

*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*.

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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

of doing so. 47 U.S.C. 225(d)(3). As the Commission has explained, however, the cost recovery framework—and the annual determination of the TRS compensation rates—“is not akin to a ratemaking process that determines the charges a regulated entity may charge its customers,” but rather is intended to “cover the reasonable costs incurred in providing the TRS services mandated by Congress and the Commission’s regulations.” *2004 TRS Report and Order*, 19 FCC Rcd 12543, paragraph 179; published at 69 FR 53346, September 1, 2004; see generally 47 CFR 64.604(c)(5)(iii)(E) of the Commission’s rules (providers shall be compensated for the “reasonable costs” of providing TRS).

*VRS*. In 2000, the Commission recognized VRS as a 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 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 communications assistant (CA), a qualified interpreter, through a video link; the CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. 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; December 2005—3.1 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 makes payments to eligible providers based on per-minute compensation rates for traditional TRS, IP Relay, Speech-to-Speech (STS), and VRS. The compensation rates are set on an annual basis through a two-stage process. First, 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. The fund administrator then uses this data to propose compensation rates to the Commission for the particular fund year. The proposed rates are intended to compensate the providers for their “reasonable” costs of providing TRS. Second, 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”).

The fund administrator may “examine, verify, and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.” 47 CFR 64.604(c)(5)(iii)(c) of the Commission’s rules. The fund administrator therefore has the responsibility, in the first instance, to ensure the accuracy and reasonableness of the cost and demand data submitted by the providers so that its proposed rates will be based on permissible costs consistent with the TRS regulations and prior Commission orders.

Once the fund administrator reviews the submitted projected costs and minutes of use, it calculates 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 fund administrator’s proposed rates, the basis for those rates, and any comments received, and by June 30 issues an order adopting the TRS compensation rates for the following July 1 to June 30 fund year.

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, as was done in this proceeding. A rate order may also be challenged by filing a petition for reconsideration, as was done with respect to the *2003 Bureau TRS Order*. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98–67; DA 03–2111, 18 FCC Rcd 12823 (June 30, 2003) (*2003 Bureau TRS Order*). Those petitions were resolved in the *2004 TRS Report and Order*, 19 FCC Rcd at 12537–12552, paragraphs 163–200. 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*, Second Order on Reconsideration and Fourth Report and Order, CC Docket No. 90–571; 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*. See *2004 Bureau TRS Order*, 19 FCC Rcd 12231, paragraph 17, note 56 (listing rate orders); *2005 TRS Rate Order*.

#### Applications for Review

On June 30, 2004, the Bureau released the *2004 Bureau TRS Order*, which adopted NECA's proposed TRS per-minute compensation rates for traditional TRS and IP Relay, STS, and VRS, for the 2004–2005 fund year. *2004 Bureau TRS Order*, 19 FCC Rcd 12224. These rates, however, were subject to revision based on review of: “(1) any supplemental cost data relating to capital investment, and (2) any adjustments to cost disallowances challenged by a provider in response to this Order.” *2004 Bureau TRS Order*, 19 FCC Rcd 12225, paragraph 2. The rates were \$1.349 per-minute for interstate traditional TRS and interstate and intrastate IP Relay, \$1.440 per-minute for interstate STS, and \$7.293 per-minute for interstate and intrastate VRS. In calculating these rates, NECA disallowed certain costs submitted by some of the providers for each of the TRS services. See *2004 Bureau TRS Order*, 19 FCC Rcd 12232–12234, paragraphs 18–19 (traditional TRS and IP Relay), 22 (STS), and 25 (VRS). These rates were modified on December 30, 2004, by the *Modified 2004 Bureau TRS Rate Order*. The Bureau also approved NECA's proposed Interstate TRS fund size and carrier contribution factor. *2004 Bureau TRS Order*, 19 FCC Rcd 12224–12225, paragraphs 1–2. NECA proposed a total fund size requirement of \$289,352,701, and a carrier contribution factor of 0.00356.

In response to the *2004 Bureau TRS Order*, some, but not all, of the providers elected to submit capital investment data and/or to challenge the cost disallowances specific to their filings. These providers include Hands On, Sprint, and Hamilton. The Bureau reviewed the data submitted, and made appropriate adjustments to the TRS rates. The Bureau also reviewed every cost disallowance that was challenged by a provider, and added back some costs for some providers for the various TRS services. The Bureau offered to meet with any provider that desired to review and challenge its cost disallowances, and held several such meetings. Because of provider confidentiality issues, the Commission can only summarize the cost disallowances and the restoration of certain costs. Five providers had costs

disallowed. Two of these providers elected not to challenge NECA's proposed disallowances; in those cases, the disallowed costs were almost entirely profit and tax allowances, which do not constitute reasonable costs. See *2004 TRS Report and Order*, 19 FCC Rcd 12542–12545, paragraphs 177–182 (“reasonable costs” do not include a profit or mark-up on expenses). With respect to the remaining three providers, one provider had approximately 18% of its submitted costs initially disallowed by NECA, and approximately 30% of those costs restored; another provider had approximately 9% of its submitted costs initially disallowed, and approximately 92% of those costs restored; and one provider had approximately 3% of its submitted costs initially disallowed, and approximately 78% of those costs restored. As a result of these two adjustments, the Bureau recalculated the compensation rate for each of the TRS services. The Bureau announced that the VRS compensation rate would be \$7.596 per minute (an increase of \$0.303 over NECA's proposed rate). See *Modified 2004 Bureau TRS Order* (effective for the July 1, 2004, to June 30, 2005, fund year). The other final TRS compensation rates were: for eligible traditional TRS and IP Relay, \$1.398 per minute (an increase of \$0.049); for eligible STS, \$1.596 per minute (an increase of \$0.156).

Three parties challenged the *2004 Bureau TRS Order* and the determination of the VRS compensation rate. CSD's and NVRSC's filings were accompanied by petitions for emergency stay of the *2004 Bureau TRS Order*. Those petitions sought to have the VRS per-minute compensation rate of \$8.854, which was adopted as the final VRS rate for the September 1, 2003 to June 30, 2004 funding period, apply to the 2004–2005 fund year, and not the rate of \$7.293 adopted in the *2004 Bureau TRS Order*, until such time as the Commission resolves the applications for review and the “quality issues” raised in the *2004 TRS Report and Order's* Further Notice of Proposed Rulemaking (FNPRM). The Commission addresses the petitions for stay below, and denies them as moot.

Hands On makes three arguments related to the process by which NECA determined the proposed TRS rates, arguing that: (1) The *2003 Bureau TRS Order* “was not a sufficient guide” for NECA's evaluation of a provider's submitted cost data; Hands On Application at 17–18; (2) NECA lacked authority to review and disallow submitted cost data; Hands On Application at 22–23; and (3) providers

did not have the opportunity to contest disallowances; Hands On Application at 23–26. Hands On makes the related argument that even if the *2003 Bureau TRS Order* provided sufficient guidance for the determination of the TRS compensation rates, NECA did not follow that guidance. CSD asserts that the Bureau improperly excluded certain costs in setting the 2004–2005 VRS. CSD Application at 2–13. Finally, CSD and the NVRSC argue that the determination of the rate is at odds with the mandate that the Commission encourage new technology. CSD Application at 13–15; NVRSC Application at 7–11; see 47 U.S.C. 225(d)(2).

Hamilton's application for review challenges the *2004 Bureau TRS Order* to the extent it “abandoned the ‘cost-plus’ reimbursement rate methodology for traditional TRS.” Hamilton Application at 1. Hamilton notes, however, that this issue is “inextricably interwoven” with issues presented in the *2004 TRS Report and Order* (on which the *2004 Bureau TRS Order* relied), and that it filed the application for review “to ensure that the *2004 Bureau TRS Order* does not become a final order” before the Commission addresses Hamilton's petition for reconsideration of the *2004 TRS Report and Order*. Hamilton Application at 1–2. Therefore, Hamilton's real challenge is to the Commission's *2004 TRS Report and Order*, not to the *2004 Bureau TRS Order*. In these circumstances, the Commission denies Hamilton's application for review because it does not assert that the Bureau erred in adopting the *2004 Bureau TRS Order*. The Commission will address the pending petitions for reconsideration of the *2004 TRS Report and Order* in a separate order.

#### Discussion

##### The Process of Setting the 2004–2005 VRS Compensation Rate Was Proper

The Commission finds that the procedural arguments raised by Hands On are without merit. NECA properly looked to the prior *2003 Bureau TRS Order* for guidance in analyzing the submitted costs because that order was the most recent pronouncement on the relevant issues. At the time NECA filed its proposed 2004–2005 TRS compensation rates with the Commission, the *2003 Bureau TRS Order* was the only Commission or Bureau level order that specifically addressed cost disallowances. The *2003 Bureau TRS Order* reflected the general principle that the providers' submitted costs must relate to the “reasonable” costs of providing TRS, and that the

Commission has the duty to ensure that costs underlying the compensation rates are appropriate under this standard. *2003 Bureau TRS Order*, 18 FCC Rcd 12834–12836, paragraphs 32–37. The *2003 Bureau TRS Order* noted categories of submitted costs where the Bureau found that certain costs were not reasonable. *2003 Bureau TRS Order*, 18 FCC Rcd 12835, paragraph 34 (profit calculations, taxes, and labor costs are unreasonable). That order made clear that because of confidentiality concerns, the cost disallowances would be addressed individually with the providers. *2003 Bureau TRS Order*, 18 FCC Rcd 12835, paragraph 33 and note 91. Hands On contends that the *2003 Bureau TRS Order* did not sufficiently detail permissible costs, and as a result, NECA's cost adjustments were an unreliable basis for the Bureau's evaluation of its proposed rates. Hands On Application at 18–21. Hands On asserts, for example, that NECA did not sufficiently explain in its May 3, 2004, filing why it made the cost adjustments that it did, and did not tie those adjustments to the *2003 Bureau TRS Order*. Hands On Application at 19. As the Commission has noted, however, NECA's proposed rates are reviewed by the Bureau, which makes an independent determination of the appropriate TRS compensation rates. See paragraphs 5–8. Hands On acknowledges that the regulations specifically permit the fund administrator to examine, verify, and audit data it receives from the providers, but asserts that the regulations do not permit the fund administrator "to exclude categories of costs or to substitute its judgment for the good faith judgment of the providers." Hands On Application at 23. The Commission disagrees. It is the fund administrator's role to request and collect the providers' cost and demand data, to review that data for compliance with the Commission's rules, and to propose compensation rates to the Commission based on that data. See *2004 Bureau TRS Order*, 19 FCC Rcd 12239, paragraph 40 (rejecting the notion that NECA cannot make adjustments to cost data in proposing rates to the Commission). In so doing, the fund administrator need not defer to the judgment of the providers concerning what are allowable costs; indeed, such an arrangement would be an abdication of the administrator's role in overseeing the integrity of the fund.

Hands On further states that even if NECA has the authority to review and disallow submitted cost data, it must give the providers an opportunity to

contest the disallowances. The Commission agrees. Indeed, NECA did discuss possible cost adjustments with the providers, including Hands On, before it submitted its proposed rates to the Commission. See *2004 Bureau TRS Order*, 19 FCC Rcd 12229, paragraph 13 and note 43 (also citing NECA filing). NECA also provided the Commission with the details of its cost disallowances for each provider. See Hands On Supplement to Application for Review at 1–2 (noting meetings between the Bureau and Hands On addressing its cost disallowances); see also Ex parte letter from George L. Lyon, Jr., Counsel for Hands On, CC Docket No. 98–67 (filed October 25, 2004). In addition, the Bureau gave each provider, including Hands On, an opportunity to review and contest disallowances specific to it. Hands On further complains that NECA's report proposing the compensation rates to the Commission does not detail individual cost disallowances. Hands On Supplement to Application for Review at 23–26; see also Hands On Supplement to Application for Review at 2 (asserting that all elements of rate determination, including all of the providers' cost disallowances, must be on the public record). The Bureau reviewed Hands On's cost disallowances with Hands On in great detail in meetings and over the telephone, and as a result, the Bureau restored nearly one-third of the costs initially disallowed. Hands On's challenges to those disallowed costs not restored are addressed below. See paragraph 17. Because of confidentiality issues, all cost disallowances are not shared with all providers. See generally *2004 Bureau TRS Order*, 19 FCC Rcd 12239, paragraph 39 (noting that NECA cannot detail all cost disallowances because of confidentiality issues); see 47 CFR 64.604(c)(5)(iii)(I) of the Commission's rules (requiring the fund administrator to keep the providers' data confidential).

In sum, neither Hands On, nor any other provider, has been denied a meaningful opportunity to challenge any cost disallowances specific to it under the procedures outlined above and followed by the fund administrator and the Bureau in adopting the 2004–2005 TRS compensation rates. NVRSC makes the related argument that the Bureau erred by adopting NECA's proposed VRS compensation rate when the Bureau also noted it might subsequently modify the rate based on submissions of capital investment data and challenges to specific cost disallowances. NVRSC Application at 9. The *Modified 2004 Bureau TRS Order*,

however, applied the modified VRS rate to the entire 2004–2005 fund year, thus ensuring that the compensation rates properly reflected all reasonable costs of providing the services. Further, the adoption of the modified rate makes NVRSC's argument moot.

#### The 2004–2005 VRS Rate Properly Excluded Quality of Service Factors

The Commission rejects claims that the Bureau did not properly consider the effect of the VRS rate on the quality of service, and should have allowed costs related to waived requirements. See generally CSD Application at 3–8; NVRSC Application at 13–15; Hands On Application at 4–16. TRS compensation rates are designed to compensate providers for the reasonable costs of providing service in compliance with non-waived mandatory minimum standards.

Arguments regarding quality of service generally concern the effect of the rate on the ability of providers to offer VRS 24 hours a day, seven days a week (24/7), and to promptly answer calls. The Commission raised these quality of service issues in the *2004 TRS Report and Order's FNPRM*, and did not adopt speed of answer and 24/7 service requirements for VRS until July 14, 2005. *VRS Speed of Answer Order* at paragraph 1 (the requirements are effective January 1, 2006). The Bureau does not have the discretion to include costs in its calculations that relate to matters that the Commission has raised only in a pending *FNPRM*, or that the Commission has indicated are not appropriate for reimbursement. Such costs include, for example, engineering, research and development, or other costs relating to enhancements that go beyond the required standards applicable to the particular service. *2004 TRS Report and Order*, 19 FCC Rcd 12547–12548, 12551, paragraphs 189–190, 197. The Commission agrees with the Bureau that "providers are not entitled to unlimited financing from the Interstate TRS Fund to enable them to further develop a service that is not even required." *2004 Bureau TRS Order*, 19 FCC Rcd 12236, paragraph 31, note 84. This statement was taken from the Commission's *2004 TRS Report and Order*. Therefore, CSD's argument is directed not at the *2004 Bureau TRS Order*, but rather the *2004 TRS Report and Order*. The Commission finds, therefore, that because the Commission had only proposed speed of answer and 24/7 service requirements for VRS at the time the Bureau adopted the 2004–2005 rate, the Bureau correctly excluded costs of meeting such requirements from the 2004–2005 rate calculations. Such costs

may be included in subsequent cost submissions, and the resulting rate will reflect reasonable costs incurred to comply with these new requirements. CSD makes the related assertion that the VRS rate was based on the incorrect assumption that the “lower” VRS rate adopted for the previous fund year (2003–2004) did not affect the quality of VRS service. CSD Application at 8–10; *see also* NVRSC Application at 15. The order itself makes clear, however, that the VRS rate was adopted based solely on the projected cost (and demand) data submitted by the providers, as modified based on certain disallowances. *2004 Bureau TRS Order*, 19 FCC Rcd 12242, paragraph 50.

Section 225 of the Communications Act provides that the Commission shall ensure that its TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. CSD Application at 13–14. NVRSC asserts the VRS rate is too low to allow providers to enhance the quality of the service through the development of new and improved technology. NVRSC Application at 8–10; *see generally* 47 U.S.C. 225(d)(2). Petitioners argue that, pursuant to section 225 of the Communications Act, providers should be compensated from the Interstate TRS Fund for research and development directed at complying with technical and operational standards that have been waived. CSD Application at 13–15; NVRSC Application at 19–20. The Commission rejects this argument. As a general matter, the Commission believes that the principle recognized in the *2004 TRS Report and Order*—that compensable costs must be directed to providing the service in compliance with applicable non-waived mandatory minimum standards *2004 TRS Report and Order*, 19 FCC Rcd 12547–12548, paragraphs 189–190—is consistent with the mandate that the Commission not impair the development of new technology. Providers are free to develop new TRS features and services to enhance the provision of TRS, and may gain a competitive advantage in doing so. But 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. Moreover, the very existence of VRS—and the Commission’s adoption of other new forms of TRS such as Captioned Telephone service *See, e.g., See Telecommunications Relay*

*Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98–67, CG Docket No. 03–123, FCC 05–141; published at 70 FR 54294, September 14, 2005 (finding that two-line Captioned Telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund)—reflect the Commission’s faithful adherence to encouraging new technologies to meet this statutory mandate.

#### The Cost Disallowances Related to Installation Were Proper

The Commission rejects Hands On’s assertion that the Interstate TRS Fund should pay for its installation of video cameras and VRS software at its customers’ premises (which includes on-site training) to ensure “connectivity.” Hands On Application at 35. Hands On’s application for review challenges other cost disallowances. *See* Hands On Application at 26–37. Subsequent to the filing of Hands On’s application for review, however, the Bureau reviewed with Hands On its cost disallowances, and ultimately restored approximately 30% of the initially disallowed costs. As a result, subsequent to the release of the *Modified 2004 Bureau TRS Order*, Hands On withdrew its objections concerning cost disallowances in the areas of accounting staff, corporate overhead, operations, software licensing, and general and administrative personnel. Hands On Supplement to Application for Review at 2–3. Hands On’s supplemental filing, however, does not address its initial challenges to cost disallowances for engineering personnel. *See* Hands On Application at 30–31. After meetings between the Bureau and Hands On, Hands On agreed that some of the excluded engineering personnel could be removed, and the Bureau ultimately restored costs for some other engineering personnel previously excluded. Therefore, issues regarding disallowances for engineering personnel have been resolved. Installation expenses are not “reasonable costs” of providing TRS, and are not permitted for any provider. The Commission has consistently stated that compensable expenses must be the providers’ expenses in making the service available and not the customer’s costs of receiving the service. *See, e.g., 2004 TRS Report and Order*, 19 FCC Rcd 12543–12544, paragraphs 179, 181. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or

installation of the equipment or any necessary software.

#### Allowance for Working Capital

The Commission rejects Hands On’s contention that the Bureau should have adopted a higher allowance for working capital. This factor, which was set at 1.4 percent, compensates the providers for the time they are out of pocket their expenses before they are compensated by NECA. Hands On Application at 20–21; *see 2004 Bureau TRS Order*, 19 FCC Rcd 12230, paragraph 16 and note 53 (setting forth in detail the derivation of the 1.4 percent figure for an allowance for working capital). Hands On asserts that the 1.4 percent figure does not adequately cover the time period for which providers are out of pocket their expenses because it is based on a 30 day period rather than a 45 day period. Hands On Application at 20–21. Hands On maintains that, although the providers are reimbursed on a monthly basis one month after service is provided, they incur costs at the beginning of each month, but do not receive compensation for that month until the end of the following month. Hands On Application at 20.

Hands On’s argument confuses when a provider incurs an expense with when the provider pays the expense. The purpose of the working capital allowance is to reimburse the providers for the time they are actually out of pocket money they have paid for services rendered. Even granting Hands On’s assumption that most of the providers’ costs are labor costs, and that “most providers pay their employees semi-monthly,” the Commission believes that the 30 day period reasonably compensates the providers for the time they are actually out of pocket. Hands On Application at 21. Assuming, for example, that employees are paid on the 15th and 30th of the month, the average payment date would be the 22nd. The Commission also assumes that labor is paid at least a week in arrears, *i.e.*, that payment is not concurrent with period of performance. For example, the payment on the 15th of the month would be for labor from the 22nd of the prior month to the 8th of the month, and the payment on the 30th of the month would be for labor from the 8th to the 22nd of the month. Under these circumstances, the average out-of-pocket date for labor incurred in a particular month, which would be paid by NECA at the end of the following month, would be the 30th of the month. Further, the Commission assumes that other types of expenses are generally paid approximately 30 days after the provider is billed. Accordingly,

the Commission declines to increase the working capital allowance.

The 2003–2004 VRS Compensation Rate Does Not Apply to the 2004–2005 Fund Year

The Commission rejects CSD's and NVRSC's argument that, instead of adopting a VRS rate for the 2004–2005 fund year based on the cost and demand data submitted by the providers for that fund year, the Bureau should have continued to apply the modified VRS rate adopted in the 2004 TRS Report and Order (\$8.854 per minute) applicable to the previous fund year (2003–2004), pending resolution of VRS issues raised in the 2004 TRS Report and Order's FNPRM. CSD Application at 16–17; NVRSC Application at 9–10, 18–20. NVRSC asserts that the Bureau should *not* have followed the 2004 TRS Report and Order in adopting the 2004–2005 VRS rate, but rather should have continued the VRS rate from the 2003–2004 fund year. NVRSC Application at 9–10. According to CSD and NVRSC, VRS providers should be compensated at the rate of \$8.854 per minute in 2004–2005, not at the rate of \$7.596 ultimately adopted by the Bureau for the 2004–2005 fund year. CSD Application at 15–16; NVRSC Application at 20.

This argument is inconsistent with the cost recovery mechanism that has been in place for over ten years. As explained above, for each fund year the compensation rates are based on the providers' own projected cost and demand data for the upcoming two-year period. If there is concern that the rates were not calculated correctly, the answer is not to apply rates from a previous fund year based on an entirely different set of cost and demand projections, but to review the calculation of the challenged rates and the data upon which they rely and make any resulting adjustments retroactive to the beginning of the fund year. In this instance, therefore, no basis to apply the VRS rate from the 2003–2004 fund year to the 2004–2005 fund year.

The Emergency Petitions for a Stay of the 2004 Bureau TRS Order

CSD and NVRSC filed a petition for emergency stay, seeking to have the 2003–2004 VRS per-minute compensation rate of \$8.854 apply to the 2004–2005 fund year, instead of the rate of \$7.293 adopted in the 2004 Bureau TRS Order for the 2004–2005 fund year, until such time as the Commission resolved the pending applications for review. The petitions for an emergency stay accompanied the applications for review. Because, as set forth above, the Commission has

affirmed the 2004 Bureau TRS Order (as modified by the Modified 2004 Bureau TRS Order), and have rejected the argument that the 2003–2004 VRS rate should apply in the 2004–2005 fund year, the Commission dismisses the stay requests as moot.

#### Congressional Review Act

The Commission will not send a copy of the Memorandum Opinion and Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(1A), 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, that the Memorandum Opinion and Order is hereby adopted.

The applications for review filed by CSD, Hands On, NVRSC, and Hamilton are hereby *denied*, as provided herein.

The Memorandum Opinion and Order shall become effective August 16, 2006.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–13490 Filed 8–15–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06–1531; MB Docket No. 05–297; RM–11290]

#### Radio Broadcasting Services; Savanna, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** At the request of Charles Crawford, the Audio Division allots Channel 275A at Savanna, Oklahoma, as the community's first local aural transmission service. A later filed minor change application, File No. BPH–20050509AAB, filed by JDC Radio, Inc., licensee of Station KQIB(FM), Channel 275C3, Idabel, Oklahoma, is dismissed. Channel 275A is allotted at Savanna with a site restriction of 7.0 kilometers (4.3 miles) south at coordinates 34–46–00 NL and 95–50–00 WL. A filing window period for Channel 275A at Savanna will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

**DATES:** Effective September 11, 2006.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–297, adopted July 26, 2006, and released July 28, 2006. At the request of Charles Crawford, the Audio Division allots Channel 275A at Savanna, Oklahoma, as that community's first local aural transmission service. 70 FR 70775 (November 23, 2005). The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Savanna, Channel 275A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6–13359 Filed 8–15–06; 8:45 am]

**BILLING CODE 6712–01–P**