

**FEDERAL COMMUNICATIONS
COMMISSION****47 CFR Part 64**

[CG Docket Nos. 10-51 and 03-123; FCC 13-82]

Structure and Practices of the Video Relay Service Program; 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 adopts further measures to improve the structure, efficiency, and quality of the video relay service (VRS) program, reducing the inefficiencies in the program, as well as reducing the risk of waste, fraud, and abuse, and ensuring that the program makes full use of advances in commercially-available technology. These measures involve a fundamental restructuring of the program to support innovation and competition, drive down ratepayer and provider costs, eliminate incentives for waste that have burdened the Telecommunications Relay Services (TRS) Fund in the past, and further protect consumers. The Commission adopts several measures in order to: ensure that VRS users can easily select their provider of choice by promoting the development of interoperability and portability standards; enable consumers to use off-the-shelf devices and deploying a VRS application to work with these devices; create a centralized TRS User Registration Database to ensure VRS user eligibility; encourage competition and innovation in VRS call handling services; spur research and development on VRS services by entering into a Memorandum of Understanding with the National Science Foundation; and pilot a National Outreach Program to educate the general public about relay services. In this document, the Commission also adopts new VRS compensation rates that move these rates toward actual costs over the next four years which will better approximate the actual, reasonable costs of providing VRS, and will reduce the costs of operating the program. The Commission takes these steps to ensure the integrity of the TRS Fund while providing stability and certainty to providers.

DATES: Effective August 5, 2013, except amendments to 47 CFR 64.604(c)(13); 64.606(a)(4), (g)(3), and (g)(4); 64.611(a)(3) and (4); 64.615(a); 64.631(a)

through (d), (f); 64.634(b); 64.5105(c)(4) and (c)(5); 64.5107; 64.5108; 64.5109; 64.5110; 64.5111, of the Commission's rules which contain new information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities*, Report and Order (*Order*), document FCC 13-82, adopted on June 7, 2013 and released on June 10, 2013, in CG Docket Nos. 10-51 and 03-123. In document FCC 13-82, the Commission also seeks comment in an accompanying Further Notice of Proposed Rulemaking (FNPRM), which is summarized in a separate **Federal Register** Publication. The full text of document FCC 13-82 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: www.bcpweb.com. Document FCC 13-82 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/encyclopedia/telecommunications-relay-services-trs>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13-82 contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 13-82 as required by the PRA of 1995, Public Law 104-13 in a

separate notice that will be published in the **Federal Register**.

Synopsis

1. In the Report and Order, which is part of document FCC 13-82, the Commission adopts measures to improve the structure, efficiency, and quality of the VRS program, reduce the noted inefficiencies in the program, as well as reduce the risk of waste, fraud, and abuse, and ensure that the program makes full use of advances in commercially-available technology.

2. Under Title IV of the ADA, the Commission must ensure that telecommunications relay services (TRS) are available, to the extent possible and in the most efficient manner to persons in the United States with hearing or speech disabilities. In addition, the Commission's regulations must encourage the use of existing technology and must not discourage the development of new technology. Finally, the Commission must ensure that TRS users pay rates no greater than the rates paid for functionally equivalent voice communication services. To this end, the costs of providing TRS on a call are supported by shared funding mechanisms at the state and federal levels.

3. In March 2000, the Commission recognized VRS as a reimbursable relay service. See, e.g., *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; published at 65 FR 38432, June 21, 2000, and at 65 FR 38490, June 21, 2000 (2000 TRS Order). VRS allows persons with hearing or speech disabilities to use American Sign Language (ASL) to communicate in near real time through a Communication Assistant (CA), via video over a broadband Internet connection. VRS communications require the interaction of three separate yet interlinked components: VRS access technologies, video communication service, and relay service provided by ASL-fluent CAs. To initiate a VRS call, a consumer uses a VRS access technology to connect to an ASL-fluent CA over the Internet via a broadband video communication service. The CA, in turn, places an outbound telephone call to the called Party. During the call, the CA relays the communications between the two parties, signing what the hearing person says to the ASL user and conveying the ASL user's responses in voice to the hearing person. In this manner, a conversation between an ASL user and a hearing person can flow in near real-time. The Commission remains

committed to fulfilling the intent of Congress to ensure the provision of VRS that is functionally equivalent to conventional voice telephone services.

4. On December 15, 2011, the Commission released the *2011 VRS Reform FNPRM*, seeking comment on wide-ranging proposals to improve the structure and efficiency of the VRS program, to ensure that the program is as immune as possible from the waste, fraud, and abuse that threaten its long-term viability, and to revisit the rate methodology used for compensating VRS providers. *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Further Notice of Proposed Rulemaking; published at 77 FR 4948, February 1, 2012 (*2011 VRS Reform FNPRM*). The Commission's implementation of section 225 of the Act relied heavily on competition in order to allow VRS users to choose among providers. However, there are shortcomings to this approach. First, multiple providers offer substantially similar services with no opportunity for price competition, as end users receive the service at no cost. The result is that the rates paid for VRS will be efficient solely insofar as the Commission can itself determine and mandate appropriate rates. Further, the Commission's existing rate-setting process inefficiently supports providers that have failed to achieve economies of scale. In addition, rates are based on cost information supplied by providers, and the FCC has not had a meaningful opportunity to measure the claims against facts or cost information from neutral or independent sources. Second, providers' self-interest in maximizing their compensation from the Fund may make them less effective at carrying out the Commission's TRS policies. The vulnerability of the program to waste, fraud, and abuse by providers has been well established. *See, e.g., Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order and Notice of Proposed Rulemaking; published at 75 FR 25255, May 7, 2010 (*VRS Call Practices NPRM*). Also, despite encouragement for VRS providers to work together to develop systems and standards that will facilitate compliance with the Commission's rules, the VRS industry has not fully achieved the standardization needed for full interoperability and portability.

5. The *2011 VRS Reform FNPRM* and the subsequent *VRS Structure and Rates PN* sought comment on a range of possible solutions to these problems. *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and*

Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 03-123 and 10-51, Public Notice; published at 77 FR 65526, October 29, 2012.

6. In the Report and Order, the Commission:

- Directs the Managing Director, in consultation with the Chief Technology Officer (CTO), the Chief of the Office of Engineering and Technology (OET), and the Chief of the Consumer and Governmental Affairs Bureau (CGB), to determine how best to structure, fund, and enter into an arrangement with the National Science Foundation (NSF) (or cause the TRS Fund administrator to enter into such an arrangement) to enable research designed to ensure that TRS is functionally equivalent to voice telephone services and improve the efficiency and availability of TRS;
- Directs the Managing Director, in consultation with the Chief of CGB, to establish a two-to-three year pilot iTRS National Outreach Program (iTRS-NOP) and to select one or more independent iTRS Outreach Coordinators to conduct and coordinate IP Relay and VRS outreach nationwide under the Commission's (or the TRS Fund administrator's) supervision;
- Promotes the development and adoption of voluntary, consensus interoperability and portability standards, and to facilitate compliance with those standards by directing the Managing Director to contract for the development and deployment of a VRS access technology reference platform;
- Directs the Managing Director to contract for a central TRS user registration database (TRS-URD) to ensure accurate registration and verification of users, to achieve more effective fraud and abuse prevention, and to allow the Commission to know, for the first time, the number of individuals that actually use VRS; and
- Directs the Managing Director to contract for a neutral party to build, operate, and maintain a neutral video communication service platform, which will allow eligible relay interpretation service providers to compete without having to build their own video communication service platforms.

7. In addition, the Commission accompanies these actions with more targeted, incremental measures to improve the efficiency of the program, help protect against waste, fraud and abuse, improve the Commission's administration of the program, and generally ensure that VRS users' experiences reflect the policies and goals of section 225 of the Act. Specifically, the Commission:

- Clarifies responsibility for disability access policy and TRS program administration within the Commission;
 - Adopts a general prohibition on practices resulting in waste, fraud and abuse;
 - Requires providers to adopt regulatory compliance plans subject to Commission review;
 - More closely harmonizes the VRS speed of answers rules with those applicable to other forms of TRS by reducing the permissible wait time for a VRS call to be answered to 30 seconds, 85 percent of the time, and by requiring measurement of compliance on a daily basis;
 - Adopts rules to protect relay consumers against unauthorized default provider changes, also known as "slamming," by VRS and Internet Protocol Relay Service (IP Relay) providers;
 - Adopts rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers;
 - Adopts permanently the interim rules adopted in the *2011 iTRS Certification Order* requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under § 64.606 of the Commission's rules are truthful, accurate, and complete; *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, CG Docket No. 10-51; published at 76 FR 47469, August 5, 2011, and at 76 FR 47476, August 5, 2011 (*2011 iTRS Certification Order*); and
 - Initiates a step-by-step transition from existing, tiered TRS Fund compensation rates for VRS providers toward a unitary, market-based compensation rate.

Legal Authority

8. Section 225 of the Act defines TRS as a service that allows persons with hearing or speech disabilities to communicate in a manner that is functionally equivalent to voice telephone service. 47 U.S.C. 225(a)(3) of the Act. Section 225 of the Act requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner to persons with hearing or speech disabilities in the United States. 47 U.S.C. 225(b)(1). The statute requires that the Commission's regulations encourage the use of existing technology and not discourage the development of new technology. 47 U.S.C. 225(d)(2). Section 225 of the Act further requires that the Commission prescribe regulations that,

among other things, establish functional requirements, guidelines, and operations procedures for TRS and establish minimum standards that shall be met in carrying out the provision of TRS. 47 U.S.C. 225(d)(1)(A).

9. *Functional Equivalence.* TRS is required by statute to provide telecommunication services which are functionally equivalent to voice services to the extent possible. Functional equivalence is, by nature, a continuing goal that requires periodic reassessment. The ever-increasing availability of new services and the development of new technologies continually challenge the Commission to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service. *See 2000 TRS Order* at paragraph 4; *see also*

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket Nos. 98-67 and 03-123; published at 68 FR 50093, August 25, 2003, and at 68 FR 50973, August 25, 2003 (*2003 TRS Order*). The establishment of well-defined interoperability and portability standards and the deployment of the VRS access technology reference platform will ensure that VRS users actually experience the functional equivalency upon which the Commission's interoperability rules were predicated. Harmonizing the VRS speed of answers rules with those applicable to other forms of TRS and adopting anti-slaming and CPNI rules all will make the VRS user's experience more functionally equivalent to voice telephone service.

10. *“Availability” and “Efficiency.”* Research will be conducted more efficiently under an arrangement with the NSF than it would be if conducted by individual providers with disparate incentives. The Commission's changes to the outreach program will improve the efficiency of the Commission's outreach efforts while simultaneously improving the availability of TRS through education of TRS users and the hearing population alike. The establishment of well-defined interoperability and portability standards and the deployment of the VRS access technology reference platform are consistent with the Commission's obligation to establish minimum standards for provider performance, and will promote efficiency in VRS provider operations. Establishment of a neutral video communication service provider will

promote the availability of VRS by allowing the entrance of new, eligible, standalone VRS CA service providers, and will promote efficiency through a reduction in duplicative expenditures on video communication service platforms and through provider compliance with the Commission's interoperability mandates. The TRS-URD and the eligibility certification and identity verification requirements the Commission adopt will help to reduce the potential for waste, fraud, and abuse, improving the efficiency of the program and the availability of TRS.

11. *Fund Expenditures.* Congress determined that the Commission should ensure that compensation is provided for the costs caused by interstate TRS. 47 U.S.C. 225(d)(3)(B). The Commission adopted a cost recovery framework that entails collecting contributions from providers of interstate telecommunications services to create a fund from which eligible TRS providers are compensated for the costs of eligible TRS services. Contributions to the Interstate TRS Fund (Fund) are based on the carrier's interstate and end-user revenues. All contributions are placed in the Fund, which is administered by the TRS Fund administrator. The Commission must often balance the interests of contributors to the Fund, who are ratepayers with the interests of users of TRS. The Commission's obligation to ensure that the goals of the statute are met in the most efficient manner necessitates adopting reasonable compensation rates that do not overcompensate entities that provide TRS. The Commission has had four years of data demonstrating that VRS providers were significantly overcompensated, evidenced by a comparison of the best available data concerning their actual costs per minute to the per minute compensation they have been receiving based on their projected costs per minute. Because the rates the Commission adopt herein are demonstrably sufficient to cover the costs caused by VRS as reflected in the VRS providers' reported average actual and projected costs, the Commission concludes that these are consistent with the requirements in section 225 of the Act, and are consistent with the Commission's commitment to further the goals of functional equivalency through strengthening and sustaining VRS.

Structural Reforms

12. The Commission sets forth reforms which, for certain discrete areas, rely on the efforts of one or more non-provider third parties to carry out the Commission's policies. These

reforms are designed to improve the Commission's administration of VRS and the TRS program as a whole, to ensure compliance with the Commission's interoperability and portability requirements, and to further minimize the potential for waste, fraud, and abuse.

Research and Development

13. In the past, the Commission has disallowed expenses associated with research and development (R&D) except to the extent that such expense is necessary to meet the Commission's mandatory minimum standards. The Commission sought comment in the *2010 VRS NOI* on how and whether to revise its rules regarding compensation for R&D, including how to ensure that the results of any R&D supported by the Fund are fairly shared so that all providers and ultimately all users are able to enjoy the results. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Notice of Inquiry; published at 75 FR 41863, July 19, 2010 (*2010 VRS NOI*). The Commission asked in the *2011 VRS Reform FNPRM* what other steps the Commission could take to promote R&D in VRS and other forms of TRS. In order to ensure that R&D on TRS not directly related to provider compliance with the Commission's mandatory minimum standards is conducted in an efficient manner, and that the results of that research benefit the public, the Commission directs the Managing Director, in consultation with the CTO, the Chief of OET, and the Chief of CGB, to determine how best to structure and fund research designed to further the Commission's goals of ensuring that TRS is functionally equivalent to voice telephone services and improving the efficiency and availability of TRS. The Commission directs the Managing Director to enter into an arrangement (or contract with the TRS Fund administrator to enter into an arrangement, if appropriate) with the NSF to conduct the research. After the arrangement is in place, the CTO (or, in the absence of a CTO, the Chief of OET, or the OET Chief's designee), shall serve as the Commission's primary point of contact with the NSF.

TRS Broadband Pilot Program

14. In the *2011 VRS Reform FNPRM* the Commission sought comment on a proposal to implement a TRS Broadband Pilot Program (TRSBPP) that would offer discounted broadband to potential VRS users who could not otherwise afford the costs of Internet access service to the extent that the record shows that there is unaddressed

demand for VRS. There is insufficient data to produce an accurate estimate of the number of Americans with hearing or speech disabilities who are fluent enough in ASL to use VRS, or the subset of those individuals who do not subscribe to VRS due to the expense of a broadband connection. Without better data on whether or to what extent broadband affordability constrains the availability of VRS, and without relevant demographic data on the number of Americans fluent in ASL, it is difficult to determine the demand or need for a TRSBPP. The Commission therefore declines to implement a TRSBPP at this time.

15. The Commission will continue to work to ensure the availability and affordability of broadband to individuals who are deaf, hard of hearing, deaf-blind, and speech disabled not only to enable access to VRS, but generally to facilitate integration into and participation in various aspects of society. In order to promote awareness of the Commission's existing, wider-reaching broadband adoption initiatives, the Commission directs CGB to include within its national outreach plan efforts to build such awareness. In addition, the decision to implement a TRS user registration database in this Order will allow the Commission to identify the actual number of current VRS users, thereby helping the Commission to properly assess the need for a standalone TRSBPP in the future.

National Outreach

16. In 1991 the Commission adopted rules requiring all common carriers to provide the public with information to ensure that callers in their service areas are aware of the availability and use of all forms of TRS. See

Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act, CC Docket No. 90-571, Report and Order and Request for Comments; published at 56 FR 36729, August 1, 1991 (TRS I). The Commission and various stakeholders repeatedly have raised concerns about the effectiveness of outreach efforts on the national level, and the extent to which providers have characterized as "outreach" actions that would better be described as "branded marketing," both for TRS in general and for VRS in particular. The failure to effectively educate the general public about the nature of TRS calls has had a negative effect on consumers' ability to use these services, as TRS calls are often rejected, frequently because of mistaken assumptions about their purpose.

17. In light of the Commission's continued concerns regarding the effectiveness of IP Relay and VRS providers' outreach efforts, the Commission concludes that an Internet-based TRS National Outreach (iTRS-NOP) that does not rely on the efforts of individual IP Relay and VRS providers is necessary and appropriate to achieve the purposes of section 225 of the Act; that is, to fulfill Congress's intent to make TRS available to the extent possible and in the most efficient manner. The Commission believes that section 225 of the Act's directive for the Commission to prescribe regulations that ensure relay services are available * * * in the most efficient manner both make it appropriate to take new steps to better educate the public about the purpose and functions of TRS, and provides the Commission with sufficient authority to direct that the iTRS-NOP be funded for this purpose from TRS contributions as a necessary cost caused by TRS. The iTRS-NOP will achieve the Commission's objectives by educating merchants and other business in a neutral fashion about the importance of accepting legitimate relay calls and by eliminating duplicative outreach efforts by multiple providers.

18. The Commission believes that its first efforts to coordinate IP Relay and VRS outreach on a nationwide basis will be best carried out through a pilot program of limited duration and that the outreach directives under the National Deaf Blind Equipment Distribution Program (NDBEDP) provide a useful model for such efforts. Accordingly, for each of the next two Fund years, with an option to extend the program for one additional year, the Commission directs the TRS Fund administrator to set aside a portion of the TRS Fund to be available for VRS outreach. The Commission directs the Managing Director, in consultation with the Chief of CGB, to (i) select one or more iTRS Outreach Coordinators to conduct and coordinate IP Relay and VRS outreach nationwide and be compensated through the Fund or (ii) contract with the TRS Fund administrator to enter into such arrangements under objectives and factors determined by the Managing Director in consultation with the Chief of CGB. The iTRS Outreach Coordinators shall not be affiliated with any iTRS provider and shall disseminate non-branded information to potential new-to-category users and to the general public about IP Relay and VRS, their purposes and benefits, and how to access and use these services. The Commission directs CGB to oversee

outreach activities, which may include, but are not limited to:

- Consulting with consumer groups, IP Relay and VRS providers, the TRS Fund administrator, other TRS stakeholders, and other iTRS Outreach Coordinators, if any;
- Establishing clear and concise messaging about the purposes, functions, and benefits of IP Relay and VRS;
- Educating the deaf, hard of hearing, and speech disability consumers about the broadband adoption programs available to low-income families without access to broadband and VRS;
- Determining media outlets and other appropriate avenues for providing the general public and potential new-to-category subscribers with information about IP Relay and VRS;
- Preparing for and arranging for publication, press releases, announcements, digital postcards, newsletters, and media spots about IP Relay and VRS that are directed to retailers and other businesses, including trade associations;
- Creating electronic and media tool kits that include samples of the materials listed in the previous bullet, and which may also include templates, all of which will be for the purpose of facilitating the preparation and distribution of such materials by consumer and industry associations, governmental entities, and other TRS stakeholders;
- Providing materials to local, state, and national governmental agencies on the purposes, functions, and benefits of IP Relay and VRS; and
- Exploring opportunities to partner and collaborate with other entities to disseminate information about IP Relay and VRS.

19. The iTRS Outreach Coordinator(s) will be expected to submit periodic reports to the Managing Director and the Chief of CGB on the measures taken pursuant to the directive above. In addition, the iTRS Outreach Coordinator(s) will be expected to work with and assist the Chief of CGB and Managing Director, as appropriate, to measure and report on the effectiveness of the outreach efforts taken under the iTRS-NOP. The iTRS Outreach Coordinator(s) selected to conduct such outreach must have experience in conducting nationwide promotional and informational programs and experience with and expertise in working with the deaf, hard of hearing and speech disability communities. The Commission directs the Chief of CGB, in consultation with the Managing Director, to further define the selection criteria and the nature and scope of the

IP Relay and VRS outreach program. In addition, the Commission directs the Chief of CGB, in consultation with the Managing Director, to assess the reasonableness and appropriateness of individual outreach expenses proposed by the selected iTRS Outreach Coordinator(s).

20. In the first year, a maximum expenditure of \$2 million is reasonable and sufficient funding for the iTRS-NOP. Because of the novel nature of these national outreach efforts, the Commission establishes a two-year pilot program that may extend for up to an additional one year, for a total of three years. The Commission is hopeful that the experience gained during this pilot program will help inform future Commission action to establish a permanent national outreach program for IP Relay and VRS, and potentially other forms of iTRS. The Commission expects that this 24- to 36-month period will give the Commission sufficient time to conduct and analyze the effectiveness of the pilot program, and determine the next steps to make such program permanent, or take such other actions that are necessary to ensure effective education on IP Relay and VRS to the American public.

21. The selection of iTRS Outreach Coordinators does not prohibit IP Relay or VRS providers from otherwise providing the public with information about their individual relay service features, but also that the cost of such efforts may no longer be included in their cost submissions used to determine per minute compensation for IP Relay and VRS as “outreach” costs. In addition, the Commission will consider using its Accessibility Clearinghouse, created pursuant to the CVAA, as a central repository for providers who wish to provide information about any such features designed to address specific communication needs.

Interoperability and Portability Requirements

22. The Commission acts to improve the effectiveness of its interoperability and portability rules. These rules, first adopted in 2006, are intended to (i) allow VRS users to make and receive calls through any VRS provider, and to choose a different default provider, without changing the VRS access technology they use to place calls, and (ii) ensure that VRS users can make point-to-point calls to all other VRS users, irrespective of the default provider of the calling and called party. Providers also must ensure that videophone equipment that they distribute retains certain, but not all,

features when a user ports her number to a new default provider. Despite encouragement for VRS providers to work together to develop systems and standards that will facilitate compliance with the Commission’s rules, the VRS industry has not fully achieved the standardization needed for full interoperability and portability. Further, ineffective interoperability rules appeared to be hindering competition between VRS providers and frustrating VRS users’ access to off-the-shelf VRS access technology. The Commission therefore sought comment in the *2011 VRS Reform FNPRM* on the effectiveness of the current interoperability and portability requirements, and the role that existing VRS access technology standards or the lack thereof may play in frustrating the effectiveness of those requirements.

23. As an initial step, the Commission codifies the existing interoperability and portability requirements in new § 64.621 of the Commission’s rules. The Commission also (i) adopts the proposal from the *2011 VRS Reform FNPRM* to clarify the scope of providers’ interoperability and portability obligations by eliminating use of the term “CPE” in the iTRS context in favor of “iTRS access technology;” (ii) takes steps to support the development of voluntary, consensus standards to facilitate interoperability and portability; and (iii) directs that a “VRS access technology reference platform” be developed to provide a benchmark for interoperability.

24. The Commission adopted interoperability and portability requirements to ensure that TRS is provided in a functionally equivalent manner, and its actions to improve the effectiveness of those requirements are likewise grounded in section 225 of the Act. The Commission’s actions also will improve the availability of VRS by ensuring that consumers have ready access to all VRS providers without the need to switch equipment. Further, the development of interoperability and portability standards and the availability of a VRS access technology reference platform will improve the efficiency of the program by making it far easier for providers to design VRS access technologies to the appropriate standard, and to test their compliance with those standards prior to deployment.

Defining iTRS Access Technologies

25. The Commission adopts the proposal from the *2011 VRS Reform FNPRM* to clarify the scope of providers’ interoperability and portability obligations by eliminating use of the

term “CPE” in the iTRS context in favor of “iTRS access technology.” The Commission in the *Internet-based TRS Numbering Order* used the defined term “CPE” to describe “TRS customer premises equipment,” or the technology used to access Internet-based TRS. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CC Docket No. 08-151, Report and Order and Further Notice of Proposed Rulemaking; published at 73 FR 41286, July 18, 2008 and at 73 FR 41307, July 18, 2008 (*First Internet-Based TRS Numbering Order*). The Commission proposed in the *2011 VRS Reform FNPRM* to amend §§ 64.605 and 64.611 of the Commission rules by replacing the term “CPE” where it appears with the term “iTRS access technology.” The Commission further proposed to define “iTRS access technology” as “any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call.” Under this definition, any software, hardware, or other technology issued, leased, or otherwise provided to VRS or IP Relay users by Internet-based TRS providers, including “provider distributed equipment” and “provider based software,” whether used alone or in conjunction with “off-the-shelf software and hardware,” would qualify as “iTRS access technology.” The Commission adopts the original proposal, with one modification. “iTRS access technology” will be defined as “any equipment, software, or other technology issued, leased, or otherwise provided by an Internet-based TRS provider that can be used to make and receive an Internet-based TRS call” to make clear that iTRS access technologies must provide both inbound and outbound functionality. This modification is consistent with existing Commission policies which require that Internet-based TRS users have the ability to make and receive calls. Given the differential treatment of VRS and IP Relay, the Commission further adopts the proposal to refer separately to iTRS access technology as “VRS access technology” and “IP Relay access technology” where appropriate, but decline to further disaggregate iTRS access technology into further sub-categories of iTRS access technology at this time.

Promoting Standards To Improve Interoperability and Portability

26. There is universal support in the record for the development of voluntary,

consensus standards to facilitate interoperability and portability. Progress is being made under the auspices of the SIP Forum, and the public interest is best served by allowing that process to continue. The Commission directs the CTO and the Chief of OET, in consultation with the Chief of CGB, to coordinate Commission support of and participation in that process in order to ensure the timely development of voluntary, consensus standards to facilitate interoperability and portability. The Commission also delegates to the Chief of CGB, after consultation with the CTO and the Chief of OET, the authority to conduct rulemaking proceedings to incorporate into the Commission's rules by reference any interoperability and portability standards developed under the auspices of the SIP Forum, now or in future, or such other voluntary, consensus standard organization as may be formed to address these issues. Recognizing that the scope of the SIP Forum VRS Task Group charter extends beyond the Commission's current mandatory minimum standards, the Commission also delegates to Chief of CGB, after consultation with the CTO and the Chief of OET, the authority to conduct rulemaking proceedings to incorporate into the Commission's rules by reference as new or updated mandatory minimum standards any standards or recommended standards developed by the SIP Forum (or such other voluntary, consensus standard organization as may be formed to address these issues) that the Chief of CGB finds will advance the statutory functional equivalency mandate or improve the availability of TRS, in the most efficient manner. In conducting such rulemakings, the Chief of CGB shall provide guidance on implementation, including the need for a transition period for existing VRS access technologies, complaint resolution, or other actions necessary to ensure full interoperability and portability.

27. The Commission finds that VRS interoperability and portability standards should include the portability of address book and speed dial list features. The portability of such features is critical to effective competition and the provision of consumer choice in VRS. If the standards developed and incorporated into the Commission's rules do not require that VRS access technology and VRS providers support a standard data interchange format for exporting and importing user personal contacts lists and user speed dial lists between VRS access technologies and

VRS providers, the Commission directs the Chief of CGB, after consultation with the CTO and Chief of OET, to conduct an accelerated rulemaking to adopt such standards.

28. Pending action to incorporate interoperability and portability standards into the Commission's rules by reference by the Chief of CGB, the Commission will accept a demonstration that a provider is fully compliant with completed SIP Forum standards or recommended standards as *prima facie* evidence of compliance with the Commission's interoperability and portability requirements. Compliance with any standards incorporated into the Commission's rules by reference or otherwise shall be a prerequisite for compensation from the Fund. No VRS provider shall be compensated for minutes of use generated by non-standards compliant VRS access technologies or otherwise generated in a manner inconsistent with the Commission's rules. If a provider cannot reliably separate minutes of use generated through standards compliant VRS access technologies from those generated through non-standards compliant VRS access technologies, the provider will not receive compensation for any of the minutes.

29. The Commission has previously urged the industry to develop interoperability and portability standards, but such efforts have proven ineffective. The Commission strongly encourages the SIP Forum's VRS Task Group to adhere to its proposed schedule, and to take any further steps identified as necessary by the Task Group with alacrity. Given the critical importance of this issue, the Commission will take such steps as are necessary to ensure the development and promulgation of interoperability and portability standards—including the adoption of standards developed outside the context of the SIP Forum—if it becomes apparent that the current effort has bogged down or is unlikely to produce the desired results.

VRS Access Technology Reference Platform

30. The Commission directs the Managing Director to contract for the development and deployment of a VRS access technology reference platform. The lack of clearly defined interoperability and portability standards has made it difficult for providers to determine whether VRS access technologies—theirs or a competitor's—are, in fact, compliant with the Commission's requirements, and what steps must be taken to resolve interoperability and portability issues. A

reference platform compliant with the interoperability and portability standards will provide a concrete example of a standards specific VRS access technology implementation and will allow providers to ensure that any VRS access technology they develop or deploy is fully compliant with our interoperability and portability requirements by testing their own devices and apps to ensure that they meet the VRS interoperability standards.

31. Further, the Commission directs the FCC's Managing Director, in consultation with the CTO and the Chief of OET, to select, consistent with the Commission's neutrality criteria, a neutral party (or have the TRS Fund administrator select a neutral party) to develop a VRS access technology reference platform under contract to the Commission (or the TRS Fund administrator) and compensated through the Fund.

32. The VRS access technology reference platform shall be a software product that is compliant with the interoperability and portability standards, and useable on commonly available off the shelf equipment and operating systems. Because it will take time to develop these standards, the Commission directs the Managing Director to allow the neutral party chosen to develop the VRS access technology reference platform to release "beta" versions of this platform at appropriate points in the development process, so long as procedures are in place to update the application as standards are established. The neutral party chosen to develop the VRS access technology reference platform also shall be required to provide appropriate levels of technical support during the term of the contract to entities, including developers, that license the VRS access technology reference platform and to end users, including troubleshooting technical issues that may arise in the placing or processing of VRS or point-to-point calls.

33. The VRS access technology reference platform will be fully functioning VRS access technology; that is, it will function as current provider-specific products function to provide the ability to place VRS and point-to-point calls, including dial-around functionality, the ability to update the users registered location, and such other capabilities as are required by the Commission's rules. In order to maximize the benefit of this investment from the TRS Fund, the VRS access technology reference platform shall be available for use by the public and by developers. Therefore, the Managing Director shall ensure that the VRS

access technology reference platform, in addition to being compliant with standards developed consistent with the development of voluntary, consensus standards to facilitate interoperability and portability, performs consistently with the Commission's rules, including allowing users to select any VRS provider as their default provider and providing dial around capability and such other rules as may be adopted in future.

34. The Commission defers to the Managing Director to determine the terms under which the VRS access technology reference platform will be licensed, but direct that he or she consider "open source" licensing to ensure the widest possible distribution of and use of the VRS access technology reference platform and, to the extent possible, underlying developed code. The Commission also directs that the Managing Director consider licensing the VRS access technology reference platform consistent with the tiered approach, which would allow VRS providers and other developers to tailor the appearance and interface of the VRS access technology reference platform while ensuring that its core functionality remains fully standards compliant.

35. The Commission declines at this time to designate an entity responsible for certifying interoperability among VRS providers' VRS access technologies. The availability of the VRS access technology reference platform should enable providers to test their own products prior to introducing them into the market or issuing upgrades. However, interoperability with the VRS access technology reference platform will be a minimum condition for a provider's VRS access technology to be in compliance with the Commission's rules and thus will be a minimum condition for receiving compensation from the Fund for calls using such technology. In other words, once the VRS access technology reference platform is available for use, and after completion of a reasonable testing period that will be announced in advance, no VRS provider shall be compensated for minutes of use generated by the provider's VRS access technologies that are found to be non-interoperable with the reference platform. To the extent the Commission receives complaints regarding a VRS provider or application developer's failure to comply with standards developed consistent with the development of voluntary, consensus standards to facilitate interoperability and portability, the Commission will rely on existing processes to determine

whether compliance with our rules is being achieved, whether it is appropriate to withhold payments, initiate an enforcement proceeding, or take other appropriate actions.

36. The Commission, in its role as custodian of the Fund and the enforcer of the Commission's interoperability rules, must ensure that the platform is developed and released in an expeditious manner, can be updated and/or modified at the Commission's direction as standards and regulations evolve, is licensed in an appropriate manner, and otherwise is developed and maintained in a manner consistent with the Commission's statutory obligations and the public interest. In the interest of avoiding the same conflicts and delays that have hindered the development of consensus industry standards to date, the best possible platform will be procured through the Commission's contracting process.

37. The VRS access technology reference platform should set a baseline for interoperability and should in no way impede future innovation. The VRS access technology reference platform will help to ensure interoperability and portability as required by the Commission's mandatory minimum standards, but should be considered only a floor, not a ceiling on functionality. To the extent providers wish to provide additional features and functions beyond those required by the industry standards or by the Commission's rules, the VRS access technology reference platform should not serve as barrier.

38. If a VRS provider's network and the VRS access technology reference platform do not interoperate properly, the problem may be with the provider's network architecture—if only at the edge where the provider's network and the reference platform interface. While the Commission does not dictate how providers are to comply with the Commission's interoperability and portability requirements, they are nevertheless obligated to meet them—and to achieve this, they may have to alter the operation of their networks to ensure compatibility with the VRS access technology reference platform and the standards-based features of other VRS access technologies.

TRS User Registration Database (TRS-URD) and Eligibility Verification

39. The Commission acts to improve the mechanism used to register and verify the eligibility of VRS users through creation of a TRS-URD and implementation of centralized eligibility verification requirements. Ensuring that the VRS program is as immune as

possible from the waste, fraud, and abuse that threatens the long-term viability of the program as it currently operates has been a core goal of this proceeding. When a VRS provider engages in fraudulent practices, the VRS system is made inefficient and the availability of VRS for legitimate users is limited, contrary to section 225 of the Act. 47 U.S.C. 225(b)(1). VRS provider practices that result in waste, fraud, and abuse threaten the sustainability of the TRS Fund and are directly linked to the efficiency and effectiveness of the TRS Fund support mechanisms upon which VRS providers rely for compensation. Moreover, such practices unlawfully shift improper costs to consumers of other telecommunications services, including local and long distance voice subscribers, interconnected VoIP, and others.

40. To help combat such fraud, the Commission (i) directs the development and implementation of a TRS user registration database and (ii) adopts a centralized eligibility verification requirement to ensure that registration for VRS is limited to those who have a hearing or speech disability. A user registration database will provide the Commission, for the first time, a definitive count of the number of unique, active VRS users, and a tool that will allow for more effective auditing and compliance procedures. A centralized eligibility verification system will also help to prevent the registration of fraudulent users and therefore ensure the compensability of VRS calls handled and increase the efficiency of the VRS program.

41. Development and deployment of the TRS-URD, including the ability to conduct eligibility verification, will impose costs that are covered by the TRS Fund. The price for startup and implementation of the TRS numbering directory database and a one year base operating period was \$1,541,000. The cost of the TRS-URD is likely to be comparable, if not significantly less. The resultant improvement in functional equivalence and VRS availability for consumers, ease of compliance by providers, and overall efficiency in the operation of the TRS program justifies imposition of these costs.

42. The Commission directs the FCC's Managing Director, in consultation with the CTO, the Chief of OET, and Chief of CGB, to select (or have the TRS Fund administrator select under objectives and factors determined by the Managing Director in consultation with the CTO, the Chief of OET, and Chief of CGB), consistent with the Commission's neutrality criteria, a neutral party to build, operate, and maintain a user

registration database under contract to the Commission (or the TRS Fund administrator) and compensated through the Fund. Each VRS provider shall be required to register each of its users, populate the database with the necessary information for each of its users, and query the database to ensure a user's eligibility for each call.

43. The TRS-URD must have certain capabilities to allow the TRS Fund administrator and the Commission to: (a) receive and process subscriber information provided by VRS providers sufficient to identify unique VRS users and ensure each has a single default provider; (b) assign each VRS user a unique identifier; (c) allow VRS providers and other authorized entities to query the database to determine if a prospective user already has a default provider; (d) allow VRS providers to indicate that a VRS user has used the service; and (e) maintain the confidentiality of proprietary data housed in the database by protecting it from theft, loss, or disclosure to unauthorized persons. The TRS-URD cannot serve its intended purpose unless VRS providers populate the database with the necessary information and query the database to ensure a user's eligibility for each call. The Commission therefore adopts a rule requiring each VRS provider to submit to the TRS-URD administrator the following information for each of the users for which it serves as the default provider:

- Full name, full residential address, ten-digit telephone number assigned in the TRS numbering directory, last four digits of the Social Security number, and date of birth;
- The user's registered location information for emergency calling purposes;
- VRS provider name and dates of service initiation and termination;
- A digital copy of the user's self-certification of eligibility for VRS and the date obtained by the provider;
- The date on which the user's identification was verified; and
- The date on which the user last placed a point-to-point or relay call.

44. Furthermore, prior to providing subscriber information to the database, the VRS provider must obtain consent from the subscriber. In doing so, the VRS provider must describe to the subscriber in writing using clear and easily understandable language the specific information being provided, that the information is being provided to the TRS-URD to ensure the proper administration of the TRS program, and that failure to provide consent will result in the registered user being

denied service. VRS providers must obtain and keep a record of affirmative acknowledgment by every registered user of such consent.

45. All personally identifying information will only be accessible for access and modification via network connections using commercially reasonable encryption. VRS providers must submit this information for existing registered users to the TRS-URD within 60 days of notice from the Commission that the TRS-URD is ready to accept such information. Calls from existing registered users that have not had their information populated in the TRS-URD within 60 days of notice from the Commission that the TRS-URD is ready to accept such information shall not be compensable. VRS providers must submit this information (except for the date on which the user last placed a point-to-point or relay call, which is not required for newly registered users) for users registered after the TRS-URD is operational upon initiation of service. We require that the TRS-URD be capable of receiving and processing data provided by VRS providers both in real-time and via periodic batches. The Commission directs the Managing Director to ensure that the TRS-URD administrator specifies how VRS providers must submit data to the database subject to both real-time and batch processes.

46. *Per Call Validation.* In order to ensure the compensability of each call, VRS providers shall validate the eligibility of a user by querying the TRS-URD on a per-call basis. Such validation shall occur during the call setup process, prior to the placement of the call. If a caller's eligibility cannot be validated using the TRS-URD, the call shall not be placed, and the VRS provider shall either terminate the call or, if appropriate, offer to register the user if they are able to demonstrate eligibility. Calls that are not completed because the user's eligibility cannot be validated shall not be included in speed of answer calculations. In order to ensure that emergency calls are processed as expeditiously as possible, the Commission excepts emergency calls from this requirement.

47. *Unique User Identifiers.* The TRS-URD shall assign a unique identifier to each user in the TRS-URD. The Commission directs the TRS-URD administrator to determine the form that this unique identifier should take, and the standards and practices associated with assigning and managing the unique identifier, in connection with the contracting process.

48. *Ensuring Data Integrity.* In order to ensure the integrity of the data in the

TRS-URD, it is important to periodically remove information for users who are no longer using VRS (e.g., due to death of the user). The Managing Director will ensure that the TRS-URD administrator removes users from the TRS-URD if they have neither placed nor received a VRS or point to point call in a one year period. Users that are removed from the TRS-URD may, of course, reregister at a later time. If a VRS provider is notified by one of its registered users that the user no longer wants use of a ten-digit number or the provider obtains information that the user is not eligible to use the service, the VRS provider must request that the TRS-URD administrator remove the user's information from the database and may not seek compensation for providing service to the ineligible user. The TRS-URD administrator shall honor such requests.

49. *Security.* The data housed in the TRS-URD may include sensitive personal information. The TRS-URD must have sufficient safeguards to maintain the proprietary or personal nature of the information in the database by protecting it from theft or loss. An important component of maintaining the appropriate level of privacy and data security will be limiting access to the database to authorized entities and then only for authorized purposes. The TRS-URD is not to be used for purposes that do not further the efficient operation and administration of the VRS program, and the Commission authorizes use by providers only for the reasons specified herein, and to determine whether information with respect to its registered users already in the database is correct and complete. Moreover, the Commission specifically prohibits providers from conducting lookups in the TRS-URD to identify other VRS providers' customers for marketing purposes, including win-back efforts. The Managing Director shall ensure that the minimum number of entities has access to the TRS-URD, that such access is utilized only for authorized purposes, and that the data available to a provider in a given circumstance is limited to the minimum necessary.

50. The exact form of the data elements in the database, the structure of the database, and other detailed implementation issues shall be specified during the contracting process. It may become necessary, over time, to modify the data that is to be stored in the database or otherwise make changes to the way the database is administered, structured, or interacted with so as to ensure the efficient administration of the program. To facilitate the ability to

respond to such necessary changes efficiently, the Commission delegates to the Managing Director (or the TRS Fund administrator, if appropriate with the approval of the Managing Director) the authority to modify the TRS-URD contract as necessary to implement changes that are necessary to ensure the efficient administration of the program.

Certification of Eligibility and Verification of Identity

51. The Commission requires every VRS provider to obtain from each registered user a self-certification of eligibility and to implement a centralized identity verification requirement to ensure that registration for VRS is limited to those who have a hearing or speech disability. The Commission declines to relieve VRS providers of their obligation to register users for whom they are the default provider by centralizing that process. VRS providers identify and sign up users through their marketing efforts, and have staff that are trained in ASL and customer registration, and are therefore well equipped to gather from users and potential users the information necessary to register, certify, and verify the eligibility of registrants. It would be difficult, if not impossible, to find a third party with the incentive and ability to conduct those tasks effectively.

Certification of Eligibility

52. In order to be eligible for compensation from the TRS Fund for providing service to their registered VRS users, each provider is required to obtain from each registered user and submit to the TRS-URD a written self-certification that the user has a hearing or speech disability that makes them eligible to use VRS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users.

53. VRS providers shall require their CAs to terminate any call that does not involve an individual that uses ASL or that otherwise, pursuant to the provider's policies, procedures, and practices as described in its annual compliance plan, does not appear to be a legitimate VRS call, and VRS providers may not submit such calls for compensation from the Fund.

54. VRS providers shall submit to the TRS-URD a properly executed certification of eligibility for each of their existing registered users within 60 days of a public notice from the Managing Director providing notice that the TRS-URD is ready to accept information. VRS providers shall submit a properly executed certification for

“new to category” users at the time of registration. When registering a user that is transferring service from another VRS provider, VRS providers shall obtain and submit a properly executed certification if a query of the TRS-URD shows a properly executed certification has not been filed. The Commission also requires each VRS provider to maintain the confidentiality of such registration and certification information obtained by the provider, and to not disclose such registration and certification information, as well as the content of such information, except upon request of the FCC, the TRS Fund administrator, or the TRS-URD administrator or as otherwise required by law.

55. The user self-certification mandated by these rules must adhere to several requirements. In particular, a VRS provider must obtain from each user self-certification that: (1) the user has a hearing or speech disability that makes the user eligible to use VRS; and (2) the user understands that the cost of the VRS calls is paid for by contributions from other telecommunications users to the TRS Fund. In addition, this self-certification must be made on a form separate from any other user agreement, and requires a separate signature specific to the self-certification.

Verification of Identity

56. A centralized process by which the identity of users is verified would help to prevent the registration of fraudulent users and therefore ensure the compensability of VRS calls handled and increase the efficiency of the VRS program. VRS providers are in the best position to gather information necessary to verify user identity but conducting all verifications through a single, centralized process will ensure that all users meet the verification standards mandated by the Commission. Further, it is highly likely that requiring all VRS providers to conduct identity verification through a central process will result in cost savings. The Fund will almost certainly be able to negotiate a contract for verification services for all providers that is less expensive than the sum of the individual contracts that would need to be negotiated by each VRS provider.

57. The Commission directs the Managing Director to ensure that the TRS-URD has the capability of performing an identification verification check when a VRS provider or other party submits a query to the database about an existing or potential user. The criteria for identification verification shall be established by the Managing Director in consultation with the CTO

and the Chief of OET. VRS providers shall not register individuals that do not pass the identification verification check conducted through the TRS-URD, and shall not seek compensation for calls placed by such individuals.

Neutral Video Communication Service Provider

58. VRS communications require the interaction of three separate yet interlinked components: VRS access technologies, video communication service, and relay service provided by ASL-fluent CAs. In the *VRS Structure and Rates PN*, the Commission sought comment on specific proposals to disaggregate these components, including a proposal by CSDVRS to require an industry structure in which all providers of VRS CA services would utilize an enhanced version of the TRS numbering directory to provide features such as user registration and validation, call routing, and usage accounting.

Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates, CC Docket Nos. 03-123 and 10-51, Public Notice and Further Notice of Proposed Rulemaking; published at 77 FR 65526, October 29, 2012 (*VRS Structure and Rates PN*). In effect, the CSDVRS proposal would separate the video communication service component of VRS from the VRS CA service component by providing the functions of the former from an enhanced database (“enhanced iTRS database”). The Commission chooses not to require that all providers utilize a single video communication service provider at this time. In lieu of requiring all VRS providers to use a single video communication service platform, the Commission establishes, by contract, a neutral video communication service provider that will allow consumers to connect to the “standalone” VRS CA service provider of their choice. The neutral video communication service provider will provide user registration and validation, authentication, authorization, ACD platform functions, routing (including emergency call routing), call setup, mapping, call features (such as call forwarding and video mail), and such other features and functions not directly related to the provision of VRS CA services.

59. The creation of a neutral video communication service provider will have multiple beneficial effects, the most obvious being in the promotion of more efficient and effective VRS CA service competition. The availability of a neutral platform will eliminate a significant barrier to entry: the cost of

building and maintaining a video communication service platform. Standalone VRS CA service providers are likely to focus their efforts on distinguishing themselves through innovation in the provision of high-quality ASL interpretation and the hiring of interpreters who can meet a wide variety of VRS user communication needs. A neutral video communication service provider also will provide the Commission direct insight into the operation of the video communication service component of VRS. The Commission will be better able to assess the costs of operating a platform and to develop platform related performance metrics, potentially including metrics that go beyond simple “speed of answer” requirements. Further, a neutral video communication service provider will serve, at least in part, the same functions as the VRS access technology reference platform with respect to ensuring interoperability between providers. The neutral video communication service provider contract will mandate full compliance with industry established interoperability standards, thereby providing a neutral platform against which interoperability issues can be tested. The availability of this neutral video communication service provider also will allow the Commission to be better able to assess claims that independent products or services are not compliant with the Commission’s interoperability rules. As with the VRS access technology reference platform, all providers’ VRS access technologies and (in the case of vertically integrated providers) video communication service platforms must be interoperable with the neutral video communication service provider’s service platform, including for point-to-point calls. After completion of a reasonable testing period that will be announced in advance, the neutral video communication service provider will begin providing service to standalone VRS CA service providers, and from that point on, no VRS provider shall be compensated for minutes of use involving VRS access technologies or video communication service platforms that are not interoperable with the neutral video communication service provider’s platform.

60. Aside from this interoperability obligation, existing, vertically integrated providers of VRS are in no way obligated to utilize the neutral video communication service provider, and may continue to deliver VRS over their existing platforms consistent with the Commission’s rules. Given the

complexity that would result from allowing vertically integrated providers to process calls both over their own video communication service platforms and the neutral video communication service platform the Commission adopts, only providers choosing to operate as standalone VRS CA service providers will be permitted to utilize the neutral video communication service platform to process VRS calls. Existing, vertically integrated VRS providers that wish to transition to operation as a standalone VRS CA service provider may do so upon 60 days notice to the Commission.

Neutral Video Communication Service Provider Performance Requirements

61. The Commission directs the FCC’s Managing Director, in consultation with the CTO, the Chief of OET, and the Chief of CGB, to select, consistent with the Commission’s neutrality criteria, a neutral party to build, operate, and maintain a neutral video communication service platform under contract to the Commission and compensated through the Fund. The Commission further directs the Managing Director to take the following guidance into account when contracting for the neutral video communication service provider.

62. *Quality of service.* The Managing Director, in consultation with the Chief of CGB, shall specify appropriate benchmarks for service quality, including benchmarks for availability, dropped calls, and call signaling delay, consistent with existing Commission requirements.

63. *Standards compliance.* The neutral video communication service platform must conform to all standards incorporated into the Commission’s rules by reference. By extension, the neutral video communication service platform must be interoperable with the VRS access technology platform and other standards compliant VRS access technologies. To the extent the neutral video communication service provider develops and releases iTRS access technology, that iTRS access technology must comply with the Commission’s rules.

64. *Backwards compatibility.* The neutral video communication service platform should provide a reasonable level of backwards compatibility with the installed base of existing VRS access technologies.

65. *Functionality.* The Managing Director shall ensure that the neutral video communication service provider provides all of the operational, technical, and functional capabilities specified in the Commission’s rules that

are not otherwise fulfilled by VRS access technology or a standalone VRS CA service provider. Such requirements include, but are not limited to, routing and delivery of VRS calls to and from the PSTN with interpretation from the user’s registered provider, routing of point-to-point calls, and delivery of calling party identifying information. The neutral video communication service platform shall be available 24 hours a day. The neutral video communication service platform shall ensure appropriate processing of emergency calls, using the user’s registered standalone VRS CA service provider for interpretation services. Specifically, the technical requirements shall specify that the neutral video communication service provider provides each standalone VRS CA service provider with the functionality necessary to comply with § 64.605(b) of the Commission’s rules.

66. The neutral video communication service provider also shall provide such functionality as is required to allow standalone VRS CA service providers to fulfill their registration obligations under § 64.611 of the Commission’s rules. Specifically, the neutral video communication service provider will act on behalf of standalone VRS CA service providers to obtain and assign ten digit telephone numbers to consumers during the user registration process, route and deliver inbound and outbound calls, interface with the TRS Numbering Directory, interface with the TRS-URD, and facilitate any necessary actions as pertain to toll-free numbers.

67. Additionally, the neutral video communication service provider shall provide standard interfaces and protocols through which standalone VRS CA service providers will provide interpretation services and send and receive such information as is necessary to ensure compliance with the Commission’s rules. The neutral video communication service provider shall deliver to standalone VRS CA service providers such information as is necessary for the standalone VRS CA service provider to process the call and maintain such records as are necessary to allow them to seek compensation from the TRS Fund. The neutral video communication service platform also shall provide advanced capabilities as specified by CGB including video mail and address book capabilities.

68. *Scalability.* The neutral video communication service platform will necessarily carry few minutes of use at the initiation of its operations, but is likely to attract additional minutes of use over time. The neutral video communication service platform

provider therefore must ensure that the platform, in addition to having the capacity to process initial levels of call volume, be scalable (*i.e.*, be able to handle increasing amounts of traffic over time as demand warrants) on a reasonable timeline.

69. *Customer service.* The neutral video communication service provider shall provide appropriate levels of customer service both to standalone VRS CA service providers and to end users, including troubleshooting technical issues that may arise in the placing or processing of VRS or point-to-point calls.

Stakeholder Concerns

70. Given that no VRS provider will be required to utilize the neutral video communication service provider, the Commission need not address general concerns expressed by commenters regarding a “command and control” approach to VRS that would disrupt existing business models and putatively damage competition, innovation, and customer satisfaction. Nevertheless, to the extent that some of these concerns could be applicable to the approach the Commission adopts, the Commission addresses each in turn.

71. *Privacy and Security.* While it is not clear how the neutral video communication service provider would pose any greater (or lesser) risk to consumer data than does an integrated provider, the neutral video communication service provider may possess or have access to sensitive personal information. The neutral video communication service provider must, therefore, have sufficient safeguards to maintain the proprietary or personal nature of the information in its possession by protecting it from theft or loss.

72. *Fraud.* The availability of a centralized communication service platform may increase the risk that “fly-by-night” VRS CA service providers will seek to defraud the TRS Fund. However, standalone VRS CA service providers must go through a certification process like other VRS providers before they are eligible to seek compensation from the TRS Fund. This certification process, taken in combination with the Commission’s improved ability to audit data on VRS calls processed by the neutral video communication service provider, will be sufficient to protect the Fund against this kind of waste, fraud, and abuse.

73. *Service quality.* A centralized provider may not be incented to provide quality services, but the services of the neutral video communication service provider are essentially “mechanical” in

nature and can be quantified using well-understood industry-standard metrics such as call signaling delay and availability. Appropriately developed service quality benchmarks specified by contract are sufficient to ensure that the neutral video communication service provider will provide an appropriate level of performance. Any neutral video communication service provider that hopes to win a renewal of its contract will be strongly incented to perform.

74. *Compensation.* Changes to the structure of the VRS program will require changes to the existing compensation system. The Commission will modify the way that vertically integrated providers are compensated and set in place a reasonable glide path to market based rates—a process the Commission began years ago. The Commission proposes to transition to a ratemaking approach that makes use of competitively established pricing, *i.e.*, contract prices set through a competitive bidding process, where feasible.

75. *Customer confusion.* The provision of VRS through disaggregated service providers may result in customer confusion and poor customer service if consumers do not know who to contact to resolve technical difficulties and other problems. This Order ensures that consumers may choose to obtain service from an integrated provider or from a standalone VRS CA service provider utilizing the neutral video communication service platform. To the extent consumers are dissatisfied with their existing registered provider, they may choose a different one.

Standalone VRS CA Service Provider Standards

76. The availability of a neutral video communication service platform will lower the barriers to entry in the provision of VRS CA service. This will promote more effective and efficient competition on the basis of service quality, including interpreter quality and the capabilities to handle the varied needs of VRS users. This can be accomplished consistently with maintaining strong certification criteria and service standards and without affording additional opportunities for fraud, abuse, or waste.

77. *General obligations.* Standalone VRS CA service providers shall be providers of VRS and shall be obligated to comply fully with the Commission’s TRS regulations, with one general exception: a standalone VRS CA service provider must utilize the neutral video communication service platform to fulfill those obligations not directly

related to the provision of VRS CA service. The Commission therefore revises § 64.604(c)(5)(iii)(N)(1)(iii) of the Commission’s rules to allow standalone VRS CA service providers to utilize the neutral video communication service platform for the provision of platform functions. Standalone VRS CA service providers shall be responsible for providing VRS CA service and ensuring that the neutral video communication service provider has the information it needs to fulfill these obligations on its behalf. The Commission will not, however, hold a standalone VRS CA service provider responsible for any action, or failure to act, by the neutral video communication service provider for which the neutral video communication service provider is responsible.

78. *Certification.* The Commission has adopted rigorous rules governing iTRS provider practices and eligibility, certification, and oversight. Like any other iTRS provider, standalone VRS CA service providers must comply with these rules. In complying with the certification requirements set forth in § 64.606 of the Commission’s rules, standalone VRS CA service providers shall, in their description of the technology and equipment used to support their call center functions, describe (a) how they provide connectivity to the neutral video communication service provider, and (b) how they internally route calls to CAs and then back to the neutral video communication service provider. Standalone VRS CA service providers need not describe ACD functionality if it is not used for these purposes, as standalone VRS CA service providers will not operate their own video communication service platforms.

79. *Registration.* A standalone VRS CA service provider shall fulfill its obligations under § 64.611(a), (c), (d), and (e) of the Commission’s rules through the Commission-contracted neutral video communication service provider. The standalone VRS CA service provider shall be responsible for providing interpretation service and gathering and delivering such information from its users to the neutral video communication service provider as is necessary to ensure the obligations set forth in § 64.611 are fulfilled. For the sake of clarity, standalone VRS CA service providers also must comply with § 64.611(f) and (g) of the Commission’s rules.

80. *Speed of Answer.* Standalone VRS CA service providers shall be responsible for meeting the Commission’s speed of answer

requirements as measured from the time a VRS call reaches the signaling servers or user agents operated by the standalone VRS CA service provider.

81. **TRS Facilities.** Standalone VRS CA service providers shall fulfill their obligations regarding TRS facilities, except that they are not required to provide a copy of a lease or licensing agreement for an ACD unless it is used in the provision of CA service.

Delineating Responsibility Between the Neutral Video Communication Service Provider and Standalone VRS CA Service Providers

82. Absence evidence to the contrary, the Commission will generally delineate responsibility based on ownership or control of the network elements responsible for a failure. For example, a standalone VRS CA service provider will not be responsible for a service interruption pursuant to § 64.606(h) of the Commission's rules if that interruption results from an outage of the neutral video communication service provider's network. Violations attributable to the neutral video communication service provider will be addressed through contract enforcement provisions. Violations attributable to the provision of CA service will be addressed through existing Commission procedures. A VRS CA service provider is also responsible for ensuring that the neutral video communication service provider has the information it needs to fulfill non-VRS CA service functions.

Implementation of Structural Reforms

Neutrality Requirements

83. Building, maintaining, and/or operating the TRS-URD, the VRS access technology reference platform, and the neutral video communication service platform will best be done by one or more neutral third parties under contract to the Commission and compensated through the Fund. The neutral administrator of the TRS-URD, the neutral video communication service provider, and the neutral administrator of the VRS access technology reference platform each: (1) Must be a non-governmental entity that is impartial and is not an affiliate of any Internet-based TRS provider; (2) may not themselves, or any affiliate, issue a majority of its debt to, nor derive a majority of its revenues from, any Internet-based TRS provider; and (3) notwithstanding the neutrality criteria set forth in (1) and (2) above, may be determined by the Commission to be or not to be subject to undue influence by parties with a vested interest in the outcome of TRS-related activities. *See*

§ 52.12(a)(1)(iii) of the Commission's rules. Any subcontractor that performs functions of the neutral administrator of the TRS-URD, the neutral video communication service provider, and/or the neutral administrator of the VRS access technology reference platform each must also meet these neutrality criteria.

Cost Recovery

84. Section 225 of the Act creates a cost recovery regime whereby TRS providers are compensated for their reasonable costs of providing service in compliance with the TRS regulations. *See* 47 U.S.C. 225(d)(3); 47 CFR 64.604(c)(5) of the Commission's rules. The Commission does not routinely grant extraordinary cost recovery for new regulations, and does not believe that the providers' additional costs necessary to implement the requirements adopted herein will be substantial. Thus, the Commission does not find it appropriate to grant additional extraordinary cost recovery in connection with this Order, particularly given that providers currently are compensated well above their actual costs.

Additional Reforms

Improving the Commission's Operations

85. The Commission has delegated authority for disability access policy to CGB, stating that CGB "advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to persons with disabilities. 47 CFR 0.141(f) of the Commission's rules. However, in document FCC 13-82, the Commission delegates financial oversight of the TRS Fund to the Managing Director. Nonetheless, such financial oversight must be consistent with the TRS Orders, rules, and policies, and OMD should consult with CGB on issues that potentially could impact the availability, provision, and continuity of services to consumers. Enforcement regarding TRS will continue to be carried out under the existing authority delegated to CGB, OMD, and the Enforcement Bureau, as appropriate.

86. CGB will retain authority over TRS policy matters. OMD will be responsible for management of all TRS related contracts and contractors, including the TRS Fund administration contract/TRS Fund administrator, and the TRS-URD contract adopted pursuant to this Order. In addition, OMD will be responsible for overseeing TRS Fund audits performed by the TRS Fund administrator, responding (jointly

with CGB, if appropriate) to the FCC's Office of Inspector General audits of the TRS Fund, advising the TRS Fund administrator on payment withholding and other financial decisions, and reviewing TRS Fund contribution factor calculations.

87. To meet this clarified responsibility, the Commission notes that the Managing Director has recently designated an FCC employee to serve as a TRS Fund Program Coordinator, which the Commission believes will help OMD to carry out its responsibilities with regard to the TRS Fund. The Commission directs that the Contracting Officer's Representatives (CORs) for all TRS related contracts shall provide support to the TRS Fund Program Coordinator. In addition, the TRS Fund Program Coordinator will coordinate with CGB, the Managing Director, and all other relevant Bureaus and Offices as needed to appropriately oversee the TRS Fund, and will establish and oversee appropriate processes for coordination of Commission staff with the CORs who oversee TRS contracted entities in accordance with their prescribed contractual duties. Issues that could expand the scope of the contract work, extend the length of the contract, or raise the price of performance must be coordinated with the Contracting Officer.

General Prohibitions on Practices Causing Unreasonable Discrimination and Waste, Fraud, and Abuse

88. The *2011 VRS Reform FNPRM*, proposed to adopt regulations that generally prohibit VRS provider practices that discriminate against particular users or classes of users or that otherwise result in waste, fraud, or abuse of the TRS Fund. The Commission concludes that the most appropriate course is to adopt a regulation that mirrors the prohibitions in Section 202(a) of the Act. Section 202(a) of the Act generally prohibits common carriers from engaging in unjust or unreasonable discrimination in charges, practices, classifications, etc., or giving undue or unreasonable advantages or disadvantages to any customer or class of customers, in connection with communications service 42 U.S.C. 202(a). Such a requirement that furthers the "functional equivalence" purpose of section 225 of the Act by providing safeguards against discrimination in the provision of relay services equivalent to those generally applicable to carriers in their provision of voice communication services. Accordingly, the Commission

amends § 64.604 of the Commission's rule to provide that:

“(c)(12) A VRS provider shall not (1) directly or indirectly, by any means or device, engage in any unjust or unreasonable discrimination related to practices, facilities, or services for or in connection with like relay service, (2) engage in or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or (3) subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”

89. The Commission intends that this rule be interpreted and applied in the same manner that section 202(a) of the Act is applied to common carriers, *i.e.*, that this rule will prohibit VRS providers from discriminating in connection with “like” relay service to the same extent that section 202(a) of the Act prohibits common carriers from discriminating in connection with “like” communication service.

90. The Commission also adopts a general prohibition on VRS providers engaging in fraudulent, abusive, and wasteful practices, *i.e.*, practices that threaten to drain the TRS Fund by causing or encouraging (1) False TRS Fund compensation claims, (2) unauthorized use of VRS, (3) the making of VRS calls that would not otherwise be made, or (4) the use of VRS by consumers who do not need the service in order to communicate in a functionally equivalent manner.

91. To prevent practices that cause or encourage unauthorized or unnecessary use of relay services, the Commission amends § 64.604 of the Commission's rules to provide that:

“(c)(13) A VRS provider shall not engage in any practice that causes or encourages, or that the provider knows or has reason to know will cause or encourage (1) false or unverified claims for TRS Fund compensation, (2) unauthorized use of VRS, (3) the making of VRS calls that would not otherwise be made, or (4) the use of VRS by persons who do not need the service in order to communicate in a functionally equivalent manner. A VRS provider shall not seek payment from the TRS Fund for any minutes of service it knows or has reason to know are resulting from such practices. Any VRS provider that becomes aware of such practices being or having been committed by any person shall as soon as practicable report such practices to the Commission or the TRS Fund administrator.”

92. The Commission intends that this rule encompass, but not be limited by, the Commission's numerous prior

declaratory rulings describing wasteful, fraudulent, and abusive practices that violate section 225 of the Act. For purposes of the amended rule, a practice is prohibited where, for example, it artificially stimulates TRS usage, enables or encourages participation by unauthorized users, or uses financial incentives to attract new TRS users or to increase usage. This list is provided by way of example only and is not intended to be exhaustive. Providers are in the best position to identify anomalies and tends based on analysis of their call traffic and abuses detected by CAs. The Commission expects each provider to be diligent in ensuring its practices do not result in waste, fraud, or abuse. All monies paid from the Fund to providers who are in violation of this rule shall be recoverable by the TRS Fund administrator.

Provider Compliance Plans

93. Although the Commission's rules currently require VRS providers who have received Commission certification to submit annual reports providing evidence of ongoing compliance with our minimum standards, its rules do not specifically require the development of or submission to the Commission of an annual compliance plan addressing waste, fraud, and abuse, comparable to what is required of Lifeline-only carriers. To provide an improved mechanism for ensuring that providers have taken adequate steps and adopted sufficient measures to prevent waste, fraud, and abuse, the Commission amends § 64.606(g) of the Commission's rules to add the following requirements:

(g)(3) Each VRS provider shall include within its annual report a compliance plan describing the provider's policies, procedures, and practices for complying with the requirements of § 64.604(c)(13) of the Commission's rules. Such compliance plan shall include, at a minimum: (i) identification of any officer(s) or managerial employee(s) responsible for ensuring compliance with § 64.604(c)(13) of the Commission's rules, (ii) a description of any compliance training provided to the provider's officers, employees, and contractors, (iii) identification of any telephone numbers, Web site addresses, or other mechanisms available to employees for reporting abuses, (iv) a description of any internal audit processes used to ensure the accuracy and completeness of minutes submitted to the TRS Fund administrator, and (v) a description of all policies and practices that the provider is following to prevent waste, fraud, and abuse of the TRS Fund. A provider that fails to file a compliance plan as directed shall not

be entitled to compensation for the provision of VRS during the period of noncompliance.

(4) If, at any time, the Commission determines that a VRS provider's compliance plan currently on file is inadequate to prevent waste, fraud, and abuse of the TRS Fund, the Commission shall so notify the provider, shall explain the reasons the plan is inadequate, and shall direct the provider to correct the identified defects and submit an amended compliance plan reflecting such correction within a specified time period not to exceed 60 days. A provider that fails to comply with such directive shall not be entitled to compensation for the provision of VRS during the period of noncompliance. A submitted compliance plan shall not be *prima facie* evidence of the plan's adequacy; nor shall it be evidence that the provider has fulfilled its obligations under § 64.604(c)(13) of the Commission's rules.

Speed of Answer

94. The Commission sought comment in the *2011 VRS Reform FNPRM* on whether to update its VRS “speed of answer” rules, which require VRS providers to answer 80 percent of all VRS calls within 120 seconds, measured on a monthly basis. The record demonstrates that it is appropriate to take steps to more closely align the VRS speed of answer rules with those applicable to other forms of TRS by reducing the permissible wait time for a VRS call to be answered to 30 seconds, 85 percent of the time, and to measure compliance on a daily basis.

95. *Wait time.* VRS providers already achieve a speed of answer of 30 seconds for the majority of VRS calls. The Commission therefore finds it reasonable to reduce the permissible wait time for VRS calls to 30 seconds. This 30 second requirement deviates from the 10 second speed of answer standard required for other forms of TRS, but given that VRS providers already are largely achieving this standard at current CA staffing levels, this action will set a new standard for VRS provider performance without additional cost to providers or the TRS Fund.

96. *Compliance threshold.* Consistent with the Commission's rules for other forms of TRS, the Commission increases from 80 to 85 percent the number of calls that a provider must answer within the allowable wait time. The Commission previously has found that an 85 percent speed of answer compliance threshold allows providers sufficient leeway to compensate for

abandoned calls and fluctuations in call traffic.

97. *Measurement window.* Consistent with the Commission's rules for other forms of TRS, the Commission requires a daily (rather than monthly) measurement of compliance with the Commission's VRS speed of answer standard. Given that providers now have more than a decade of experience managing CA staffing levels and already are largely meeting the 30 second wait time requirement the Commission adopts, deviating from the measurement window the Commission applies to other forms of TRS is no longer necessary.

98. *Calculating speed of answer.* In the *2005 VRS Speed of Answer Order*, the Commission concluded that "the speed of answer measurement begins when the VRS provider's equipment accepts the call from the Internet." *See e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 98-67 and 03-123; Report and Order; published at 70 FR 51649, August 1, 2005 (*2005 VRS Speed of Answer Order*). Because VRS users can now dial the number they wish to call, and the connection of the call to the called party no longer requires the VRS provider to obtain telephone numbers and other information from VRS users, the Commission now clarifies that the speed of answer will be measured based on the elapsed time between the time at which the call (whether initiated by a hearing or ASL user) is first delivered to the provider's system (handoff time) until the call is either abandoned (call termination time) or answered by any method which results in the caller's call immediately being placed, not put in a queue or on hold (session start time). This clarification mirrors § 64.604(b)(2)(ii) of the Commission's rules governing speed of answer for other forms of TRS, which requires that 85 percent of all calls "be answered within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold." 47 CFR 64.604(b)(2)(ii) of the Commission's rules. Calls that are not completed because the user's eligibility cannot be validated shall not be included in speed of answer calculations.

99. *Phase In.* To allow providers to adjust their operations, as necessary, to meet the new speed of answer requirement, the Commission establishes a phase-in period. Specifically, as measured on a daily basis: (1) by January 1, 2014, VRS providers must answer 85 percent of all

VRS calls within 60 seconds; and (2) by July 1, 2014, VRS providers must answer 85 percent of all VRS calls within 30 seconds. The Commission will monitor VRS providers' compliance with these new standards, and re-visit this issue in the future if necessary.

Preventing Slamming

100. In order to protect VRS and IP Relay users from unwanted changes in their default provider, the Commission adopts rules governing how these changes may take place. These rules, which are incorporated into part 64, subpart F of the Commission's rules (TRS regulations) and are modeled after part 64, subpart K of the Commission's rules, prescribe: the type(s) of user authorization that providers must obtain prior to switching a subscriber's default provider; how verification of any such authorization must be obtained and maintained by the receiving provider; whether and how providers may use information obtained when receiving notification of a user's service change to another provider, whether for marketing, win-back, or other purposes; and complaint procedures and remedies for violation of these rules. 47 CFR 64.1100 of the Commission's rules *et seq.* The rules the Commission adopts are not identical to the slamming rules adopted for telecommunications carriers. Modifications have been made to reflect the differences between Internet-based TRS providers and telecommunications carriers, eliminate redundant provisions, and otherwise make the rules more explicit so as to improve enforcement and administration of the requirements that apply to Internet-based TRS providers.

101. The rules the Commission adopts specifically require a provider to obtain individual user consent before a default provider change may occur. Such consent must be obtained in compliance with prescribed verification procedures, which require that a provider, prior to effecting a default provider change, either: (1) obtain the user's written or electronically signed authorization to change his or her default provider; or (2) utilize an independent third party to verify the subscriber's request. This will help prevent unauthorized default provider changes, thereby reducing the number of consumer complaints. Moreover, the rules the Commission adopts require that third-party verification be conducted in the same language as the underlying transaction. The third-party verifier must elicit: the date of the verification; identification of the user; confirmation that the person on the call is authorized to make the default provider change; confirmation

that the person on the call wants to make the default provider change and understands what the change in default provider means, including that the customer may need to return any leased video equipment belonging to the default provider; confirmation that the person on the call understands that a default provider change, not an upgrade to existing service, or any other misleading description of the transaction is being authorized; the name of the new default provider; the telephone number of record to be transferred to the new default provider; and the type of relay service used with the telephone number being transferred. The rules also require that the third-party verification process be recorded, which in the case of a third-party verification conducted in ASL, means video-recorded.

102. In the *First Internet-Based TRS Numbering Order*, the Commission found that iTRS providers and their numbering partners are subject to the same porting obligations as interconnected VoIP providers, with the sole exception of contributing to meet shared numbering administration costs and local number portability (LNP) costs. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking; published at 73 FR 41286, July 18, 2008 and at 73 FR 41307, July 18, 2008.

103. Because the Commission already addressed the number portability obligations of iTRS providers the Commission will not, except as discussed herein, revisit the number portability obligations of iTRS providers at this time, and the Commission does not include in the iTRS slamming rules the provisions found in subpart K of part 64 that already apply to the numbering partners of the iTRS providers. However, in response to reports alleging that there have been instances where VRS providers have, upon receiving a number porting request for one of their registered users, failed to process that user's calls pending completion of the port or have disabled or reduced the functionality of that user's VRS access technology during the pendency of the porting process, the Commission reminds iTRS providers and their numbering partners on both ends of the number porting process that they are responsible for coordinating the timing of the number porting to ensure that there is no interruption of service to the user. To

prevent improper degradation or interruption of service, the Commission adopts a rule prohibiting default providers from reducing the level or quality of service provided to their users, or the functionality of their users' iTRS access technology, during the porting process.

104. The Commission adopts recordkeeping requirements applicable to iTRS providers that are five years in duration, as opposed to two years in the case of telecommunications carriers. This is consistent with other recordkeeping requirements applicable to iTRS providers and will ensure that the underlying records supporting verification of a default provider change are maintained and are available to the Commission for review. .

105. In the telecommunications carrier context, subpart K of part 64 of the Commission's rules requires that preferred carrier change orders be submitted within 60 days of obtaining a letter of agency. In the iTRS provider slamming rules adopted, the Commission likewise requires that all default provider change orders be implemented within 60 days, whether verified by a letter of authorization or by a third party verification. The Commission finds that placing a limit on the amount of time between when the default provider change order is received and verified and when the change is implemented avoids situations where, for example, an iTRS provider may implement a stale default provider change order that the iTRS user may no longer desire.

106. The Commission permits a provider to acquire by sale or transfer either part or all of another provider's user base, provided that the acquiring provider complies with the user notification procedures set forth in the new rule. Any such sale or transfer must be to a provider that is certified by the Commission pursuant to § 64.606(a)(2) of the Commission's rules to receive compensation from the Fund to provide the specific relay service for which the sale or transfer is occurring.

107. Under the telecommunications slamming rules, a "preferred carrier freeze" prevents a change in a subscriber's preferred carrier selection by placing a "freeze" on that subscriber's selection, unless the subscriber gives the carrier from whom the freeze was requested his or her express consent to change carriers. The Commission will prohibit default provider freezes. Allowing such freezes, especially in a market where anti-slaming procedures have not previously applied, could be detrimental for an industry where

competition continues to evolve, and where consumers should be able to change their default providers with ease.

108. The Commission extends to VRS and IP Relay the common carrier prohibition against using carrier proprietary information gained from a number porting request to initiate retention marketing while a number port is in progress. A VRS or IP Relay provider may not use the proprietary information obtained from a provider submitting a number porting request to try to retain its customer during the porting process. Once the port is complete, the carrier change information is no longer proprietary information protected from use by the former default provider, and therefore the former default provider may use such information to market to its former customer, consistent with TRS requirements.

109. *Enforcement.* The telecommunications carrier slamming rules provide that any submitting provider that fails to comply with the slamming rules for a particular subscriber shall pay 150% of the payments from that subscriber to the authorized carrier, who in turn pays a refund to the subscriber of 50% of all such payments. The appropriate remedy is for the submitting provider to pay to the Fund 100% of the amount that was paid by the Fund to the submitting provider. In other words, since the minutes submitted to the Fund for reimbursement by the submitting provider were not authorized, the provider will have to return its compensation for such minutes to the Fund. The Commission will not require the submitting provider to pay to the Fund an additional 50% because such additional payment would amount to a collection of funds in excess of the costs caused by TRS. However, the Commission reminds VRS and IP Relay providers that, in addition to the repayment remedy, violations could result in enforcement or other remedies available by law to address noncompliance, including but not limited to the Commission's forfeiture procedures.

110. The Commission adopts complaint procedures for unauthorized changes of a default provider that are similar to the complaint procedures used for unauthorized changes of telecommunications carriers. The rules the Commission adopts provide for consumers to file informal complaints with the Commission in writing, including via the Commission's web-based complaint filing system via the option 'Disability Access to

Communications Services and Equipment."

111. *Legal Authority.* The Commission's statutory authority to apply anti-slaming safeguards to VRS and IP Relay derives from section 225 of the Act, which directs the Commission to prescribe regulations to ensure that telecommunications relay services are available in the most efficient manner to enable communication in a manner functionally equivalent to voice telephone services. *See* 47 U.S.C. 225(a)(3), (b)(1). Because voice telephone users enjoy the protections of the Commission's anti-slaming regulations, the Commission finds that applying these same protections to VRS and IP Relay users advances the Act's mandate of functional equivalency. Such protections will improve the efficiency of VRS and IP Relay by reducing wasteful "churning" of the customer base for those services. The Commission establishes slamming prohibitions for VRS and IP Relay pursuant to the specific mandate of section 225(d)(1)(A) of the Act to establish "functional requirements, guidelines, and operations procedures" for TRS. 47 U.S.C. 225(d)(1)(A).

Consumer Privacy

112. In this section, the Commission adopts rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers. The Commission sought comment on the adoption of such privacy rules for TRS in general in 2008 in the *TRS Numbering FNPRM*, and more recently for VRS with respect to certain issues in the *2011 VRS Reform FNPRM*.

113. Commenters generally agree that the Commission should apply Customer Proprietary Network Information (CPNI) protections to all forms of TRS, as well as to point-to-point video services provided over the VRS network, with minor modifications to account for the unique nature of TRS. The Commission now adopts rules that are modeled after part 64, subpart U of the Commission's rules, for the purpose of applying the protections of the CPNI rules to TRS and point-to-point video calls handled over the VRS network. For TRS to be functionally equivalent to voice telephone services, consumers with disabilities who use TRS are entitled to have the same assurances of privacy as do consumers without disabilities for voice telephone services. Further, because upwards of 80–90 percent of all calls made by ASL users on the VRS network are point-to-point, the Commission finds that it is just as

important, if not more important, to apply the CPNI protections to point-to-point video calls handled over the VRS network as it is to apply these safeguards to calls that are relayed.

114. The rules the Commission adopts are not identical to the CPNI rules for telecommunications carriers in subpart U of part 64 of the Commission's rules. Modifications have been made to reflect the differences between TRS providers and telecommunications carriers. For example, the use of sign language is contemplated by the rules. Other modifications have been made to make the rules more explicit so as to improve enforcement and administration of the rules. Although the Commission does not address herein every variance between the subpart U rules that apply to telecommunications carriers and the subpart EE rules that apply to TRS, the Commission describes the main differences below.

115. As with telecommunications services, a TRS provider may access CPNI for the purpose of marketing services to its registered users within the same category of service (meaning same type of TRS) that its registered users already receive from that provider. However, just as a wireless carrier may not access CPNI for the purpose of marketing to a roaming service user (because the roaming service user is not a subscriber of the serving carrier), a TRS provider may not use CPNI for the purpose of marketing to a dial-around user. Similarly, just as a telecommunications carrier may not use CPNI to market services to a party on the other end of its subscriber's voice call because such party may not be a subscriber of that carrier, the Commission does not permit a TRS provider to use CPNI for the purpose of marketing services to a party on the other end of its registered user's point-to-point call.

116. The Commission agrees with the Consumer Groups that due to certain inherent differences between voice telephone services and TRS, certain additional protections should apply to TRS. As the Commission has repeatedly emphasized, because the TRS Fund, and not the consumers, pay for TRS calls, TRS providers may not, with or without using CPNI, engage in marketing communications that offer improper financial incentives to existing or potential customers or that suggest, urge, or tell a TRS user to make more or longer TRS calls. To make clear that, in adopting CPNI rules to cover TRS providers, the Commission is not relieving TRS providers of their obligations under the Commission's prior rulings regarding prohibited

marketing communications, the rules adopted explicitly provide that when CPNI is used for marketing purposes, it may only be used for lawful marketing activities. To the extent that the Consumer Groups advocate restrictions on political speech by TRS providers, the Commission believes that a more developed record is necessary to evaluate the potential merits of adopting new requirements in that regard, and consequently the Commission seeks comment on those issues in the document FCC 13-82 FNPRM.

117. Because the administrator of the TRS Fund requires call data information and other CPNI to administer the Fund and to investigate and prevent waste, fraud, and abuse of TRS, the Commission is adding provisions to the rules requiring TRS providers to use, disclose, or permit access to CPNI upon request by the administrator of the Fund. The Commission further notes that, because consumers generally are not billed for TRS, the concerns about access to customer financial information that underlie the subpart U provisions requiring password protection of CPNI to obtain access to call data information over the telephone are less applicable here, and this provision has been replaced with a simpler customer authentication provision in subpart EE.

118. The rules adopted for TRS CPNI require records to be maintained for three years, compared with one year in subpart U, to ensure that the underlying records supporting a TRS provider's annual compliance certification are maintained and available to the Commission for review. For example, § 64.5109 (e) of the Commission's rules requires an officer of a TRS provider to file with the Commission an annual CPNI compliance certification. A TRS provider must provide a statement explaining, among other things, how its operating procedures ensure compliance with the CPNI rules and include an explanation of any actions taken against data brokers, a summary of all consumer complaints over the reporting period that assert a breach of the consumer's CPNI rights, and report all instances of non-compliance. The three-year record retention will assist the Commission in any investigation it may undertake based on the annual compliance filing or in response to consumer complaints by ensuring that relevant documents are not destroyed in the ordinary course before the Commission has an opportunity to secure their retention through issuance of a letter of inquiry or subpoena.

119. *Legal Authority.* The Commission's statutory authority to apply customer privacy requirements to

TRS derives from section 225 of the Act, which directs the Commission to prescribe regulations to ensure that telecommunications relay services are available to enable communication in a manner that is functionally equivalent to voice telephone services. *See* 47 U.S.C. 225(a)(3), 225(b)(1). Because voice telephone users enjoy the privacy protections of the Commission's CPNI regulations, the Commission finds that applying these same protections to TRS users advances the Act's mandate of functional equivalency. The Commission establishes customer privacy requirements for TRS pursuant to the specific mandate of section 225(d)(1)(A) of the Act to establish "functional requirements, guidelines, and operations procedures" for TRS. 47 U.S.C. 225(d)(1)(A). In addition, extending the Commission's CPNI regulations to TRS users also is ancillary to the Commission's responsibilities under section 222 of the Act to telecommunications service subscribers that place calls to or receive calls from TRS users, because TRS call records include call detail information concerning all calling and called parties.

120. The Commission also has ancillary authority to apply the CPNI requirements to point-to-point video services provided by VRS providers over the VRS network. First, the provision of point-to-point video services is "communication by wire or radio" within the general jurisdictional grant of section 2 of the Act. 47 U.S.C. 152. Second, the application of CPNI protection to point-to-point video services is ancillary to the Commission's responsibilities under sections 222 and 225 of the Act. As discussed above, the Commission has direct authority under section 225 to adopt privacy requirements for VRS service. Point-to-point services are provided by VRS providers to their VRS customers by virtue of the Commission's requirement that VRS providers facilitate such functionality. Consequently, VRS providers have access to CPNI regarding point-to-point services by virtue of their section 225 of the Act-regulated role as the VRS provider for the caller and/or recipient of a point-to-point call. In addition, the Commission concludes that there is a risk that consumers will not readily recognize or anticipate regulatory distinctions between VRS services and the point-to-point services at issue here, which rely on the same access technology and are routed and transmitted over the same network as the VRS services provided by that same provider. Consequently, to the extent that users' privacy is not adequately

protected with respect to point-to-point calls, this risks undermining their expectation of privacy as to VRS services, as well. Thus, the Commission finds that adopting privacy protections for point-to-point services is reasonably ancillary to the Commission's oversight of the VRS provider-user relationship in general, and the privacy protections adopted in that context in particular, regulated under the Commission's section 225 of the Act authority. Further, for a VRS user whose primary means of communication is ASL, a point-to-point video call is akin to a telephone call. Specifically, for such an individual, a point-to-point video call transmitted over the Internet is the primary means by which that person can communicate with another person whose primary means of communication is also ASL. In essence, then, from a privacy perspective, point-to-point video calls between ASL users are "virtually indistinguishable" from VoIP calls between hearing persons, and thus users must have the same expectation of privacy. Thus, analogous to the Commission's exercise of ancillary authority to extend CPNI requirements to interconnected VoIP, the Commission concludes it is reasonably ancillary to the Commission's section 222 of the Act authority to extend privacy requirements to point-to-point services.

Certification Under Penalty of Perjury for Certification Application and Annual Reports

121. In the *2011 iTRS Certification Order*, the Commission found the interim certification to be "a necessary and critical component of the Commission's efforts to curtail fraud and abuse." The Commission affirms this finding and concludes that this attestation is essential to the Commission's efforts to ensure that only qualified providers become and remain eligible for compensation from the Fund. Having received no comment opposing the interim certification, and because of its continued necessity, the Commission permanently adopts the following requirements:

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification under paragraph (a)(2) of this section, must certify as follows: I swear under penalty of perjury that I am _____ (name and title), _____ an officer of the above-named applicant, and that I have examined the

foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an Internet-based TRS provider under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual report under paragraph (g) of this section, must, with each such submission, certify as follows: I swear under penalty of perjury that I am _____ (name and title), _____ an officer of the above-named reporting entity, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

122. The Commission believes that this attestation requirement will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the information provided.

Other Issues

CA Qualifications

123. The Commission's rules direct that VRS CAs must be qualified interpreters, i.e., capable of interpreting "effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." 47 CFR 64.601(a)(17) of the Commission's rules. The Commission sought comment in the *2011 VRS Reform FNPRM* on whether specific training requirements or qualifications for VRS CAs were needed beyond the general requirements set forth in § 64.604(a)(1) of the Commission's rules, as well as the effect that imposing such requirements would have on the current pool of CAs and on the ability of VRS providers to comply with the speed of answer requirement.

124. There is no record in this proceeding to indicate a lack of high VRS CA quality, and Commission records indicate that few consumers have complaints regarding VRS CA quality in the last 12 months. Further, VRS providers compete for users primarily on the basis of quality of service, including the quality of their VRS CAs; a user dissatisfied with the quality of a given provider's VRS CAs can switch to another provider on a per

call or permanent basis. VRS providers thus have developed their own internal methods designed to ensure compliance with the Commission's "qualified interpreter" requirement. For these reasons, the Commission sees no need to modify that requirement at this time.

125. There is no doubt that high quality VRS CAs are critical to the provision of effective VRS, and the Commission will revisit this issue if it becomes apparent that the Commission's current rules are insufficient to ensure the availability of qualified VRS CAs. The Commission will continue to carefully monitor consumer complaints related to the quality of VRS CAs and will look for patterns of complaints regarding individual CAs or providers. The Commission encourages callers who encounter a VRS CA that they believe is unable to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, to make note of the CA's identification number, notify the VRS provider handling the call, and file a complaint with the Commission. Finally, the Commission reminds VRS providers that their annual complaint log summaries (submitted to the Commission) must include, among other things, a listing of complaints alleging a violation of any of the TRS mandatory minimum standards, including violations of the requirement for CAs to be qualified, as well as the manner in which such complaints were resolved.

Skill-Based Routing

126. Commenters have asked that VRS providers be allowed, or required, to offer "skill-based routing," which would allow a VRS caller to select preferred VRS CAs according to the CAs' skill sets—in particular their interpreting, transliteration, and signing styles, and/or areas of knowledge (e.g., medicine, law, or technology). The Commission is concerned that allowing skill-based routing would increase the incentive of VRS users to substitute VRS for in-person sign language interpreting services, including video remote interpreting (VRI)—a practice that is not permitted. Even if that critical issue were resolvable, skill-based routing poses a number of implementation issues. The Commission therefore declines to require or allow skill-based CA routing—or any type of routing to a particular interpreter or interpreter pool—at this time.

VRS Compensation Rate Structure and Rates

Per-User Compensation Mechanism

127. The *2011 VRS Reform FNPRM* sought comment on a proposal to transition VRS from the existing per-minute compensation mechanism to a per-user compensation mechanism in order to better align the compensation methodology with the providers' cost structure, increase efficiency and transparency in the rate setting process, and reduce incentives to conduct common and difficult-to-detect forms of fraud. The record reflects broad opposition to a per-user compensation mechanism.

128. It is difficult to assess, on the basis of the existing record, the validity of commenters' objections to a per-user compensation mechanism or the ultimate impact a per-user mechanism would have on VRS providers and consumers; the reforms that are a predicate to implementation of a per-user mechanism would both alter the nature of the VRS program and provide data that will help determine the need for additional reforms. The Commission therefore declines to adopt a per-user compensation mechanism at this time.

Short-Term Rate Methodology Pending Implementation of Structural Reforms

129. As discussed in the Further Notice, the Commission proposes that, once structural reforms are implemented, the Commission will set VRS compensation rates based largely if not entirely on competitively established pricing, *i.e.*, prices set through a competitive bidding process. During the transition to structural reforms, however, in order to satisfy the Commission's "obligation to protect the integrity of the Fund and to deter and detect waste," the Commission concludes to continue to move rates closer to actual cost using currently available ratemaking tools. While the interim rates set in 2010 began to close the gap between rates and costs, those rates have remained in effect for almost three years, during which average provider costs have declined significantly. Therefore, the Commission will reduce rates further to bring them closer to average provider costs, as calculated by the Fund administrator, beginning with the 2013–14 Fund year.

130. The use of providers' actual, historical costs continues to provide a valuable point of reference for setting VRS compensation rates, pending implementation of the Commission's structural reforms. Historical costs are an especially useful reference point

where, as here, prior submissions of projected costs have proven to be higher than actual costs subsequently determined for the Fund year.

131. The Commission agrees that a multi-year plan, with built-in rate level adjustments, is an appropriate means to provide stability and predictability for the transition period pending implementation of structural reforms. However, the Commission declines to use the interim rates currently in effect as the starting point for a new multi-year rate plan. When the current interim rates were adopted, the Commission specifically determined that those rates were substantially in excess of actual costs. Balancing the need for cost-based rates with concerns about carrier stability in the short term, the Commission decided to allow providers to continue to collect VRS compensation from the TRS Fund at above-cost rates for a limited period, in order to spare providers from a precipitous rate drop and to allow them to continue providing high quality service pending the Commission's consideration of an appropriate rate methodology and other reforms. As a consequence, providers have benefitted for several additional years, at the expense of the TRS Fund and the general body of ratepayers who contribute to the Fund, from VRS compensation rates substantially in excess of costs. Moreover, given that, as noted above, provider costs are declining, the disparity between the existing interim rates and actual provider costs is even greater than it was when the rates were initially set. In effect, in the interests of preserving industry stability pending the adoption of structural reforms, VRS providers have already had the opportunity to provide VRS under a multi-year rate plan, lasting from July 2010 to the present, with above-cost interim rates as both the starting point and the end point. The Commission can no longer justify maintaining VRS rates at these interim levels.

132. While the Commission recognizes that efficiency disincentives can be generated when rates are annually recalculated based on historical costs, in this instance the Commission utilizes RLSA's historical cost analysis for a different purpose, namely, as the reference point for establishing a multi-year rate plan. The Commission agrees with those commenters who urge that multi-year rate plans can offer salutary, efficiency-promoting and rate-predictability benefits and the Commission adopts such a plan below. Multi-year rate plans, however, must have a defensible

cost-based reference point from which to proceed. The Commission finds that RLSA's cost analysis, which actually uses a combination of providers' projected costs and actual historical costs, provides an appropriate reference point in this instance for establishing a multi-year rate plan that enables the VRS industry to transition towards cost-based rates, which the Commission proposes to determine in the future using competitively established pricing. Thus, the Commission finds that the cost basis calculated by RLSA, based on a combination of historical and projected costs, is an appropriate reference point for the rates the Commission adopts, which are described in section IV.D below. In the remainder of this section, the Commission addresses several questions raised in the *2011 VRS Reform FNPRM* regarding allowable categories of costs and the handling of rate tiers both during and after the transition to structural reforms.

Outreach

133. The Commission has decided to establish a coordinated nationwide outreach program for VRS and IP Relay, handled by an independent entity. This change removes the need for VRS and IP Relay providers to incur expenses to conduct their own outreach activities. Therefore, in the future the Commission will preclude such providers from including outreach expenses in their annual cost submissions to the TRS Fund administrator. The elimination of this obligation for IP Relay providers will be taken into account in determining future IP Relay per minute rates. The Commission therefore directs the Fund Administrator to submit a revised rate recommendation that treats outreach as a non-compensable cost for IP Relay providers and direct the Chief, Consumer and Governmental Affairs Bureau, to adopt or revise IP Relay rates for Fund year 2013–2014 as appropriate after consideration of that recommendation. To be clear, however, providers remain free to conduct outreach; the Commission decides here only that the Commission will not consider the expense of such activities in setting rates for these services.

User Equipment

134. The Commission has consistently held that costs attributable to the user's relay hardware and software, including installation, maintenance, and testing, are not compensable from the Fund. The Commission has explained that expenses for which providers are compensated "must be the providers' expenses in making the service available

and not the customer's costs of receiving the equipment. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software.”

135. The Commission declines to alter the Commission's policy against the use of monies from the TRS Fund to support VRS providers' distribution of user equipment or access technology, whether as part of generally applicable rates or through direct payments to VRS providers. A better approach is to fund the development of open source VRS access technology, and to contract for the development and deployment of a VRS access technology reference platform. After implementation of a VRS access technology reference platform and the other reforms adopted herein, there will be another opportunity to assess the extent to which additional measures are necessary and appropriate to promote the availability of iTRS access technology.

Capital Costs and Income Taxes

136. In the *2010 VRS NOI* and the *VRS Structure and Rates PN*, the Commission sought comment on the current process for allowing providers a rate-of-return on capital investment. With respect to the types of capital costs that are recoverable, the Commission finds it would be irresponsible and contrary to the Commission's mandate to ensure the efficient provision of TRS and to preserve the integrity of the TRS Fund, to simply reimburse VRS providers for all capital costs they have chosen to incur—such as high levels of debt—where there is no reason to believe that those costs are necessary to the provision of reimbursable services. The Commission's application of the 11.25% rate of return to TRS compensation rates is a longstanding practice that was affirmed by a federal court of appeals and the Commission declines to alter the Commission's current approach to Fund support for VRS providers' recovery of capital costs, except that the Commission accepts RLSA's recommended adjustment to account for corporate income taxes.

Rate Tiers

137. No party has presented a valid reason why the TRS Fund should support indefinitely VRS operations that are substantially less efficient. Therefore, to encourage the provision of VRS in the most efficient manner, the gap between the highest and lowest tiered rates will be reduced over time, in accordance with the schedule set forth in Table 2 below.

138. The Commission also believes that the Commission's structural reforms, once implemented, will eliminate any residual need for tiered rates. Prior to implementation of restructuring, however, there are good reasons to retain rate tiers and no compelling reasons to eliminate them. With only six providers currently providing VRS, eliminating the rate tiers immediately could force out some of the smallest remaining providers, unnecessarily constricting the service choices available to VRS consumers during the period prior to implementation of structural reforms. The Commission concludes that it is worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient providers in the future, in the more competition-friendly environment that the Commission expects to result from the Commission's structural reforms. Therefore, the Commission will allow tiered rates to remain in effect during the transition to structural reforms, but with a gradually reduced gap between highest and lowest tiers, in order to allow smaller providers an opportunity to increase the efficiency of their operations so as to maximize their chances of success after structural reforms are implemented.

139. The Commission also concludes that the tier boundaries should be adjusted during the transition, so as to ensure that smaller providers have a full opportunity to achieve efficient operations. As noted above, VRS rates are currently structured in three tiers: Tier I rates apply to a provider's first 50,000 VRS minutes each month; Tier II rates apply to a provider's monthly minutes between 50,001 and 500,000; and Tier III rates apply to a provider's monthly minutes in excess of 500,000. As adjusted in this order, Tier I rates will apply to a provider's first 500,000 monthly VRS minutes; Tier II rates will apply to a provider's monthly minutes between 500,001 and 1 million; and Tier III rates will apply to a provider's monthly minutes in excess of 1 million.

140. Regarding the configuration of tiers, the critical question concerns whether and how to adjust the boundary between Tier II, for which the rate is currently \$6.23 per minute, and Tier III, for which the rate is currently \$5.07 per minute. The Commission finds that, regardless of whether the existing cost differences between the largest provider and its smaller competitors—including providers currently handling call volume levels greater than 500,000 minutes per month—are due to economies of scale or to other efficiency

differences among the existing providers, their actual existence is undisputed and is supported by historical data.

141. Further, given the Commission's decision to reduce the gap between the highest and lowest tiered rates and its expectation that tier classifications ultimately will be eliminated upon the implementation of structural reforms, the main question is not whether the Commission can pinpoint the exact level where the greatest economies of scale are achieved, but rather how it can best balance, during the transition to structural reforms, the competing concerns of (1) maintaining sufficient incentives for smaller providers to improve the efficiency of their operations, and (2) ensuring that smaller providers have a reasonable opportunity to compete effectively during the transition and to achieve or maintain the necessary scale to compete effectively after structural reforms are implemented. In this regard, the Commission finds that significant potential harm to competition could result if the Commission sets rate tier boundaries at levels that are too low to allow smaller competitors to remain in the market pending implementation of structural reforms. The Commission concludes that the harm to the public interest will be greater if the Commission set the rate tier boundary for the transition period lower than the optimum level, than if the Commission set it higher than the optimum level. Therefore, in setting the boundary between the highest and next-highest tiers, the Commission concludes that the Commission should err on the side of setting the boundary too high.

142. In order to ensure that VRS competition is preserved pending the implementation of structural reforms, therefore, the Commission will redraw the Tier II/III boundary at 1 million monthly minutes. Setting the Tier II/III boundary at the 1 million minute level will serve to offset the potential competitive impact of lowering per minute reimbursement rates and thus will allow relatively well established but currently less efficient providers to operate within compensation rate categories that reflect their currently higher costs.

143. In addition, the Commission adjusts the boundary between Tiers I and II, currently at 50,000 monthly minutes, up to 500,000 monthly minutes. The Commission agrees with the Fund administrator that the rates for all monthly minutes up to 500,000 should be merged, inasmuch as the rates applicable to these minutes are already virtually equal and the historical record

does not reflect significant cost differences between smaller and larger companies operating within these ranges.

144. In summary, for purposes of setting rates applicable to the transition

period prior to implementation of structural reforms, the Commission will merge existing Tiers I and II into a new Tier I, and carve out a new Tier II, applicable to the range of 500,001–1 million monthly minutes, from the

lower portion of existing Tier III. The existing and new tiers are shown in Table 1 below.

TABLE 1—RECONFIGURED RATE TIERS FOR VRS COMPENSATION

Tier numbers	Existing tier definition (The range of a provider's monthly VRS minutes to which the Tier is applicable)	New tier definition (The range of a provider's a monthly VRS minutes to which the Tier is applicable)
I	0–50,000	0–500,000
II	50,001–500,000	500,001–1 million
III	Over 500,000	Over 1 million

145. To minimize any unintended consequences from the adjustment of the Tier II/III boundary, the Commission will phase in the divergence of the rates applicable to Tier II and Tier III over time, as VRS compensation rates in general are being moved closer to actual costs. This is shown below in Table 2.

Determination of a Cost-Based Rate and a Transitional Rate Plan

146. In the 2012 VRS Rate Filing, RLSA stated that VRS providers' weighted average actual per-minute costs were \$3.5740 for 2010 and \$3.1900 for 2011, and that VRS providers' weighted average projected per-minute costs were \$3.4313 for 2012. RLSA proposed that rates be based on the average of these three numbers, or \$3.396 per minute, with appropriate adjustments to reflect rate tiers.

Implementing the proposed cost-based rate, however, would require per minute rate reductions of \$2.844 (\$6.24–\$3.396) in the Tier I rate, \$2.834 (\$6.23–\$3.396) in the Tier II rate, and \$1.674 (\$5.07–\$3.396) in the Tier III rate. To avoid such dramatic immediate reductions, RLSA proposed that the \$3.396 cost based rate be phased in over a multi-year time period, with the rates restructured in two tiers instead of the current three tiers. Based on equal yearly rate reductions over a three-year phase-in period, RLSA proposed that rates be set initially by reducing each tier by about one-third of the foregoing amounts, resulting in initial rates of \$5.2877 per minute for Tiers I and II (applicable to a provider's first 500,000 minutes each month) and \$4.5099 per minute for Tier III (applicable to a provider's monthly minutes in excess of 500,000).

147. In its May 1, 2013 TRS compensation rate filing, RLSA updated the VRS cost information presented in the 2012 VRS Rate Filing. The administrator reported that the weighted averages of the actual per-minute costs reported by providers are \$3.2477 for

2011 and \$3.0929 for 2012, and that weighted averages of providers' per-minute projected costs are \$3.3894 for 2013 and \$3.7102 for 2014.

148. As noted above, the Commission finds that RLSA's use, in this instance, of a combination of provider's projected costs and actual, historical costs is appropriate for the purpose of setting rates for the transition period. Although the Commission remains concerned about the accuracy of provider projections in general, in this instance the inclusion of projected costs does not appear to inject a significant bias. Indeed, had the Fund administrator excluded 2012 projected costs from the calculation, and simply taken an average of the two historical cost figures (from 2010 and 2011), the result would have been virtually the same. The Commission also approves RLSA's use of weighted averages in calculating actual and projected costs. The Commission finds reasonable RLSA's determination that a rate based on providers' reasonable costs, if adopted, would be \$3.396 per minute, the average of three figures representing providers' historical costs for 2010, historical costs for 2011, and projected costs for 2012. RLSA's estimate is also within the range of provider cost figures presented in RLSA's most recent TRS rate filing.

149. The Commission concurs with RLSA that taking a step-by-step transition from existing, tiered rates toward a unitary cost-based rate is appropriate. Immediate imposition of a unitary cost-based rate would represent a significant and sudden cut to providers' compensation with potentially negative consequences for consumers. Rather than RLSA's proposed three-year transition, however, the Commission concludes that a somewhat longer "glide path" towards a unitary cost-based rate strikes the correct balance. As discussed in the Further Notice, as the Commission implements structural reforms, the Commission proposes to transition to a

new ratemaking approach that uses competitive bidding to establish market-based rates. The Commission's structural reform plan will take a period of years to implement fully. Accordingly, until then, the Commission adopts a multi-year "glide path" towards cost-based rates. In addition, rather than RLSA's proposed yearly rate adjustments, the Commission finds that smaller six-month rate adjustments will provide a less disruptive "glide path" for providers. To improve the predictability of reimbursements and assist providers in planning efficiently for this transition, the Commission now determines the rates that will be in effect for the next four years, subject to exogenous cost adjustments, unless implementation of structural reforms and/or related changes in methodology supports revision of the rates prior to that time.

150. The Commission finds it appropriate to "jump-start" the transition to cost-based rates by setting a uniform \$0.25 rate reduction for the initial rate period. The effective date of the initial rates set herein will be the later of July 1, 2013, or August 5, 2013. Those initial rates, which will remain in effect through December 31, 2013, will be \$5.98 per minute for new Tier I (applicable to a provider's first 500,000 minutes each month), and \$4.82 per minute for new Tier II (applicable to a provider's minutes between 500,001 and 1 million each month) and new Tier III (applicable to a provider's monthly minutes in excess of 1 million). These rates are each about \$0.25 lower than the existing rates applicable to the corresponding ranges of minutes.

151. Subsequently, the Tier III rate will be reduced in \$0.19 increments every six months, so that at the end of four years (unless the rate has been adjusted by then to take account of implementation of structural reforms) it will reach \$3.49, a level approaching RLSA's estimate of the weighted average of actual per-minute VRS costs. The

rates for the other tiers will be reduced at a slower pace relative to current levels, in order to ensure that smaller VRS providers have a reasonable opportunity to improve the efficiency of their operations and to reach the optimum scale to compete effectively after the implementation of structural reforms. Thus, after the initial \$0.25 drop, the Tier I rate will be reduced by \$0.23 (a larger absolute reduction, but a smaller percentage reduction than for Tier III) every six months until January 1, 2016, when (unless the rate has been adjusted by then to take account of implementation of structural reforms) the reductions will begin to accelerate. As to Tier II, while the Commission has determined in section IV.C above that it

is appropriate to carve out a new Tier II in order to allow smaller competitors a full opportunity to improve efficiencies and achieve scale, the Commission will not initially differentiate the rates for new Tiers II and III. Rather, the rates for new Tiers II and III are initially set equal to each other, at \$4.82 per minute, to avoid any sudden, unintended consequences from the reconfiguration of tiers. In subsequent periods, as the rates for Tiers I and III are reduced further, the Tier II rate will remain stable for several periods at \$4.82, so that it becomes differentiated from the Tier III rate and so that the gap between the rates for Tiers I and II will progressively diminish until the rates for those two

tiers are equal. The Tier I and Tier II rates will then remain equal to each other while incrementally declining until the end of the transition. Despite these individual variations in the rate of change for the rates in each tier, all rates are progressively reduced over the four-year plan, and all rates reach levels approaching, but higher than, actual costs at the end of the four-year period.

152. The progressive adjustment of rates for each tier is illustrated in Table 2 below, which shows: (1) The current interim compensation rates, (2) average provider costs as calculated by RLSA, (3) RLSA's proposed first-year rates, and (4) the rates the Commission adopts for Fund years 2013–14, 2014–15, 2015–16, and 2016–17.

TABLE 2—AVERAGE VRS PROVIDER COSTS, CURRENT VRS COMPENSATION RATES, RLSA's PROPOSED RATES, AND THE RATES ADOPTED FOR FUND YEARS 2013–14 THROUGH 2016–17

[Footnotes omitted]

Tiers (as reconfigured by this order)	Weighted average provider costs	FY 2012–13 Rates	RLSA's Proposed first-year rates	FY 2013–14 Rates	FY 2014–15 Rates	FY 2015–16 Rates	FY 2016–17 Rates
Tier I (0–500,000 minutes/month).	\$3.396	\$6.24/\$6.23	\$5.2877	\$5.98 (Jul.–Dec. 2013). \$5.75 (Jan.–June 2014).	\$5.52 (Jul.–Dec. 2014). \$5.29 (Jan.–June 2015).	\$5.06 (Jul.–Dec. 2015). \$4.82 (Jan.–June 2016).	\$4.44 (Jul.–Dec. 2016). \$4.06 (Jan.–June 2017).
Tier II (500,001–1 million minutes/month).	\$3.396	\$5.07	\$4.5099	\$4.82 (Jul.–Dec. 2013). \$4.82 (Jan.–June 2014).	\$4.82 (Jul.–Dec. 2014). \$4.82 (Jan.–June 2015).	\$4.82 (Jul.–Dec. 2015). \$4.82 (Jan.–June 2016).	\$4.44 (Jul.–Dec. 2016). \$4.06 (Jan.–June 2017).
Tier III (over 1 million minutes/month).	\$3.396	\$5.07	\$4.5099	\$4.82 (Jul.–Dec. 2013). \$4.63 (Jan.–June 2014).	\$4.44 (Jul.–Dec. 2014). \$4.25 (Jan.–June 2015).	\$4.06 (Jul.–Dec. 2015). \$3.87 (Jan.–June 2016).	\$3.68 (Jul.–Dec. 2016). \$3.49 (Jan.–June 2017).

153. The rates established in document FCC 13–82 will apply as scheduled to all VRS providers absent further action by the Commission. During the “glide path” period, however, the Commission may adjust the compensation rate to reflect exogenous cost changes, including the shedding of service responsibilities by VRS providers as VRS components begin to be provided by neutral entities. The Commission reserves the right to revisit the rates adopted in document FCC 13–82 if provider data shows that, notwithstanding the Commission's actions, the rates remain substantially in excess of actual provider costs.

Final Regulatory Flexibility Certification

154. As required by the Regulatory Flexibility Act (RFA), an Initial

Regulatory Flexibility Analysis (IRFA) was incorporated in the *2011 VRS Reform FNPRM* in this proceeding. The Commission sought comment on the possible significant economic impact on small entities by the policies and rules proposed in the *2011 VRS Reform FNPRM*, including comment on the IRFA. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

155. Under Title IV of the Americans with Disabilities Act (ADA), the Commission must ensure that telecommunications relay services (TRS) “are available, to the extent possible and in the most efficient manner” to persons in the United States with hearing or speech disabilities. Section 225 of the Communications Act of 1934, as amended (Act) defines TRS

as a service provided in a manner that is “functionally equivalent” to voice telephone services and directs the Commission to establish functional requirements, minimum standards, and other regulations to carry out the statutory mandate. In addition, the Commission's regulations must encourage the use of existing technology and must not discourage the development of new technology. Finally, the Commission must ensure that TRS users “pay rates no greater than the rates paid for functionally equivalent voice communication services.” To this end, the costs of providing TRS on a call are supported by shared funding mechanisms at the state and federal levels. The federal fund supporting TRS is the Telecommunications Relay Services Fund (TRS Fund or Fund), which is

managed by the TRS Fund administrator, subject to the oversight of the Commission. Video relay service (VRS) is a form of TRS that allows persons with hearing or speech disabilities to use sign language to communicate in near real time through a communications assistant (CA), via video over a broadband Internet connection.

156. In the *2011 VRS Reform FNPRM* and subsequent *VRS Structure and Rates PN*, the Commission sought comment on a series of proposals to improve the structure and efficiency of the VRS program, to ensure that it is available to all eligible users and offers functional equivalence—particularly given advances in commercially-available technology—and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates.

157. In document FCC 13–82, as an important first step in its reforms, the Commission has identified certain discrete areas in which it can explore a new approach of relying on the efforts of one or more non-VRS provider third parties, either in whole or in part, to carry out the Commission's VRS policies. Specifically, the Commission:

- Directs the Commission's Managing Director, in consultation with the Chief of the Office of Engineering and Technology (OET) and the Chief of the Consumer and Governmental Affairs Bureau (CGB), to determine how best to structure, fund, and enter into an arrangement with the National Science Foundation (NSF) (or cause the TRS Fund administrator to enter into such an arrangement) to enable research designed to further the Commission's multiple goals of ensuring that TRS is functionally equivalent to voice telephone services and improving the efficiency and availability of TRS;

- Directs the Managing Director in consultation with the Chief of CGB to establish a two-to three year pilot Internet-based TRS (iTRS) National Outreach Program (iTRS–NOP) to select one or more independent iTRS Outreach Coordinators to conduct and coordinate IP Relay and VRS outreach nationwide under the Commission's (or the TRS Fund administrator's) supervision;

- Promotes the development and adoption of voluntary, consensus interoperability and portability standards, and facilitate compliance with those standards by directing the Managing Director to contract for the development and deployment of a VRS access technology reference platform;

- Directs the Managing Director to contract for a central TRS User

Registration Database (TRS–URD) which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, to achieve more effective fraud and abuse prevention, and to allow the Commission to know, for the first time, the number of individuals that actually use VRS; and

- Directs the Managing Director to contract for a neutral party to build, operate, and maintain a neutral video communication service platform, which will allow eligible relay interpretation service providers to compete as VRS providers using the neutral video communication service platform without having to build their own video communication service platform.

158. Because the Commission is not fully departing from its historical regulatory approach for VRS, in the Report and Order, the Commission accompanies the actions describe above with targeted, incremental measures to improve the efficiency of the program, help protect against waste, fraud, and abuse, improve its administration of the program, and to generally ensure that VRS users' experiences reflect the policies and goals of section 225 of the Act. Specifically, the Commission:

- Adopts a general prohibition on practices resulting in waste, fraud, and abuse;
- Requires providers to adopt regulatory compliance plans subject to Commission review;

- More closely harmonizes the VRS speed of answer rules with those applicable to other forms of TRS by reducing the permissible wait time for all VRS calls to be answered within 30 seconds, 85 percent of the time, to be measured on a daily basis;

- Adopts rules to protect relay consumers against unauthorized default provider changes, also known as "slamming," by VRS and Internet Protocol (IP) Relay providers;

- Adopts rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers; and;

- Adopts permanently the interim rules adopted in the *2011 iTRS Certification Order*, requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under § 64.606(g) of the Commission's rules are truthful, accurate, and complete.

159. Consistent with the Commission's incremental approach to reform of the structure of this program, the Commission initiates in document

FCC 13–82 a step-by-step transition from the existing tiered TRS Fund compensation rates for VRS providers toward a unitary, market-based compensation rate. Specifically, document FCC 13–82 (1) adjusts a volume-based three-tier rate structure by modifying the tier boundaries and (2) calls for a series of incremental rate reductions, every six months, over a four-year period.

160. No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities. The Commission has, nonetheless, considered any potential significant economic impact that the rule changes may have on the small entities which are impacted. On balance, the Commission believes that the economic impact on small entities will be positive rather than negative, and that the rule changes are needed to combat waste, fraud, and abuse in the TRS program.

161. 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 rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

162. The Commission believes that the entities that may be affected by the proposed rules are VRS providers and other TRS providers that are eligible to receive compensation from the TRS Fund. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. Currently, there are ten TRS providers that are authorized by the Commission to receive compensation from the Fund. Six of these entities may be small businesses under the SBA size standard.

163. Certain rule changes adopted in document FCC 13–82 modify rules or add requirements governing reporting,

recordkeeping and other compliance obligations.

164. The development and deployment of a VRS access technology reference platform will require providers to offer access technology that is compatible with the reference platform. By ensuring interoperability of VRS and point-to-point video calling, these additional requirements will actually benefit small entities by facilitating their ability to compete with the larger providers.

165. Although the development of a central TRS-URD will include the requirement for VRS providers to collect certain information from consumers and enter that information in the TRS-URD, the TRS-URD will actually reduce the regulatory burden on VRS providers because (1) the providers will no longer be required to verify user information, which will be accomplished centrally by a single entity contracted by the Commission, and (2) the providers will have reduced burdens when collecting information from users who switch providers, because the user information of those consumers is already in the database.

166. The Commission has decided to establish a neutral video communication service provider to reduce barriers to entry, to promote efficient and effective VRS CA service competition, and to ensure interoperability between VRS providers. VRS providers, including small entities, who elect to use the platform of the neutral video communication service provider for network operations will be able to operate more efficiently because they will be relieved of the obligation to provide their own video communication service platform. Although providers, including small entities, who elect to continue to operate their own video communication service platform will be required to ensure that such platform is interoperable with the platform of the neutral video communication service provider, the interoperability requirement will benefit small entities because the interoperability requirement will facilitate their ability to compete with larger providers.

167. The general prohibition on practices resulting in waste, fraud, and abuse adopted in the Report and Order codifies and clarifies the already existing prohibition on such practices. However, VRS providers will also be required to adopt regulatory compliance plans, submit such plans to the Commission and certify that they are in compliance. Although these additional requirements will result in new reporting, recordkeeping, and compliance requirements for VRS

providers, including small entities, given the history of waste, fraud, and abuse in the VRS industry, these requirements are therefore necessary to ensure that the providers are not engaging in practices resulting in waste, fraud, and abuse. The Commission finds it essential to enact such measures to ensure the efficiency of the TRS program as required by section 225(b)(1) of the Act and to control the expenditure of public funds. The costs incurred by providers associated with regulatory compliance, which in the Report and Order the Commission believes will not be substantial, will be far outweighed by the substantial savings to the Fund that result from curbing waste, fraud, and abuse.

168. The adoption of more stringent VRS speed of answer requirements—calls answered within 30 seconds, 85 percent of the time, measured daily—will not cause an undue regulatory burden on VRS providers, including small entities, because record evidence demonstrates that the actual speed of answer currently practiced by providers would satisfy the new requirements, and all parties commenting on the issue supported a reduced speed of answer time. The more stringent speed of answer requirements are closer to the speed of answer requirements for other forms of TRS and are closer to achieving functionally equivalent service for VRS users. In addition, the new requirements are being phased in to help ease any regulatory burden that may exist.

169. Although the adoption of rules to protect consumers against unauthorized default provider changes, also known as “slamming,” will result in additional regulatory compliance requirements for VRS and IP Relay providers, including small entities, in addition to protecting consumers, such requirements will also protect providers, including small entities, from unauthorized provider changes, thereby enhancing the ability of such entities to compete.

170. Although the adoption of rules to protect consumer information relating to all relay services authorized under section 225 of the Act and to point-to-point video services offered by VRS providers will impose additional regulatory compliance requirements on all TRS providers, including small entities, such requirements are essential to ensure that users of TRS services enjoy the same privacy protections as users of telecommunications services.

171. Under interim rules established by the Commission, TRS providers, including small entities, are already certifying under penalty of perjury that their certification applications and annual compliance filings are truthful,

accurate and complete. Making the interim certification requirements permanent is necessary to curb waste, fraud, and abuse in the TRS program and does not increase the regulatory compliance obligations.

172. The rate changes enacted in document FCC 13-82 do not impose any new reporting or recordkeeping requirements.

173. The RFA requires an agency to describe any significant alternatives, specific to small entities, that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.”

174. In general, alternatives to proposed rules are discussed only when those rules pose a significant adverse economic impact on small entities. In this context, however, the proposed rules generally confer benefits as explained below. Therefore, we limit our discussion of an alternative to paragraphs 26–28 below.

175. By ensuring interoperability of VRS and point-to-point video calling, the development and deployment of a VRS access technology reference platform will benefit small entities by facilitating their ability to compete with the larger providers.

176. The development of a central TRS-URD will reduce the regulatory burden on small entities because (1) VRS providers will no longer be required to verify user information, which will be accomplished centrally by a single entity contracted by the Commission, and (2) the providers will have reduced burdens when collecting information from users who switch providers, because the user information of those consumers is already in the database.

177. Small entities that elect to use the platform of the neutral video communication service provider for network operations will be able to operate more efficiently because they will be relieved of the obligation to provide their own video communication service platform. Although small entities that elect to continue to operate their own video communication service platform will be required to ensure that such platform is interoperable with the

platform of the neutral video communication service provider, the interoperability requirement will benefit these small entities because the interoperability requirement will facilitate their ability to compete with larger providers.

178. The adoption of rules to protect consumers against unauthorized default provider changes, also known as “slamming,” will benefit small entities by protecting them from unauthorized provider changes, thereby enhancing their ability to compete.

179. The general prohibition on practices resulting in waste, fraud, and abuse, the requirement for providers to adopt regulatory compliance plans, submit such plans to the Commission and certify that they are in compliance, and the requirement for providers to certify under penalty of perjury that their certification applications and annual compliance filings are truthful, accurate and complete are all necessary to combat waste, fraud, and abuse in the VRS industry. The Commission therefore finds it essential to enact such measures to ensure the efficiency of the TRS program as required by section 225(b)(1) of the Act and to control the expenditure of public funds. Because large and small providers alike have engaged in practices resulting in waste, fraud, and abuse in the VRS industry, exempting small providers from these requirements was considered and rejected. Therefore, it would be contrary to the public interest to in any way limit or exempt small entities from these requirements.

180. The adoption of more stringent VRS speed of answer requirements is necessary to bring the VRS speed of answer requirements closer to the speed of answer requirements for other forms of TRS and to help achieve functionally equivalent service for TRS users as required by section 225(a)(3) of the Act. Slower speed of answer requirements for small providers were considered and rejected, because they would not provide consumers with functionally equivalent service. The Commission finds that these new requirements will not cause an undue regulatory burden on small providers, because record evidence demonstrates that the actual speed of answer currently practiced by providers would satisfy the new requirements, and all parties commenting on the issue supported a reduced speed of answer time. In addition, the new requirements are being phased in to help ease any regulatory burden that may exist.

181. The adoption of rules to protect consumer information relating to all relay services authorized under section

225 of the Act and to point-to-point video services offered by VRS providers is essential to ensure that users of TRS services enjoy the same privacy protections as users of telecommunications services. Adopting regulations for small TRS providers that would not be as comprehensive as the regulations already in place for wireline, wireless and Voice over Internet Protocol (VoIP) providers to protect consumer information was considered and rejected because such lesser regulations would not provide TRS users with full protection of their privacy rights and such users would be denied functionally equivalent service as required by section 225(a)(3) of the Act. It would therefore be contrary to the public interest to enact any special exemptions for small providers.

Congressional Review Act

182. The Commission will send a copy of document FCC 13-82 in a report to be sent to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to sections 1, 2, 4(i), (j), 225, 251 254 and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, 251, 254 and 303(r), document FCC 13-82 is adopted. Pursuant to section 1.427(a) of the Commission’s rules, 47 CFR 1.427(a), document FCC 13-82 and the rules adopted herein shall be effective August 5, 2013, except, 47 CFR 64.604(c)(5)(iii)(N)(13); 64.606(a)(4); 64.606(g)(3) and (4); 64.611(a)(3) and (4); 64.615(a); 64.631(a) through (d), (f); 64.634(b); 64.5105(c)(4) and (5); 64.5107; 64.5108; 64.5109; 64.5110; 64.5111 which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

The Commission shall send a copy of document FCC 13-82 to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document FCC 13-82 including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements; Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

- 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

- 2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

- 3. Amend § 64.601 by revising paragraphs (a)(2) through (29) and adding paragraphs (a)(30) through (45) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(2) *ACD platform*. The hardware and/or software that comprise the essential call center function of call distribution, and that are a necessary core component of Internet-based TRS.

(3) *American Sign Language (ASL)*. A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(4) *ANI*. For 911 systems, the Automatic Number Identification (ANI) identifies the calling party and may be used as the callback number.

(5) *ASCII*. An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(6) *Authorized provider*. An iTRS provider that becomes the iTRS user’s new default provider, having obtained the user’s authorization verified in accordance with the procedures specified in this part.

(7) *Baudot*. A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(8) *Call release*. A TRS feature that allows the CA to sign-off or be “released” from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.

(9) *Common carrier or carrier*. Any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(10) *Communications assistant (CA)*. A person who transliterates or interprets conversation between two or more end users of TRS. CA supersedes the term “TDD operator.”

(11) *Default provider*. The iTRS provider that registers and assigns a ten-digit telephone number to an iTRS user pursuant to § 64.611.

(12) *Default provider change order*. A request by an iTRS user to an iTRS provider to change the user’s default provider.

(13) *Hearing carry over (HCO)*. A form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. Two-line HCO is an HCO service that allows TRS users to use one telephone line for hearing and the other for sending TTY messages. HCO-to-TTY allows a relay conversation to take place between an HCO user and a TTY user. HCO-to-HCO allows a relay conversation to take place between two HCO users.

(14) *Interconnected VoIP service*. The term “interconnected VoIP service” has the meaning given such term under § 9.3 of this chapter, as such section may be amended from time to time.

(15) *Internet-based TRS (iTRS)*. A telecommunications relay service (TRS) in which an individual with a hearing or a speech disability connects to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network. Internet-based TRS does not include the use of a text

telephone (TTY) over an interconnected voice over Internet Protocol service.

(16) *Internet Protocol Captioned Telephone Service (IP CTS)*. A telecommunications relay service that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the Internet, rather than the public switched telephone network.

(17) *Internet Protocol Relay Service (IP Relay)*. A telecommunications relay service that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet, rather than using a text telephone (TTY) and the public switched telephone network.

(18) *IP Relay access technology*. Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive an IP Relay call.

(19) *iTRS access technology*. Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive an Internet-based TRS call.

(20) *Neutral Video Communication Service Platform*. The service platform that allows a registered Internet-based VRS user to use VRS access technology to make and receive VRS and point-to-point calls through a VRS CA service provider. The functions provided by the Neutral Video Communication Service Platform include the provision of a video link, user registration and validation, authentication, authorization, ACD platform functions, routing (including emergency call routing), call setup, mapping, call features (such as call forwarding and video mail), and such other features and functions not provided by the VRS CA service provider.

(21) *New default provider*. An iTRS provider that, either directly or through its numbering partner, initiates or implements the process to become the iTRS user’s default provider by replacing the iTRS user’s original default provider.

(22) *Non-English language relay service*. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared

language other than English, through a CA who is fluent in that language.

(23) *Non-interconnected VoIP service*. The term “non-interconnected VoIP service”—

(i) Means a service that—

(A) Enables real-time voice communications that originate from or terminate to the user’s location using Internet protocol or any successor protocol; and

(B) Requires Internet protocol compatible customer premises equipment; and

(ii) Does not include any service that is an interconnected VoIP service.

(24) *Numbering partner*. Any entity with which an Internet-based TRS provider has entered into a commercial arrangement to obtain North American Numbering Plan telephone numbers.

(25) *Original default provider*. An iTRS provider that is the iTRS user’s default provider immediately before that iTRS user’s default provider is changed.

(26) *Qualified interpreter*. An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(27) *Registered Internet-based TRS user*. An individual that has registered with a VRS or IP Relay provider as described in § 64.611.

(28) *Registered Location*. The most recent information obtained by a VRS or IP Relay provider that identifies the physical location of an end user.

(29) *Sign language*. A language which uses manual communication and body language to convey meaning, including but not limited to American Sign Language.

(30) *Speech-to-speech relay service (STS)*. A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.

(31) *Speed dialing*. A TRS feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a short-hand name or number for the user’s most frequently called telephone numbers.

(32) *Telecommunications relay services (TRS)*. Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a

hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms “dual party relay system,” “message relay services,” and “TDD Relay.”

(33) *Text telephone (TTY).* A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term “TDD” or “telecommunications device for the deaf,” and TT.

(34) *Three-way calling feature.* A TRS feature that allows more than two parties to be on the telephone line at the same time with the CA.

(35) *TRS Numbering Administrator.* The neutral administrator of the TRS Numbering Directory selected based on a competitive bidding process.

(36) *TRS Numbering Directory.* The database administered by the TRS Numbering Administrator, the purpose of which is to map each registered Internet-based TRS user’s NANP telephone number to his or her end device.

(37) *TRS User Registration Database.* A system of records containing TRS user identification data capable of:

(i) Receiving and processing subscriber information sufficient to identify unique TRS users and to ensure that each has a single default provider;

(ii) Assigning each VRS user a unique identifier;

(iii) Allowing VRS providers and other authorized entities to query the TRS User Registration Database to determine if a prospective user already has a default provider;

(iv) Allowing VRS providers to indicate that a VRS user has used the service; and

(v) Maintaining the confidentiality of proprietary data housed in the database by protecting it from theft, loss or disclosure to unauthorized persons. The purpose of this database is to ensure accurate registration and verification of VRS users and improve the efficiency of the TRS program.

(38) *Unauthorized provider.* An iTRS provider that becomes the iTRS user’s new default provider without having obtained the user’s authorization verified in accordance with the procedures specified in this part.

(39) *Unauthorized change.* A change in an iTRS user’s selection of a default

provider that was made without authorization verified in accordance with the verification procedures specified in this part.

(40) *Video relay service (VRS).* A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller.

(41) *Visual privacy screen.* A screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call.

(42) *Voice carry over (VCO).* A form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation. Two-line VCO is a VCO service that allows TRS users to use one telephone line for voicing and the other for receiving TTY messages. A VCO-to-TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user. VCO-to-VCO allows a relay conversation to take place between two VCO users.

(43) *VRS access technology.* Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive a VRS call.

(44) *VRS Access Technology Reference Platform.* A software product procured by or on behalf of the Commission that provides VRS functionality, including the ability to make and receive VRS and point-to-point calls, dial-around functionality, and the ability to update user registration location, and against which providers may test their own VRS access technology and platforms for compliance with the Commission’s interoperability and portability rules.

(45) *VRS CA service provider.* A VRS provider that uses the Neutral Video Communication Service Platform for the video communication service components of VRS.

■ 4. Amend § 64.604 by revising paragraphs (b)(2)(iii), (b)(4)(iv) and (c)(5)(iii)(N)(1)(iii), and add paragraphs (c)(11) through (13), and (d) to read as follows:

§ 64.604 Mandatory minimum standards.

(2) * * *

(iii) *Speed of answer requirements for VRS providers.* (A) Speed of answer requirements for VRS providers are phased-in as follows:

(1) By January 1, 2007, VRS providers must answer 80% of all VRS calls within 120 seconds, measured on a monthly basis;

(2) By January 1, 2014, VRS providers must answer 85% of all VRS calls within 60 seconds, measured on a daily basis; and

(3) By July 1, 2014, VRS providers must answer 85% of all VRS calls within 30 seconds, measured on a daily basis. Abandoned calls shall be included in the VRS speed of answer calculation.

(B) VRS CA service providers must meet the speed of answer requirements for VRS providers as measured from the time a VRS call reaches facilities operated by the VRS CA service provider.

* * * * *

(4) * * *

(iv) A VRS provider leasing or licensing an automatic call distribution (ACD) platform must have a written lease or license agreement. Such lease or license agreement may not include any revenue sharing agreement or compensation based upon minutes of use. In addition, if any such lease is between two eligible VRS providers, the lessee or licensee must locate the ACD platform on its own premises and must utilize its own employees to manage the ACD platform. VRS CA service providers are not required to have a written lease or licensing agreement for an ACD if they obtain that function from the Neutral Video Communication Service Platform.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(N) * * *

(1) * * *

(iii) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible provider, or the eligible VRS provider is a VRS CA service provider and the authorized third party is the provider of the Neutral Video Communication Service Platform, except that a VRS CA service provider may not contract with or otherwise authorize the provider of the Neutral

* * * * *

(b) * * *

Video Communication Service Platform to perform billing on its behalf.

* * * * *

(11) [Reserved]

(12) *Discrimination and preferences.*

A VRS provider shall not:

- (i) Directly or indirectly, by any means or device, engage in any unjust or unreasonable discrimination related to practices, facilities, or services for or in connection with like relay service,
- (ii) Engage in or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or
- (iii) Subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(13) *Unauthorized and unnecessary use of VRS.* A VRS provider shall not engage in any practice that causes or encourages, or that the provider knows or has reason to know will cause or encourage:

- (i) False or unverified claims for TRS Fund compensation,
- (ii) Unauthorized use of VRS,
- (iii) The making of VRS calls that would not otherwise be made, or
- (iv) The use of VRS by persons who do not need the service in order to communicate in a functionally equivalent manner. A VRS provider shall not seek payment from the TRS Fund for any minutes of service it knows or has reason to know are resulting from such practices. Any VRS provider that becomes aware of such practices being or having been committed by any person shall as soon as practicable report such practices to the Commission or the TRS Fund administrator.

(d) *Other standards.* The applicable requirements of §§ 64.605, 64.611, 64.615, 64.617, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 of this part are to be considered mandatory minimum standards.

■ 5. Amend § 64.605 by revising paragraph (b)(4)(ii) to read as follows:

§ 64.605 Emergency calling requirements.

* * * * *

(b) * * *

(4) * * *

(ii) If the VRS or IP Relay is capable of being used from more than one location, provide their registered Internet-based TRS users one or more methods of updating their Registered Location, including at least one option that requires use only of the iTRS access technology necessary to access the VRS or IP Relay. Any method utilized must allow a registered Internet-based TRS user to update the Registered Location at will and in a timely manner.

■ 6. Amend § 64.606 by adding paragraphs (a)(4) and (g)(3) and (4) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) * * *

(4) For the purposes of paragraphs (a)(2)(ii)(A)(4) and (a)(2)(ii)(A)(6) of this section, VRS CA Service Providers shall, in their description of the technology and equipment used to support their call center functions, describe:

- (i) How they provide connectivity to the Neutral Video Communication Service Platform; and
- (ii) How they internally route calls to CAs and then back to the Neutral Video Communication Service Platform. VRS CA service providers need not describe ACD platform functionality if it is not used for these purposes.

* * * * *

(g) * * *

(3) Each VRS provider shall include within its annual report a compliance plan describing the provider's policies, procedures, and practices for complying with the requirements of § 64.604(c)(13) of this subpart. Such compliance plan shall include, at a minimum:

(i) Identification of any officer(s) or managerial employee(s) responsible for ensuring compliance with § 64.604(c)(13) of this subpart;

(ii) A description of any compliance training provided to the provider's officers, employees, and contractors;

(iii) Identification of any telephone numbers, Web site addresses, or other mechanisms available to employees for reporting abuses;

(iv) A description of any internal audit processes used to ensure the accuracy and completeness of minutes submitted to the TRS Fund administrator; and

(v) A description of all policies and practices that the provider is following to prevent waste, fraud, and abuse of the TRS Fund. A provider that fails to file a compliance plan shall not be entitled to compensation for the provision of VRS during the period of noncompliance.

(4) If, at any time, the Commission determines that a VRS provider's compliance plan currently on file is inadequate to prevent waste, fraud, and abuse of the TRS Fund, the Commission shall so notify the provider, shall explain the reasons the plan is inadequate, and shall direct the provider to correct the identified defects and submit an amended compliance plan reflecting such correction within a specified time period not to exceed 60 days. A provider that fails to comply with such directive shall not be entitled

to compensation for the provision of VRS during the period of noncompliance. A submitted compliance plan shall not be *prima facie* evidence of the plan's adequacy; nor shall it be evidence that the provider has fulfilled its obligations under § 64.604(c)(13) of this subpart.

* * * * *

■ 7. Amend § 64.611 by adding paragraphs (a)(3) and (4), by revising paragraph (f), and by adding paragraph (h) to read as follows:

§ 64.611 Internet-based TRS registration.

(a) * * *

(3) *Certification of eligibility of VRS users.* (i) A VRS provider seeking compensation from the TRS Fund for providing VRS to a particular user registered with that provider must first obtain a written certification from the user, attesting that the user is eligible to use VRS.

(ii) The certification required by paragraph (a)(3)(i) of this section must include the user's attestation that:

(A) The user has a hearing or speech disability; and

(B) The user understands that the cost of VRS calls is paid for by contributions from other telecommunications users to the TRS Fund.

(iii) The certification required by paragraph (a)(3)(i) of this section must be made on a form separate from any other agreement or form, and must include a separate user signature specific to the certification. For the purposes of this rule, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature. For the purposes of this rule, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

(iv) Each VRS provider shall maintain the confidentiality of any registration and certification information obtained by the provider, and may not disclose such registration and certification information or the content of such registration and certification information except as required by law or regulation.

(v) VRS providers must, for existing registered Internet-based TRS users, submit the certification required by

paragraph (a)(3)(i) of this section to the TRS User Registration Database within 60 days of notice from the Managing Director that the TRS User Registration Database is ready to accept such information.

(vi) When registering a user that is transferring service from another VRS provider, VRS providers shall obtain and submit a properly executed certification if a query of the TRS User Registration Database shows a properly executed certification has not been filed.

(vii) VRS providers shall require their CAs to terminate any call which does not involve an individual eligible to use VRS due to a hearing or speech disability or, pursuant to the provider's policies, the call does not appear to be a legitimate VRS call, and VRS providers may not seek compensation for such calls from the TRS Fund.

(4) TRS User Registration Database information. Each VRS provider shall collect and transmit to the TRS User Registration Database, in a format prescribed by the administrator of the TRS User Registration Database, the following information for each of its new and existing registered Internet-based TRS users: full name; full residential address; ten-digit telephone number assigned in the TRS numbering directory; last four digits of the social security number or Tribal Identification number, if the registered Internet-based TRS user is a member of a Tribal nation and does not have a social security number; date of birth; Registered Location; VRS provider name and dates of service initiation and termination; a digital copy of the user's self-certification of eligibility for VRS and the date obtained by the provider; the date on which the user's identification was verified; and (for existing users only) the date on which the registered Internet-based TRS user last placed a point-to-point or relay call.

(i) Each VRS provider must obtain, from each new and existing registered Internet-based TRS user, consent to transmit the registered Internet-based TRS user's information to the TRS User Registration Database. Prior to obtaining consent, the VRS provider must describe to the registered Internet-based TRS user, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the TRS User Registration Database to ensure proper administration of the TRS program, and that failure to provide consent will result in the registered Internet-based TRS user being denied service. VRS providers must obtain and keep a record of affirmative acknowledgment by every

registered Internet-based TRS user of such consent.

(ii) VRS providers must, for existing registered Internet-based TRS users, submit the information in paragraph (a)(3) of this section to the TRS User Registration Database within 60 days of notice from the Commission that the TRS User Registration Database is ready to accept such information. Calls from or to existing registered Internet-based TRS users that have not had their information populated in the TRS User Registration Database within 60 days of notice from the Commission that the TRS User Registration Database is ready to accept such information shall not be compensable.

(iii) VRS providers must submit the information in paragraph (a)(4) of this section upon initiation of service for users registered after 60 days of notice from the Commission that the TRS User Registration Database is ready to accept such information.

* * * * *

(f) *iTRS access technology.* (1) Every VRS or IP Relay provider must ensure that all iTRS access technology they have issued, leased, or otherwise provided to VRS or IP Relay users delivers routing information or other information only to the user's default provider, except as is necessary to complete or receive "dial around" calls on a case-by-case basis.

(2) All iTRS access technology issued, leased, or otherwise provided to VRS or IP Relay users by Internet-based TRS providers must be capable of facilitating the requirements of this section.

* * * * *

(h) A VRS CA service provider shall fulfill its obligations under paragraphs (a), (c), (d), and (e) of this section using the Neutral Video Communication Service Platform.

■ 8. Amend subpart F by adding §§ 64.615, 64.617, 64.619, 64.621, 64.623, 64.630, 64.631, 64.632, 64.633, 64.634, 64.635, and 64.636 to read as follows:

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

* * * * *

Sec.

64.615 TRS User Registration Database and administrator.

64.617 Neutral Video Communication Service Platform.

64.619 VRS Access Technology Reference Platform and administrator.

64.621 Interoperability and portability.

64.623 Administrator requirements.

64.630 Applicability of change of default TRS provider rules.

64.631 Verification of orders for change of default TRS providers.

64.632 Letter of authorization form and content.

64.633 Procedures for resolution of unauthorized changes in default provider.

64.634 Procedures where the Fund has not yet reimbursed the provider.

64.635 Procedures where the Fund has already reimbursed the provider.

64.636 Prohibition of default provider freezes.

§ 64.615 TRS User Registration Database and administrator.

(a) *TRS User Registration Database.*

(1) VRS providers shall validate the eligibility of the party on the video side of each call by querying the TRS User Registration Database on a per-call basis. Emergency 911 calls are excepted from this requirement.

(i) Validation shall occur during the call setup process, prior to the placement of the call.

(ii) If the eligibility of at least one party to the call is not validated using the TRS User Registration Database, the call shall not be completed, and the VRS provider shall either terminate the call or, if appropriate, offer to register the user if they are able to demonstrate eligibility.

(iii) Calls that VRS providers are prohibited from completing because the user's eligibility cannot be validated shall not be included in speed of answer calculations and shall not be eligible for compensation from the TRS Fund.

(2) The administrator of the TRS User Registration Database shall assign a unique identifier to each user in the TRS User Registration Database.

(3) *Data integrity.* (i) Each VRS provider shall request that the administrator of the TRS User Registration Database remove from the TRS User Registration Database user information for any registered user:

(A) Who informs its default provider that it no longer wants use of a ten-digit number for TRS services; or;

(B) For whom the provider obtains information that the user is not eligible to use the service.

(ii) The administrator of the TRS User Registration Database shall remove the data of:

(A) Any user that has neither placed nor received a VRS or point to point call in a one year period; and

(B) Any user for which a VRS provider makes a request under paragraph (a)(3)(i) of this section.

(4) VRS providers may query the TRS User Registration Database only for the purposes provided in this subpart, and to determine whether information with respect to its registered users already in the database is correct and complete.

(5) *User verification.* (i) The TRS User Registration Database shall have the capability of performing an identification verification check when a VRS provider or other party submits a query to the database about an existing or potential user.

(ii) VRS providers shall not register individuals that do not pass the identification verification check conducted through the TRS User Registration Database.

(iii) VRS providers shall not seek compensation for calls placed by individuals that do not pass the identification verification check conducted through the TRS User Registration Database.

(b) *Administration—(1) Terms of administration.* The administrator of the TRS User Registration Database shall administer the TRS User Registration Database pursuant to the terms of its contract.

(2) *Compensation.* The TRS Fund, as defined by § 64.604(a)(5)(iii) of this subpart, may be used to compensate the administrator of the TRS User Registration Database for the reasonable costs of administration pursuant to the terms of its contract.

§ 64.617 Neutral Video Communication Service Platform.

(a) VRS CA service providers certified by the Commission are required to utilize the Neutral Video Communication Service Platform to process VRS calls. Each VRS CA service provider shall be responsible for providing sign language interpretation services and for ensuring that the Neutral Video Communication Service Platform has the information it needs to provide video communication service on the VRS CA service provider's behalf.

(b) *Administration—(1) Terms of administration.* The provider of the Neutral Video Communication Service Platform shall administer the Neutral Video Communication Service Platform pursuant to the terms of its contract.

(2) *Compensation.* The TRS Fund, as defined by § 64.604(a)(5)(iii) of this subpart, may be used to compensate the provider of the Neutral Video Communication Service Platform for the reasonable costs of administration pursuant to the terms of its contract.

§ 64.619 VRS Access Technology Reference Platform and administrator.

(a) *VRS Access Technology Reference Platform.* (1) The VRS Access Technology Reference Platform shall be a software product that performs consistently with the rules in this subpart, including any standards adopted in § 64.621 of this subpart.

(2) The VRS Access Technology Reference Platform shall be available for use by the public and by developers.

(b) *Administration—(1) Terms of administration.* The administrator of the VRS Access Technology Reference Platform shall administer the VRS Access Technology Reference Platform pursuant to the terms of its contract.

(2) *Compensation.* The TRS Fund, as defined by § 64.604(a)(5)(iii) of this subpart, may be used to compensate the administrator of the VRS Access Technology Reference Platform for the reasonable costs of administration pursuant to the terms of its contract.

§ 64.621 Interoperability and portability.

(a) *General obligations of VRS providers.* (1) All VRS users must be able to place a VRS call through any of the VRS providers' services, and all VRS providers must be able to receive calls from, and make calls to, any VRS user.

(2) A VRS provider may not take steps that restrict a user's unfettered access to another provider's service, such as providing degraded service quality to VRS users using VRS equipment or service with another provider's service.

(3) All VRS providers must ensure that their VRS access technologies and their video communication service platforms are interoperable with the VRS Access Technology Reference Platform, including for point-to-point calls. No VRS provider shall be compensated for minutes of use involving their VRS access technologies or video communication service platforms that are not interoperable with the VRS Access Technology Reference Platform.

(4) All VRS providers must ensure that their VRS access technologies and their video communication service platforms are interoperable with the Neutral Video Communication Service Platform, including for point-to-point calls. No VRS provider shall be compensated for minutes of use involving their VRS access technologies or video communication service platforms that are not interoperable with the Neutral Video Communication Service Platform.

(b) [Reserved]

§ 64.623 Administrator requirements.

(a) For the purposes of this section, the term "Administrator" shall refer to each of the TRS Numbering administrator, the administrator of the TRS User Registration Database, the administrator of the VRS Access Technology Reference Platform, and the provider of the Neutral Video Communication Service Platform. A

single entity may serve in one or more of these capacities.

(b) *Neutrality.* (1) The Administrator shall be a non-governmental entity that is impartial and not an affiliate of any Internet-based TRS provider.

(2) Neither the Administrator nor any affiliate thereof shall issue a majority of its debt to, nor derive a majority of its revenues from, any Internet-based TRS provider.

(3) Neither the TRS Numbering administrator nor any affiliate thereof shall be unduly influenced, as determined by the North American Numbering Council, by parties with a vested interest in the outcome of TRS-related numbering administration and activities.

(4) None of the administrator of the TRS User Registration Database, the administrator of the VRS Access Technology Reference Platform, or the provider of the Neutral Video Communication Service Platform, nor any affiliates thereof, shall be unduly influenced, as determined by the Commission, by parties with a vested interest in the outcome of TRS-related activities.

(5) Any subcontractor that performs any function of any Administrator shall also meet the neutrality criteria applicable to such Administrator.

(c) *Terms of administration.* The Administrator shall administer pursuant to the terms of its contract.

(d) *Compensation.* The TRS Fund, as defined by § 64.604(a)(5)(iii) of this subpart, may be used to compensate the Administrator for the reasonable costs of administration pursuant to the terms of its contract.

§ 64.630 Applicability of change of default TRS provider rules.

Sections 64.630 through 64.636 of this part governing changes in default TRS providers shall apply to any provider of IP Relay or VRS eligible to receive payments from the TRS Fund.

§ 64.631 Verification of orders for change of default TRS providers.

(a) No iTRS provider, either directly or through its numbering partner, shall initiate or implement the process to change an iTRS user's selection of a default provider prior to obtaining:

(1) Authorization from the iTRS user, and

(2) Verification of that authorization in accordance with the procedures prescribed in this section. The new default provider shall maintain and preserve without alteration or modification all records of verification of the iTRS user's authorization for a minimum period of five years after

obtaining such verification and shall make such records available to the Commission upon request. In any case where the iTRS provider is unable, unwilling or otherwise fails to make such records available to the Commission upon request, it shall be presumed that the iTRS provider has failed to comply with its verification obligations under the rules.

(b) Where an iTRS provider is offering more than one type of TRS, that provider must obtain separate authorization from the iTRS user for each service, although the authorizations may be obtained within the same transaction. Each authorization must be verified separately from any other authorizations obtained in the same transaction. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) A new iTRS provider shall not, either directly or through its numbering partner, initiate or implement the process to change a default provider unless and until the order has been verified in accordance with one of the following procedures:

(1) The iTRS provider has obtained the iTRS user's written or electronically signed authorization in a form that meets the requirements of § 64.632 of this part; or

(2) An independent third party meeting the qualifications in this subsection has obtained, in accordance with the procedures set forth in paragraphs (c)(2)(i) through (iv) of this section, the iTRS user's authorization to implement the default provider change order that confirms and includes appropriate verification of registration data with the TRS User Registration Database as defined in § 64.601(a) of this part. The independent third party must not be owned, managed, controlled, or directed by the iTRS provider or the iTRS provider's marketing agent; must not have any financial incentive to confirm default provider change orders for the iTRS provider or the iTRS provider's marketing agent; and must operate in a location physically separate from the iTRS provider or the iTRS provider's marketing agent.

(i) Methods of third party verification. Third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (iv) of this section are satisfied. It shall be a per se violation of these rules if at any time the iTRS provider, an iTRS provider's marketing representative, or any other person misleads the iTRS user with respect to the authorization that the iTRS user is

giving, the purpose of that authorization, the purpose of the verification, the verification process, or the identity of the person who is placing the call as well as on whose behalf the call is being placed, if applicable.

(ii) Provider initiation of third party verification. An iTRS provider or an iTRS provider's marketing representative initiating a three-way conference call must drop off the call once the three-way connection has been established.

(iii) Requirements for content and format of third party verification. Any description of the default provider change transaction by a third party verifier must not be misleading. At the start of the third party verification process, the third party verifier shall identify the new default provider to the iTRS user and shall confirm that the iTRS user understands that the iTRS user is changing default providers and will no longer receive service from the iTRS user's current iTRS provider. In addition, all third party verification methods shall elicit, at a minimum: The date of the verification; the identity of the iTRS user; confirmation that the person on the call is the iTRS user; confirmation that the iTRS user wants to make the default provider change; confirmation that the iTRS user understands that a default provider change, not an upgrade to existing service, or any other misleading description of the transaction, is being authorized; confirmation that the iTRS user understands what the change in default provider means, including that the iTRS user may need to return any video equipment belonging to the original default provider; the name of the new default provider affected by the change; the telephone number of record to be transferred to the new default provider; and the type of TRS used with the telephone number being transferred. If the iTRS user has additional questions for the iTRS provider's marketing representative during the verification process, the verifier shall instruct the iTRS user that they are terminating the verification process, that the iTRS user may contact the marketing representative with additional questions, and that the iTRS user's default provider will not be changed.

The marketing representative may again initiate the verification process following the procedures set out in this section after the iTRS user contacts the marketing representative with any additional questions. Third party verifiers may not market the iTRS provider's services by providing additional information.

(iv) Other requirements for third party verification. All third party verifications shall be conducted in the same language and format that were used in the underlying marketing transaction and shall be recorded in their entirety. In the case of VRS, this means that if the marketing process was conducted in American Sign Language (ASL), then the third party verification shall be conducted in ASL. In the event that the underlying marketing transaction was conducted via text over IP Relay, such text format shall be used for the third party verification. The third party verifier shall inform both the iTRS user and, where applicable, the communications assistant relaying the call, that the call is being recorded. The third party verifier shall provide the new default provider an audio, video, or IP Relay transcript of the verification of the iTRS user authorization. New default providers shall maintain and preserve audio and video records of verification of iTRS user authorization in accordance with the procedures set forth in paragraph (a)(2) of this section.

(d) A new default provider shall implement an iTRS user's default provider change order within 60 days of obtaining either:

(1) A written or electronically signed letter of agency in accordance with § 64.632 of this part or

(2) Third party verification of the iTRS user's default provider change order in accordance with paragraph (c)(2) of this section. If not implemented within 60 days as required herein, such default provider change order shall be deemed void.

(e) At any time during the process of changing an iTRS user's default provider, and until such process is completed, which is when the new default provider assumes the role of default provider, the original default provider shall not:

(1) Reduce the level or quality of iTRS service provided to such iTRS user, or

(2) Reduce the functionality of any VRS access technology provided by the iTRS provider to such iTRS user.

(f) An iTRS provider that is certified pursuant to § 64.606(a)(2) of this part may acquire, through a sale or transfer, either part or all of another iTRS provider's iTRS user base without obtaining each iTRS user's authorization and verification in accordance with paragraph (c) of this section, provided that the acquiring iTRS provider complies with the following streamlined procedures. An iTRS provider shall not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64 of the Commission rules.

(1) Not later than 30 days before the transfer of the affected iTRS users from the selling or transferring iTRS provider to the acquiring iTRS provider, the acquiring iTRS provider shall provide notice to each affected iTRS user of the information specified herein. The acquiring iTRS provider is required to fulfill the obligations set forth in the advance iTRS user notice. In the case of VRS, the notice shall be provided as a pre-recorded video message in American Sign Language sent to all affected iTRS users. In the case of IP Relay, the notice shall be provided as a pre-recorded text message sent to all affected iTRS users. The advance iTRS user notice shall be provided in a manner consistent with 47 U.S.C. 255, 617, 619 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, §§ 6.3, 6.5, 14.20, and 14.21 of this chapter. The following information must be included in the advance iTRS user notice:

- (i) The date on which the acquiring iTRS provider will become the iTRS user's new default provider;
- (ii) The iTRS user's right to select a different default provider for the iTRS at issue, if an alternative iTRS provider is available;
- (iii) Whether the acquiring iTRS provider will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring iTRS provider, and
- (iv) The toll-free customer service telephone number of the acquiring iTRS provider.

(2) All iTRS users receiving the notice will be transferred to the acquiring iTRS provider, unless they have selected a different default provider before the transfer date.

§ 64.632 Letter of authorization form and content.

(a) An iTRS provider may use a written or electronically signed letter of authorization to obtain authorization of an iTRS user's request to change his or her default provider. A letter of authorization that does not conform with this section is invalid for purposes of this subpart.

(b) The letter of authorization shall be a separate document or located on a separate screen or Web page. The letter of authorization shall contain the following title "Letter of Authorization to Change my Default Provider" at the top of the page, screen, or Web page, as applicable, in clear and legible type.

(c) The letter of authorization shall contain only the authorizing language described in paragraph (d) of this

section and be strictly limited to authorizing the new default provider to implement a default provider change order. The letter of authorization shall be signed and dated by the iTRS user requesting the default provider change.

(d) At a minimum, the letter of authorization must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The iTRS user's registered name and address and each telephone number to be covered by the default provider change order;

(2) The decision to change the default provider from the original default provider to the new default provider;

(3) That the iTRS user designates [insert the name of the new default provider] to act as the iTRS user's agent and authorizing the new default provider to implement the default provider change; and

(4) That the iTRS user understands that only one iTRS provider may be designated as the TRS user's default provider for any one telephone number.

(e) If any portion of a letter of authorization is translated into another language then all portions of the letter of authorization must be translated into that language. Every letter of authorization must be translated into the same language as any promotional materials, descriptions or instructions provided with the letter of authorization.

(f) Letters of authorization submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

§ 64.633 Procedures for resolution of unauthorized changes in default provider.

(a) *Notification of alleged unauthorized provider change.* Original default providers who are informed of an unauthorized default provider change by an iTRS user shall immediately notify the allegedly unauthorized provider and the Commission's Consumer and Governmental Affairs Bureau of the incident.

(b) *Referral of complaint.* Any iTRS provider that is informed by an iTRS user or original default provider of an unauthorized default provider change shall:

(1) Notify the Commission's Consumer and Governmental Affairs Bureau, and

(2) Shall inform that iTRS user of the iTRS user's right to file a complaint

with the Commission's Consumer and Governmental Affairs Bureau. iTRS providers shall also inform the iTRS user that the iTRS user may contact and file a complaint with the alleged unauthorized default provider. An original default provider shall have the right to file a complaint with the Commission in the event that one of its respective iTRS users is the subject of an alleged unauthorized default provider change.

(c) *Notification of receipt of complaint.* Upon receipt of an unauthorized default provider change complaint or notification filed pursuant to this section, the Commission will notify the allegedly unauthorized provider and the Fund administrator of the complaint or notification and order that the unauthorized provider identify to the Fund administrator all minutes attributable to the iTRS user after the alleged unauthorized change of default provider is alleged to have occurred. The Fund administrator shall withhold reimbursement for such minutes pending Commission determination of whether an unauthorized change, as defined by § 64.601(a) of this part, has occurred, if it has not already done so.

(d) *Proof of verification.* Not more than 30 days after notification of the complaint or other notification, the allegedly unauthorized default provider shall provide to the Commission's Consumer and Governmental Affairs Bureau a copy of any valid proof of verification of the default provider change. This proof of verification must clearly demonstrate a valid authorized default provider change, as that term is defined in §§ 64.631 through 64.632 of this part. The Commission will determine whether an unauthorized change, as defined by § 64.601(a) of this part, has occurred using such proof and any evidence supplied by the iTRS user or other iTRS providers. Failure by the allegedly unauthorized provider to respond or provide proof of verification will be presumed to be sufficient evidence of a violation.

§ 64.634 Procedures where the Fund has not yet reimbursed the provider.

(a) This section shall only apply after an iTRS user or iTRS provider has complained to or notified the Commission that an allegedly unauthorized change, as defined by § 64.601(a) of this part, has occurred, and the TRS Fund (Fund), as defined in § 64.604(c)(5)(ii) of this part, has not reimbursed the allegedly unauthorized default provider for service attributable to the iTRS user after the allegedly unauthorized change occurred.

(b) An allegedly unauthorized provider shall identify to the Fund administrator all minutes submitted by the allegedly unauthorized provider to the Fund for reimbursement that are attributable to the iTRS user after the allegedly unauthorized change of default provider, as defined by § 64.601(a) of this part, is alleged to have occurred.

(c) If the Commission determines that an unauthorized change, as defined by § 64.601(a) of this part, has occurred, the Commission shall direct the Fund administrator to not reimburse for any minutes attributable to the iTRS user after the unauthorized change occurred, and neither the authorized nor the unauthorized default provider may seek reimbursement from the fund for those charges. The remedies provided in this section are in addition to any other remedies available by law.

(d) If the Commission determines that the default provider change was authorized, the default provider may seek reimbursement from the Fund for minutes of service provided to the iTRS user.

§ 64.635 Procedures where the Fund has already reimbursed the provider.

(a) The procedures in this section shall only apply after an iTRS user or iTRS provider has complained to or notified the Commission that an unauthorized change, as defined by § 64.601(a) of this part, has occurred, and the Fund has reimbursed the allegedly unauthorized default provider for minutes of service provided to the iTRS user.

(b) If the Commission determines that an unauthorized change, as defined by § 64.601(a) of this part, has occurred, it shall direct the unauthorized default provider to remit to the Fund an amount equal to 100% of all payments the unauthorized default provider received from the Fund for minutes attributable to the iTRS user after the unauthorized change occurred. The remedies provided in this section are in addition to any other remedies available by law.

§ 64.636 Prohibition of default provider freezes.

(a) A default provider freeze prevents a change in an iTRS user's default provider selection unless the iTRS user gives the provider from whom the freeze was requested his or her express consent.

(b) Default provider freezes shall be prohibited.

■ 9. Add subpart EE to part 64 to read as follows:

Subpart EE—TRS Customer Proprietary Network Information.

Sec.

- 64.5101 Basis and purpose.
- 64.5103 Definitions.
- 64.5105 Use of customer proprietary network information without customer approval.
- 64.5107 Approval required for use of customer proprietary network information.
- 64.5108 Notice required for use of customer proprietary network information.
- 64.5109 Safeguards required for use of customer proprietary network information.
- 64.5110 Safeguards on the disclosure of customer proprietary network information.
- 64.5111 Notification of customer proprietary network information security breaches.

§ 64.5101 Basis and purpose.

(a) *Basis.* The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this subpart is to implement customer proprietary network information protections for users of telecommunications relay services pursuant to sections 4, 222, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 4, 222, and 225.

§ 64.5103 Definitions.

(a) *Address of record.* An "address of record," whether postal or electronic, is an address that the TRS provider has associated with the customer for at least 30 days.

(b) *Affiliate.* The term "affiliate" shall have the same meaning given such term in section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(c) *Call data information.* The term "call data information" means any information that pertains to the handling of specific TRS calls, including the call record identification sequence, the communications assistant identification number, the session start and end times, the conversation start and end times, incoming and outbound telephone numbers, incoming and outbound internet protocol (IP) addresses, total conversation minutes, total session minutes, and the electronic serial number of the consumer device.

(d) *Communications assistant (CA).* The term "communications assistant" or "CA" shall have the same meaning given to the term in § 64.601(a) of this part.

(e) *Customer.* The term "customer" means a person:

(1) To whom the TRS provider provides TRS or point-to-point service, or

(2) Who is registered with the TRS provider as a default provider.

(f) *Customer proprietary network information (CPNI).* The term "customer proprietary network information" or "CPNI" means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service used by any customer of a TRS provider; and information regarding a customer's use of TRS contained in the documentation submitted by a TRS provider to the TRS Fund administrator in connection with a request for compensation for the provision of TRS.

(g) *Customer premises equipment (CPE).* The term "customer premises equipment" or "CPE" shall have the same meaning given to such term in section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(h) *Default provider.* The term "default provider" shall have the same meaning given such term in § 64.601(a) of this part.

(i) *Internet-based TRS (iTRS).* The term "Internet-based TRS" or "iTRS" shall have the same meaning given to the term in § 64.601(a) of this part.

(j) *iTRS access technology.* The term "iTRS access technology" shall have the same meaning given to the term in § 64.601(a) of this part.

(k) *Opt-in approval.* The term "opt-in approval" shall have the same meaning given such term in § 64.5107(b)(1) of this subpart.

(l) *Opt-out approval.* The term "opt-out approval" shall have the same meaning given such term in § 64.5107(b)(2) of this subpart.

(m) *Point-to-point service.* The term "point-to-point service" means a service that enables a VRS customer to place and receive non-relay calls without the assistance of a CA over the VRS provider facilities using VRS access technology. Such calls are made by means of ten-digit NANP numbers assigned to customers by VRS providers. The term "point-to-point call" shall refer to a call placed via a point-to-point service.

(n) *Readily available biographical information.* The term "readily available biographical information" means information drawn from the customer's life history and includes such things as the customer's social security number, or the last four digits of that number; mother's maiden name; home address; or date of birth.

(o) *Sign language.* The term "sign language" shall have the same meaning given to the term in § 64.601(a) of this part.

(p) *Telecommunications relay services (TRS).* The term "telecommunications

relay services" or "TRS" shall have the same meaning given to such term in § 64.601(a) of this part.

(q) *Telephone number of record.* The term "telephone number of record" means the telephone number associated with the provision of TRS, which may or may not be the telephone number supplied as part of a customer's "contact information."

(r) *TRS Fund.* The term "TRS Fund" shall have the same meaning given to the term in § 64.604(c)(5)(iii) of this part.

(s) *TRS provider.* The term "TRS provider" means an entity that provides TRS and shall include an entity that provides point-to-point service.

(t) *TRS-related services.* The term "TRS-related services" means, in the case of traditional TRS, services related to the provision or maintenance of customer premises equipment, and in the case of iTRS, services related to the provision or maintenance of iTRS access technology, including features and functions typically provided by TRS providers in association with iTRS access technology.

(u) *Valid photo ID.* The term "valid photo ID" means a government-issued means of personal identification with a photograph such as a driver's license, passport, or comparable ID that has not expired.

(v) *Video relay service.* The term "video relay service" or VRS shall have the same meaning given to the term in § 64.601(a) of this part.

(w) *VRS access technology.* The term "VRS access technology" shall have the same meaning given to the term in § 64.601(a) of this part.

§ 64.5105 Use of customer proprietary network information without customer approval.

(a) A TRS provider may use, disclose, or permit access to CPNI for the purpose of providing or lawfully marketing service offerings among the categories of service (*i.e.*, type of TRS) for which the TRS provider is currently the default provider for that customer, without customer approval.

(1) If a TRS provider provides different categories of TRS, and the TRS provider is currently the default provider for that customer for more than one category of TRS offered by the TRS provider, the TRS provider may share CPNI among the TRS provider's affiliated entities that provide a TRS offering to the customer.

(2) If a TRS provider provides different categories of TRS, but the TRS provider is currently not the default provider for that customer for more than one offering by the TRS provider, the

TRS provider shall not share CPNI with its affiliates, except as provided in § 64.5107(b) of this subpart.

(b) A TRS provider shall not use, disclose, or permit access to CPNI as described in this paragraph (b).

(1) A TRS provider shall not use, disclose, or permit access to CPNI to market to a customer TRS offerings that are within a category of TRS for which the TRS provider is not currently the default provider for that customer, unless that TRS provider has customer approval to do so.

(2) A TRS provider shall not identify or track CPNI of customers that call competing TRS providers and, notwithstanding any other provision of this subpart, a TRS provider shall not use, disclose or permit access to CPNI related to a customer call to a competing TRS provider.

(c) A TRS provider may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A TRS provider may use, disclose or permit access to CPNI derived from its provision of TRS without customer approval, for the provision of CPE or iTRS access technology, and call answering, voice or video mail or messaging, voice or video storage and retrieval services.

(2) A TRS provider may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(3) A TRS provider may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, call waiting, caller I.D., and call forwarding, only to those customers that are currently registered with that TRS provider as their default provider.

(4) A TRS provider shall use, disclose, or permit access to CPNI to the extent necessary to:

(i) Accept and handle 911/E911 calls;

(ii) Access, either directly or via a third party, a commercially available database that will allow the TRS provider to determine an appropriate Public Safety Answering Point, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location;

(iii) Relay the 911/E911 call to that entity; and

(iv) Facilitate the dispatch and response of emergency service or law enforcement personnel to the caller's location, in the event that the 911/E911 call is disconnected or the caller becomes incapacitated.

(5) A TRS provider shall use, disclose, or permit access to CPNI upon request by the administrator of the TRS Fund, as that term is defined in § 64.604(c)(5)(iii) of this part, or by the Commission for the purpose of administration and oversight of the TRS Fund, including the investigation and prevention of fraud, abuse, and misuse of TRS and seeking repayment to the TRS Fund for non-compensable minutes.

(6) A TRS provider may use, disclose, or permit access to CPNI to protect the rights or property of the TRS provider, or to protect users of those services, other TRS providers, and the TRS Fund from fraudulent, abusive, or unlawful use of such services.

§ 64.5107 Approval required for use of customer proprietary network information.

(a) A TRS provider may obtain approval through written, oral, electronic, or sign language methods.

(1) A TRS provider relying on oral or sign language approval shall bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a TRS provider must remain in effect until the customer revokes or limits such approval or disapproval. A TRS provider shall accept any such customer revocation, whether in written, oral, electronic, or sign language methods.

(3) A TRS provider must maintain records of approval, whether oral, written, electronic, or sign language, during the time period that the approval or disapproval is in effect and for at least one year thereafter.

(b) *Use of opt-in and opt-out approval processes.* (1) Opt-in approval requires that the TRS provider obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the TRS provider's request consistent with the requirements set forth in this subpart.

(2) With opt-out approval, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in § 64.5108(d)(1) of this subpart after the TRS provider has provided to the customer appropriate notification of the TRS provider's request for consent consistent with the rules in this subpart.

(3) A TRS provider may only use, disclose, or permit access to the

customer's individually identifiable CPNI with the customer's opt-in approval, except as follows:

(i) Where a TRS provider is permitted to use, disclose, or permit access to CPNI without customer approval under § 64.5105 of this subpart.

(ii) Where a TRS provider is permitted to use, disclose, or permit access to CPNI by making use of customer opt-in or opt-out approval under paragraph (7)(4) of this section.

(4) A TRS provider may make use of customer opt-in or opt-out approval to take the following actions with respect to CPNI:

(i) Use its customer's individually identifiable CPNI for the purpose of lawfully marketing TRS-related services to that customer.

(ii) Disclose its customer's individually identifiable CPNI to its agents and its affiliates that provide TRS-related services for the purpose of lawfully marketing TRS-related services to that customer. A TRS provider may also permit such persons or entities to obtain access to such CPNI for such purposes.

§ 64.5108 Notice required for use of customer proprietary network information.

(a) *Notification, generally.* (1) Prior to any solicitation for customer approval to use, disclose, or permit access to CPNI, a TRS provider shall provide notification to the customer of the customer's right to deny or restrict use of, disclosure of, and access to that customer's CPNI.

(2) A TRS provider shall maintain records of notification, whether oral, written, electronic, or sign language, during the time period that the approval is in effect and for at least one year thereafter.

(b) *Individual notice.* A TRS provider shall provide individual notice to customers when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) *Content of notice.* Customer notification shall provide sufficient information in clear and unambiguous language to enable the customer to make an informed decision as to whether to permit a TRS provider to use, disclose, or permit access to, the customer's CPNI.

(1) The notification shall state that the customer has a right to deny any TRS provider the right to use, disclose or permit access to the customer's CPNI, and the TRS provider has a duty, under federal law, to honor the customer's right and to protect the confidentiality of CPNI.

(2) The notification shall specify the types of information that constitute

CPNI and the specific entities that will use, receive or have access to the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw the customer's consent to use, disclose, or permit access to access to CPNI at any time.

(3) The notification shall advise the customer of the precise steps the customer must take in order to grant or deny use, disclosure, or access to CPNI, and must clearly state that customer denial of approval will not affect the TRS provider's provision of any services to the customer. However, TRS providers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) TRS providers shall provide the notification in a manner that is accessible to the customer, comprehensible, and not misleading.

(5) If the TRS provider provides written notification to the customer, the notice shall be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A TRS provider may state in the notification that the customer's approval to use CPNI may enhance the TRS provider's ability to offer products and services tailored to the customer's needs. A TRS provider also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(8) The notification shall state that any approval or denial of approval for the use of CPNI outside of the service for which the TRS provider is the default provider for the customer is valid until the customer affirmatively revokes or limits such approval or denial.

(9) A TRS provider's solicitation for approval to use, disclose, or have access to the customer's CPNI must be proximate to the notification of a customer's CPNI rights to non-disclosure.

(d) *Notice requirements specific to opt-out.* A TRS provider shall provide notification to obtain opt-out approval through electronic or written methods, but not by oral or sign language communication (except as provided in paragraph (f) of this section). The contents of any such notification shall comply with the requirements of paragraph (c) of this section.

(1) TRS providers shall wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A TRS provider may, in its discretion, provide for a longer period. TRS providers shall notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) TRS providers using the opt-out mechanism shall provide notices to their customers every two years.

(3) TRS providers that use email to provide opt-out notices shall comply with the following requirements in addition to the requirements generally applicable to notification:

(i) TRS providers shall obtain express, verifiable, prior approval from consumers to send notices via email regarding their service in general, or CPNI in particular;

(ii) TRS providers shall either:

(A) Allow customers to reply directly to the email containing the CPNI notice in order to opt-out; or

(B) Include within the email containing the CPNI notice a conspicuous link to a Web page that provides to the customer a readily usable opt-out mechanism;

(iii) Opt-out email notices that are returned to the TRS provider as undeliverable shall be sent to the customer in another form before the TRS provider may consider the customer to have received notice;

(iv) TRS providers that use email to send CPNI notices shall ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and

(v) TRS providers shall make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. TRS providers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) *Notice requirements specific to opt-in.* A TRS provider may provide notification to obtain opt-in approval through oral, sign language, written, or electronic methods. The contents of any such notification shall comply with the

requirements of paragraph (c) of this section.

(f) *Notice requirements specific to one-time use of CPNI.* (1) TRS providers may use oral, text, or sign language notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone, TRS, or point-to-point contacts for the duration of the call, regardless of whether TRS providers use opt-out or opt-in approval based on the nature of the contact.

(2) The contents of any such notification shall comply with the requirements of paragraph (c) of this section, except that TRS providers may omit any of the following notice provisions if not relevant to the limited use for which the TRS provider seeks CPNI:

(i) TRS providers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) TRS providers need not advise customers that the TRS provider may share CPNI with the TRS provider's affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) TRS providers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as the TRS provider explains to customers that the scope of the approval the TRS provider seeks is limited to one-time use; and

(iv) TRS providers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the TRS provider clearly communicates that the customer can deny access to his or her CPNI for the call.

§ 64.5109 Safeguards required for use of customer proprietary network information.

(a) TRS providers shall implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI. Except as provided for in §§ 64.5105 and 64.5108(f) of this subpart, TRS providers shall provide access to and shall require all personnel, including any agents, contractors, and subcontractors, who have contact with customers to verify the status of a customer's CPNI approval before using, disclosing, or permitting access to the customer's CPNI.

(b) TRS providers shall train their personnel, including any agents, contractors, and subcontractors, as to when they are and are not authorized to use CPNI, including procedures for verification of the status of a customer's CPNI approval. TRS providers shall

have an express disciplinary process in place, including in the case of agents, contractors, and subcontractors, a right to cancel the applicable contract(s) or otherwise take disciplinary action.

(c) TRS providers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All TRS providers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record shall include a description of each campaign, the specific CPNI that was used in the campaign, including the customer's name, and what products and services were offered as a part of the campaign. TRS providers shall retain the record for a minimum of three years.

(d) TRS providers shall establish a supervisory review process regarding TRS provider compliance with the rules in this subpart for outbound marketing situations and maintain records of TRS provider compliance for a minimum period of three years. Sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(e) A TRS provider shall have an officer, as an agent of the TRS provider, sign and file with the Commission a compliance certification on an annual basis. The officer shall state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The TRS provider must provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the TRS provider must include an explanation of any actions taken against data brokers, a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI, and a report detailing all instances where the TRS provider, or its agents, contractors, or subcontractors, used, disclosed, or permitted access to CPNI without complying with the procedures specified in this subpart. In the case of iTRS providers, this filing shall be included in the annual report filed with the Commission pursuant to § 64.606(g) of this part for data pertaining to the previous year. In the case of all other TRS providers, this filing shall be made annually with the Disability Rights Office of the Consumer and

Governmental Affairs Bureau on or before March 1 in CG Docket No. 03-

123 for data pertaining to the previous calendar year.

(f) TRS providers shall provide written notice within five business days to the Disability Rights Office of the Consumer and Governmental Affairs Bureau of the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the TRS provider's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified, if applicable, and whether the state commission(s) has taken any action, a copy of the notice provided to customers, and contact information.

(2) Such notice shall be submitted even if the TRS provider offers other methods by which consumers may opt-out.

§ 64.5110 Safeguards on the disclosure of customer proprietary network information.

(a) *Safeguarding CPNI.* TRS providers shall take all reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI. TRS providers shall authenticate a customer prior to disclosing CPNI based on a customer-initiated telephone contact, TRS call, point-to-point call, online account access, or an in-store visit.

(b) *Telephone, TRS, and point-to-point access to CPNI.* A TRS provider shall authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer telephonic, TRS, or point-to-point access to CPNI related to his or her TRS account. Alternatively, the customer may obtain telephonic, TRS, or point-to-point access to CPNI related to his or her TRS account through a password, as described in paragraph (e) of this section.

(c) *Online access to CPNI.* A TRS provider shall authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to his or her TRS account. Once authenticated, the customer may only obtain online access to CPNI related to his or her TRS account through a password, as described in paragraph (e) of this section.

(d) *In-store access to CPNI.* A TRS provider may disclose CPNI to a customer who, at a TRS provider's retail location, first presents to the TRS

provider or its agent a valid photo ID matching the customer's account information.

(e) *Establishment of a password and back-up authentication methods for lost or forgotten passwords.* To establish a password, a TRS provider shall authenticate the customer without the use of readily available biographical information, or account information. TRS providers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or account information. If a customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer shall establish a new password as described in this paragraph.

(f) *Notification of account changes.* TRS providers shall notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed. This notification is not required when the customer initiates service, including the selection of a password at service initiation. This notification may be through a TRS provider-originated voicemail, text message, or video mail to the telephone number of record, by mail to the physical address of record, or by email to the email address of record, and shall not reveal the changed information or be sent to the new account information.

§ 64.5111 Notification of customer proprietary network information security breaches.

(a) A TRS provider shall notify law enforcement of a breach of its customers' CPNI as provided in this section. The TRS provider shall not notify its customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules, until it has completed the process of

notifying law enforcement pursuant to paragraph (b) of this section. The TRS provider shall file a copy of the notification with the Disability Rights Office of the Consumer and Governmental Affairs Bureau at the same time as when the TRS provider notifies the customers.

(b) As soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach, the TRS provider shall electronically notify the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility at <http://www.fcc.gov/eb/cpni>.

(1) Notwithstanding any state law to the contrary, the TRS provider shall not notify customers or disclose the breach to the public until 7 full business days have passed after notification to the USSS and the FBI except as provided in paragraphs (b)(2) and (3) of this section.

(2) If the TRS provider believes that there is an extraordinarily urgent need to notify any class of affected customers sooner than otherwise allowed under paragraph (b)(1) of this section, in order to avoid immediate and irreparable harm, it shall so indicate in its notification and may proceed to immediately notify its affected customers only after consultation with the relevant investigating agency. The TRS provider shall cooperate with the relevant investigating agency's request to minimize any adverse effects of such customer notification.

(3) If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the TRS provider not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the TRS provider when it appears that public disclosure or notice to

affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the TRS provider, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by TRS providers.

(c) *Customer notification.* After a TRS provider has completed the process of notifying law enforcement pursuant to paragraph (b) of this section, and consistent with the waiting requirements specified in paragraph (b) of this section, the TRS provider shall notify its customers of a breach of those customers' CPNI.

(d) *Recordkeeping.* All TRS providers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the USSS and the FBI pursuant to paragraph (b) of this section, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. TRS providers shall retain the record for a minimum of 2 years.

(e) *Definition.* As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.

(f) This section does not supersede any statute, regulation, order, or interpretation in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

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