (July 14, 2005), paragraphs 4–25; published at 70 FR 51649 (August 31, 2005) (*VRS Speed of Answer Order*). In the *VRS Speed of Answer Order*, the Commission required that: (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. Because the Commission has now adopted a speed of answer rule for VRS, this issue is moot.

#### Congressional Review Act

The Commission will not send a copy of the *Order on Reconsideration* pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

#### 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, the *Order on Reconsideration is hereby adopted*.

The petition for partial reconsideration filed by Hands On is granted in part and denied in part, as provided herein, and the petitions for reconsideration filed by CSD, NVRSC, and Hamilton are denied, as provided herein.

The final per-minute compensation rate for VRS for the 2003–2004 Fund

year of \$8.854 shall apply retroactively to all VRS minutes provided during that Fund year commencing July 1, 2003.

The *Order On Reconsideration* shall be effective August 16, 2006.

Federal Communications Commission.

**Marlene H. Dortch**,

*Secretary*.

[FR Doc. E6–13486 Filed 8–15–06; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03–123; FCC 06–88]

### 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 denies the applications for review and affirms the per-minute compensation rate for Video Relay Service (VRS) adopted by the Consumer and Governmental Affairs Bureau for the 2004–2005 fund year. Three parties filed applications for review challenging the per minute compensation rate for VRS, a form of telecommunications relay service (TRS).

**DATES:** Effective August 16, 2006.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at [Thomas.Chandler@fcc.gov](mailto:Thomas.Chandler@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This document does not contain new or modified information collection requirements subject to the PRA of 1995, 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 106–198, see 44 U.S.C. 3506(c)(4). This is a summary of the Commission’s document FCC 06–88, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, CG Docket No. 03–123, adopted June 20, 2006, released July 12, 2006

denying the applications for review filed by Communication Services for the Deaf, Inc. (CSD) on July 26, 2004, the National Video Relay Service Coalition (NVRSC) on July 20, 2004, and Hands On Video Relay Services, Inc. (Hands On) on July 20, 2004. The applications for review challenge the per-minute compensation rate for Video Relay Service adopted in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, (2004 Bureau TRS Rate Order), CC Docket No. 98–67, DA 04–1999, 19 FCC Rcd 12224, released June 30, 2004. This order was later modified in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, (Modified 2004 Bureau TRS Rate Order), CC Docket No. 98–67, DA 04–4063, 19 FCC Rcd 24981, released December 30, 2004.

The full text of document FCC 06–88 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, SW., Room CY–A257, Washington, DC 20554. Document FCC 06–88 and copies of subsequently filed documents in this matter may also be purchased from the Commission’s duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission’s duplicating contractor at their Web site <http://www.bcpweb.com> or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 06–88 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

#### Synopsis

##### Background

##### TRS Cost Recovery Framework

TRS. Title IV of the Americans with Disabilities Act of 1990 (ADA) requires common carriers offering “telephone voice transmission services” to also provide TRS throughout the area in which they offer service so that persons with hearing and speech disabilities will have access to the telephone system. 47 U.S.C. 225(c). The statute also mandates that eligible TRS providers be compensated for their costs