

On August 24, 2006, the National Association of Regulatory Utility Commissioners filed a motion requesting an extension of the comment date to October 25, 2006, and the reply comment date to December 9, 2006.

The WCB determined that providing additional time to file comments and reply comments will facilitate the development of a more substantive and complete record in this proceeding. Although it is the policy of the Commission that extensions of time shall not be routinely granted, given the extensive nature of the Missoula Plan and the complexity of the proposals contained therein, the WCB determined that good cause exists to provide parties an extension of time, from September 25, 2006 to October 25, 2006 for filing comments, and from November 9, 2006 to December 11, 2006 for filing reply comments in this proceeding.

Accordingly, *it is ordered* that, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. 154(i), 154(j), 155(c), and sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 CFR 0.91, 0.291, 1.46, the pleading cycle established in this matter shall be modified as follows:

*Comments Due:* October 25, 2006.

*Reply Comments Due:* December 11, 2006.

*It is further ordered* that the Motion of the National Association of Regulatory Utility Commissioners for Extension of Time is *granted*, as set forth herein.

Federal Communications Commission.

**Donald K. Stockdale,**

*Associate Chief, Wireline Competition Bureau.*

[FR Doc. E6-15196 Filed 9-12-06; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03-123; FCC 06-106]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on a broad range of issues concerning the compensation of providers of telecommunications relay services (TRS) from the Interstate TRS Fund (Fund). The Commission seeks comment on: Alternative cost recovery

methodologies for interstate traditional TRS and Speech-to-Speech (STS), including Hamilton Relay, Inc.'s (Hamilton) proposed "MARS" plan ("Multi-state Average Structure"), and also whether traditional TRS and STS should be compensated at the same rate; the appropriate cost recovery methodology for Video Relay Service (VRS) and the length of time the VRS rate should be in effect; issues relating to "reasonable" costs compensable under the present cost recovery methodology, including whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund, and ways to improve the management and administration of the Fund, including adopting measures for assessing the performance and efficiency of the Fund and to deter waste, fraud, and abuse.

**DATES:** Comments are due on or before October 30, 2006. Reply comments are due on or before November 13, 2006. Written Paperwork Reduction Act (PRA) comments on the proposed information collection requirements should be submitted on or before November 13, 2006.

**ADDRESSES:** You may submit comments, identified by [CG Docket number 03-123 and/or FCC Number 06-106], 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](mailto: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, you may submit your PRA comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to [PRA@fcc.gov](mailto:PRA@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](mailto:Kristy_L_LaLonde@omb.eop.gov), or via fax at (202) 395-5167. To submit your comments by U.S. postal mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1-C216, 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). For additional information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418-0217, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Further Notice of Proposed Rulemaking *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (2006 Cost Recovery FNPRM)*; CG Docket No. 03-123, FCC 06-106, 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 document FCC 06-106, TRS and STS Services for Individuals with Hearing and Speech Disabilities, *2006 Cost Recovery FNPRM*, CG Docket No. 03-123, adopted July 13, 2006, released July 20, 2006, seeking comment on issues concerning the compensation of TRS providers from the Fund. 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](mailto: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](mailto: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 *2006 Cost Recovery FNPRM* 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 PRA of 1995, Public Law 104–13. Public and agency comment are November 13, 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:** 3060–0463.

**Title:** Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *2006 Cost Recovery Further Notice of Proposed Rulemaking*, CG Docket No. 03–123, FCC 06–106.

**Form No.:** N/A.

**Type of Review:** Revision of currently approved collection.

**Number of Respondents:** 5,060.

**Number of Responses:** 5,066.

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

**Estimated Time per response:** 10 hours.

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

**Total Annual Hourly Burden:**

\$11,148.

**Total Annual Costs:** \$0.

**Privacy Act Impact Assessment:** No impact(s).

**Needs and Uses:** On December 21, 2001, the Commission released the *2001 TRS Cost Recovery MO&O & FNPRM*, In the Matter of Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guideline, CC Docket No. 98–67, FCC 01–371. In the *2001 TRS Cost Recovery MO&O & FNPRM*, the Commission directed the TRS administrator to continue applying the average per minute compensation methodology to develop traditional TRS compensation rates; required TRS providers to submit certain TRS-related costs and demand data to TRS Fund administrator; and directed the TRS administrator to expand the TRS Center Data Request, a form for providers to itemize their actual and projected cost and demand data, to include specific sections to capture STS costs and completed conversation minutes for STS and VRS.

On July 20, 2006, the Commission released a *2006 Cost Recovery FNPRM*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–106. The Commission seeks comment on a broad range of issues concerning the compensation of providers of TRS from the Interstate TRS Fund (Fund). In the *2006 Cost Recovery FNPRM*, the Commission seeks comment on: (1) Hamilton’s proposed “MARS” plan and alternative cost recovery methodologies for traditional TRS, STS and Internet Protocol (IP) Relay, including any possible changes to the existing TRS Center Data Request form; (2) appropriate cost recovery methodology for VRS, including possible changes to the existing TRS Center Data Request form; and (3) the basis of “reasonable” costs of providing all forms of TRS that should be compensable under present cost recovery methodology, including marketing and outreach expenses, overhead costs and executive compensation. Also, in the *2006 Cost Recovery FNPRM*, the Commission proposes to improve the efficiency of the rate setting process, and to ensure the reasonableness of the compensation rates for all forms of TRS. The *2006 Cost Recovery FNPRM* proposes a mandatory reporting requirement that TRS providers compensated from the Interstate TRS Fund would be required to submit rate data to the Commission, either annually or for a multi-year period, for the states in which they provide service.

## Synopsis

### Background

#### *TRS Cost Recovery Framework*

*TRS.* When section 225 of the Communications Act was enacted and implemented, TRS calls were placed using a TTY connected to the Public Switched Telephone Network (PSTN) (traditional TRS). In March 2000, the Commission recognized several new forms of TRS, including STS and VRS. STS is used by persons with a speech disability. Specially trained Communications Assistants (CAs) who understand the speech patterns of persons with speech disabilities repeat the words spoken to the other party to the call. The Commission made STS a mandatory service, so that all states with a certified state TRS program must offer this service. VRS is an Internet-based form of TRS that allows the TRS user whose primary language is American Sign Language (ASL) to communicate with the CA in ASL, rather than text, through a video link. In April 2002, the Commission recognized a second Internet-based form of TRS—IP Relay. Like traditional TRS, IP Relay uses text, but the user connects to the CA via the Internet and a personal computer or other web-enabled device. Most recently, in August 2003, the Commission recognized captioned telephone service as a form of TRS.

#### *Compensation of TRS Providers.*

Section 225 of the Communications Act creates a cost recovery regime whereby providers of TRS are compensated for the reasonable costs caused by TRS. This regime is based on the “jurisdictional separation of costs.” Section 225 of the Communications Act provides that the costs caused by interstate TRS “shall be recovered from all subscribers for every interstate service,” and the costs caused by the provision of intrastate TRS “shall be recovered from the intrastate jurisdiction.” As a general matter, the costs caused by intrastate TRS are recovered by each state. No specific funding method is required for intrastate TRS or state TRS programs. States generally recover the costs of intrastate TRS either through rate adjustments or surcharges assessed on all intrastate end users, and reimburse TRS providers directly for their intrastate TRS costs. Most states presently select one provider to offer TRS within the state.

With respect to interstate TRS, there are two aspects to the cost recovery framework set forth in the regulations: (1) Collecting contributions from common carriers providing interstate

telecommunications services to create a fund from which eligible TRS providers may be compensated; and (2) compensating eligible TRS providers from the Fund for the costs of providing eligible TRS services. In creating the Interstate TRS Fund, the Commission enacted a shared funding mechanism based on contributions from all carriers who provide interstate telecommunications services. All contributions are placed in the Fund, which is administered by the TRS Fund administrator, currently the National Exchange Carrier Association, Inc. (NECA). The Fund administrator uses these funds to compensate “eligible” TRS providers for the costs of providing TRS. Compensation is based on per-minute rates adopted each year by the Commission. There are currently four different compensation rates for the different forms of TRS: traditional TRS, IP Relay, STS, and VRS.

To determine the annual per-minute compensation rates under the present cost recovery methodology, TRS providers are required to submit to the Fund administrator projected cost and minutes of use data for a two-year period. Specifically, TRS providers must supply the administrator with “total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment,” as well as “other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements.” Using this data, the Fund administrator determines the average per-minute compensation rate for the various forms of TRS, and submits the rates to the Commission for approval. The Commission issues a rate order each year by June 30, either approving or modifying these rates.

#### *Discussion*

In recent years, the annual determination of the TRS compensation rates—and particularly the VRS rate—under the present methodology has presented a variety of regulatory and administrative challenges. Further, comments filed in response to NECA’s filing of proposed compensation rates for the 2006–2007 Fund year reflect dissatisfaction with the rate setting process, as well as with the proposed rates. Thus, the Commission seeks comment on numerous issues relating to the cost recovery methodology used for determining the TRS compensation rates paid by the Fund, as well as the scope of the costs properly compensable under section 225 of the Communications Act and the TRS regime as intended by Congress.

In so doing, the Commission is mindful of the role of TRS as an accommodation under the ADA for persons with disabilities. As the Commission has stated, “because Title IV places the obligation on carriers providing voice telephone services to also offer TRS to, in effect, remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities, the costs of providing TRS are really just another cost of doing business generally, *i.e.*, of providing voice telephone service.” For this reason, “the annual determination of the TRS compensation rates is not akin to a rate-making process that determines the charges a regulated entity may charge its customers,” but rather “it is a determination of a per-minute compensation rate that will cover the reasonable costs incurred in providing the TRS services mandated by Congress and our regulations.” As the Commission has stated in the context of disallowing research and development expenses, the Fund is not intended to be “an unbounded source of funding for enhancements that go beyond [the mandatory minimum] standards.” It follows that the use of TRS cost recovery methodologies and procedures that fairly and predictably compensate providers for the reasonable costs of providing service will not only be faithful to the intent of the ADA, but will also benefit all consumers.

#### *Cost Recovery Methodology for Traditional TRS, STS, and IP Relay*

##### *Hamilton’s MARS Plan*

Hamilton requests that the Commission initiate a proceeding to adopt a proposed alternative cost recovery methodology—the “MARS” Plan—for determining the per-minute compensation rate for traditional TRS. Under the proposed MARS plan, the interstate traditional TRS rate would be calculated based on a weighted average of the intrastate TRS rates paid by the states. In addition, because some states base their TRS rate on “session minutes,” rather than “conversation minutes,” Hamilton proposes using a factor to convert session minutes to conversation minutes. Hamilton bases its proposal on the intrastate TRS data from twenty-three states for which information was readily available.

According to Hamilton, the MARS plan is a superior approach to the current cost recovery methodology for traditional interstate TRS because it is grounded in competition, as most states select an intrastate TRS provider through a competitive bidding process. Hamilton also asserts that this approach

would be easier and less costly to administer and will benefit consumers “by lowering interstate TRS rates to the competitively-based market value.”

Hamilton also notes that under the present cost recovery methodology—what it calls “rate of return regulation”—the Fund administrator and the Commission have “to examine the minutiae of each TRS providers’ costs and capital investments,” and review all costs submitted by each provider to determine whether to allow or disallow each individual cost. Hamilton adds that this “complicated rate-making process \* \* \* will only get more complicated as providers seek to include ever more of their costs in the rate base.” Hamilton also asserts that the present methodology “fails to replicate the competitive market and instead discourages efficiency and encourages the ‘padding’ of investment.”

Hamilton asserts that, by contrast, the MARS plan would eliminate the need to examine any carrier data. Under the plan, the Fund administrator would simply collect the per-minute rate and minutes of use for each state, which are “presumptively competitive rates \* \* \* because they have been subject to a state contract competitive bidding process,” and determine the interstate rate by averaging those rates, adjusted for minutes of use. Hamilton notes that this plan would avoid the costs associated with collecting, evaluating, correcting, and re-evaluating TRS provider data.”

*Use of the MARS Plan.* The Commission seeks comment on whether the it should adopt the MARS plan, in whole or in part (such as in a hybrid approach in which the MARS plan is used to set a rate cap), as the cost recovery methodology for traditional interstate TRS and possibly, other forms of TRS, such as STS. Under the MARS Plan the compensation rate for traditional interstate TRS is based on an average of state rates for intrastate traditional TRS. In contrast, the present methodology is based on projected cost and demand data submitted by the providers. The Commission seeks comment generally on whether the MARS plan, because it is based on competitively bid state rates, will result in a fairer, more reasonable compensation rate. The Commission urges commenters to address the advantages and disadvantages of the present methodology, the MARS plan, and any alternative approach based, in whole or in part, on either.

The Commission also seeks comment on the fact that some states compensate for session minutes, rather than conversation minutes. The Fund presently compensates providers for

conversation minutes (*i.e.*, actual conversation time between the calling and called party), not session minutes (*i.e.*, time the CA spends on a call). Because some state rates are based on session minutes, Hamilton proposed calculating a conversion factor to convert the session minute rates to conversation minute rates. The Commission seeks comment on the appropriateness of converting session minutes to conversation minutes, and specifically on how the factor should be calculated and applied. The Commission also seeks comment on whether it would be more appropriate to use session minutes instead of conversation minutes. Further, the Commission seeks comment on whether some states’ practice of rounding call minutes to the nearest full minute might affect the use of the MARS plan, and if so, how.

The Commission also seeks comment on how the MARS plan might be implemented. For example, if a state rate has been based on the interstate rate, inclusion of that state’s rate into the MARS plan calculation may not be appropriate. The Commission seeks comment on whether any other factors that might warrant excluding a particular state’s rate from the calculation. The Commission also seeks comment on how often states adopt TRS compensation rates. The Commission also seeks comment on what data would be required from the states and the extent to which this data is readily available. In addition, the Commission asks parties to comment on any other issues relating to the implementation of the MARS plan and the calculation of rates under that approach, including the costs and benefits of implementing this plan.

In addition, Hamilton proposes to weight the individual state rates by that states’ total minutes of use so that states with relatively high rates and low minutes of use do not skew the average. The Commission seeks comment on whether it would be appropriate to weight the states’ rates, and, if so, how a weighted rate should be calculated.

#### Application of MARS Plan to STS

The Commission recognizes that the MARS Plan is specifically proposed as a methodology for developing the compensation rate for interstate traditional TRS. Because intrastate STS is also a mandatory form of TRS, the Commission seeks comment on whether the MARS plan (or a similar plan based on state STS rates) could also be used to determine the interstate STS compensation rate. The Commission also seeks comment on other issues

concerning implementation of the MARS plan as applied to STS, including the exclusion of particular states’ rates, the effect of using session minutes rather than conversation minutes, using a weighted average, and whether the rate period should be one year or some longer period.

#### Same Compensation Rate for Traditional TRS, STS, and IP Relay

NECA has noted that in recent years, given the small demand for this service, the STS compensation rate has not been stable. NECA therefore recommends in its filing for the 2006–2007 Fund year that the Commission consider adopting one rate that would apply to both STS and traditional TRS, based on consolidating the providers’ data for these services. The Commission seeks comment on whether the same rate should apply to both traditional TRS and STS, under the existing cost recovery methodology, the MARS plan (or a similar type of plan based on state rates), or any other methodology, including modified versions of the existing cost recovery methodology and/or the MARS plan. The Commission further seeks comment on any other matters relating to whether traditional TRS and STS should be compensated at the same rate.

The Commission seeks comment on whether IP Relay calls should also be compensated at the same rate as traditional TRS. The Commission understands that in many instances the same CAs working at the same TRS facility handle traditional TRS and IP Relay calls interchangeably, and that the only difference between the calls is how they reach the relay center (*i.e.*, via the PSTN or via the Internet). The Commission seeks comment generally on this assumption, and on any cost differences between providing traditional TRS and providing IP Relay.

#### Alternative Cost Recovery Methodologies for Traditional TRS, STS, and IP Relay

The Commission also seeks comment on whether other cost recovery methodologies might be appropriate for traditional TRS, STS, and IP Relay, and easier to administer and result in more predictable rates than the current methodology. For example, the Commission seeks comment on whether the interstate traditional TRS and STS rates should simply be the same as the intrastate rate paid for a similar call coming into the relay center and handled by the same provider. Under this approach, an interstate traditional TRS or STS call originating in Maryland would be compensated at the intrastate

rate for intrastate calls in the state of Maryland. Because the actual cost of providing a traditional TRS or STS call should be the same regardless of its jurisdictional nature, the intrastate rate may provide a reasonable and fair recovery for interstate calls as well.

The Commission seeks comment on this proposal and any related issues, including whether this methodology may be burdensome or overcomplicated, or whether there might need to be an adjustment to the compensation for interstate calls if, for example, the intrastate rate is impacted by requirements different from the interstate requirements. In these circumstances, for example, the compensation rate might appropriately be based on the lesser of the rate resulting from the MARS plan or the rate the particular state pays for intrastate calls. The Commission also seeks comment on this alternative.

#### Use of a "True-up" or Transition to Actual Costs

The Commission also seeks comment on whether, under the MARS plan or any other cost recovery methodology for traditional TRS, STS, and IP Relay, there should be a "true-up" at the end of the Fund-year based on actual reasonable costs. Under a true-up, providers would be required to reimburse the Fund for any amount by which their payments exceed actual reasonable costs.

The Commission seeks comment generally on any issues relating to the use of a true-up, including how a true-up could be implemented, what record keeping requirements might be required, and when and how often the true-up should occur. The Commission also seeks comment on whether, and how, to transition to a cost recovery methodology under which rates are set based on actual reasonable costs, thus eliminating any need for a true-up in most, if not all, cases.

#### Rate Period for Traditional TRS, STS, and IP Relay

Finally, the Commission seeks comment on whether the interstate traditional TRS rate, the interstate STS rate, and the IP Relay rate should continue to be set for a one-year period or whether a longer rate period is appropriate. The Commission seeks comment on the advantages and disadvantages of using either a one-year rate period or some longer or shorter period of time for these services.

#### *Cost Recovery Methodology for VRS*

##### The Appropriate Cost Recovery Methodology

Because of the continued sharp growth in the use of VRS, open issues concerning what costs may appropriately be included in determining the compensation rate under the current methodology, and the providers' demonstrated inability to accurately forecast demand, the Commission seeks additional comment on the issues raised in 2004 (and summarized above). The Commission also notes that, since 2004, the Commission has adopted VRS speed of answer and interoperability requirements, which may also affect cost recovery issues. In addition, the Commission has recently permitted entities desiring to offer VRS to be certified by the Commission. As a result, the Commission expects additional VRS providers to enter the market. Many of these providers, like some of the existing providers, will not be traditional telephone companies and therefore, may present unique cost issues. For these reasons, the Commission believes that it is important to refresh the record on what the appropriate cost recovery methodology for VRS should be.

The Commission is particularly interested in adopting a methodology that would result in more predictability for the providers, and be consistent with the principle that TRS is intended to be an accommodation for persons with disabilities, entitling providers to their "reasonable" costs of providing this service. The Commission therefore seeks comment on whether modifications should be made to the current methodology or whether there is a methodology other than the current compensation scheme that is more appropriate. For example, should the Commission adopt a compensation methodology for VRS where funds are disbursed based on each individual provider's actual, reasonable costs? Should the Commission treat VRS as a national service, seek competitive bids, and thereby permit the two or three lowest bidders to provide service at the lowest bid rate, or set compensation rates based on the lowest bid, with some sort of incentive or disincentive built into the auction process to ensure competitive bidding without limiting the number of ultimate providers at that rate? The Commission seeks comment on these proposals and any other issues relevant to adopting an appropriate cost recovery methodology for VRS.

#### Use of a "True-up" or Transition to Actual Costs

The Commission also seeks comment on whether, under whatever methodology is used, providers should be required to reimburse the Fund for any amount by which their payments exceed reasonable actual costs. A true-up based on reasonable actual costs might both minimize incentives for providers to underestimate projected minutes of use and overstate projected costs, and ensure that providers are not over-compensated. The Commission seeks comment on whether any such over-compensation from the Fund can be reconciled with section 225 of the Communications Act.

#### Rate Period for VRS

In 2004, Commission sought comment on whether it is difficult for VRS providers to plan and budget for the provision of this service, particularly with regard to labor costs and staffing. *2004 TRS Report and Order*, 19 FCC Rcd at 12569, paragraph 247; published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004. The Commission also recognized that, as a general matter, the operating expenses for VRS are more complex than with the other forms of TRS, and overall the costs are higher. The Commission therefore sought comment on whether the VRS compensation rate should be set for a two-year period, rather than a one-year period.

#### *"Reasonable" Costs and Confidentiality of Provider Data*

NECA's Data Collection Form sets forth several categories of costs related to the provision of TRS for which providers may seek compensation. These categories apply to all forms of TRS. As discussed below, in some instances these categories of costs may not be defined with sufficient clarity, and therefore providers may have been submitting costs that should not be included in the compensation rates as reasonable costs of providing service. For this reason, with regard to certain types of costs the Commission seeks comment on the nature and extent of such costs that are reasonable and consistent with section 225 of the Communications Act.

#### *Marketing and Outreach Expenses*

The Commission seeks comment on the extent to which marketing and outreach should continue to be compensated by the Fund. To the extent these activities should be covered, the Commission seeks comment on the types of expenses that should be covered and whether there is a

distinction between a marketing and outreach, and if so, how each should be defined.

The Commission seeks comment on the nature of outreach and marketing expenses that may properly be compensable under section 225 of the Communications Act, and how these expenses may be more precisely defined. The Commission also seeks comment on whether *any* marketing expenses are properly includable in the rates. The Commission notes that, as a general matter, the Commission's rules address outreach and are directed at making the public aware of the use and availability of TRS generally and encouraging hearing persons and merchants to stay on the line and accept relay calls. 47 CFR 64.604(c)(3) of the Commission's rules ("Public access to information"). Therefore, the Commission seeks comment on whether anything more than non-branded educational outreach should be compensated by the Fund. The Commission tentatively concludes that provider-specific "branded" marketing is inappropriate for compensation from the Fund, and that the Fund should not be used to promote any particular provider's service over the service of competing providers, or to encourage consumers to switch providers. The Commission also seeks comment on whether it is consistent with the statute to fund marketing or outreach campaigns by *each* provider, since they may largely be duplicative and directed at the same audience. Finally, the Commission seeks comment generally on the nature and cost of outreach and marketing activities providers have funded in the past, as well as amount and nature of the providers' current outreach and marketing efforts that are geared toward hearing persons and merchants, so that they do not hang up on relay calls.

The Commission also seeks comment on whether, as NECA has suggested, the amount of outreach and marketing expenses compensated from the Fund should be based on a given percentage of the compensation rate.

#### *Overhead Costs*

The Commission seeks comment on whether, consistent with section 225 of the Communications Act, any general overhead costs (*i.e.*, those indirect costs that are neither cost-causative nor definable) should be compensable by the Fund as a reasonable cost of providing TRS. The Commission notes that under the statute, TRS was intended to be a service offered by common carriers that already offer voice telephone service. Further, the cost

recovery mechanism was intended to ensure that carriers recover the costs of providing this service, since consumers who use the service cannot be required to pay more than the rates paid for functionally equivalent voice communication services. 47 U.S.C. 225(d)(1)(D). In this light, the Commission seeks comment on whether providers' reasonable costs should be limited to their *marginal costs* of providing TRS, which would not include an allocation of general overhead costs. In other words, the Commission seeks comment on whether, consistent with the statute, the reasonable costs of providing TRS include only categories of costs actually incurred by providing TRS.

Assuming compensation of some overhead costs is consistent with the statute, the Commission seeks comment on the appropriate approach to allocating general overhead costs to the provision of TRS. Are there alternatives to allocating overhead costs as a percentage of total revenues? What limits should be placed on the recovery of such costs? Commenters supporting a percentage approach should also comment on what percentage is appropriate and why.

#### *Legal and Lobbying Expenses*

The Commission seeks comment on limits to the nature and amount of legal and lobbying expenses compensable under the "reasonableness" standard applicable to the compensation of all TRS costs, particularly with regard to such costs that are attributable to lobbying and not to compliance with the existing TRS rules. Should amounts allowed for legal and lobbying expenses be uniform for all providers, or be tied to the number or minutes of service provided?

The Commission also seeks comment on whether it is appropriate and consistent with the statutory meaning of costs caused by the service for the Fund to reimburse the "start up" expenses of new entities seeking to offer TRS. For example, should the Fund reimburse the legal and related organizational expenses of multiple new companies that desire to offer TRS, particularly when there are already numerous providers offering service?

#### *Executive Compensation*

The Commission seeks comment concerning the amount of executive compensation that is included in the providers' cost data, and on whether the number of executives for whom compensation is sought should be tied to, or limited by, the overall size of certain providers. Should

reimbursement of such costs be limited and, if so, how? The Commission seeks comment, for example, on how the Commission might clarify the scope and nature of such costs that should be considered "reasonable" costs compensable by the Fund, and whether they should be limited to some percentage of other costs or in some other way.

#### *Making Provider Cost and Demand Data Public*

Historically, the Commission has honored requests by providers submitting projected cost and demand data to treat that information as confidential. The Commission recognizes, however, that this approach makes it difficult for providers and the public (including entities that pay into the Fund) to comment on the reasonableness of the rates. The Commission therefore seeks comment generally on whether the providers' projected (and/or actual) cost and demand data, or particular categories of the cost and demand data, should be made public. The Commission seeks comment on whether there are categories of data that in particular should be given confidential treatment, and if so, why.

#### *Management and Administration of the Fund*

The Fund has grown from approximately \$40 million to over \$460 million since 2000. In addition, the number of providers offering service continues to grow, particularly with regard to IP Relay and VRS. Further, as noted above, new issues continue to arise concerning the nature and extent of certain costs that may be appropriately compensated from the Fund. For these reasons, the Commission seeks comment generally on steps the Commission may take to ensure the integrity of the Fund and to ensure that compensation is consistent with the statute.

*Fund Administrator.* The Commission seeks comment generally on measures the Commission might adopt to improve the management and administration of the Fund. Presently, the Commission's rules provide for the appointment of a Fund administrator, currently NECA. The administrator collects funds from all interstate carriers to create the Fund from which TRS providers are compensated. The administrator also proposes to the Commission, based on data submitted to it each year by the providers, the TRS compensation rates and the resulting Fund size and carrier contribution factor. The Commission seeks comment on how administration

of the Fund could be improved, and whether the rules that govern the activities of the administrator should be modified, including those addressing both the billing and collection process and the disbursement of funds to providers. The Commission seeks input from providers, users, and others, including government agencies, that may have experience with this and similar programs.

The Commission further seeks comment on ways in which the Commission might better assess the effectiveness and efficiency of the administrator's management of the Fund. The Commission seeks comment, for example, on whether there are performance measures the Commission might implement to assess the effectiveness of the TRS program and the Fund administrator. The Commission also seeks comment on whether the Fund administrator should be subject to additional reporting requirements and, if so, what they should be. In addition, the Commission seeks comment on whether such measures should mimic those used in the Universal Service Fund context. The Commission also seeks comment on any other changes that might be made to the Fund administrator's role in initially calculating the compensation rates proposed to the Commission. Finally, the Commission seeks comment on whether to adopt rules to implement ethical standards and address conflicts of interest for officers and employees of the administrator.

*Oversight of Providers.* The Commission also seeks comment on ways to ensure that the compensation paid to providers is legitimate and proper under the Commission's rules. The Commission seeks comment on whether there are other types of information that providers should be required to provide to ensure the integrity of Fund payments, such as financial statements, earning reports, and information related to any parent or affiliate. The Commission also seeks comment on the efficacy of the auditing powers presently granted the Fund administrator and the Commission under the Commission's rules, as well as the scope and frequency of such audits. See 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules.

*Deterring Waste, Fraud, and Abuse.* Finally, the Commission invites comment on any other ways to achieve more fair and efficient administration and management, as well as to deter and detect waste, fraud, and abuse. The Commission seeks to ensure that, with the number of providers and number of minutes of use continuing to increase,

particularly with respect to VRS and IP Relay, the Fund is compensating providers only for legitimate minutes of use provided in compliance with the mandatory minimum standards, and that the compensation rates are based on accurate demand and cost data.

#### **Initial Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present 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 *2006 Cost Recovery FNPRM*. Written public comments are requested on this IRFA. 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, Title II, 110 Statute 857 (1996). Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *2006 Cost Recovery FNPRM* indicated on the first page of this document. The Commission will send a copy of the *2006 Cost Recovery FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

#### *A. Need for, and Objectives of, the Proposed Rule*

In recent years, the annual determination of the TRS compensation rates—and particularly the VRS rate—under the present methodology has presented a variety of regulatory and administrative challenges, such as the appropriateness of the current per-minute compensation methodology, the accuracy of provider demand projections, and the reasonableness of expenses related to outreach, marketing, overhead, and legal and lobbying services and further, comments filed in response to NECA's filing of proposed compensation rates for the 2006-2007 Fund year reflect dissatisfaction with the rate setting process, as well as with the proposed rates and certain cost disallowances. For these reasons, in this *2006 Cost Recovery FNPRM*, the Commission seeks comment on numerous issues relating to the cost recovery methodology used for determining the TRS compensation rates paid the Fund, as well as the scope of the costs properly compensable under section 225 and the TRS regime as intended by Congress.

This *2006 Cost Recovery FNPRM* addresses alternative cost recovery methodologies for interstate traditional

TRS. The present methodology for compensating traditional TRS providers for the cost of providing interstate service is based a per-minute compensation rate. Each year the Fund administrator collects projected cost and demand data from the providers, and determines an average per-minute compensation rate, which it submits to the Commission for approval or modification. Each provider is compensated for its minutes of use at this averaged rate based on the projected cost and demand data submitted by the providers. Therefore, providers do not receive reimbursement for their actual costs; their reimbursements are based on the averaged rate applied to their actual minutes of use.

Hamilton Relay, Inc. has proposed an alternative methodology to determine the compensation rate for interstate traditional TRS. Under Hamilton's proposal—called the "MARS plan" (Multi-state Average Rate Structure)—the compensation rate would be calculated based on an average of the intrastate TRS rates paid by the states. The state rates, under Hamilton's proposal, would be weighted based on the total minutes of use for each state. Hamilton proposes using a weighted average because otherwise states with a relatively high per minute intrastate rate, but a very small number of minutes, would skew the multi-state per minute rate higher than it should be.

Hamilton asserts that its proposed plan would be superior to the current methodology because state rates are set by a competitive bidding process. Hamilton also asserts that its proposal would be easier and less costly to administer. Hamilton further asserts that its proposal would benefit consumers "by lowering interstate TRS rates to the competitively based market value."

Hamilton also notes that under the present cost recovery methodology—what it calls "rate of return regulation"—the Fund administrator and the Commission have "to examine the minutiae of each TRS providers' costs and capital investments," and review all costs submitted by each provider to determine whether to allow or disallow each individual cost. Hamilton adds that this "complicated rate-making process \* \* \* will only get more complicated as providers seek to include ever more of their costs in the rate base." Hamilton also asserts that the present methodology "fails to replicate the competitive market and instead discourages efficiency and encourages the 'padding' of investment."

Hamilton asserts that, by contrast, the MARS plan would eliminate the need to examine any carrier data.

Hamilton states that the Fund administrator would simply collect the per-minute rate and minutes of use for each state, which are “presumptively competitive rates \* \* \* because they have been subject to a state contract competitive bidding process,” and would determine the interstate rate by averaging those rates, adjusted for minutes of use. Hamilton notes that this plan would avoid the costs associated with collecting, evaluating, correcting, and re-evaluating TRS provider data.”

Given our underlying regulatory concerns, the *2006 Cost Recovery FNPRM* seeks comment on Hamilton’s proposal. Comments are sought on the advantages and disadvantages of this proposal compared to the current methodology, how the proposal would be implemented, how state minutes would be measured, and whether the rates would be set for a one year period or a longer time. This *2006 Cost Recovery FNPRM* also seeks comment on whether the MARS plan would be easier to administer and result in administrative cost. This *2006 Cost Recovery FNPRM* also seeks comment on whether the rate for interstate traditional TRS should be compensated at the same rate as Speech to Speech (STS) service.

This *2006 Cost Recovery FNPRM* also addresses the issue of the appropriate cost recovery methodology for VRS and the appropriate data reporting period for VRS. Because of the continued sharp growth in the use of VRS, open issues concerning what costs may appropriately be included in determining the compensation rate under the current methodology, and also because of the providers’ demonstrated inability to accurately forecast demand, the *2006 Cost Recovery FNPRM* seeks additional comment on the issues raised in 2004 (and summarized above). The Commission also notes that recently the Commission has permitted entities desiring to offer VRS to be certified by the Commission. As a result, the Commission expects additional VRS providers to enter the market. Many of these providers, like some of the existing providers, will not be traditional telephone companies and therefore may present unique cost issues. For this reason, the Commission believes that it is important to refresh the record on what the appropriate cost recovery methodology for VRS should be.

The Commission is particularly interested in adopting a methodology that would result in more predictability for the providers, and that would be consistent with the principle that TRS is

intended to be an accommodation for persons with disabilities, entitling providers to their “reasonable” costs of providing this service. The Commission therefore anticipates developing rules concerning a methodology other than the current compensation scheme that is more appropriate. For example, should the Commission adopt a compensation methodology for VRS where funds are disbursed based on each individual provider’s actual, reasonable costs? Should the Commission treat VRS as a national service, seek competitive bids, and thereby permit the two or three lowest bidders to provide service at the lowest bid rate? The *2006 Cost Recovery FNPRM* seeks comment on these proposals and any other issues relevant to adopting an appropriate cost recovery methodology for VRS.

The *2006 Cost Recovery FNPRM* also addresses certain categories of provider costs. First, although the Commission continues to recognize the importance of outreach, the Commission seeks ways to define with sufficient clarity the nature of outreach and marketing expenses that may appropriately be included in providers’ cost submissions. Second, with regard to overhead costs, the Commission notes that some providers have submitted costs that reflect a percentage of total company overhead costs based on the percentage of company revenues attributable to TRS. The Commission also notes that some providers’ expenses for legal and lobbying have recently grown to more than \$2 million a year for each provider. Finally, the Commission expresses its concern about the extent to which some salaries of corporate officers and executives have been included in submitted costs. This *2006 Cost Recovery FNPRM* therefore seeks to resolve the extent of such costs that are “reasonable” costs of providing TRS, including whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund.

In addition, this *2006 Cost Recovery FNPRM* addresses whether the providers’ cost and demand data submitted to the Fund administrator should be made public. It also seeks comment on ways to improve the management and administration of the Fund, including adopting measures for assessing the performance and efficiency of the Fund and to deter waste, fraud, and abuse.

#### *B. Legal Basis*

The authority for actions proposed in this *2006 Cost Recovery FNPRM* 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. sections 151, 154(i), 154(j), 201–205, 218 and 225.

#### *C. 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) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

The Commission believes that the entities that may be affected by the proposed rules are TRS providers that offer interstate traditional TRS, interstate STS, interstate Captioned Telephone Service, IP Relay 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 forms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110. Currently, there are eleven TRS providers that offer interstate traditional TRS, interstate STS, interstate Captioned Telephone Service, IP Relay and VRS. These providers consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately three or fewer of these entities are small businesses.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed methodology for setting the interstate compensation rate for traditional TRS service may require the providers to submit rate data to the Commission, either annually or for a multi-year period, for the states in which they provide service. Further, adoption of a cost recovery methodology for VRS other than the current per-minute compensation methodology may require VRS providers to maintain different records, although there would be no new reporting requirements. Presently, VRS providers report their costs annually, and their minutes of use monthly, to the Interstate TRS Fund Administrator. In addition, the 2006 *Cost Recovery FNPRM* contemplates adoption of a means of documenting the "reasonable" costs compensable under the present cost recovery methodology for all forms of TRS.

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

The RFA requires an agency to describe any significant alternatives, specific to small businesses, 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)-(4).

Adoption of Hamilton's proposed methodology for setting the interstate traditional TRS rate would eliminate the need to file the much more voluminous cost and demand data that providers presently must submit to the Fund administrator. Further, if the rate period is extended for more than one year, reporting requirements would be lessened by less frequent data filings with the Fund administrator. Therefore, the effect of the adoption of Hamilton's proposed methodology would be to lessen the reporting burden on small business.

In addition, adoption of a cost recovery methodology for VRS other than the current per minute compensation methodology could eliminate apparent dissatisfaction among the providers about the rate setting process and improve the predictability and efficiency in reporting the cost data and receiving the compensation for the provision of VRS. A seamless and efficient cost recovery methodology, including clear cost data submission guidelines, would lessen the reporting burden on small business.

Further, setting a standard of what and how the "reasonable" costs should be compensable under the present cost recovery methodology for all forms of TRS, including whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund, would provide guidance for the providers that may improve the predictability in the cost of providing TRS. It would also eliminate uncertainties with whether the costs submitted would be compensable or not. Eliminating uncertainties would lessen the reporting burden on small business.

The majority of TRS service is provided by large interexchange carriers and large incumbent local exchange

carriers. Because the Commission believes that few small business entities would be impacted by these proposals, and that the impact, if any, would be minor, it is premature to propose specific alternatives that would minimize significant economic impact on small businesses. Further, since the Commission believes the rules adopted pursuant to this proceeding will result in a more streamlined approach to administering TRS for all entities, including small entities, the Commission further persuaded that it would be premature to consider alternatives to the conferral of such benefits. However, the Commission invites comment on specific alternatives that may minimize the economic impact of the proposed rules on small businesses.

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

None.

**Ordering Clauses**

Pursuant to the authority contained in sections 1, 4(i) and (o), 225, 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, 303(r), 403, 554(g), and 606, this Further Notice of Proposed Rulemaking is adopted.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further 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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