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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10-51 and 03-123; FCC 17-86]

Structure and Practices of the Video Relay Services Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a four-year rate plan to compensate video relay service (VRS) providers, amends its rules to permit-server based routing for VRS and point-to-point calls, authorizes the continued use of money from the Telecommunications Relay Service (TRS) Fund for Commission-supervised research and development, eliminates rules providing for a neutral video communications service platform, and reinstates the effectiveness of the rule incorporating the VRS Interoperability Profile technical standard.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The compliance date for 47 CFR 64.621(b)(1) is **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publication listed in the rules was approved by the Director of the Federal Register as of May 30, 2017

FOR FURTHER INFORMATION CONTACT: Bob Aldrich, Consumer and Governmental Affairs Bureau at: (202) 418-0996, e-mail Robert.Aldrich@fcc.gov, or Eliot Greenwald, Consumer and Governmental Affairs Bureau at: (202) 418-2235, e-mail Eliot.Greenwald@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order, FCC 17-86, adopted and released on July 6, 2017, in CG Docket Nos. 10-51 and 03-123. The full text of this document will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. 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), (844) 432-2272 (videophone), or (202) 418-0432 (TTY).

CONGRESSIONAL REVIEW ACT

The Commission sent a copy of document FCC 17-86 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

Document FCC 17-86 does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4).

SYNOPSIS

VRS Compensation – Allowable Cost Categories

1. In the Further Notice of Proposed Rulemaking (FNPRM), FCC 17-26, published at 82 FR 17613, April 12, 2017, the Commission stated its intention not to reopen questions concerning the categories of expenses that should be considered allowable costs for VRS compensation. Various parties commenting in this proceeding nonetheless urge that the Commission re-open the matter of allowing costs associated with customer premise equipment (CPE), numbering, outreach, and research and development (R&D). In addition, Sorenson

Communications, LLC (Sorenson) raises new concerns about allowing compensation for imputed intellectual property. These issues are beyond the scope of the rulemaking. The Commission has previously considered and disallowed compensation for each of these categories, except intellectual property, which is addressed below.

2. No reason to reopen previously settled disallowance issues. No party provides a compelling reason to reopen the above issues in this proceeding, especially in the absence of Administrative Procedure Act (APA) notice. The Commission does not agree that circumstances have changed dramatically and sees no material difference from prior proceedings where these issues were addressed.

3. Even if the issues were not already settled and there was APA notice regarding them, the Commission would not be persuaded by arguments to expand allowable costs. Equalizing all VRS-related costs to a voice telephone user's costs is not part of the Commission's mandate under section 225 of the Act. Congressional intent to equalize either network access rates or equipment costs for TRS and voice service users is not evident in the text of this narrowly drawn provision, its surrounding context, or its legislative history. In 1990, the year of section 225's enactment, all TRS calls took place between individuals who used TTYs and voice users. But the high costs of TTY service rates and equipment were matters of public awareness and were being addressed through state and federal action outside the relay requirements of section 225 of the Act. Regarding service costs, the plain text of this section demonstrates that it solely was intended to prevent relay users from incurring the added costs of routing TRS calls through remote relay centers that lie outside the geographical locations of the parties to a relay call, and nothing more. Congress had knowledge about, and ample opportunity to direct the Commission to equalize telephone service costs for TTY users at the time of section 225's enactment, yet it specifically chose not to do so. Accordingly, the discrepancy between the

higher service costs for a broadband connection needed to achieve access to VRS and the costs of telephone service incurred by voice users was not a matter intended to be addressed by section 225 of the Act.

4. Similarly, at the time of section 225's enactment, it was quite evident that the cost of end user equipment needed to complete TRS calls would be significantly greater than the equipment costs incurred by voice telephone users. The average cost for a TTY was $600-$1000, a prohibitive amount for many individuals with low incomes. Again, however, there is simply no indication in section 225 of the Act or its legislative history of an intent by Congress to require the Commission to use the TRS Fund or any other mechanism to equalize such equipment costs. Rather, states developed local programs to distribute TTYs and other specialized customer premises equipment to low income and other eligible individuals with disabilities.

5. Further, disallowance of end user equipment costs from compensable expenses does not discourage the development of improved technology. Rather, compensation to providers for the provision of free equipment <u>runs counter</u> to promoting the use of new mobile and other technologies that are available for use with VRS. The Commission has undertaken extensive efforts to expand the availability of interoperable off-the-shelf Internet Protocol (IP) enabled devices for VRS use, so that individuals who use these services can reduce their dependence on VRS equipment specifically designed for a particular provider's network. Providers increasingly run their own software on off-the-shelf mobile devices, tablets, desktop personal computers, and laptops, reducing the need for specialized, stand-alone VRS equipment. Because the Commission's rules require that all providers support a common standard for relay user equipment (in addition to their own proprietary standards), the Commission has made it possible for the software developed according to such standard to work on all provider networks,

thus making it more attractive for third parties to develop VRS software. These actions demonstrate a concerted effort by the Commission to further section 225's mandate to encourage the use of new and innovative technology.

6. By not authorizing recovery of the costs of VRS CPE, the Commission avoids offering preferential subsidies to certain VRS providers (i.e., those who rely on the free provision of expensive, dedicated videophones and other equipment to attract and retain VRS consumers for their branded services) to the exclusion of others, as well as avoids encouraging providers to engage in free CPE giveaways as incentives to use their services. The Commission believes that if VRS providers are to compete for customers, it is preferable for such competition to take place with respect to the quality of their services—which was the intended purpose of section 225 of the Act—not the equipment they can afford to distribute. The Commission finds no basis for departing from Commission precedent, and therefore again declines to allow use of TRS funds to support VRS providers' equipment costs.

7. Intellectual Property. The Commission concludes that a provider that develops its own intellectual property is not entitled to have the imputed value of that property included in allowable costs. First, the Commission has not previously allowed compensation for the imputed value of TRS providers' property, whether tangible or intangible, and the Commission sees no reason to do so under a methodology that is based on compensating providers for their actual expenses. Any attempt to value intellectual property would necessarily be speculative and highly inexact, especially in the absence of evidence based on arm's length marketplace transactions involving such property. Second, as noted above, to the extent that a provider engages in R&D to develop VRS technologies whose purpose is to meet the Commission's mandatory minimum standards, it is already permitted to recover those expenses from the TRS Fund. To also compensate a provider for the imputed value of such technology would be duplicative at best.

Third, the Commission finds unconvincing the suggestion of an analogy between costs incurred by a TRS provider to license technology from third parties and the imputation of a licensing fee to be "paid" by a TRS provider to itself. The Commission's cost-of-service methodology appropriately assesses the cost of VRS based on provider's actual expenses, not hypothetical expenses that a provider might have incurred had it chosen to purchase technology from third parties. When a VRS provider chooses to develop its own VRS technologies rather than license them from others, it is reasonable to assume that the provider decided that such self-provisioning would enable it to provide service more effectively and at lower cost. It is likewise reasonable and appropriate for the Commission to assess a provider's costs based on its actual expenditures rather than hypothetical, more costly expenditures that it might have made but chose not to.

8. In effect, the argument for recovery of the imputed value of a TRS provider's intellectual property appears to be a way of arguing that VRS providers should be able to gain additional profit for what they have invested in R&D. Although the Commission allows providers to recover their reasonable expenses of providing TRS, in prior decisions it has disallowed claims for "profit" in excess of a reasonable allowance for the cost of raising capital. Although in the section following the Commission modifies the method of estimating capital costs by adopting an "operating margin" approach that will allow providers greater opportunity to recover such costs, the Commission does not thereby authorize providers to recover additional "markup" or profit that goes beyond such reasonable allowance.

Capital Cost Recovery / Operating Margin

9. Replacing return on investment with operating margin. In light of VRS providers' concerns about the adequacy of the 11.25% allowed return on plant investment for capital cost recovery in an industry with very little plant investment, the Commission adopts its proposal in the FNPRM to replace the current rate-of-return approach to capital cost recovery

with an operating margin approach, allowing recovery of a specified percentage of allowable expenses.

10. Setting an allowed operating margin. There is wide variation among average operating margins of different industry sectors, as well as between operating margins for particular companies and time periods. Sorenson provides a list of adjusted EBITDA margins for 20 "leading publicly traded information technology consulting companies," which Sorenson states is based on data reported by Bloomberg on U.S.-listed public companies with a market cap of at least $1 billion and with 100% of their revenue derived from "IT Services." Sorenson notes that the unweighted average margin for the companies on this list is 15.9%.

11. The Commission concludes that consideration of operating margins earned in analogous industries may be a reasonable approach to setting an allowed operating margin for VRS providers. However, information technology (IT) consulting companies are not sufficiently analogous to VRS providers for their operating margins to serve as a reasonable proxy. Unlike IT consulting companies, the bulk of VRS costs are labor costs, primarily salaries and benefits for interpreters, who need not be highly skilled in technology. The Census Bureau's survey of public companies' financial data for North American Industry Classification System (NAICS) Code 541, defined as "Professional, Scientific, and Technical Services," but excluding legal, shows that average quarterly pre-tax operating margins for this industry sector between 2013 and 2016 ranged from 1.8% (in 1Q2016) to 7.9% (in 2Q2013), averaging 4.6% in the 2013-16 period as a whole and 3.2% in 2016. For NAICS 5419, a subsector that includes translation and interpretation services but excludes various less analogous industry segments such as accounting, architectural and engineering, and computer systems design services, the average operating margin for the public firms included in the Census Bureau's survey ranged from 3.9% to 12.2% for the 2013-16 period and averaged 7.4% in the 2013-16 period as a whole and 7.6% in 2016.

Government contractors are another category that may reasonably be viewed as analogous to VRS providers in that they are paid by the government for providing services mandated by law or otherwise closely supervised by a government entity. In five surveys of government contractors by Grant Thornton, conducted between 2009 and 2015, the majority of respondents consistently reported profit rates before interest and taxes between 1% and 10%, with the median profit rate in the neighborhood of 6%.

12. Selecting an operating margin from among this wealth of data regarding arguably analogous industry sectors is not subject to precise determination. The Commission notes that for 2016 (or 2015, in the case of government contractors, as that was the most recent year surveyed), none of the industry sector surveys described above, other than the one cited by Sorenson, had average operating margins greater than 7.6%, and that even the high technology firms cited by Sorenson have a median operating margin of only 12.35%. Based on the current record, and in light of the Commission's statutory mandate to ensure that VRS is made available "to the extent possible, and in the most efficient manner," the Commission concludes that the range of 7.6% to 12.35% represents the "zone of reasonableness" of an allowable operating margin for VRS providers.

Compensation Rate Structure

13. Over the last four years, the Commission has observed the results of its 2013 structural reform and rate initiatives, including the effects on provider incentives, to the extent those can be discerned. The 2013 plan provided for reducing the rate gap between highest- and lowest-priced tiers, with the ultimate expectation that the tiered rate structure eventually would be replaced by a unitary compensation rate for all minutes, which would be set either directly or by proxy based on competitive bidding. This expectation was, in turn, based on the assumption that structural reforms, such as effective interoperability and portability standards and the

establishment of a neutral routing platform would generate a "more competition-friendly environment" for small providers. There was also an expectation that, pending the completion of such structural reforms, the temporary continuation of a tiered rate structure would both encourage improvements in efficiency and ensure 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." 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, FCC 13-82, published at 78 FR 40581, July 5, 2013 (2013 VRS Reform Order).

14. The record confirms that most of these underlying expectations and assumptions have not been borne out by experience. First, a number of the Commission's expectations regarding the pace and content of structural reforms have proven to be overly optimistic. Improved interoperability standards were not incorporated into the Commission's rules until this year, and some aspects of equipment portability, which was expected to improve the competitiveness of the VRS market by facilitating consumers' use of inexpensive, off-the-shelf devices, have yet to secure consensus from the VRS industry. Further, the neutral video communications platform, which the 2013 VRS Reform Order envisioned as a key element in enabling small providers to compete effectively, proved to be impracticable. These developments disprove the Commission's original assumption that structural reforms would be far enough advanced to enable the elimination of tiered rates and the introduction of a market-based methodology upon the expiration of the 2013 compensation plan.

15. Second, provider cost reports overall do not show the major improvements in smaller providers' efficiency that the Commission assumed were possible. With the "glide path" reductions in VRS compensation rates, providers have been under pressure to improve

efficiency, and the record indicates that certain providers have taken significant measures to do so. The weighted average of historical per-minute costs reported by VRS providers has declined from 2013 to 2016; however, the decline has been relatively modest, compared to the period from 2009 to 2012, when average per-minute costs declined by more than $1.00 per minute. Thus, while it appears that providers have achieved some efficiency improvements, other factors, such as the lack of full interoperability, may have limited their success. As a result, the Commission's expectation that smaller VRS providers would be able to make substantial improvements in efficiency within the past four-year period was not fulfilled.

16. Third, updated VRS demand data confirm that the VRS market structure is largely unchanged since 2013, when "Sorenson provide[d] about 80% of the VRS minutes logged every month, and its two principal competitors each provide[d] another five to ten percent." Since then, the two cited competitors of Sorenson have merged, but it is too early to predict how that merger will affect the viability of competition in the VRS market (other than reducing the total number of competitors from five to four). What is clear, however, is that competitors have not made significant inroads into Sorenson's market share, and no VRS provider has been able to grow significantly so as to achieve "the necessary scale to compete effectively."

17. As a consequence of these developments, there remain vast differences in the per-minute costs of VRS providers, which roughly track the vastly different market shares of each current provider. As long as such lopsided cost structures persist, it seems highly unlikely that any of the non-dominant VRS providers can compete successfully to gain market share vis-à-vis the largest, least-cost provider.

18. In the face of these unfulfilled expectations and assumptions, the Commission must choose from a number of alternative courses to take. One possible course would be to seek to maximize efficiency by transitioning to a single rate set at the level of the allowable costs of

the lowest-cost provider, or alternatively, at the level of the average allowable costs for the VRS industry. This approach would reduce the cost burden on the TRS Fund, at least in the short term, but, given the current disparate cost structures in the VRS market, also would be likely to eliminate all VRS competition. The Commission has consistently sought to encourage and preserve the availability of a competitive choice for VRS users, because it ensures a range of service offerings analogous to that afforded voice service users and because it provides a competitive incentive to improve VRS offerings. Further, the continuing presence of such competitive offerings is likely to encourage the lowest-cost provider to maintain higher standards of service quality than if it faced no competition. Thus, if the Commission was to allow VRS competition to be extinguished, for the sake of increasing the efficiency of VRS, the Commission would risk depriving users of functionally equivalent VRS. Because the Commission believes that, in the current circumstances, the benefits of such a rate reduction, through increased efficiency, are not worth the risks to functional equivalence associated with eliminating competitive choice, the Commission did not propose this course as an alternative, and no party advocates it.

19. A second alternative would be to transition to a single rate set at the cost level of some higher-cost provider—most likely the next-lowest-cost provider. Due to the current imbalance among VRS providers' cost structures, however, this method would be likely to result in greatly increased TRS Fund expenditures, because the most efficient provider—with the overwhelming bulk of minutes—would be compensated at a rate far in excess of its actual costs. Such inefficient use of TRS Fund resources is not permitted by section 225 of the Act if there is a more efficient method of ensuring the availability of functionally equivalent service. In addition, by generating an extremely uneven set of operating margins—huge windfall profits for one provider and minimally sufficient margins or actual operating losses for the others, taking

this approach seems likely to doom any prospect of the VRS market evolving to a more competitive structure. Indeed, adopting this approach, as a practical matter, would inevitably eliminate two of the four existing VRS competitors. A single rate could not be set high enough to allow a third provider to remain in the market without raising TRS Fund expenditures and allowing the windfall profits for lower-cost providers to achieve astronomical levels.

20. For these reasons, the Commission concludes that the alternative proposed in the FNPRM—maintaining a tiered rate structure for the next four years—is the best available alternative at present. Compared with any practicable single-rate approach, as further explained below, a tiered rate approach is most likely to ensure that functionally equivalent VRS remains available and is provided in the most efficient manner with respect to TRS Fund resources.

21. First, the application of tiered rates rather than a single rate will help ensure that there continue to be competitive options for VRS users, an objective that takes on special importance at this time, in light of the recent attrition in the VRS market. Although there were six independently owned providers at the time of the 2013 VRS Reform Order, this number has since been reduced to four. The presence of multiple competitors, even if less efficient than the lowest-cost provider, may enhance functional equivalence by ensuring that VRS users have a choice among diverse service offerings. Further attrition, which would be inevitable if the Commission sets a single rate at any realistic level, would further limit the ability of consumers to select providers based on service quality and features, and would make the continuing availability of *any* competitive choice less certain, eroding the Commission's ability to ensure the availability of functionally equivalent service. In these circumstances, to the extent that a tiered rate structure is more effective than a single rate in preventing further erosion of the competitiveness of the VRS environment, it may be justifiable on that ground alone, even if overall efficiency would be somewhat reduced.

22. Moreover, the record indicates that, at this time, a tiered rate structure is more likely than a single-rate structure to improve the efficiency with which the TRS Fund supports VRS. Given the major disparities in service provider size and cost structure, tiered rates enable the Commission to reduce waste of TRS Fund resources by limiting compensation that is excessive in relation to a provider's actual costs. Thus, the Commission is not persuaded that a tiered rate structure, by allowing payment of a higher effective compensation rate to less efficient VRS providers, necessarily contravenes the mandate that VRS be available in the most efficient manner. While the mandate is for the Commission to ensure the availability of VRS in the most efficient manner, the Commission must measure such efficiency by comparing the <u>overall</u> expenditures from the TRS Fund the Commission has established for that purpose, with the <u>overall</u> results achieved by such expenditures in terms of TRS availability and functional equivalence. A single rate structure fails this test of efficiency because it would cost the TRS Fund more in overall compensation than the tiered rate structure the Commission adopts.

23. Further, the Commission must consider the value users get for the compensation paid to providers, and may take into consideration the extent to which the participation of less efficient providers produces other benefits in the way of improved services for consumers. In this regard, on numerous occasions, the Commission has made clear that there are benefits in supporting less efficient providers that meet the needs of niche populations, including people who are deaf-blind or speak Spanish, enabling the entrance of new companies that can introduce technological innovations into the VRS program, and ensuring that consumers with hearing and speech disabilities can select among multiple VRS providers—just as voice telephone users do. While the Commission is obligated to ensure the efficiency of the VRS program, it cannot sacrifice functional equivalency in doing so. Moreover, it is the Commission's statutory obligation not to merely seek a short-term savings in an accounting sense; rather the Commission

must consider the consequences of its actions in the long run. By supporting the continued participation of multiple providers, a tiered rate structure can help to prevent the VRS marketplace from devolving into a monopoly environment, thereby providing the Commission with much needed flexibility to consider other approaches that may improve efficiency. For example, one option the Commission may want to consider in the future is a reverse auction, in which multiple providers bid for offering service at the most efficient levels; but such an approach would not be feasible if all providers except one have been driven out of the market. A tiered rate structure allows the Commission to set rates that permit each provider an opportunity to recover its reasonable costs of providing VRS, without overcompensating those providers who have lower actual costs because, for example, they have reached a more efficient scale of operations.

24. The Commission also does not agree that tiered rate structures necessarily detract from providers' incentives to grow and increase their efficiency. As to growth incentives, while there could theoretically be a risk that a provider would "put the brakes on" its growth as it approached a tier boundary, a review of each providers' compensable minutes over the last few years does not suggest that providers' growth rates have been affected as their minutes approach a tier boundary. Moreover, to the extent there is such a risk of generating perverse incentives, the Commission believes it can be effectively addressed by ensuring that tier boundaries are wide enough to cover a provider's likely growth during the life of the rate plan. As to efficiency incentives, because rates are being set for a period of several years, providers will have an incentive to reduce unnecessary costs so they can increase profits and minimize losses.

25. Further, the tiers set under this structure are not provider-specific. Rather, each tier is equally applicable to any provider's minutes that fall within that tier. Accordingly, under the tier structure the Commission adopts, the provider with both relatively large and relatively

small volumes of minutes are each compensated at the higher (Tier I) rate for their first 1 million minutes, at a lower (Tier II) rate for additional minutes between 1,000,000 and 2,500,000, and at the lowest (Tier III) rate for any minutes over 2,500,000.

26. The Commission also declines to adopt at this time a plan for transitioning from tiered rates to a single rate structure. The anticipated developments that the Commission thought would eliminate any need for tiered rates have not materialized. Not only have structural reforms been delayed and reduced in scope, but expected gains in individual provider efficiency have not occurred, the largest VRS provider's current market share remains approximately the same, and there continue to be wide disparities among providers' cost structures. Thus, the Commission's experience to date does not provide sufficient confidence that transitioning to a single rate structure would be consistent with preserving the benefits of competition and ensuring the availability of VRS in the most efficient manner. With additional time, this situation may change. The full implementation of competition-promoting interoperability and portability standards, as well as the introduction of some new reforms in other areas, may offer greater opportunities for providers to compete more effectively with one another. Additionally, the Commission is currently gathering comment on service quality metrics, which, when defined, measured, and published, will enhance VRS competition by enabling consumers to make more informed decisions in their selection of their VRS providers. At a later time, the Commission can revisit the compensation rate structure issue as appropriate in light of such developments.

Alternative approaches

27. The Commission concludes that alternative approaches to setting VRS rates proposed in the FNPRM, including reliance on price caps, market-price benchmarks, a reverse auction, and direct provision of VRS by common carriers, should not be adopted at this time.

28. Price caps. It is premature, at best, to commit to a price cap approach that

involves setting an initial, single rate based on, for example, the costs of a "reasonably efficient provider." Setting a single rate at any level that permits more than one provider to remain in the market would provide windfall profits to the lowest-cost provider, and the wasteful costs that such windfall profits would impose on the TRS Fund would be extremely high given the disparate cost structures of the current providers. Such costs will be imposed regardless of whether the single rate is set under a traditional cost-of-service methodology or as the "initializing" rate to kick off a price cap plan. Further, the Commission does not perceive any way in which price caps could significantly ameliorate the competition and inefficiency disadvantages the Commission has identified above that lead it to reject a single-rate approach. The multi-year, tiered transition plan being adopted will provide many of the same benefits as a price cap, such as predictability in rates and incentives to become more efficient. In addition, given that the weighted average of provider's historical costs has declined measurably over the last four years, the Commission does not believe that the use of such indices is necessary at this time to ensure that VRS providers can continue to recover their reasonable allowable costs, including a reasonable operating margin, over the next four years. Towards the end of the 2017-21 rate plan, there will be another opportunity to examine whether a price cap approach should be adopted in conjunction with whatever rate structure approach is selected for the next plan to maintain efficiency incentives going forward.

29. Reverse auction. Sorenson advocates the use of a reverse auction to set VRS rates, citing as models the auctions authorized by the Federal Energy Regulatory Commission (FERC) to set rates for supplying electricity, as well as those conducted by this Commission to allocate support for Mobility Funds and to select recipients of support under the Rural Broadband Experiments. However, the auction proposed by Sorenson differs significantly from these examples. The FERC and Commission auctions involved bidding for both price and

quantity of the service to be supplied, while Sorenson's VRS proposal would require providers to bid a price that is not tied to a specific quantity. Additionally, the Commission auctions sought selection of a single provider for each service area, rather than multiple providers as in the VRS market. If a provider has no guarantee of serving a fixed number of minutes, each provider's bid will likely be based on current costs associated with the current number of minutes they provide at the time of bidding. Thus, while Sorenson argues that a reverse auction would promote competition, encourage greater efficiencies, and provide stability, it seems equally or more likely to have the opposite effect—producing a VRS rate that is either well above the average cost of providing service, or so low as to keep currently higher cost providers from continuing or new entrants from joining the market. The reverse auction proposal thus suffers from the same defects as other single-rate proposals—it forces a choice between setting a single rate so low as to preclude effective competition and setting it so high as to provide wasteful, windfall profits to the lowest-cost provider. In light of the absence of analogous models for successful implementation, and the other issues discussed above, the Commission declines to pursue a reverse auction approach at this time. The Commission does not rule out exploring this type of approach in the future, however, should new developments warrant revisiting it.

30. Direct provision or procurement of VRS by common carriers. The Commission also finds little benefit at this time in the alternative of terminating TRS Fund support for VRS and, instead, requiring common carriers to provide VRS directly or through contracts with TRS providers. Sorenson offers no supporting evidence for its claim that common carriers and other voice service providers could provide VRS more efficiently on a direct basis than indirectly, through their contributions to the TRS Fund. Further, no carrier has commented favorably on this proposal, while a carrier trade association, USTelecom, affirmatively opposes it. Accordingly, at the present time, the Commission has no basis to conclude that direct provision

of VRS would advance the mandate to provide VRS in the most efficient manner or reduce the burden on TRS Fund contributors. Further, the Commission agrees with the non-dominant providers that competition and consumer choice might not survive a transition to a direct-provision or direct-procurement approach. It may well be that common carriers would simply choose to work with the dominant, low-cost provider, rather than attempt to maintain provider choice for consumers.

31. Market-based pricing generally. While in 2013 the Commission indicated a strong interest in exploring a market-based approach, it did not commit to adopting any market-based approach, much less one that could prove less effective than cost-based alternatives for meeting the objectives of section 225 of the Act. Moreover, the market-based schemes proposed in 2013, which assumed there would be a transition to a single market-based rate, no longer appear to be as viable today as they did to the Commission at that time. Those proposals relied on the expected availability of pricing benchmarks that would in turn result from the establishment of a neutral video communications service platform. This platform has not been built, and based on the unsuccessful initial request for proposals for the platform and the general lack of interest in it shown by most existing providers, the Commission has decided not to move forward with its original plan to build this platform. Similarly, support is also lacking for the other market-oriented idea proposed by the Commission in 2013: an auction of calls to certain telephone numbers receiving a high volume of VRS calls.

Tier Structure and Rate Levels

32. Emergent rate. The Commission adopts its proposal to add an emergent rate to the tiered rate structure, applicable solely to providers that have no more than 500,000 total monthly minutes as of July 1, 2017. The Commission concludes that a separate rate structure for such providers is appropriate for a limited period to take into account the generally much higher

cost of service for very small providers, encourage new entry into the program, and give such providers and new entrants appropriate incentives to grow. Rather than view an emergent rate as a subsidy for providers that have been unable to attract users, the Commission believes that this approach recognizes the still unbalanced structure of the VRS industry, as well as the incompleteness of VRS reforms intended to enhance competition. In light of the apparently fragile current state of VRS competition and the per-minute cost differentials, the Commission concludes it would be unwise at this time to subject two of the current four competitors to the dramatic rate reductions that would be necessary to fit them under the same tiered rate structure as the other two, much larger providers. Further, smaller providers may offer service features that are designed for niche VRS market segments or that may not be available through other providers and that are helpful in meeting the specific needs of particular VRS consumers. By providing an emergent rate, the Commission can increase the likelihood that, in the near term, even if no new entrants arrive, consumers can continue to select a service provider from four competitors instead of two.

33. In order to maintain incentives for growth and avoid subjecting emergent providers to a sudden drop in the rate applicable to all their minutes when they reach the 500,000-minute ceiling, providers who are initially subject to the emergent rate and who then generate monthly minutes exceeding 500,000 shall continue to be compensated at the otherwise applicable emergent rate (rather than the Tier I rate) for their first 500,000 monthly minutes, until the end of the four-year rate plan, i.e., until June 30, 2021. Such providers shall be compensated at the otherwise applicable Tier I rate for monthly minutes between 500,000 and 1 million.

34. For emergent providers, the Commission adopts a $5.29 per minute rate for each year of the four-year plan. To the extent that these providers have demonstrated the ability to show consistent, substantial growth over the past years, provider cost projections indicate that

this rate will afford such providers a reasonable opportunity to meet their expenses and earn some profit. The Commission expects that this opportunity should be enhanced with the implementation of provider interoperability and other competition-promoting measures, such as the development and publication of service quality metrics.

35. However, the Commission does not intend that this rate structure continue to apply to any currently operating providers after the end of the four-year rate plan adopted in document FCC 17-86. During the next four years, the provision of a special rate for emergent providers may not impose major costs on Fund contributors, but the likely benefits to consumers will also remain very limited unless these emergent companies manage to use this four-year window of opportunity to expand their market share. Therefore, after four years, the Commission intends that all existing providers, regardless of size, will be subject to the same rate structure (whether tiered or unitary) under the compensation scheme that then takes effect.

36. Tiers I-III. The Commission also adopts the proposed tier structure, in which a provider's monthly minutes up to 1,000,000 will be included in Tier I, monthly minutes between 1,000,001 and 2,500,000 in Tier II, and all monthly minutes above 2,500,000 in Tier III, with the highest rate applicable to Tier I minutes and the lowest rate applicable to Tier III minutes. Based on real-world evidence, which consistently shows the existence of substantial disparities among the per-minute costs incurred by VRS providers, which are broadly in-line with the similarly wide disparities in their volumes of minutes, the Commission concludes that there are likely to be substantial economies of scale in administrative costs, marketing, and other areas.

37. Further, the existence of persistent cost differences between the largest and lowest-cost VRS provider and its smaller competitors is undisputed. To maintain a competitive environment for the near term, the Commission's most realistic option is to set compensation rates that allow the few remaining VRS competitors an additional period of time to offer a

competitive alternative to the lowest-cost provider, while reforms continue to be implemented. In this context, the Commission's primary concern is not to identify the exact extent of scale economies but to ensure that tiers reflect the disparate sizes and cost structures of current competitors. Further, as the Commission also recognized in 2013, significant potential harm to competition could result if the rate tier boundaries are too low and prevent smaller competitors from remaining in the market, while if the Commission sets the boundaries too high the only consequence will be that smaller, less efficient competitors may remain in the market longer than would otherwise be the case, resulting in somewhat higher expenditures from the Fund. With the intervening attrition in the number of VRS competitors, the Commission's preference is even greater today for striking a balance that emphasizes preserving competition.

38. The Commission expands the Tier I boundary to 1,000,000 minutes, in order to ensure that the "emergent" providers, as well as any new entrants, as they grow large enough to leave the "emergent" category, will be subject to a rate that reflects their size and likely cost structure and that is appropriately higher than the marginal rate applicable to larger and more efficient providers. Tier I, which also applies to the first 1,000,000 minutes of each larger provider, allows the Commission to set a rate that is high enough to ensure that each provider is able to cover its relatively fixed, less variable costs. The Commission expands the Tier II boundary, as well, to 2,500,000 minutes, for similar reasons. Expanding the Tier II boundaries, which applies to the minutes of all providers in excess of the 1,000,000-minutes threshold and up to the 2,500,000-minutes ceiling, enables the Commission to set a rate that is appropriately lower than the Tier I rate, but higher than the rate for Tier III, which will currently apply only to the largest provider, whose per-minute costs are far lower than any other provider's. The Tier II rate can thus be set low enough to ensure that providers with more than 1,000,000 minutes are not compensated far in excess of their allowable costs, but high enough to ensure that such providers

have an incentive to continue providing additional minutes of service. By increasing the upper boundary of this tier, as well as Tier I, the Commission also limits any risk of eroding a provider's incentive to continue growing as its monthly minutes approach a tier boundary. The lower Tier III rate, in turn, will appropriately be the marginal rate for the largest, lowest-cost provider.

39. Application of rate tiers to commonly owned providers. Regarding the recent merger of two VRS providers, Purple Communications, Inc. (Purple), and CSDVRS, LLC d/b/a ZVRS (ZVRS), there is disagreement among the commenters as to whether the compensation rate tiers should apply to these now-affiliated companies separately or on a consolidated basis, prior to their full consolidation. The VRS compensation system should be designed, as far as possible, to avoid creating undesirable incentives to exploit the tier structure by creating multiple subsidiaries for the provision of VRS. However, the consent decree that authorized the merger between ZVRS and Purple specifically includes language providing that the two entities will continue to operate and submit requests for compensation payments as separate VRS providers, and will be treated as separate entities for compliance purposes, for up to 36 months after the effective date (i.e., until February 15, 2020), after which they will consolidate the operations of the two VRS providers. As applied here, that determination means that the two companies will be treated as separate entities for purposes of the tiered rate structure until February 14, 2020, or until such time that these companies consolidate their operations. After February 14, 2020, or from the date of consolidation if it takes place earlier, these companies will be treated as a single provider for purposes of the tiered rate compensation structure. To ensure compliance with this outcome, the Commission directs ZVRS to provide the Commission with 60 days notice prior to such consolidation.

40. Rate period and adjustments. As with the prior rate plan, the new rate plan will be four years in duration. A four-year period is long enough to offer a substantial degree of rate stability, thereby (1) giving providers certainty regarding the future applicable rate; (2) providing a significant incentive for providers to become more efficient without incurring a penalty; and (3) mitigating any risk of creating the "rolling average" problem previously identified by the Commission regarding TRS, in which the use of rates based on averaged provider costs, if recalculated every year, could leave some providers without adequate compensation, even if they are reasonably efficient. On the other hand, a four-year period is short enough to allow an opportunity for the Commission to reset the rates in response to substantial cost changes or other significant developments that may occur over time. Given the lack of support for continuing six-month adjustments, the Commission adopts the administratively simpler approach of having rate adjustments occur annually over the next four-year rate period.

41. Rate Levels. In setting rate levels, the Commission seeks to limit the likelihood that any provider's total compensation will be insufficient to provide a reasonable margin over its allowable expenses, and to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin. Further, the Commission seeks to avoid any risk of setting a rate for any tier that is either below the marginal cost of a provider subject to that tier or excessively above such marginal cost.

42. Tier I Rate Level. For this tier, the FNPRM sought comment on a range of possible rates—from $4.06 to $4.82 for the first year and from $3.74 to $4.82 for the fourth year. The current rate level of $4.06 per minute (in conjunction with the $3.49 rate currently applicable to a provider's minutes in excess of 1 million)—is too low to permit all providers to meet their allowable expenses and earn a reasonable operating margin. Instead, the Commission adopts the rate of $4.82 per minute recommended by the non-dominant providers, which will

apply to all four years of the rate period. A Tier I rate at this level will allow all providers subject to it to recover their allowable expenses and earn an operating margin within the zone of reasonableness. This Tier I rate level also provides an appropriate incentive for emergent providers to grow their businesses beyond 500,000 minutes.

43. Tier II. The Commission adopts a Tier II rate of $3.97 per minute for all four years of the rate period. For this tier, the FNPRM sought comment on a range of possible rates—from $3.49 to $4.35 for the first year and from $3.08 to $4.35 for the fourth year. The $3.97 rate the Commission adopts is roughly in the middle of the range of Tier II options for the first year. The $4.35 per minute rate advocated by the non-dominant providers is higher than is necessary to allow providers to recover their allowable costs and earn a reasonable operating margin. On the other hand, the current rate level of $3.49, combined with the current Tier I level, is too low to permit all providers to earn a reasonable operating margin. Based on the data reported by providers, applying the $3.97 rate for all four years of the rate period, in conjunction with other applicable rates, will allow all providers subject to this rate to recover their allowable expenses and earn an operating margin within the zone of reasonableness the Commission has adopted. At $3.97, this rate is also above the allowable expenses per minute of any provider subject to the Tier II rate, thus minimizing the risk of deterring such a provider from increasing its VRS minutes. At the same time, the Tier II rate is at a level that, in conjunction with other applicable rates, limits any overcompensation of providers subject to it.

44. Tier III. For this tier, the FNPRM sought comment on a range of possible rates—from $2.83 to $3.49 for the first year and from $2.63 to $3.49 for the fourth year. The Commission concludes that the rate level for Tier III should be $3.21 in the first year and $2.63 per minute in the final year. The $2.63 rate is higher than the average allowable expenses per minute for the current provider subject to this tier, and, in conjunction with other applicable

rates, will allow providers that fall into this tier to earn an operating margin over allowable expenses that is within the zone of reasonableness the Commission has adopted. However, because this rate is a substantial reduction from the current Tier III rate, a gradual transition to reach this rate level is appropriate. Accordingly, the Commission adopts a rate of $3.21 per minute for Fund Year 2017-18, the first year of the rate plan period. This continues the ongoing adjustment of the Tier III rate, under the previous rate plan, under which it dropped by $.38 per minute per year, as the initial rate of $3.21 is $.38 below the approximate average ($3.59) of the $3.68 and $3.49 Tier III rates applicable during the 2016-17 Fund Year. The Tier III rate will be reduced by another $0.38 in Fund Year 2018-19, to a rate of $2.83 per minute. For the final two years, the Tier III rate will be $2.63 per minute.

45. Although Sorenson asserts that a proper analysis of VRS costs indicates the Tier III rate should be higher, the Commission does not rely on Sorenson's analysis for several reasons. First, projections for the second year out (in this case, 2018), which are included in Sorenson's analysis, historically have had a poor record of accuracy. Second, Sorenson's cost calculation includes costs that are not allowable, as well as a 15.9% operating margin, which is outside the zone of reasonableness the Commission has adopted.

46. <u>Aggregate effect of the rate levels adopted</u>. The approach adopted here effectively balances the Commission's overarching goal of maintaining competition and consumer choice with its obligation to administer the Fund in an efficient manner. When aggregated, if the tiered compensation rates currently in effect were to be extended for four more years, assuming the present growth of this service, compensation payments from the TRS Fund to VRS providers would be expected to total (over these four years) approximately $1,887,000,000. This figure would swell to approximately $1,925,000,000, were the Commission to adopt the single-rate approach proposed by Sorenson at the lowest rate that

Sorenson deems acceptable—$3.73 per minute. This would not only result in an increase of about $38 million over extending the current rates, but also would stifle competition in the VRS market by likely eliminating all but one provider. By contrast, under the tiered rate plan adopted today, the Commission expects that the total cost to the TRS Fund will be approximately $1,835,000,000, which will produce a cost savings of approximately $52 million compared to current rates and preserve the competitive VRS environment that consumers now enjoy.

Other Compensation Matters

47. Audits for providers receiving the emergent rate. The existing, more generally applicable rules regarding audits are sufficient to address any accuracy issues regarding emergent providers' costs. Therefore, the Commission declines to adopt a separate, mandatory audit requirement for providers receiving the emergent rate. However, the Commission reminds all current and potential VRS providers that their costs may be subject to audit at any time to assure the accuracy and integrity of TRS Fund compensation rates and payments.

48. Exogenous costs. In general, the 2007 model for exogenous cost recovery is procedurally sufficient for addressing provider requests for compensation for exogenous costs. Substantively, given that the tiered rates set in document FCC 17-86 are intended to reduce VRS compensation rates in the direction of cost-based levels that have yet to be reached, the Commission adopts the following conditions to ensure that exogenous cost recovery does not result in increasing the disparity between Fund expenditures and actual provider costs. Providers may seek compensation for well-documented exogenous costs that (1) belong to a category of costs that the Commission has deemed allowable, (2) result from new TRS service requirements or other causes beyond the provider's control, (3) are new costs that were not factored into the applicable compensation rates, and (4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its VRS revenues.

49. Effective date. VRS compensation rates historically have been set prospectively and are normally not adjusted retrospectively unless an error has been made. In establishing the rates applicable to the current period, the Commission acted appropriately based on the record, and the Commission is not aware of any compelling reason to reconsider those ratemaking decisions. Further, while the Commission found it necessary in 2016 to retrospectively apply an emergency rate freeze with respect to the smallest VRS providers, the Commission does not find that a comparable emergency exists now necessitating further adjustment of rates for the same period for which they were already adjusted once on an emergency basis. Accordingly, the Commission declines to give the new rates retrospective effect back to January 1, 2017; rather, the rates the Commission adopts are effective as of July 1, 2017.

50. The Commission finds good cause to make the rule changes adopting a new four-year rate plan in document FCC 17-86 effective as of July 1, 2017. The current rate plan was scheduled to expire on June 30, 2017. Providers have been aware of this pending expiration since 2013, and have further been aware of the Commission's proposal to establish a new rate plan going forward. To avoid unnecessary disruption to VRS providers' operations and to ensure the ability of consumers to continue to place and receive VRS calls, the Consumer and Governmental Affairs Bureau (Bureau) recently acted to waive the June 30, 2017 expiration of the existing rates and directed Rolka Loube to continue compensating VRS providers at the prevailing rates, pending further action by the Commission.

51. As the Commission now takes action to establish a new four-year rate regime, the Commission directs Rolka Loube to compensate VRS providers at the applicable rates adopted herein for all compensable minutes of use incurred beginning July 1, 2017, except that, to ensure that the release of document FCC 17-86 after July 1 does not adversely affect any VRS provider, the Commission will not apply the reduction in Tier III rates to any compensable minutes of use

incurred between July 1 and the release date of document FCC 17-86. To implement this provision (given that minutes of use are compensated on a monthly basis), the Commission directs Rolka Loube to compensate any provider with Tier III minutes in July 2017 at a rate of $3.49 per minute for the first X Tier III minutes, where X equals the number of compensable minutes of use incurred between July 1 and the release of document FCC 17-86. So if a VRS provider has no Tier III minutes in July 2017, this provision will not affect it; if a provider has X or fewer Tier III minutes, then all such minutes will be compensated at the higher $3.49 rate; and if a provider has more than X Tier III minutes, then it will receive $3.49 per minute for the first X Tier III minutes and $3.21 for all remaining Tier III minutes. The Commission also directs the Bureau to provide actual notice to known VRS providers by sending them a copy of document FCC 17-86.

52. Historical Cost vs. Projected Costs. For purposes of document FCC 17-86, a review of the past relationships between projected and actual costs indicates that the most reliable reference points for cost calculations when rates are set are the actual costs reported for the previous calendar year and the projected costs for the current calendar year. The least reliable reference point is the projected costs for the year after the current year. Accordingly, as a reference point for cost calculations for purposes of document FCC 17-86, the Commission uses the weighted average of each provider's actual costs and demand for 2016 and projected costs and demand for 2017.

Other Matters – Server-Based Routing

53. Under the TRS numbering rules, calls that involve multiple VRS providers are routed based on the information provided in the TRS Numbering Directory. Section 64.613(a) of the Commission's rules currently requires that the Uniform Resource Identifier (URI) for a VRS user's telephone number contain the IP address of the user's device. However, the VRS Provider

Interoperability Profile technical standard provides for the routing of inter-provider VRS and point-to-point video calls to a server of the terminating VRS provider rather than directly to a specific device. The technical standard thus specifies the use of call routing information that contains provider domain names, rather than user-specific IP addresses. To permit the implementation of the VRS Provider Interoperability Profile, which has been incorporated by reference into the Commission's rules, it is necessary to amend the TRS Numbering Directory rule. This change will foster the implementation of interoperability, thereby enhancing functional equivalence. In addition, allowing routing based on domain names will promote TRS regulation that "encourage[s] . . . the use of existing technology and do[es] not discourage or impair the development of improved technology," as required by 47 U.S.C. 225(c)(2), and will improve the efficiency, reliability, and security of VRS and point-to-point video communications, thus advancing these important Commission objectives as well. The Commission also finds that server-based routing will not impair the Commission's ability to prevent waste, fraud, and abuse in the VRS program.

Other Matters – Research and Development

54. The Commission adopts its proposal in the FNPRM to direct the TRS Fund administrator, as part of annual ratemaking proceedings, to include in the proposed TRS Fund administrative budget an appropriate amount for Commission-directed research and development R&D. These funds will enable the Commission to ensure that TRS evolves with improvements in technology. Because the TRS Fund administrator previously submitted its recommended budget for the 2017-18 Fund Year without recommending a specific amount for R&D, the Commission also allocates $6.1 million from the TRS Fund to be used for R&D projects to be overseen by the Commission in the 2017-18 TRS Fund Year.

Other Matters – Repeal of the Neutral Video Communications Service Platform

55. The Commission adopts its proposal to delete the rule provisions relating to the neutral video communications service platform (Neutral VRS Platform). Although the Commission requested bids to build the Neutral VRS Platform, no acceptable bids were received, and the Commission canceled that procurement. Because no party has made any showing that the Commission should request new bids for the Neutral VRS Platform or otherwise expressed any interest in utilizing it, the Commission (i) removes §§ 64.601(a)(20) and (45), 64.611(h), and 64.617 and (ii) modifies §§ 64.604(b)(2)(iii), (b)(4)(iv), and (c)(5)(iii)(N)(1)(iii) and 64.606(a)(4) of the Commission's rules to eliminate references to the Neutral VRS Platform and VRS communications assistant (CA) service providers (the entities that would have made use of the platform).

Other Matters – Technical Correction to the VRS Speed-of-Answer Rule

56. In the 2013 VRS Reform Order, the Commission modified § 64.604(b)(2)(iii) of the Commission's rules, the speed-of-answer rule, changing it from (a) a requirement to answer 80% of all VRS calls within 120 seconds, measured on a monthly basis, to (b) a requirement to answer 85% of all VRS calls (i) within 60 seconds, measured on a daily basis, by January 1, 2014, and (ii) within 30 seconds, measured on a daily basis, by July 1, 2014. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated this aspect of the 2013 VRS Reform Order. The court ruled that, pending further action by the Commission, its decision "will have the effect of reinstating the requirement that 80% of VRS calls be answered within 120 seconds, measured on a monthly basis." The Commission therefore amends § 64.604(b)(2)(iii) of its rules to comply with the mandate of the D.C. Circuit and provide for a speed-of-answer requirement to answer 80% of all VRS calls within 120 seconds, measured on a monthly basis.

ORDER

57. In the Order (2017 VRS Improvements Order), FCC 17-26, published at 82 FR 28566, June 23, 2017, the Commission set aside the effectiveness of the VRS Provider Interoperability Profile technical standard until the Commission resolved the apparent conflict between the VRS Provider Interoperability Profile technical standard, under which VRS providers employ server-based routing, and the existing Commission rule, under which they must route calls based on the IP address of the user's device. Now that the Commission, in document FCC 17-86, has amended 47 CFR 64.613(a)(2) to permit server-based routing, the Commission reestablishes the effectiveness of the rule amendment incorporating the VRS Provider Interoperability Profile, adopted in the Report and Order (2017 VRS Interoperability Order), DA 17-76, published at 82 FR 19322, April 27, 2017.

FINAL REGULATORY FLEXIBILITY ANALYSIS

58. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the FNPRM. The Commission sought written public comment on its proposals in the FNPRM, including comment on the IRFA. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Proposed Rules

59. Document FCC 17-86 addresses server-based routing of VRS calls, and funding for Commission-directed R&D.

60. First, by amending TRS rules to permit server-based routing, document FCC 17-86 expands the ways that VRS calls can be routed. Under a new interoperability standard, calls may be routed to a server of the terminating VRS provider that serves multiple VRS users and devices, rather than directly to a specific device. This new routing method uses the providers' domain names, rather than user-specific IP addresses, as is currently required.

61. Second, the Commission directs the TRS Fund administrator, as part of future annual ratemaking proceedings, to include for Commission approval proposed funding for Commission-directed R&D. Such funding is necessary to continue to meet the Commission's charge of furthering the goals of functional equivalence and efficient availability of TRS.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

62. No comments were filed in response to the IRFA.

Small Entities Impacted

63. The server-based routing rule amendment adopted in document FCC 17-86 will affect obligations of VRS Providers. These services can be included within the broad economic category of All Other Telecommunications. Five providers currently receive compensation from the TRS Fund for providing VRS: ASL Services Holdings, LLC; CSDVRS, LLC; Convo Communications, LLC; Purple Communications, Inc.; and Sorenson Communications, Inc. The R&D funding will have no impact on VRS providers.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

64. Server-based call routing involves the use of domain names, and VRS providers using this method will need to keep records of such domain names. The domain names will then be processed as call routing information, just as other call routing information is processed currently. The funding for R&D will have no reporting, recordkeeping, or other compliance requirements.

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

65. Server-based call routing using domain names will be available to all VRS providers, will not be burdensome, and will advance interoperability. Greater interoperability will foster competition, thereby benefitting the smaller providers. To the extent there are

differences in operating costs resulting from economies of scale, those costs are reflected in the different compensation rate structures applicable to large and small VRS providers.

66. The funding for R&D does not have any compliance or reporting requirements impacting small entities. Indeed, small entities are not covered by the rule.

67. No commenters raised other alternatives that would lessen the impact of any of these requirements on small entities vis-à-vis larger entities.

Federal Rules which Duplicate, Overlap, or Conflict with, the Commission's Proposals

68. None.

ORDERING CLAUSES

69. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, document FCC 17-86 is ADOPTED, and part 64 of Title 47 is AMENDED.

70. Pursuant to section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3), and §§ 1.4(b)(1) and 1.427(b) of the Commission's rules, 47 CFR 1.4(b)(1), 1.427(b), the VRS compensation rates became effective on July 1, 2017.

71. A copy of document FCC 17-86 shall be sent by overnight mail, first class mail and certified mail, return receipt requested, to all known VRS providers.

72. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 17-86, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Incorporation by reference, Individuals with disabilities, Telecommunications relay services, Video relay services.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

Final Rules

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, 225, 254(k), 403(b)(2)(B), (c), 715, 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.

2. Amend § 64.601 by:

a. Revising paragraph (a)(12);

b. Removing paragraph (a)(20);

c. Redesignating paragraphs (a)(14) through (19) as paragraphs (a)(15) through (20) and adding new paragraph (a)(14);

d. Revising paragraph (a)(26);

e. Removing paragraphs (a)(45) through (49);

f. Redesignating paragraphs (a)(27) through (44) as paragraphs (a)(30) through (47) and adding new paragraphs (a)(27) through (29); and

g. Revising newly redesignated paragraph (a)(30).

The additions and revisions read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

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

* * * * *

(14) Hearing point-to-point video user. A hearing individual who has been assigned a ten-digit NANP number that is entered in the TRS Numbering Directory to access point-to-point service.

* * * * *

(26) Point-to-point video call. A call placed via a point-to-point video service.

(27) Point-to-point video service. A service that enables a user to place and receive non-relay video calls without the assistance of a CA.

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

(29) Real-Time Text (RTT). The term real-time text shall have the meaning set forth in § 67.1 of this chapter.

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

* * * * *

3. Amend § 64.604 by revising paragraphs (b)(2)(iii), (b)(4)(iv), and (c)(5)(iii)(N)(1)(iii) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(b) * * *

(2) * * *

(iii) Speed of answer requirements for VRS providers. VRS providers must answer 80% of all VRS calls within 120 seconds, measured on a monthly basis. VRS 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 provider to the time when the call is answered by a CA—i.e., not when the call is put on hold, placed in a queue, or connected to an IVR system. Abandoned calls shall be included in the VRS speed of answer calculation.

* * * * *

(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.

* * * * *

(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.

* * * * *

§ 64.606 [Amended]

4. Amend § 64.606 by removing paragraph (a)(4).

§ 64.611 [Amended]

5. Amend § 64.611 by removing paragraph (h).

6. Amend § 64.613 by revising paragraph (a)(2) to read as follows:

§ <u>64.613 Numbering directory for Internet-based TRS users</u>.

(a) * * *

(2) For each record associated with a VRS user's geographically appropriate NANP telephone number, the URI shall contain a server domain name or the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

* * * * *

<u>§ 64.617 [Removed]</u>

7. Remove § 64.617.

8. Amend § 64.621 by revising paragraph (b)(1) to read as follows:

<u>§ 64.621 Interoperability and portability</u>.

* * * * *

(b) * * *

(1) Beginning no later than **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, VRS providers shall ensure that their provision of VRS and video communications, including their access technology, meets the requirements of the VRS Provider Interoperability Profile.

* * * * *

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