

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telecommunications Relay Services
and Speech-to-Speech Services for
Individuals with Hearing and Speech
Disabilities
CC Docket No. 98-67

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. On January 14, 1997, the Commission released a *Notice of Inquiry (NOI)* seeking comment on ways in which Telecommunications Relay Services (TRS) for persons with hearing and speech disabilities can be improved.¹ The Commission sought comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users, and inquired about the effectiveness of the current TRS regulation. The Commission also sought comment on the impact of competition in telecommunications markets on TRS and whether competition in the provision of TRS might have a positive impact on the quality of that service. The Commission received 49 comments and 34 reply comments in response to the *Notice of Inquiry*.²

¹ Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, *Notice of Inquiry*, CC Docket No. 90-571, 12 FCC Rcd 1152 (1997).

² See Appendix A for a list of parties filing comments and reply comments in response to the *NOI*, and for abbreviations used to refer to commenters.

2. After reviewing the record developed in the *NOI*, we propose rule amendments in this *Notice of Proposed Rulemaking (Notice)* that we believe will enhance the quality of TRS, and broaden the potential universe of TRS users. The proposals set forth here are intended to further promote access to telecommunications for the millions of persons with disabilities who might otherwise be foreclosed from participation in our increasingly telecommunications and information-oriented society. First, we propose to require that, within two years of the publication in the Federal Register of a *Report and Order* in this proceeding, common carriers providing voice transmission service must ensure that nationwide speech-to-speech (STS) relay services are available to users with speech disabilities throughout their service areas. Oftentimes, persons with speech disabilities are unable to use the voice telephone network because of a lack of understanding by the public of, and accommodation to, their disability. Speech-to-speech services use facilitators specially trained to understand the speech of persons with speech disabilities to "relay" communications between those individuals and individuals without speech disabilities. For the approximate 2.5 million Americans with speech disabilities, speech-to-speech services profoundly affect their lives, by enabling them to talk to friends and family and to conduct business using telecommunications services that most Americans take for granted.

3. Second, we propose a number of amendments to our current TRS minimum standards that we believe will improve the overall effectiveness of the TRS program. For example, we propose to amend our speed-of-answer rules to make the experience of persons using TRS in placing a telephone call through a TRS center more functionally equivalent to the experience of voice callers using the voice telephone network. The ability to make a telephone call without delay and without routinely encountering a busy signal is fundamental to our concept of a rapid, efficient, Nationwide communications system. We believe that the changes we propose in our TRS minimum standards bring us closer to our goal of a rapid, efficient, nationwide communications systems for all of the people of the United States.

4. Third, we propose amendments to our TRS enforcement rules to improve our oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS. Currently, state TRS programs are certified for a five year period, with no requirement that they report to the Commission on changes in their programs during that period. To increase the effectiveness of our enforcement, we propose that certified state TRS programs notify the Commission of substantive changes to their program within sixty (60) days of the effective date of the change, and to file documentation demonstrating that the state program remains in compliance with all of the Commission's mandatory minimum standards. We propose other amendments to our enforcement rules similarly aimed at fulfilling our obligation to ensure that state TRS programs fully meet or exceed all federal operational, technical and functional standards for the provision of TRS.

5. Consistent with the goal of the Americans with Disabilities Act of 1990 (ADA)³ of bringing individuals with disabilities fully into the mainstream of American society, we believe that

³ Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69, *codified at* 47 U.S.C. § 225.

the actions proposed today will have practical impacts that result in direct and tangible improvements in the quality of TRS. Moreover, through this *Notice* and the rulemaking process, we seek to extend the benefits of advances in telecommunications to Americans who might otherwise be excluded because of their disability.

II. BACKGROUND

6. Title IV of the ADA⁴ 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.⁵ TRS is a telephone transmission service designed to give persons with hearing or speech disabilities "functionally equivalent" access to the telephone network.⁶ TRS has been available on a uniform, nationwide basis since July 26, 1993.⁷ The Commission sets minimum operational, functional and technical standards for TRS, certifies state TRS programs, and oversees the administration of the interstate TRS cost-recovery fund.⁸

7. Currently, TRS uses dedicated equipment and staff (Communications Assistants or CAs) that relay conversations between persons using text telephones (TTYs) and persons who use conventional telephones.⁹ To access TRS, a TTY user dials the telephone number of the local TRS center.¹⁰ The caller then gives the number of the party he or she desires to call to the CA. The CA in turn places an outbound voice call to the called party. The CA serves as the "link" in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a call to a TTY user.

⁴ *Id.*

⁵ 47 U.S.C. § 225(b)(1).

⁶ 47 U.S.C. § 225(a)(3).

⁷ Under Title IV, common carriers providing telephone voice transmission services were required to begin providing TRS, throughout the areas they serve, as of July 26, 1993. *See* 47 U.S.C. § 225(c).

⁸ *See* 47 C.F.R. §§ 64.601 - 64.605.

⁹ A text telephone (TTY) is a machine that employs graphic communications in the transmission of coded signals through a wire or radio communication system. 47 C.F.R. § 64.601(8). The Commission's rules require TRS providers to be capable of communicating with TTYs in both Baudot and ASCII format, at any speed generally in use. 47 C.F.R. § 64.604(b)(1).

¹⁰ Individual states have their own TRS access numbers (usually toll-free numbers). In addition, some state TRS programs have separate numbers for voice and TTY access.

8. In enacting Title IV, Congress directed the Commission to ensure that persons with hearing and speech disabilities benefit from technological advances.¹¹ Thus, Title IV states that "the Commission shall ensure that regulations prescribed to implement this section encourage . . . the use of existing technology and do not discourage or impair the development of improved technology."¹² As Congress stated:

[T]his legislation is not intended to discourage innovation regarding telecommunications services to individuals with hearing and speech impairments. The hearing and speech-impaired communities should be allowed to benefit from advancing technology. As such, the provisions of the Section do not seek to entrench current technology, but rather to allow for new, more efficient and more advanced technology.¹³

The Commission's *NOI* was released in this spirit. This *Notice* represents our continuation of the implementation of the statutory directive that the Commission ensure that our TRS regulations do not artificially suppress or impair the development of TRS in a changing, dynamic telecommunications landscape.

III. DISCUSSION

A. Coverage of Improved TRS Under Title IV of the ADA

1. Scope of TRS Generally

9. Background and Comments. Title IV of the ADA and the Commission's rules define TRS as:

[t]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to communicate 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 impairment or speech impairment to communicate using voice communication services by wire or radio.¹⁴

¹¹ See 47 U.S.C. § 225(d)(2); H.R. Rep. No. 101-485(II), 101st Cong., 2d Sess. 130 (1990) (House Report II).

¹² 47 U.S.C. § 225(d)(2).

¹³ House Report II at 130.

¹⁴ 47 U.S.C. § 225(a)(3); 47 C.F.R. § 64.601(7).

The statutory and regulatory definitions further explain that TRS "includes services that enable two-way communication between an individual who uses a TDD¹⁵ or other nonvoice terminal device and an individual who does not use such a device."¹⁶

10. Historically, the Commission's rules on TRS have been applied only to TTY-to-speech and speech-to-TTY services. In the *NOI*, however, the Commission sought comment on whether the requirements of the ADA also apply to any "improved" TRS.¹⁷ By "improved" services, we meant any form of TRS that goes beyond the current TTY-to-speech and speech-to-TTY model, such as Video Relay Interpreting (VRI) and STS relay services.¹⁸ We also sought comment on whether these services must comply with all standards for TRS under Title IV.¹⁹ We further noted that the current definition of "Communications Assistant" defines a CA as "a person who transliterates conversation from text to voice and from voice to text between two end users of TRS."²⁰ We sought comment on whether this definition would need to be modified to encompass relay services that do not involve speech-to-text or text-to-speech.²¹

11. A majority of commenting parties believe that the statutory definition of TRS encompasses forms of relay service that go beyond the current TTY-based relay services.²² PacTel and Missouri, however, state that the determination of whether improved services fall under Title IV should be made on a case-by-case basis.²³ Southwestern Bell argues that the express language of Title IV limits its provision to services that are based on the use of TTYs.²⁴

¹⁵ Although Congress used the term "TDD" to refer to text telephones in the statute, and the Commission's rules at 47 C.F.R. § 64.601(8) designate a text telephone as "TT," we use the more generally accepted term "TTY" to refer to text telephones throughout this document in order to minimize confusion.

¹⁶ 47 U.S.C. § 225(a)(3). *See also* 47 C.F.R. § 64.601(7).

¹⁷ *NOI*, 12 FCC Rcd at 1156-57.

¹⁸ *Id.* VRI allows persons with hearing disabilities to access the telephone network through the use of sign language interpreters and desktop personal computer video conferencing software. STS uses specially trained CAs that serve as call facilitators for persons with severe speech disabilities. *See* sections III(A)(2) - (3), *infra*, for background on and a discussion of STS and VRI services.

¹⁹ *Id.*

²⁰ 47 C.F.R. § 64.601(5).

²¹ *NOI*, 12 FCC Rcd at 1157.

²² *See, e.g.*, NAD Comments at 3; DCADC-VAD Comments at 2; MCDHH Comments at 2; CPAS Comments at 2-4; AOAC Comments at 2-4; Maryland Comments at 5.

²³ PacTel Reply Comments at 3; Missouri PSC Comments at 4.

²⁴ *See* Southwestern Bell Comments at 2-4.

Southwestern Bell relies on a 1996 Common Carrier Bureau Order concerning Operator Services for the Deaf (OSD), where the Bureau declined to allow cost recovery for interstate OSD from the interstate TRS Fund, concluding that OSD is a "TTY-to-TTY" service, not a "relay" service, and therefore does not fall within the definition of TRS.²⁵ Countering Southwestern Bell's argument, the California PUC points out that ". . . the specific reference to TDDs [in the ADA] is meant to illustrate the type of technology that might be used, not to preclude the use of other technologies."²⁶

12. Ameritech notes that new and improved TRS should generally be subject to Commission TRS standards. It states, however, that our existing rules cannot always be applied to new forms of TRS and in some cases "may need to be modified to reflect basic operational differences."²⁷ Similarly, using STS services as an example, the California PUC notes that "trials [of speech-to-speech] have demonstrated that speech-to-speech differs from TRS in a number of respects and it may not be appropriate to include speech-to-speech directly in TRS minimum standards."²⁸ Finally, several commenters assert that the costs for improved TRS should be recoverable from the TRS Fund, regardless of whether such improved services are required, or are provided voluntarily.²⁹

13. The parties that address the Commission's definition of "Communications Assistant" uniformly agree that the current definition is too restrictive.³⁰ Wisconsin TRS-AC also notes that the term "CA" may not be the best term, because voice users are more familiar with the term "operator" and may be less likely to hang up without realizing the call is a TRS call if that term is used.³¹

14. Discussion. We tentatively conclude that Title IV of the ADA is applicable to any wire or radio communication service that enables persons with hearing or speech disabilities to engage in communication with persons without such disabilities and is not limited to services

²⁵ *Id.* at 3-4, *citing* Establishment of a Funding Mechanism for Interstate Operator Services for the Deaf, *Memorandum Opinion and Order*, CC Docket No. 90-571, 11 FCC Rcd 6808 (1996) (*OSD Order*).

²⁶ California PUC Reply Comments at 2.

²⁷ Ameritech Comments at 7.

²⁸ *See* California PUC Comments at 26. *See also* NASRA Comments at 9; AT&T Comments at 8. *See infra* section III(A)(2), for a further discussion of STS services.

²⁹ *See, e.g.*, AIM Comments at 2; Ameritech Comments at 17-18; AOAC Comments at 10-11; Texas PUC Comments at 10; Wisconsin TRS-AC Comments at 7.

³⁰ *See, e.g.*, AIM Comments at 1; Wisconsin TRS-AC Comments at 3; AOAC Comments at 5; MCDHH Comments at 2; NVRC Comments at 7.

³¹ Wisconsin TRS-AC Comments at 3.

using TTYs. Our tentative conclusion is based on the plain language of Title IV³² together with Congress' direction to the Commission to ensure that its regulations do not limit or discourage the deployment of new technologies. We believe that Title IV's language and structure establish that Congress intended TRS to be an evolving service that would expand beyond traditional TTY relay service as new technologies developed. We seek comment on our tentative conclusion.

15. We also tentatively conclude that the costs of providing interstate "improved" relay services should be reimbursed from the interstate TRS Fund. This conclusion is based on, and consistent with, our statutory duty not to discourage the implementation of improved TRS. We tentatively conclude that TRS providers should be able to receive reimbursement for providing intrastate or interstate improved relay services regardless of whether they provide the service voluntarily or the provision of the service is required by the Commission's or a certified state's TRS rules, provided that the Commission has first issued a determination, through a rulemaking or a declaratory ruling, that a certain service is an "improved" TRS service. We tentatively conclude that two services shall be classified as "improved" TRS service, and thus the costs of providing these services should be recoverable: (1) STS service and (2) VRI service. Since STS and VRI services are already being implemented by many TRS providers, we believe that allowing recovery for the costs of these two services will spur further development of these services. We seek comment on our tentative conclusions.

16. Because some practical considerations may be involved in cost-recovery for improved TRS, such as whether separate reimbursement rates must be developed for different types of TRS, we tentatively conclude that the Interstate TRS Fund Advisory Council³³ should develop guidelines for interstate cost-recovery for improved TRS, within six months of the adoption of a *Report and Order* in this proceeding. We tentatively conclude that such guidelines would be subject to review and final approval by the Commission, following an opportunity for public comment on the guidelines. We seek comment on this tentative conclusion. Commenters should discuss the issues that the Advisory Council should consider in formulating these guidelines and provide specific language for guidelines in support of their recommendations.

17. Pursuant to statutory directive,³⁴ the Commission has established rules that set forth the minimum operational, technical and functional standards for TRS.³⁵ We tentatively

³² See 47 U.S.C. § 225(a)(3) (stating that TRS *includes* TTY-based services or services using "other nonvoice terminal device[s]" (emphasis added)).

³³ The TRS Fund Advisory Council is a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers. The Council meets at least semi-annually in order to monitor TRS cost recovery matters. See 47 C.F.R. § 64.604(c)(4)(iii)(H).

³⁴ 47 U.S.C. § 225(d).

³⁵ 47 C.F.R. § 64.604.

conclude that only services that are mandated by Commission regulation must comply with the Commission's mandatory minimum standards. These services would include standard TRS, voice carryover (VCO), hearing carryover (HCO), and, as we are proposing in this *Notice*, STS service.³⁶ We tentatively conclude, as argued by Ameritech, that some improved services such as STS may have operational differences that make compliance with current Commission standards infeasible, as discussed in section III(A)(2), *infra*. We seek comment on these tentative conclusions. We note that states that require TRS not mandated by the Commission, such as VRI, are free to specify performance standards for the services provided within their jurisdiction, provided those performance standards do not conflict with federal law.³⁷

18. Finally, we tentatively conclude, as suggested by several parties, that the current definition of "Communications Assistant" is too restrictive to encompass some activities that may be performed by a person who assists in providing TRS, especially a person involved in providing "improved" TRS offerings. We propose, therefore, to amend the current definition set forth in our rules³⁸ by removing the words "from text to voice and from voice to text," and maintaining the remainder of the current definition. We seek comment on this proposal.

2. Speech-to-Speech (STS) Relay Service

19. Background and Comments STS service is an improved TRS offering that uses specially-trained persons as relay "voices" for persons with severe speech disabilities. In the *NOI*, the Commission requested general comment on STS services.³⁹ The Commission also sought specific comment on the feasibility of requiring STS services within our mandatory minimum TRS, the extent to which TRS providers are currently offering, or planning to offer, STS service, the number of potential users of STS services, the availability of trained individuals capable of providing STS services, and the potential costs of such services.⁴⁰

20. In response to the *NOI*, UCPA provides comprehensive data on the number of individuals who could benefit from STS. UCPA indicates that there are approximately 2.5 million

³⁶ "Voice carryover" is a reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user, and the CA types back the response of the other end user. 47 C.F.R. § 64.601(9). "Hearing carryover" is a reduced 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. 47 C.F.R. § 64.601(6). TRS providers are required by the Commission's rules to offer VCO and HCO. 47 C.F.R. § 64.604(b)(5). *See infra* section III(A)(2) for a discussion of speech-to-speech (STS) services.

³⁷ *See* 47 C.F.R. § 64.605(b)(3).

³⁸ 47 C.F.R. § 64.601(5).

³⁹ *See NOI*, 12 FCC Rcd at 1163.

⁴⁰ *Id.*, 12 FCC Rcd at 1163.

people in the United States with functional speech disabilities.⁴¹UCPA also notes that there are more than 500,000 people in the United States with cerebral palsy. Of this pool, 30% have severe speech disabilities and 85-90% have a speech disability.⁴² UCPA also estimates that at least 150,000 people with cerebral palsy need augmentative communication protheses to have their voices understood at all.⁴³

21. While all commenters appear to recognize the value and benefits of STS for people with speech disabilities, they are divided on whether the Commission should mandate these services. Commenters representing TRS users and the community of persons with speech disabilities generally support a Commission requirement for STS service.⁴⁴ Carriers, state administrators and TRS providers, however, generally appear to oppose a Commission requirement for STS service, and argue that market forces should be sufficient to spur providers to offer this service.⁴⁵ Some commenters also assert that, at a minimum, the Commission should monitor the development of STS at the state level for some time before mandating the service.⁴⁶ California, Georgia, Maryland and Wisconsin currently offer STS service; Missouri PSC states that it conducted a STS trial in 1995; and GTE indicates that it is exploring the possibility of STS in its Hawaii TRS operation.⁴⁷

22. AT&T points out that the costs of providing STS service are low in comparison with the costs of providing other improved TRS, such as VRI.⁴⁸ While commenters indicate that the nationwide demand for STS service may be low, commenters also state that if STS services

⁴¹ UCPA Comments at 3 (citing United Cerebral Palsy Association Research and Educational Foundation, February 1986).

⁴² *Id.*

⁴³ *Id.* The Bureau of the Census reports that there are 2.5 million people in the United States whose speech is difficult to understand. Of that number, 237,000 are unable to have their speech understood and 2,284,000 have a functional limitation in speech. Americans with Disabilities 1991-1992, Bureau of the Census Report, U.S.. Department of Commerce Economics and Statistics Administration, 1993.

⁴⁴ *See, e.g.*, UCPA Comments, *passim*; AOAC Comments at 28; Nelson Comments at 3; NVRC Comments at 9; CPAS Comments at 6; MATP Reply Comments at 3; COR Reply Comments at 2; NAD Reply Comments at 13.

⁴⁵ *See, e.g.*, AT&T Comments at 8; California PUC Comments at 3; USTA Comments at 4; Ameritech Comments at 16.

⁴⁶ *See, e.g.*, AT&T Comments at 8; AT&T Reply Comments at 4; Bell Atlantic-Nynex Reply Comments at 6; Ameritech Comments at 16; California PUC Comments at 16; California PUC Reply Comments at 3; USTA Reply Comments at 4; NASRA Comments at 9; Southwestern Bell Comments at 8.

⁴⁷ *See, e.g.*, California PUC Comments at 4-5; Maryland Comments at 6; Missouri PSC Comments at 5; GTE Comments at 11.

⁴⁸ AT&T Comments at 7.

are offered on a centralized or regional basis, the cost-effectiveness of STS can be greatly improved.⁴⁹ Finally, several commenters note that speech-to-speech has operational differences that may make application of some of the Commission's general TRS rules to this service infeasible.⁵⁰

23. Discussion. We tentatively conclude that, within two years of the publication in the Federal Register of a *Report and Order* in this proceeding, all common carriers providing voice transmission services must ensure that STS services are available to callers with speech disabilities throughout their service areas. We propose to amend section 64.603⁵¹ of our rules to reflect this proposed requirement and to add a definition of STS service under section 64.601 of our rules.⁵² We seek comment on this tentative conclusion and on the text of the proposed rules. Our tentative conclusion that STS should be required under the Commission's TRS rules is based on our finding that STS services fall within the scope of the ADA's definition of "telecommunications relay services" as a telephone transmission service that enables an individual who has a speech disability to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of a person who does not have a speech disability to communicate using voice communication services by wire or radio.⁵³ We also tentatively conclude that requiring STS under the Commission's TRS rules is consistent with our responsibility to ensure that our regulations do not discourage or impair the development of improved technologies⁵⁴ and that the significant benefits that STS service offers to people with severe speech disabilities, an insular community that has been, for the most part, denied access to the telephone network, greatly outweigh the costs of STS services. UCPA provides statistics that indicate that up to 76% of persons with severe speech disabilities are unemployed.⁵⁵ We believe that access to the telephone network through STS services would significantly enhance educational and employment opportunities for people with severe speech disabilities. STS services also would reduce the frustration and frequent hang-ups experienced by people with speech disabilities when they attempt to use the telephone in their daily lives.⁵⁶ Moreover, the

⁴⁹ See, e.g., Missouri PSC Comments at 5; GTE Comments at 12; NAD Reply Comments at 13.

⁵⁰ See, e.g., AT&T Comments at 8; California PUC Comments at 5.

⁵¹ 47 C.F.R. § 64.603.

⁵² 47 C.F.R. § 64.601. See Appendix B for the text of the proposed rule.

⁵³ 47 U.S.C. § 225(a)(3).

⁵⁴ 47 U.S.C. § 225(d)(2).

⁵⁵ UCPA Comments at 3.

⁵⁶ The Commission received 13 reply comments from individuals with speech disabilities discussing their frustrations in attempting to use telephone services and their desire to see implemented a mechanism, such as STS, that enables them to use the telephone. See, e.g., Behms Reply Comments, *passim*; Hoyer Reply Comments, *passim*;

population served by STS service does not appear to be adequately served by the current TRS system.⁵⁷

24. We recognize that a few states have already initiated programs to deliver STS services. The existence of state STS programs may suggest that STS programs could be established without a national requirement. Some state administrators have stated that they do not support the imposition of a national STS requirement, believing that additional experimentation should be conducted⁵⁸ and that the costs of providing STS on a state-by-state basis may render the provision of the services prohibitive at this time.⁵⁹ We tentatively conclude, however, that the adoption of federal rules will assist the states in developing cost-effective, regional or national centers where speech-to-speech calls can be handled. Without a federal rule requiring STS, the states may conclude that offering the service within their state alone is cost-prohibitive. We seek comment on our tentative conclusion. We also ask commenters to discuss specific state STS programs, to comment on the standards applied by the states to their STS programs and to provide the Commission with the benefit of the states' experiences.

25. We recognize that sufficient numbers of personnel trained to deliver STS services may not currently be available. We tentatively conclude, however, that an implementation date of two years following publication in the Federal Register of a *Report and Order* adopting this proposal provides a reasonable and sufficient time period for TRS providers to develop STS offerings. TRS providers may, for example, become involved in training individuals to provide STS service. The two-year timeline also allows TRS providers an opportunity to formulate the most cost-effective basis by which STS service can be provided (i.e., by coordinating or centralizing the service in regional speech-to-speech centers, rather than by attempting to provide independent services on a state-by-state basis). We seek comment on this tentative conclusion.

26. Although we have tentatively concluded that all TRS mandated by Commission rules, such as standard TRS, VCO and HCO, must comply with the Commission's minimum standards for TRS, we recognize that STS services may have operational characteristics that may make compliance with certain "traditional" TRS standards technically difficult or impossible. For example, it may be necessary to relax current speed-of-answer requirements for STS service (i.e., the length of time that may elapse between the receipt of dialing information and the dialing of the requested number) because of the longer call set-up times, that may result from the functional

LaShell Reply Comments, *passim*.

⁵⁷ HCO services, required by 47 C.F.R. § 64.604(b)(5), may allow some people with speech disabilities to use TRS, by typing on a TTY as a substitute for speech and using their own hearing. Many persons with severe speech disabilities, however, also may have physical disabilities that limit their ability to use a TTY and, thus, their ability to use HCO services.

⁵⁸ California PUC Reply Comments at 1.

⁵⁹ Missouri PSC Comments at 5.

speech limitations of an individual caller with a speech disability, involved in STS service. We ask commenters to examine the Commission's rules governing mandatory minimum standards for TRS,⁶⁰ and to comment upon whether any specific exceptions to those rules must be made for STS service, in light of the unique nature of the service. Commenting parties should suggest specific rule language in proposing a particular exception or change to the Commission's rules.

3. Video Relay Interpreting (VRI) Services

27. Background and Comments. VRI is an improved TRS offering that utilizes personal computer (PC) videoconferencing equipment, sign language interpreting services, and high-speed transmission services such as ISDN to enable a deaf TRS user to communicate with voice telephone users in sign language, or by other forms of visual communication.⁶¹ In the *NOI*, the Commission sought comment on this relatively new technology. The Commission specifically invited comment on: (1) the technical feasibility of VRI services; (2) the potential benefits of the service; (3) the availability of sign language interpreters; (4) the privacy and confidentiality aspects of VRI; and (5) the costs of VRI.⁶²

28. Sprint and the Texas PUC, who have jointly conducted comprehensive VRI trials in the state of Texas since 1995, filed detailed and informative reports with the Commission on their experiences with VRI.⁶³ Texas PUC, for example, indicates that while VRI is technically feasible through the use of ISDN Basic Rate Interface (BRI), and ISDN is already available throughout most of Texas, the cost of ISDN remains a barrier to the deployment of VRI.⁶⁴ Texas PUC also notes that high-end Pentium/586 computer equipment may be necessary to deliver a smooth video transmission rate, despite claims of PC videoconferencing product dealers that the less costly 486 computer is acceptable.⁶⁵

29. The majority of commenters addressing this issue agree that the potential benefits of VRI services for people with hearing disabilities, especially those who communicate primarily through sign language, are unquestionable.⁶⁶ Commenters state that some groups of persons with

⁶⁰ 47 C.F.R. § 64.604, attached hereto as Appendix C.

⁶¹ See *NOI* at 12 FCC Record 1157-1558 for a further description of VRI.

⁶² *NOI*, 12 FCC Rcd at 1158-1163.

⁶³ See Sprint Comments, Attachment, and Texas PUC Comments, Attachment.

⁶⁴ Texas PUC Comments at 4.

⁶⁵ *Id.* at 5. See also MCI Comments at 5-6; Southwestern Bell Comments at 5; AOAC Comments at 16-17.

⁶⁶ See, e.g., NAD Comments at 4; Ameritech Comments at 10; Travis DHS Comments at 3; Jordan Comments at 1; CAN Comments at 3-4; Nelson Comments at 2; MCI Comments at 5; Southwestern Bell Comments at 5; Texas PUC Comments at 6-7. *But see* Stoltz Comments at 4 (VRI use with "lipreading" will be minimal), NVRC Comments at

hearing disabilities, such as small children, may not have the ability to type on a TTY and, thus, still are excluded from the benefits of telephone service despite the availability of TRS.⁶⁷ Commenters also state that VRI provides more "functionally equivalent" access to the telephone network because VRI users are able to impart "tone" to the conversation, and to interject into a conversation as needed, capabilities which currently may be precluded by many TTYs.⁶⁸

30. Many commenters assert that, at least presently, the supply of qualified sign language interpreters to staff nationwide VRI services may not be adequate.⁶⁹ In particular, the Registry of Interpreters for the Deaf (RID), a national certifying body for sign language interpreters, notes a current "crisis in the nation with respect to the demand for and supply of qualified interpreters."⁷⁰ In addition, a number of commenters urge the Commission to develop standards for sign language interpreting services provided through VRI.⁷¹ NAD urges the Commission to adopt the U.S. Department of Justice's definition of "qualified interpreter" under Titles II and III of the ADA.⁷² Many commenters agree that confidentiality and privacy is vital to VRI service, but contend that current Commission confidentiality rules, and standards of the interpreting profession, may be sufficient to protect VRI users.⁷³ A majority of commenters addressing the issue of cost suggest that, at this time, the cost of VRI, both to telecommunications providers and to end users, is significant, and would be substantially higher than the cost of basic TRS.⁷⁴

7 (in order to serve people who use speech-reading and cued speech, VRI should also include "transliterating" services).

⁶⁷ See, e.g., NAD Comments at 4; SHHH Comments at 12-13; CAN Comments at 4.

⁶⁸ See, e.g., NAD Comments at 4; CAN Comments at 3-4; Texas PUC Comments at 6-7.

⁶⁹ See, e.g., Nelson Reply Comments at 3; RID Reply Comments at 2; USTA Reply Comments at 3; Louisiana Relay Comments at 3-4; Ameritech Comments at 10; Wisconsin TRS-AC Comments at 5; WMAD Comments at 18-20; MCI Comments at 6; Southwestern Bell Comments at 6-7; GTE Comments at 10.

⁷⁰ RID Reply Comments at 2.

⁷¹ See, e.g., NAD Reply Comments at 11; Wisconsin TRS-AC Comments at 5; CPAS Comments at 5. *But see* MCI Comments at 7; AOAC Comments at 19-20 (arguing that the Commission should not adopt minimum standards for interpreting services because the interpreting profession is a "mature profession" and is already subject to quality standards, and the Commission would be intruding upon private entities that develop such standards).

⁷² NAD Reply Comments at 11. The Department of Justice ADA regulations define "qualified interpreter" as "an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. § 35.104.

⁷³ See, e.g., MCI Comments at 6-7; Ameritech Comments at 13; ALDA Comments at 10; CPAS Comments at 5; AOAC Comments at 21-22; Southwestern Bell Comments at 8; Texas PUC Comments at 8-9.

⁷⁴ See, e.g., GTE Comments at 11; GTE Reply Comments at 3; USTA Reply Comments at 3; Ameritech Comments at 13; Louisiana Relay Comments at 4; Southwestern Bell Comments at 8; Texas PUC Comments at 9; California PUC

31. Finally, commenters are divided on whether VRI should become a mandatory requirement under the Commission's TRS rules. A few parties support mandated VRI services.⁷⁵ The majority of commenters, however, including carriers, TRS providers, and state administrators, oppose requiring VRI as a mandatory service at this time because of the recent introduction of the service and its high implementation cost.⁷⁶

32. Discussion. We tentatively conclude that VRI should not be mandated by the Commission's TRS rules at this time. All parties appear to agree that VRI has tremendous potential to both improve the functional equivalency of TRS and to broaden the universe of TRS users. The technology, however, is still at a relatively early stage of development, and the costs to implement this service on a nationwide basis appear to be prohibitive. We also note that there may be an inadequate supply of qualified interpreters to staff nationwide VRI services at this time. We believe that VRI will grow and develop more efficiently if providers are allowed to experiment with various VRI offerings on a trial basis, and to offer these services as a means of differentiating themselves from their competitors, until a cost-effective and practical VRI platform is developed. Mandating the provision of VRI when it is still at an early stage of development may remove competitive incentives for the development of innovative and quality VRI offerings by TRS providers. We seek comment on our tentative conclusion that VRI should not be a required TRS service under the Commission's rules at this time. Commenters who disagree with our tentative conclusion should provide specific evidence demonstrating the feasibility of implementing effective and affordable VRI on a nationwide basis.

33. We recognize that TRS providers may be increasingly likely to offer VRI services to TRS users as the technology develops and as the costs of providing VRI decrease. Accordingly, we tentatively conclude that the Commission should continue to monitor the state of VRI technology. We request comment on when and how the Commission should determine to revisit the issue of whether VRI should be mandated under our TRS rules.

34. In the interest of protecting users of voluntarily-provided VRI services from the risk of communication errors caused by the use of unqualified interpreters, we propose to

Comments at 6.

⁷⁵ See, e.g., NAD Reply Comments at 8; ALDA Comments at 9; Travis DHS Comments at 1; MCDHH Comments at 2; Foy Comments at 4; CAN Comments at 3; Nelson Comments at 2; NVRC Comments at 7; MCI Comments at 5.

⁷⁶ See, e.g., AT&T Comments at 4; AT&T Reply Comments at 2; Bell Atlantic/Nynex Reply Comments at 7; GTE Comments at 10; GTE Reply Comments at ii; California PUC Comments at 15; California PUC Reply Comments at 3; USTA Comments at 3; Ameritech Comments at 2; NASRA Comments at 9; Missouri PSC Comments at 5; Louisiana Relay Comments at 3; Kansas Relay Comments at 4; PacTel Reply Comments at 5. Sprint, a major supporter of the development and testing of VRI to date, takes "no position" on the issue of whether VRI should be a required service, but sets forth principles that should factor into the decision as to whether to mandate VRI. See Sprint Comments at 3.

incorporate the definition of "qualified interpreter," as used by the Department of Justice in its Titles II and III regulation, to our TRS rules.⁷⁷ We also tentatively conclude that our TRS confidentiality, conversation content and "type of call" rules apply to the provision of VRI services.⁷⁸ We seek comment on these proposals. Finally, as we tentatively concluded under para. 15, *supra*, while we do not propose to mandate the provision of VRI, VRI still would be considered a "relay" service within the meaning of Title IV. As such, we tentatively conclude that the costs of interstate VRI are recoverable from the interstate TRS Fund, subject to guidelines that we propose be developed by the interstate TRS Fund Advisory Council. Similarly, the costs of intrastate VRI would be recoverable from the intrastate jurisdiction. Allowing the recovery of VRI costs, we believe, will spur TRS providers to offer VRI on a voluntary basis. We seek comment on these tentative conclusions.

4. Multilingual Relay Services (MRS) and Translation Services

35. Background and Comments. Multilingual relay services (MRS) allow persons with hearing and speech disabilities who use languages other than English to communicate with voice telephone users in a shared foreign language, through a CA who is fluent in the selected language. In the *NOI*, the Commission sought comment on whether Title IV of the ADA encompasses MRS, the extent to which MRS is currently available, and if there is a need for MRS, what standards the Commission could adopt for this service.⁷⁹

36. The record indicates that MRS service is currently provided in areas of the United States where large non-English speaking populations reside, and that the majority of MRS are Spanish-language services.⁸⁰ Commenters appear to agree that MRS is within the scope of Title IV; they also state, however, that because of the varying populations and resources of different states, the decision to implement MRS should rest with the state.⁸¹ Ameritech also requests clarification on whether the Commission's inquiry on multilingual services referred to translation services or same-language services.⁸² Finally, Maryland and the DC PSC indicate that American Sign Language (ASL) translation services are available as part of their TRS offerings.⁸³

⁷⁷ See n.73, *supra*.

⁷⁸ See 47 C.F.R. § 64.604(a)(2), (a)(3).

⁷⁹ See *NOI*, 12 FCC Rcd at 1164-1165.

⁸⁰ See, e.g., California PUC Comments at 11; Maryland Comments at 6; Sprint Comments at 2; Texas PUC Comments at 10; AT&T Comments at 8; Ameritech Comments at 16; MCI Comments at 8.

⁸¹ See, e.g., Louisiana Comments at 3; Missouri PSC Comments at 6; NASRA Comments at 7-8; Southwestern Bell Comments at 9; Texas PUC Comments at 10.

⁸² Ameritech Comments at 36.

⁸³ See Maryland Comments at 8-9; DC PSC Comments at 3.

37. Discussion. We tentatively agree with those parties that assert that, at this time, the decision as to whether to implement MRS is best left to the state TRS programs. Because language needs and population demographics may vary widely from state-to-state, we tentatively conclude that the development and implementation of federal rules governing MRS could be problematic. Moreover, we tentatively conclude, based on the record, that where there is a demand for these services, some TRS providers have been providing MRS services to non-English speaking communities, especially to Spanish-speaking communities, at a satisfactory level, and that, as a consequence, Commission intervention in this area is not needed at this time.⁸⁴ We seek comment on these tentative conclusions.

38. We clarify, however, that MRS is, by definition, a "telecommunications relay service" as defined in Title IV of the ADA and our rules⁸⁵ because those services are telephone transmission services that enable a person with a hearing or speech disability to communicate by wire or radio with a person without such a disability. As such, although we do not propose to mandate the provision of MRS, MRS is considered a "relay" service within the meaning of Title IV. Accordingly, to the extent voluntarily provided, the costs of intrastate or interstate MRS are recoverable from the intrastate jurisdiction or the interstate TRS Fund, as appropriate. As with VRI, by allowing carriers to recover their costs of providing this service, we seek to spur the development of MRS and to encourage TRS providers to offer MRS on a voluntary basis.

39. We tentatively conclude that Title IV of the ADA, as a general matter, only encompasses *same-language* MRS, since such services are by nature "relay" services between a person with a hearing or speech disability and a person without such a disability, using a shared language. We understand that some TRS providers may be offering "translation" services to TRS users (*i.e.*, communication between two parties who each use a different language) including Spanish-language and ASL translation services. We tentatively conclude that any such "translation" TRS, especially foreign-language translation services, are value-added TRS offerings that go beyond the "relaying" of conversations between two end users.⁸⁶ Therefore, the interstate portion of such services should not be reimbursable from the interstate TRS Fund. We seek comment on this tentative conclusion. In particular, we ask parties to discuss whether an exception should be made for ASL translation services. ASL is a language unique to the deaf community. Therefore, ASL translation services may be necessary to provide "functional equivalency" to ASL users. We note, however, that ASL is primarily a visual language, and not a written or text-based language. Commenters should discuss whether ASL, when not presented visually but "typed" on a TTY, is capable of being translated to English in an objective and reliable manner, with a low risk of misunderstanding or CA error.

⁸⁴ See, e.g., California PUC Comments at 11; Maryland PUC Comments at 6; MCI Comments at 8; Texas PUC Comments at 10.

⁸⁵ 47 U.S.C. § 225(a)(3); 47 C.F.R. § 64.601(7).

⁸⁶ See section III(A)(1), *supra*, for a discussion of the definition of "TRS" and the scope of Title IV.

5. Access to Emergency Services

40. Background and Comments. The Commission's current TRS regulations require that "CAs shall handle emergency calls in the same manner as they handle any other TRS calls."⁸⁷ Although this issue was not raised in the *NOI*, several emergency number and public safety associations filed reply comments asserting that further Commission guidance and minimum standards may be necessary in this area.⁸⁸ Commenters suggest that there is inconsistency and confusion among the states and TRS providers as to how such calls should be handled.⁸⁹ APSCO and NENA assert that, due to the "critical nature" of emergency calls, CA processing of those calls is of utmost importance, but the procedures for handling the calls vary from state-to-state.⁹⁰ APSCO and NENA ask that the Commission establish minimum standards for call handling in this area, and suggest that consideration be given to: (1) using databases to match the TRS caller's automatic number information (ANI) with the appropriate emergency service number in his or her area; (2) allowing the TRS center to pass the caller's ANI information to the emergency service provider, even where the TRS user disconnects before emergency personnel are connected (*i.e.*, the functional equivalent of 911 "call-back"); and (3) defining what constitutes an "emergency" call.⁹¹ TX-ACSEC also supported the need for minimum standards in this area.⁹²

41. Discussion. We recognize that, despite Department of Justice regulations under Title II of the ADA that require state and local government entities to make emergency services directly accessible to TTY users,⁹³ many individuals with hearing and speech disabilities may choose to contact emergency services via a TRS center. While CAs should handle these types of calls in the same manner as they handle any other TRS call, we are concerned that the lack of consistency among TRS providers regarding the handling of emergency calls may jeopardize public safety. Moreover, we believe that TRS users should be informed as to how emergency calls will be handled by any TRS center. Accordingly, we seek further comment on this issue. Commenters should address, among other things: (1) whether TRS centers should be required under the Commission's rules to pass a caller's ANI to an emergency services operator; and (2) how "emergency calls" should be defined. We also ask TRS providers to describe their current operating procedures for incoming emergency calls. Commenters who propose that the

⁸⁷ 47 C.F.R. § 64.604(a)(3).

⁸⁸ See APCO and NENA Joint Reply Comments; TX-ACSEC Reply Comments, *passim*.

⁸⁹ See *id.*

⁹⁰ See APCO and NENA Joint Reply Comments at 2.

⁹¹ *Id.* at 3-4.

⁹² See TX-ACSEC Reply Comments, *passim*.

⁹³ See 28 C.F.R. § 35.162.

Commission adopt minimum standards in this area should propose specific rule language to implement their proposals.

6. Access to Enhanced Services

42. Background and Comments. Current Commission rules require TRS to be capable of handling "any type of call normally provided by common carriers."⁹⁴ In enacting Title IV, however, Congress stated that "there are some services, such as audiotext services, that connect callers to recorded information services. It is not the function of this legislation to facilitate access to these kind of services."⁹⁵

43. In our first *Report and Order* on TRS, the Commission held that TRS providers were not required to offer access to enhanced services.⁹⁶ We encouraged, however, the provision of access to these services where technically feasible.⁹⁷ In the *NOI*, the Commission sought to determine whether, because of technical limitations, any particular services remain inaccessible to TRS users.⁹⁸

44. A significant number of commenters asserted that two types of services remain largely inaccessible to TRS users and constitute a "glaring omission in relay services": (1) voice menu-driven services; and (2) pay-per-call services.⁹⁹ NAD states that "[m]illions of businesses, governmental agencies, transportation facilities, and schools now use these interactive systems, which, because of the speed of response needed, remain inaccessible to relay users."¹⁰⁰ According to NAD, voice menu-driven systems frequently do not offer a live operator option, and, for this reason, completely block telephone access to TRS users.¹⁰¹ AT&T states that the current TRS platform cannot effectively interact with the prompts and time limits built into many enhanced service applications, and that charges for pay-per-call services cannot be properly billed to the

⁹⁴ 47 C.F.R. § 64.604(a)(3).

⁹⁵ See H.R. Rep. No. 101-485 (IV), 101st Cong., 2d Sess. at 66 (1990).

⁹⁶ See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Report and Order and Request for Comments*, CC Docket No. 90-571, 6 FCC Rcd 4657 at n.20 (1991).

⁹⁷ See *id.*

⁹⁸ *NOI*, 12 FCC Rcd at 1166-1167.

⁹⁹ NAD Comments at 4-5; *see, also*, DCADC-VAD Comments at 3; AGB Comments at 3; AT&T Comments at 11.

¹⁰⁰ NAD Comments at 4.

¹⁰¹ *Id.*

TRS user.¹⁰² The Texas PUC, however, comments that Relay Texas already provides access to pay-per-call services.¹⁰³ Several parties also assert that the actual responsibility for access to these services rests with the provider of the enhanced service, who should make the service directly accessible via TTY, under the public access and public accommodations requirements of Titles II and III of the ADA.¹⁰⁴ Some commenters contend that, to some degree, the incompatibility of voice-menu systems and TRS may be resolved using more advanced TTY protocols that approach "realtime" text transmission.¹⁰⁵ Several commenters state that TRS should be required to handle voice menu-driven systems and pay-per-call relay calls.¹⁰⁶ Finally, to remedy the inaccessibility of voice-menu systems, NASRA suggests that CAs be "allowed to offer the caller a condensed version of the [recorded] message or ask if a particular message is sought, such as a list of services offered."¹⁰⁷

45. Discussion. The record indicates that computer-driven voice-menu systems (or "audiotext" systems), that are increasingly used by businesses and services in the United States, may present substantial barriers to TRS users because the speed at which information is provided via voice-menu is too fast to allow the TRS user to respond within the voice-menu system response time. Accordingly, TRS users must frequently place a succession of calls to leave a message with, or access the information provided by, a voice-menu system. We tentatively conclude, however, that in the absence of further direction from Congress, our jurisdiction under Title IV of the ADA does not permit us to mandate access to such services. Indeed, Congress expressly stated that Title IV was not intended to mandate access to enhanced services.¹⁰⁸ We seek comment on our tentative conclusion. Commenters who disagree with our tentative conclusion should discuss the Commission's legal authority to require access to such services through TRS. Commenters should also discuss the technical issues involved in handling calls to pay-per-call services through TRS, and why access to pay-per-call services may be provided by some TRS providers and not by others.

46. We note that many carriers, telecommunications service providers, and TRS providers make enhanced services accessible to TRS users voluntarily when technically feasible,

¹⁰² AT&T Comments at 11.

¹⁰³ Texas PUC Comments at 11. *Cf.* NAD Reply Comments at 6 ("[I]t is not clear. . . why AT&T argues that the charges associated with pay-per-call cannot be properly billed. . . when Texas has already authorized the provision of these enhanced services.").

¹⁰⁴ *See, e.g.*, Wisconsin TRS-AC Comments at 2; AT&T Comments at 11.

¹⁰⁵ *See* ALDA Comments at 4; SHHH Comments at 3.

¹⁰⁶ *See, e.g.*, NAD Comments at 4-5; DCADC-VAD Comments at 3; AGB Comments at 3.

¹⁰⁷ NASRA Comments at 3-4; *see also* MCDHH Comments at 4.

¹⁰⁸ *See* H.R. Rep. No. 101-485 (IV), 101st Cong., 2d Sess. at 66 (1990).

and we encourage them to continue to do so.¹⁰⁹ Although we tentatively conclude that we do not have jurisdiction to require access to such services, we believe Congress' mandate that we ensure that "functionally equivalent" TRS are available, to the extent possible, permits us to establish rules to govern the way in which CAs handle recorded messages that require user interaction or input.¹¹⁰ Accordingly, we tentatively conclude that our rules should be amended to allow CAs, when encountering an interactive recorded message during a TRS call that cannot be relayed verbatim, due to technical limitations, to alert the TRS user to the presence of a recorded message. The CA also should be permitted to inquire as to whether the TRS user wishes the CA to summarize the message or to listen for specific information. We tentatively conclude that this narrow exception to the requirement that all calls be relayed "verbatim"¹¹¹ would increase TRS efficiency, by allowing CAs to alert the TRS user to a recorded message through a "hot key" on their terminal, and to receive instructions from the TRS user on how he or she wishes to proceed, without having to engage in frequent call-backs.¹¹² Moreover, TRS users could still request a verbatim message, even if to do so would require frequent call-backs by the CA. We seek comment on this proposed rule. Commenters should note that the proposed rule, rather than requiring CAs to summarize recorded messages, would permit the TRS user to have a second option of directing the CA to handle such calls in this fashion.

B. Mandatory Minimum Standards

1. Speed-of-Answer Requirements

47. Background and Comments. The Commission's TRS rules require TRS providers to meet certain blockage and speed-of-answer parameters. Specifically, section 64.604(b)(2) of our rules states:

Speed of Answer. TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within

¹⁰⁹ TRS providers can, and do, recover the costs of voluntarily providing access to enhanced services. The costs of providing this access may be included in cost data (*i.e.*, the costs of personnel and plant) for traditional TRS. TRS providers submit this cost data to NECA for purposes of calculating the annual TRS provider compensation rate.

¹¹⁰ See 47 U.S.C. § 225 (a)(3), (b)(1), (d)(1).

¹¹¹ See 47 C.F.R. 64.604(a)(2).

¹¹² Currently, CAs interface with TTY users through personal computer (PC) equipment and software. Relay software programs often allow the CAs to program certain often-used phrases (*i.e.*, "ringing" or "number busy") into a "hot key" sequence so that these phrases can be transmitted to the TTY user with one or two keystrokes, rather than typing out the entire phrase.

10 seconds, and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.¹¹³

48. Speed-of-answer was one of the more frequently discussed issues by commenting parties. Most parties agreed that the Commission's current speed-of-answer rules are vague and subject to varying interpretations by different TRS providers.¹¹⁴ Louisiana, for example, points out that the speed-of-answer calculation can be distorted by the exclusion of abandoned and redialed calls from the calculation.¹¹⁵ A number of parties note that TRS providers may interpret "answer" as permitting calls to be answered by a computer and placed in queue; the TRS user could then wait several minutes or more before the call is actually answered by a CA prepared to place the call.¹¹⁶ Texas PUC and Maryland contend that their ability to assess speed-of-answer times improved when a specific time period (*e.g.*, daily) was set as the basis for the speed-of-answer calculation.¹¹⁷ Finally, NASRA suggests that the Commission's rules should be revised to require that calls be answered "within 10 seconds of reaching the relay switch."¹¹⁸

49. Discussion. Speed-of-answer requirements are a cornerstone of the Commission's TRS rules.¹¹⁹ The ability of a TRS user to reach a CA prepared to place his or her call, without experiencing delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of "functional equivalence." For this reason, we are concerned about the apparent lack of uniformity in the application of our speed-of-answer rules among state TRS programs. We also are concerned about the allegations of numerous commenters that TRS users may be subject to high rates of call blockage and, after reaching a TRS center, may be put "on hold" before their calls are placed. These types of experiences are not "functionally equivalent" to the experiences of individuals without a hearing or speech disability.

50. Because of the apparent inconsistency in the application of our rules, we tentatively conclude that we should revise our speed-of-answer rules to require TRS providers to

¹¹³ Some state TRS programs have speed-of-answer requirements that are more stringent than the Commission's requirements. California, for example, requires calls to be answered in seven (7) seconds or less. *See* California PUC Comments at 13.

¹¹⁴ *See, e.g.*, NASRA Comments at 5-6; Louisiana Comments at 2-3; Maryland Comments at 9; DC PSC Comments at 2; Hawaii CCD Comments at 3; Texas PUC Comments at 14-15; NAD Comments at 13; SHHH Comments at 6-7; DCADC-VAD Comments at 13; AGB Comments at 2; CPAS Comments at 10; and NVRC Comments at 5-6.

¹¹⁵ Louisiana Relay Comments at 2-3.

¹¹⁶ *See, e.g.*, NAD Comments at 13; Maryland Comments at 9; SHHH Comments at 6; DC PSC Comments at 2.

¹¹⁷ Texas PUC Comments at 14-15; Maryland Comments at 9.

¹¹⁸ NASRA Comments at 6.

¹¹⁹ *See* 47 C.F.R. § 64.604(b)(2).

answer 85% of all calls within 10 seconds *by a CA prepared to place the TRS call at that time*. We further propose to require that the calculation of whether a provider is in compliance with the 85% - 10 second rule must be performed on at least a daily basis.

51. The rule amendments we propose are intended to eliminate two practices: (1) the practice of having calls answered by an automated system, either at a switch, a call management platform, or at the TRS center, and placed in queue for long periods; and (2) the practice of calculating speed-of-answer rates on a weekly or monthly basis, which allows the averaging of both low-use and busy TRS calling periods. We believe that these two practices tend to distort actual TRS performance. We seek comment on these proposed rule amendments.

52. We further propose to require that the 10-second speed-of-answer time frame be triggered when a call initially arrives at the TRS provider's network. The point at which a call "initially arrives" at the TRS provider's network could vary with the construction of the network. For example, some TRS providers' network may route all TRS calls to a regional call distribution platform, while other providers' networks could route calls directly to a TRS center switch. Our proposal is intended to ensure that, once a TRS call passes into the TRS provider's network facilities, regardless of which configuration that provider uses, the TRS provider ensures that the call is answered within 10 seconds by a CA prepared to place the call. We seek comment on this proposal. We also ask commenters to discuss whether all TRS providers have the technical ability to track CA response times, and, thus, the ability to demonstrate compliance with our proposed speed-of-answer rule.

53. The exclusion of redialed or abandoned calls¹²⁰ in speed-of-answer reports can distort the record of a TRS provider's actual performance by reducing the total number of calls from which the average speed-of-answer is calculated, thus improving the TRS provider's average.¹²¹ We tentatively conclude that we should not require that these calls be included in all speed-of-answer calculations. While some callers may redial or abandon a call when they receive a busy signal or are placed on hold by a TRS center, redialed or abandoned calls may be prompted by other circumstances as well, such as callers that simply change their mind about placing a call or that are interrupted while placing the call. We tentatively conclude that we should not adopt a regulation that assumes that all abandoned and redialed TRS calls result from high blockage. We seek comment on this tentative conclusion. In reaching this tentative conclusion, we note that our rules require TRS providers to maintain adequate staffing of their facilities to ensure that callers

¹²⁰ "Redialed" or "abandoned" calls refer to calls that are successively redialed or abandoned, without being completed, when a caller is unable to reach a CA ready to place his or her call.

¹²¹ For example, if a provider receives a total of 1000 TRS calls a day, and 750 of those calls were answered within 10 seconds or less, the provider's speed-of-answer rate would be 75% and below the required minimum standard. But if 200 of those calls were abandoned by the caller before a CA came on-line to handle the call, and the provider excludes these 200 abandoned calls from its speed-of-answer calculation (without knowing whether or not the calls were abandoned by the TRS user because no response was obtained from the TRS center within 10 seconds), then the provider could report an answer rate of 94% (750/800).

are provided with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability is functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.¹²² We remain concerned that our tentative conclusion, that we should not require that redialed or abandoned calls be included in speed-of-answer reports, which could result in improved speed-of-answer statistics for a particular carrier, not be used by TRS providers to avoid properly staffing their facilities. We seek comment on how the Commission can ensure that this result is avoided.

2. CA Quality and Training

54. Background and Comments. Current Commission regulations require CAs to have, among other things, "competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, language and etiquette."¹²³ In the *NOI*, we sought general comment on the effectiveness of this rule over the past three years.¹²⁴ The Commission received numerous comments, especially from TRS users, stating that the quality of CAs varies widely, and that there is an alarming decline in CA quality that is affecting the "functional equivalency" of TRS service.¹²⁵

55. Many parties representing TRS users note that the Commission currently has no quantitative rules for CA typing speed.¹²⁶ These parties urge the Commission to amend our rules to set a minimum CA typing speed.¹²⁷ Commenters assert that, in light of more efficient technologies (*e.g.*, enhanced TTY protocols, auto-correct software), CAs could approach "realtime" transmission of text-to-voice and voice-to-text, if they were sufficiently skilled typists.¹²⁸ NAD urges the Commission to adopt a minimum typing speed of 100 words-per-minute, and to require that CA typing tests be oral, rather than written.¹²⁹ NASRA suggests a 45

¹²² 47 C.F.R. § 64.604(b)(2).

¹²³ 47 C.F.R. § 64.604(a)(1).

¹²⁴ *See NOI*, 12 FCC Rcd at 1169.

¹²⁵ *See, e.g.*, NAD Comments at 5-6; SHHH Comments at 2; NVRC Comments at 11; DC PSC Comments at 2; Texas PUC Comments at 13. *Cf.* Ameritech Comments at 21; Southwestern Bell Comments at 21 (commenting that current CAs are effective and customers are satisfied with CA competency).

¹²⁶ *See, e.g.* SHHH Comments at 4; NAD Comments at 6.

¹²⁷ *See id.*; *see also* DCADC-VAD Comments at 3; CPAS Comments at 8; NASRA Comments at 5; MATP Comments at 3.

¹²⁸ *See, e.g.*, SHHH Comments at 4; NAD Comments at 6; DCADC-VAD Comments at 3; CPAS Comments at 8; NASRA Comments at 5.

¹²⁹ NAD Comments at 6; *see also* DCADC-VAD Comments at 3; CPAS Comments at 8; NASRA Comments at 5.

word-per-minute standard.¹³⁰ AT&T, a major TRS provider, argues against adopting quantitative typing speeds for CAs.¹³¹ AT&T states that requiring a significant increase in typing speed would "disserve" TRS users, because the current labor pool for potential CAs is already "limited."¹³²

56. Several commenters urge the Commission to require the phase-in of technology, such as computer-aided realtime transcription (CART), until TRS approaches real-time, simultaneous text transmission.¹³³ Commenters argue that TRS centers should be required to install certain types of software, such as auto-correct software, that will reduce CA error and misspelling rates.¹³⁴ Sprint, however, asserts that requiring TRS providers to install certain types of software would be an intrusion into areas that the Commission does not regulate.¹³⁵

57. The Commission's current rules do not address the quality of voice articulation required of CAs. Commenters representing TRS users allege that many CAs lack competent skills in voice articulation.¹³⁶ These commenters state that CAs may have strong accents, use local dialects, or may not even be fluent in the English language.¹³⁷ Several commenters urge the Commission to impose screening or quality assurance requirements to prevent the hiring of CAs with poor voice articulation or incompetent typing skills.¹³⁸

58. Discussion. We are concerned about the allegations of TRS users that CA quality appears to vary widely, and in many cases may be substandard. We tentatively conclude, however, that a federal rule imposing a minimum typing speed for CAs is not appropriate at this time. Our tentative conclusion is based upon our concern that imposing a federal standard could actually harm TRS users by constraining the labor pool for CAs and therefore, could adversely impact the ability of the TRS providers to offer TRS on a ubiquitous, around-the-clock basis. We request comment on this tentative conclusion. Commenters objecting to our tentative conclusion should specifically discuss the effect of establishing of a minimum typing speed requirement for

¹³⁰ NASRA Comments at 5.

¹³¹ See AT&T Reply Comments at 7-8.

¹³² *Id.*

¹³³ See, e.g., SHHH Comments at 4; ALDA Comments at 4.

¹³⁴ See, e.g., SHHH Comments at 5.

¹³⁵ See Sprint Reply Comments at 2.

¹³⁶ See, e.g., NAD Comments at 7; DCADC-VAD Comments at 3; CPAS Comments at 9; NASRA Comments at 8.

¹³⁷ *Id.*

¹³⁸ *Id.*

CAs on the CA labor pool. We also invite comments on whether TRS providers are experiencing any labor shortages or difficulties in hiring and retaining competent CAs, and the extent to and manner in which TRS providers currently screen and test potential CAs for typing competency. Finally, we agree with commenters that new technologies, such as enhanced TTY protocols and enhanced computer software, could greatly increase TRS transmission times and, consequently, CA typing speeds. We seek comment, however, on the extent to which such technologies have been adopted by TRS users and TRS providers.

59. We tentatively conclude that clear and articulate voice communication is an essential skill for any CA and is essential to the concept of "functional equivalency." We seek comment on whether to amend our rules to address the need for clear and articulate voice communication by CAs and, in particular, how to evaluate the clarity and articulation of a CA's voice communications. The presence of an accent or a certain manner of speaking, which to one listener renders the speaker "inarticulate," may not render the speaker inarticulate to another listener. Accordingly, we request further comment on this area. Commenters who believe the Commission should adopt rules for voice articulation should propose specific rule language and discuss how such a rule can be applied in an objective, nondiscriminatory manner. Commenters should also discuss whether screening CAs for voice articulation would raise questions of discriminatory employment practices based upon a potential CA's race, ethnic background or national origin, or whether it would conflict with state and local equal employment opportunity laws.

60. Finally, we tentatively conclude that we should not adopt further CA requirements at this time. Because TRS is still a relatively new service, comprehensive Commission intervention in all areas of CA standards may overburden TRS providers and stifle competitive incentives for TRS providers to develop and improve their service to increase their attractiveness to consumers and state administrators. We expect, as we stated in 1991, that in areas of CA typing speed and competence, TRS providers will strive to provide "the excellent level of service all telephone consumers demand."¹³⁹ We request comment on this tentative conclusion.

3. In-Call Replacement of CAs

61. Background and Comments. In the *NOI*, the Commission sought comment on call suspensions initiated by CAs (*e.g.*, changes in CAs between shifts), and the impact of the suspensions, if any, on TRS users.¹⁴⁰ Numerous parties representing TRS users assert that during

¹³⁹ See Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, *Report and Order and Request for Comments*, CC Docket No. 90-571, 6 FCC Rcd 4657, 4659 (1991).

¹⁴⁰ *NOI*, 12 FCC Rcd at 1167-68.

relay calls, a CA may transfer a call to another CA, and that these transfers are very disruptive.¹⁴¹ Ameritech and MCI, on the other hand, assert that in-call CA transfers are rare.¹⁴² AT&T, MCI and GTE state that in-call transfers are sometimes necessary to avoid CA fatigue or repetitive-motion injuries during extended calls.¹⁴³ AT&T notes that collective bargaining agreements may require TRS providers to ensure that CAs do not work longer than their established shift and that they receive adequate breaks.¹⁴⁴ Several commenters suggest that the Commission specify a minimum period of time in which a CA is required to stay with a TRS call, to avoid CA transfers within the first few minutes of a call.¹⁴⁵ MCI also asserts that in-call CA replacement is "rare," and notes that, based on its experience as a TRS provider, the average length of a TRS call appears to be six (6) minutes.¹⁴⁶ Texas PUC recommends that the Commission adopt a rule permitting TRS users to request a specific CA gender when a CA transfer occurs.¹⁴⁷

62. Discussion. We tentatively conclude that we should amend our rules to require that a CA answering and placing a TRS call must stay with that call for at least ten (10) minutes before an in-call CA transfer can take place. We seek comment on this tentative conclusion. In particular, we ask commenters to discuss whether a ten-minute time period adequately balances the need to minimize call disruptions with the need to prevent CA fatigue and overuse injuries, or whether the minimum period of call coverage by the same CA should be shorter (5 minutes) or longer (15 minutes). We also seek comment on whether the proposed rule regarding CA transfers would conflict with any federal, state or local labor laws or regulations. Commenters asserting that our proposed rule would conflict with labor laws or regulations, or with collective bargaining agreements, should point to specific regulations or agreements that are in conflict with our proposed rule, to enable the Commission to fully assess the alleged conflicts. Finally, while we tentatively conclude that we should not establish rules permitting TRS users to request a specific CA gender during a CA transfer, we strongly encourage TRS providers to offer this option to TRS users, to the extent CA staffing allows the TRS provider to accommodate such requests. If

¹⁴¹ See, e.g., CAN Comments at 5-6; COR Reply at 7-8; CPAS Comments at 8; NAD Comments at 15; DCADC-VAD Comments at 5; NVRC Comments at 10.

¹⁴² Ameritech Comments at 19-20; MCI Comments at 9.

¹⁴³ AT&T Comments at 9-10; MCI Comments at 9; GTE Comments at 5.

¹⁴⁴ AT&T Comments at 9-10. NAD, however, asserts that any such collective bargaining agreements would be superseded by federal rules on this subject. NAD Reply Comments at n.13.

¹⁴⁵ See, e.g., Maryland Comments at 6-7 (suggesting 5-10 minutes); Texas PUC Comments at 12 (suggesting 10 minutes); NAD Reply Comments at 19 (suggesting 15 minutes).

¹⁴⁶ MCI Comments at 9.

¹⁴⁷ Texas PUC Comments at 12. It is our understanding that several TRS providers allow the TRS user to select a particular CA gender at the outset of a TRS call.

a TRS provider currently offers callers the option of requesting a specific CA gender at the outset of a call, we encourage the TRS provider to apply this option to in-call CA transfers.

C. Competition Issues

1. Multivendoring

63. Background and Comments. Commission rules allow common carriers to provide TRS within their service areas "individually, through a competitively selected vendor, or in concert with other carriers."¹⁴⁸ Currently, the most common means by which carriers and the states comply with this rule is through the competitively selected single-vendor model. Pursuant to this model, the state enters into an exclusive contract to provide statewide TRS with a single vendor that is selected through a request for proposals (RFP) process. The cost of the intrastate TRS service contract generally is recovered from all ratepayers in the state, either through an intrastate subscriber line surcharge or through the ratemaking process. Under the single-vendor model, TRS users are required to use their resident state's chosen TRS provider for intrastate calling. Because interstate TRS service is funded by a national TRS Fund, however, callers may choose any TRS provider for interstate calls by dialing one of several national toll-free numbers for interstate calls that are advertised by TRS providers.

64. We note that many commenters representing TRS users claim, as a general matter, that TRS are ineffective and fall far short of their understanding of "functional equivalence."¹⁴⁹ Many commenters argue that substandard intrastate TRS is a direct result of the single-vendor model. According to these parties, the single-vendor model encourages the selection of a TRS provider based on cost alone, and removes any incentive for incumbent TRS providers to improve service after they receive an exclusive contract to provide TRS in a state.¹⁵⁰ Many of these commenters urge the Commission to take steps to require or promote multivendoring in state TRS programs as a mechanism to improve TRS quality. Major TRS providers, including AT&T, MCI and Sprint, and the majority of state TRS administrators do not address this issue in their comments.

¹⁴⁸ 47 C.F.R. § 64.603.

¹⁴⁹ See, e.g., ALDA Comments at 1-2, NAD Comments at 2; DCADC-VAD Comments at 1-2; SHHH Comments at 2; AGB Comments at 2; AOAC Comments at 2; NVRC Comments at 2.

¹⁵⁰ See, e.g., NAD Comments at 23-24; MATP Comments at 3; MATP Reply Comments at 1; ALDA Comments at 5, 7; ALDA Reply Comments at 3-4; NVRC Comments at 4; Ultratec Reply Comments at 28; see also Bell Atlantic-NYNEX Reply Comments at 2 (stating that while multivendoring should be encouraged, it may be incompatible with universal 711 access to TRS).

65. Discussion. As an initial matter, we note that the Telecommunications Act of 1996 ("1996 Act")¹⁵¹ obligates the Commission to facilitate the introduction of competition to telecommunications markets.¹⁵² We believe that, while regulated single-vendor markets may result in reasonably low prices or reasonably high quality services, the greatest benefits of TRS will be realized when vendors directly compete for TRS consumers. Although requiring intrastate TRS multivendoring would comport with the overall policy goals of the Act and proposals for multivendoring advanced by commenters hold out substantial promise, we do not propose to require intrastate TRS multivendoring at this time. Instead, we invite comment on the following issues: (a) the Commission's jurisdiction to require intrastate multivendoring; (b) the correlation between the single-vendor model and problems with intrastate TRS; and (c) the structuring of an intrastate multivendor environment.

66. First, the Commission's jurisdiction to implement multivendoring at the state level is unclear. In most instances, intrastate TRS programs are administered directly by the states, following Commission certification.¹⁵³ Whereas the Commission exercises authority over intrastate TRS by setting mandatory minimum standards that all TRS must meet, the Commission has no direct jurisdiction over the recovery of intrastate TRS costs and is not involved in the rate-setting or contracting processes conducted by the state for its intrastate TRS program.¹⁵⁴ Moreover, Title IV of the ADA expressly permits carriers to comply with their statutory obligation to provide TRS "individually, through designees, *through a competitively selected vendor*, or in concert with other carriers."¹⁵⁵ This statutory provision appears to restrict the Commission's authority to require the multivendoring of TRS service at the state level. We seek comment on this analysis.

67. Second, while numerous commenters assert that there is a relationship between the single-vendor environment and problems with TRS quality, we have not received comment on the issue from TRS providers and state TRS administrators, two groups that we expect would have a unique understanding of the single-vendor environment. We invite these parties to comment on the allegations that the single-vendor model is inefficient and produces substandard TRS.

¹⁵¹ Pub. L. No. 104-104, 110 Stat. 96 (1996) (codified at 47 U.S.C. §§ 151 *et seq.*).

¹⁵² Through the 1996 Act, Congress sought to establish a "pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry. *See Jt. Statement of Managers*, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

¹⁵³ *See* 47 C.F.R. § 64.605. At present, 48 states, plus the District of Columbia and Puerto Rico, have received Commission certification and, thus, directly administer the intrastate TRS program in their state.

¹⁵⁴ *See* 47 U.S.C. § 225 (d)(3)(B).

¹⁵⁵ *See* 47 U.S.C. § 225(c) (emphasis added).

68. Third, while many commenters have expressed an interest in creating choice of TRS provider for intrastate calling services, none have proposed a specific structure for an intrastate multivendor environment. Specifically, no party has addressed how vendors should compete in each state, or how costs should be recovered. We seek further comment on these issues, especially from state TRS administrators who have implemented, or are planning to implement, a multivendor environment in their state.

2. Treatment of TRS Customer Information

69. Background and Comments. In the current TRS environment, statewide TRS service contracts frequently are awarded to a single TRS provider for a specified contract term, *e.g.*, three to five years. During a specific TRS providers' term, that provider may develop databases consisting of information on relay customer preferences or calling patterns. This information, often referred to as "caller profiles," is used by the TRS provider to deliver more efficient and individualized service to TRS users. If an incumbent TRS provider fails to win renewal of its contract, a dispute may arise between the outgoing TRS provider and the state as to the ownership of this customer information, with the state seeking to turn the customer information over to the new TRS provider, to ease the transition between providers.

70. Although the Commission did not raise this issue in the *NOI*, Sprint, a major TRS provider, and NASRA, an association representing state TRS administrators, devoted considerable comment to it. NASRA argues that any information, including caller profile information that is gathered by a TRS provider in the provision of service to a state's citizens, is the property of, and transferable to, the state that paid for that relay service pursuant to the contract.¹⁵⁶ NASRA seeks clarification, however, on the application of section 222 of the Communications Act, as amended, to the TRS arena.¹⁵⁷

71. Sprint argues, on the other hand, that such information is proprietary to the TRS provider, that each TRS provider should be responsible for developing its own caller database, and that TRS providers should not be forced to hand over this information to their competitors, especially in a multiple vendor environment.¹⁵⁸ Sprint also contends that all "caller profile" information is actually gathered in the TRS provider's database before the call reaches the CA and billing to the state begins. Therefore, according to Sprint, the state has not "paid" for the database.¹⁵⁹

¹⁵⁶ See generally NASRA Comments at 6-7; see also NAD Comments at 15 (supporting NASRA's position).

¹⁵⁷ See 47 U.S.C. § 222(c). Section 222, *inter alia*, addresses the use of customer proprietary network information (CPNI).

¹⁵⁸ See generally Sprint Reply Comments, *passim*.

¹⁵⁹ See *id.* at 3-5.

72. Discussion. Section 222 of the 1996 Act governs, among other things, carriers' use, disclosure, or provision of access to, customer proprietary network information.¹⁶⁰ In particular, section 222(c)(1) of the Act provides that

[e]xcept as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] in its provision of a telecommunications service shall only use, disclose or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.¹⁶¹

We seek comment on whether the disclosure by an outgoing TRS provider of customer information to a new TRS vendor that has won a TRS contract, is subject to section 222 of the Act and our implementing regulations.¹⁶² We specifically seek comment on whether TRS providers constitute "telecommunications carriers," and whether the information compiled by TRS providers constitutes "CPNI" under section 222. In particular, we ask parties to describe in detail the types of data collected from TRS users to form customer profiles, and how this information is used by TRS providers. To the extent parties argue that the disclosure of information in this situation is subject to section 222, we seek specific comment on whether such disclosure is permitted pursuant to section 222(d)(1), which generally allows a carrier to use, disclose, or permit access to CPNI, notwithstanding other provisions in section 222, "to initiate, render, bill and collect for telecommunications services." Alternatively, we seek comment on whether such disclosure is permissible without customer approval under the proviso in section 222(c)(1), which exempts from the general CPNI restrictions, uses that are "required by law."¹⁶³ As we noted above,¹⁶⁴ Title IV of the ADA 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.¹⁶⁵ Thus, requiring outgoing TRS providers to disclose customer information to a new TRS vendor may be necessary to ensure that customers receive TRS in the most efficient manner possible, consistent with this Congressional requirement.

¹⁶⁰ See 47 U.S.C. § 222(c)(1).

¹⁶¹ 47 U.S.C. § 222(c)(1).

¹⁶² See *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-115, FCC 98-27 (rel. February 26, 1998) (*CPNI Order*).

¹⁶³ See 47 U.S.C. § 222(c)(1).

¹⁶⁴ See *supra* at para. 6.

¹⁶⁵ 47 U.S.C. § 225(b)(1) (emphasis added).

D. Enforcement and Certification Issues

73. Background and Comments. Section 225(b)(2) of the Communications Act, as amended, provides the Commission with jurisdiction to administer and enforce the obligations of both interstate and intrastate common carriers to provide TRS.¹⁶⁶ Pursuant to the enforcement scheme established by Congress, which includes a voluntary state certification process and a complaint process,¹⁶⁷ states that apply for and receive Commission certification of their TRS program are subject to modified enforcement standards. In general, those standards require all complaints filed against the certified state program to be addressed in the first instance by the state.¹⁶⁸ Although no specific period is required by the statute, the Commission's rules set five (5) years as the certification period for state programs.¹⁶⁹ State TRS programs are not required to amend their certification application at any point during the five-year period under the Commission's current TRS rules.

74. A majority of commenters representing TRS users assert that the Commission's TRS enforcement and certification procedures are largely ineffective. ALDA, for example, states that the current certification process is ineffective because, among other things, there are no reporting requirements for state TRS programs during the certification period.¹⁷⁰ SHHH, along with several other commenters, notes that TRS providers do not have "well-publicized" complaint procedures.¹⁷¹ NAD states that most consumer complaints "stop at the supervisor's desk," and AGB states that complaints tend to get "lost in the process."¹⁷² A number of commenters alleged that state programs and TRS providers do not forward complaints to the Commission in a timely fashion and are not acting on complaints within the 180 day time frame established by Title IV.¹⁷³ Other commenters suggest that amendments to the Commission's complaint procedures are justified by these and other types of enforcement problems. TRS providers, state TRS administrators, and carriers did not comment on enforcement issues in response to the *NOI*.

¹⁶⁶ 47 U.S.C. § 225(b)(2). In the area of cost-recovery, however, the Commission's jurisdiction is limited to the recovery of interstate TRS costs.

¹⁶⁷ 47 U.S.C. § 225(e) - (g).

¹⁶⁸ See 47 U.S.C. § 225(g)(1).

¹⁶⁹ See 47 C.F.R. § 64.605(c).

¹⁷⁰ ALDA at 6. See also NVRC Comments at 5-6, 15; AGB Comments at 3; NAD Comments at 10.

¹⁷¹ SHHH Comments at 14 -15. See also NAD Comments at 9; DCADC-VAD Comments at 8; MATP Comments at 3; ALDA Comments at 8; NVRC Comments at 6.

¹⁷² NAD Comments at 10; AGB Comments at 3. See also DCADC-VAD Comments at 9.

¹⁷³ See 47 U.S.C. § 225(g)(2)(A)(i).

75. Discussion. To increase the effectiveness of the Commission's certification process, we tentatively conclude that the Commission's certification rules should be amended in the following manner. First, we tentatively conclude that the states be required to notify the Commission of substantive changes in their state TRS program within 60 days of the effective date of the change and to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards. The Commission may suspend or revoke a certification if, after notice and an opportunity for hearing, the Commission determines that the state certification is no longer warranted.¹⁷⁴ We further note that the Commission may, upon its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the Commission's mandatory minimum standards. We tentatively conclude that "substantive changes" include, but are not limited to: (1) the replacement of the state's TRS vendor; (2) the opening of the state TRS program to allow multiple vendors; and (3) changes in the underlying state rules governing the TRS program involving any of the mandatory minimum standards for TRS. Second, we tentatively conclude that we should amend our rules to require that, as a condition of certification, a state TRS program must demonstrate that its program makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints. We seek comment on our tentative conclusions.¹⁷⁵

76. We seek further comment on these issues, and, in particular, on what modifications to our rules may be needed regarding referral of complaints to certified states and Commission action on TRS complaints. We ask commenters, and in particular TRS providers and state administrators, to provide us with data on the number of TRS complaints they have received concerning their programs since 1993, the number of complaints resolved, and the time frame within which those complaints have been resolved. Finally, we ask commenters to discuss whether the FCC should adopt specific guidelines that can be used to assess whether a state TRS program provides "adequate procedures and remedies for enforcing the requirements of the state program."¹⁷⁶

E. Other Issues

¹⁷⁴ See 47 C.F.R. § 64.605(e).

¹⁷⁵ We note that the Commission currently is reviewing applications for certification of state TRS programs for the 1998 - 2003 certification period. See *Telecommunications Relay Services (TRS) Applications for State Certification and Renewals of Current Certification Accepted Until October 1, 1997, Public Notice*, DA 97-1321 (released June 24, 1997). Recertification of state programs for the July 26, 1998 - July 26, 2003 certification period will be conducted under the auspices of current Commission TRS rules at 47 C.F.R. §§ 64.601 - 605. The Commission recognizes that state TRS programs must be given sufficient opportunity to comply with any new rules, and with amendments to our current TRS rules, that we adopt as a result of this rulemaking.

¹⁷⁶ 47 U.S.C. § 225(f)(2)(B).

77. In the *NOI*, the Commission sought comment on several other issues relating to TRS, including: (1) the extent to which carriers are currently offering TTY users the option of having their number designated as a TTY number, either in published directories or through Directory Assistance (DA) service;¹⁷⁷ (2) the extent to which states have implemented TTY, Telebraille and other specialized consumer premises equipment distribution programs;¹⁷⁸ and (3) the effectiveness of carrier information and outreach activities.¹⁷⁹ While the Commission received a variety of comments from interested parties on these issues in response to the *NOI*, we are not proposing rules addressing these areas and do not seek comment on them. We will continue to monitor these issues, and will revisit them as appropriate.

78. A number of parties have recommended that the Commission consider establishing an advisory committee to monitor TRS quality issues, or to expand the role of the interstate TRS Fund Advisory Council to allow that body to consider also TRS quality issues.¹⁸⁰ We recognize the importance of efforts to ensure the quality of TRS. We do not, however, propose rules addressing the proposal that we create an advisory committee, or expand the role of the TRS Fund Advisory Council, in this *Notice*. Many of the tentative conclusions and proposals we reach in this *Notice* are related to the issue of TRS quality. We encourage all parties to thoroughly review and comment upon those tentative conclusions and proposals.

79. We note also with interest that a number of commenters, especially CTIA, urge the Commission to promote the integration of enhanced TTY transmission protocols, including the v.18 protocol and "enhanced Baudot" protocols, into the TTY network, or to undertake a separate rulemaking to explore the capability of enhanced protocols, such as v.18, to improve interconnectivity between TTY equipment and digital devices, including wireless devices.¹⁸¹ While such issues have considerable merit, at this time, we do not propose rules or seek comment on these issues in this docket. We may address the issues in the future in a future proceeding, not only in the context of TRS, but in the context of TTY interconnectivity and access to digital services generally.

80. Finally, parties representing TRS users recommend that the Commission require TRS providers to implement certain TRS features and capabilities. For example, several parties

¹⁷⁷ *NOI*, 12 FCC Rcd at 1170. 47 C.F.R. § 64.604 (c)(2) requires that carriers make callers in their service area aware of the availability and use of TRS through, among other things, "incorporation of TT[Y] numbers in telephone directories."

¹⁷⁸ *NOI*, 12 FCC Rcd at 1168 - 1169.

¹⁷⁹ *NOI*, 12 FCC Rcd at 1169.

¹⁸⁰ *See, e.g.*, NAD Comments at 20; Nelson Comments at 22-23.

¹⁸¹ *See* CTIA Comments and Reply Comments, *passim*.

request that the Commission require "call release" as a mandatory TRS feature.¹⁸² Other features proposed by the parties include Caller ID recognition, the ability to conduct conference calls through TRS, "two-line VCO," and automatic call forwarding.¹⁸³ In this *Notice*, we do not propose that any additional TRS features, other than those proposed in other areas of this *Notice*, be required under our rules at this time. These and other important aspects of TRS may be addressed in further proceedings in this docket.

IV. CONCLUSION

81. This *Notice of Proposed Rulemaking* embodies our statutory duty to ensure that TRS keeps pace with technological developments and does not become entrenched into one type of service. We believe that our proposed rules maintain the forward-looking spirit of Title IV of the ADA, both by proposing to extend TRS service to persons with speech disabilities, and by proposing rule amendments and modifications that we believe will increase the effectiveness of our TRS rules. We encourage interested parties to comment on the issues raised and the rules proposed in Appendix B in this *Notice of Proposed Rulemaking*.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

82. As required by the Regulatory Flexibility Act (RFA),¹⁸⁴ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided below in para. 92, *supra*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

A. Need for, and Objectives of, the Proposed Rules

83. The *Notice* is based upon the record developed in a *Notice of Inquiry* on improving telecommunications relay services (TRS), released by the Commission on January 14, 1997 (FCC 97-7). The goal of this proceeding is to consider ways in which TRS can be improved, both to better serve current TRS users and to ensure that TRS serves the broadest

¹⁸² *See, e.g.*, DCADC-VAD Comments at 6-7; CPAS Comments at 9; NVRC Comments at 14.

¹⁸³ *See* NAD Comments at 8, 18; NAD Reply Comments at 20; SHHH Comments at 8, 10; NVRC Comments at 13, 16; Texas PUC Comments at 12.

¹⁸⁴ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

possible population of persons with hearing and speech disabilities, consistent with Congress' direction at 47 U.S.C. § 225(d)(2) to the Commission to ensure that its regulations encourage the use of existing technology and do not discourage or impair the development of improved technology. Specifically, the *Notice* proposes to require nationwide speech-to-speech (STS) service for persons with severe speech disabilities as a mandatory TRS feature within two years of publication of final rules in this proceeding, and requests comment on this proposal. The *Notice* also proposes a number of rule amendments based upon the comments submitted by parties in the *Notice of Inquiry*, and seeks comment on those proposals. The overall intent of these proposed rules is to improve the effectiveness of TRS service and the Commission's oversight of TRS, and to clear up ambiguities surrounding several of the Commission's current TRS rules.

B. Legal Basis

84. Authority for actions proposed in this *Notice* may be found in: Sections 1, 4(i) and (j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 151(j), 201-205, 218 and 225.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

85. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁸⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁸⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁸⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁸⁸

86. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies

¹⁸⁵ 5 U.S.C. § 603(b)(3).

¹⁸⁶ *Id.* § 601(6).

¹⁸⁷ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

¹⁸⁸ Small Business Act, 15 U.S.C. § 632 (1996).

other than radiotelephone (wireless) companies.¹⁸⁹ The SBA defines such establishments to be small businesses when they have no more than 1,500 employees.¹⁹⁰ According to our most recent data, there are 12 interstate TRS providers, and these consist of interexchange carriers, local exchange carriers, and state-managed entities. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 12 small TRS providers that may be affected by the proposed rules, if adopted. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for Regulatory Flexibility Act purposes, that any TRS providers are small entities.

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

87. See paragraph 91, *infra*, for an initial Paperwork Reduction Act of 1995 analysis. This *Notice* proposes the following information collection: that states be required to notify the Commission of substantive changes in their state TRS program within 60 days of the effective date of the change and to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards. See paras. 73-76, *supra*, for a discussion of the proposed information collection. The information collection generally would be performed by a state official familiar with the state's telecommunications relay program; it would have no impact on large or small entities. The Commission estimates that the costs of compliance with this information collection will be minimal.

E. Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives

88. The proposals in the *Notice*, and the comments the Commission seeks regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principal shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers, and we believe that the number of small entities impacted by these proposals would be potentially very small. With respect to proposed amendments to the Commission's rules governing TRS, by statute,

¹⁸⁹ *Id.*

¹⁹⁰ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4813.

common carriers providing voice transmission services who are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through a competitively selected vendor, or in concert with other carriers.¹⁹¹ For this reason, the Commission expects that the proposed rule amendments will have a minimal impact on small entities. Moreover, the *Notice* does not propose any reporting requirements applicable to small entities. We tentatively conclude that our proposals in the *Notice* would impose minimum burdens on small entities. We encourage comment on this tentative conclusion.

F. Federal Rules that Duplicate, Overlap, or Conflict With Proposed Rules

89. None.

VI. PROCEDURAL MATTERS

A. Ex Parte Presentations

90. This is a permit-but-disclose notice-and-comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206. Written submissions, however, will be limited as discussed below.¹⁹²

B. Initial Paperwork Reduction Act of 1995 Analysis

91. This *Notice* contains proposed information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collections of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

¹⁹¹ 47 U.S.C. § 225(c).

¹⁹² See paras. 92-95, *infra*.

C. Comment Filing Procedures

92. General Requirements. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before July 20, 1998 and reply comments on or before September 14, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and 11 copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Carmell Weathers of the Common Carrier Bureau, 2000 M Street, N.W., Room 221, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

93. Paperwork Reduction Act Comments. Written comments by the public on the proposed information collections are due on July 20, 1998. Written comments must be submitted by the OMB on the proposed information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

94. Other requirements. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commissions rules.¹⁹³ We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this *Notice* to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this *Notice*, such comments must be included in a clearly labelled section at the beginning or end of the filing.

95. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Carmell Weathers, Network Services Division, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS

¹⁹³ See 47 C.F.R. § 1.49. We require, however, that a summary be included with all comments and reply comments. The summary may be paginated separately from the rest of the pleading (e.g., as "i, ii"). See 47 C.F.R. § 1.49.

5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

96. Additional Information. For additional information on this proceeding, contact Kris Monteith, (202) 418-1098 (voice), (202) 418-0484 (TTY). E-mail: kmonteit@fcc.gov. FCC Internet Home Page: <http://www.fcc.gov>. FCC Disabilities Issues Page: <http://www.fcc.gov/.ditf>.

97. Accessible Formats. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at mcontee@fcc.gov, or Ruth Dancey at (202) 418-0305, TTY (202) 418-2970, or at rdancey@fcc.gov. This Notice of Proposed Rulemaking also can be downloaded at <http://www.fcc.gov/ccb/nsd>.

VII. ORDERING CLAUSES

98. IT IS ORDERED THAT, pursuant to authority found in sections 1, 4(i) and (j), 201-205, 218 and 225 of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 151(j), 201-205, 218 and 225, this Notice of Proposed Rulemaking is hereby ADOPTED.

99. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed Rulemaking* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

**APPENDIX A
LIST OF COMMENTERS**

Comments

1. AIM, Inc.
2. Alexander Graham Bell Association for the Deaf (AGB)
3. Association of Late-Deafened Adults (ALDA)
4. ALDA-Potomac
5. Ameritech
6. AT&T
7. Auditory Oral Action Committee (AOAC)
8. Bell Atlantic-Nynex
9. BellSouth
10. State of California and the California Public Utilities Commission (California PUC)
11. California Association of the Deaf (CAD)
12. Mr. Robert Case
13. Cellular Telecommunications Industry Association (CTIA)
14. Coalition of Protection and Advocacy Systems (CPAS)
15. Consumer Action Network (CAN)
16. DC Association of Deaf Citizens and the Virginia Association of the Deaf (DCADC- VAD)
17. District of Columbia Public Service Commission (DC PSC)
18. Ms. Marcia M. Finisdore
19. Ms. Claudia Foy
20. GTE.
21. Hawaii State Coordinating Council on Deafness (Hawaii CCD)
22. Idaho Association of the Deaf (IAD)
23. Mr. Jerald M. Jordan
24. Kansas Relay Service, Inc. (Kansas Relay)
25. Louisiana Relay Administration Board (Louisiana Relay)
26. Mr. Paul M. Lurie
27. Maryland Department of Budget and Management (Maryland)
28. Massachusetts Assistive Technology Partnership (MATP)
29. Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH)
30. MCI
31. Dr. Otto Menzel
32. Missouri Public Service Commission (Missouri PSC)
33. Ms. Myra B. Morell
34. National Association of the Deaf (NAD)
35. National Association for State Relay Administration (NASRA)
36. Mr. David J. Nelson
37. Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC)

38. Oregon Public Utility Commission (Oregon PUC)
39. Self Help for Hard of Hearing People, Inc. (SHHH)
40. Ms. Ausma Smits
41. Southwestern Bell
42. Sprint
43. Mr. James H. Stoltz
44. Stavros Center for Independent Living
45. Texas Public Utility Commission (Texas PUC)
46. Travis County Department of Human Services (Travis DHS)
47. United Cerebral Palsy Association (UCPA)
48. Western Massachusetts Association of the Deaf (WMAD)
49. Wisconsin TRS Advisory Council (Wisconsin TRS-AC)

Reply Comments

1. Dr. Robert Aber
2. Association of Late Deafened Adults (ALDA)
3. Association of Public Safety Communications Officials and the National Emergency Number Association (APCO-NENA)
4. AT&T
5. Ms. Lora M. Barnes
6. Ms. Kathleen Barrett
7. Ms. Julie Behms
8. Bell Atlantic-Nynex
9. Mr. Ralph Boemio
10. Ms. Connie Brittain
11. State of California and the California Public Utilities Commission (California PUC)
12. Cellular Telecommunications Industry Association (CTIA)
13. Consumer Action Network (CAN)
14. Council of Organizational Representatives (COR)
15. Ms. Margaret DeSantos
16. Disability Resource Agency for Independent Living
17. GTE
18. Ms. Pamela K. Hoyer
19. Mr. Randy Kitch
20. Ms. Laurel LaShell
21. Massachusetts Assistive Technology Partnership (MATP)
22. National Association of the Deaf (NAD)
23. Mr. David J. Nelson
24. Pacific Telesis (PacTel)
25. Mr. Jim Reeves
26. Registry of Interpreters for the Deaf, Inc. (RID)
27. Mr. Barry A. Romich

28. Mr. Kevin Siemens
29. Sonny Access Consulting
30. Sprint
31. Texas Advisory Committee on State Emergency Communications (TX-ACSEC)
32. Ultratec, Inc.
33. UCPA of San Diego County
34. United States Telephone Association (UCPA)

**APPENDIX B
PROPOSED RULES**

Part 64, Subpart F of Title 47 of the Code of Federal Regulations is revised as follows:

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart F - Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

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

AUTHORITY: 47 U.S.C. § 154.

2. Section 64.601 is revised to read as follows:

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) *Communications assistant (CA)*. A person who transliterates conversation between two end users of TRS. CA supersedes the term "TDD operator."

(6) * * *

(7) *Speech-to-speech relay service (STS)*. A form of TRS that provides the ability for an individual with a speech disability to engage in functionally equivalent communication by wire or radio with an individual without such a disability, through the use of a communications assistant with specialized training in recognizing and relaying the speech of persons with speech disabilities.

(8) *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 * * *

(9) *Text telephone (TTY)*. A machine that employs graphic communication in the transmission of coded signals through a wire or radio communications system. TTY supersedes the terms "TT," "TDD," or "telecommunications device for the deaf."

(10) *Voice Carry over*. A reduced form of TRS where the person with the hearing disability is able to speak directly * * *

3. Section 64.603 is revised to read as follows:

§ 64.603 Provision of services.

* * *

(a) * * *

(b) * * *

(c) *Speech-to-speech (STS) service*. Each common carrier providing telephone voice transmission services shall provide, not later than [insert date 2 years after publication of final rules in the Federal Register], in compliance with the regulations prescribed herein, throughout the area in which it offers services, speech-to-speech relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers.

4. Section 64.604 is revised to read as follows:

§ 64.604. Mandatory minimum standards.

(a) *Operational standards -*

(1) * * *

(2) *Confidentiality and conversation content*. Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state, or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the user specifically requests summarization. In the event a CA encounters a automated voice-menu or audiotext system during a relay call, and the CA cannot relay the call and interact with the automated system simultaneously in a functionally equivalent manner, the CA is allowed to alert the TRS user that an automated system is present and inquire whether the user wants the CA to summarize the message or listen for a specific message.

(3) *Types of Calls.* Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. A CA answering and placing a TRS call must stay with that call for at least ten (10) minutes before an in-call CA transfer can take place. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. CAs shall handle emergency calls in the same manner as they handle any other TRS calls.

(4) *Video relay interpreting services (VRI).* If VRI services are provided to TRS users, the following rules apply: (1) interpreters or transliterators used to provide VRI must be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary; and (2) interpreters or transliterators used to provide VRI must comply with the rules relating to confidentiality, conversation content, and types of calls, at sections 64.604(a)(2) and 64.604(a)(3) of this subpart.

(b) *Technical standards -*

(1) * * *

(2) *Speed of answer.* TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls by a CA prepared to place the TRS call, within 10 seconds of the time the incoming call reaches the TRS provider's network, and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number. The calculation of whether 85% of all calls have been answered within 10 seconds must be performed on a daily basis.

(3) * * *

(4) * * *

(5) * * *

5. Section 64.605 is revised by amending section 64.605(b)(2) to read as follows, and adding a new section 64.605(f) as follows:

§ 64.605. State certification.

* * *

(b) * * *

(1) * * *

(2) Establishes that the state program makes available adequate remedies and procedures for enforcing the requirements of the state program, and demonstrates that its program makes available to TRS users informational materials on state and Commission complaint procedures that inform users about the proper procedures for filing complaints; and

(3) * * *

(c) * * *

(d) * * *

(e) * * *

(f) *Change in certified state program.* In the event a certified state TRS program undergoes a substantive change during the period in which it holds certification, the state program must, within 60 days of the change, notify the Commission of the change in its program and file documentation with the Commission demonstrating that the state program remains in compliance with the Commission's mandatory minimum standards at section 64.604 of this subpart. For purposes of this section, a "substantive change" includes, but is not limited to, the replacement of the state program's TRS vendor, the opening of the state program to allow multiple vendors, or any change in the underlying state statutes or regulations governing the state TRS program.

APPENDIX C
47 C.F.R. § 64.604

§ 64.604 Mandatory minimum standards.

(a) *Operational standards-(1) Communications assistant (CA).* TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette.

(2) *Confidentiality and conversation content.* Except as authorized by section 705 of the Communications Act, 47 U.S.C. § 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not consistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization.

(3) *Types of calls.* Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. CAs shall handle emergency calls in the same manner as they handle any other TRS calls.

(b) *Technical standards-(1) ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* TRS shall operate every day, 24 hours a day. TRS shall have adequate redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TT and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop or trunk congestion shall be functionally

equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to persons with disabilities. VCO and HCO technology are required to be standard features of TRS.

(c) *Functional standards-(1) Enforcement.* Subject to § 64.603, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(2) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TT numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of TRS.

(3) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(4) *Jurisdictional separation of costs-(i) General.* Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared funding cost recovery mechanism. Costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section.

(iii) *Telecommunications Relay Services Fund.* Effective July 26, 1993, an Interstate Cost Recovery Plan, hereinafter referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of its relative share of gross interstate revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS Fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to total interstate revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate

amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years contributions. Each subject carrier must contribute at least \$100 per year. Service providers whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet," which shall be published in the Federal Register. The worksheet sets forth information that must be provided by the contributor, the formula for computing the contribution, the manner of payment, and due dates for payments. The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of Section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions.

(C) *Data collection from TRS Providers.* TRS providers shall provide the administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with Part 32 of the Communications Act, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

(D) The TRS Fund will be subject to a yearly audit performed by an independent certified accounting firm or the Commission, or both.

(E) *Payments to TRS Providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under (c)(4)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with Parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; or

(2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(3) Interstate common carriers offering TRS pursuant to § 64.604.

(G) Any eligible TRS provider as defined in paragraph (c)(4)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) *Administrator reporting, monitoring, and filing requirements.* The administrator shall perform all filing and reporting functions required under paragraphs (c)(4)(iii)(A) through (J), of this section. Beginning in 1994, TRS payment formulas and revenue requirements shall be filed with the Commission on October 1 of each year, to be effective for a one-year period beginning the following January 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM), and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of advisory committee deliberations.

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

(5) *Complaints-(i) Referral of complaint.* If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) *Jurisdiction of Commission.* After referring a complaint to a state under paragraph (c)(5)(i), or if a complaint is filed directly with a state, the Commission shall exercise jurisdiction over such complaint only if:

(A) final action under such state program has not been taken within:

(1) 180 days after the complaint is filed with such state; or

(2) a shorter period as prescribed by the regulations of such state; or

(B) the Commission determines that such state program is no longer qualified for certification under § 64.605.

(iii) *Complaint procedures-(A) Content.* A complaint shall be in writing, addressed to the Federal Communications Commission, Common Carrier Bureau, TRS Complaints, Washington, DC 20554, or addressed to the appropriate state office, and shall contain:

(1) the name and address of the complainant,

(2) the name and address of the defendant against whom the complaint is made,

(3) a complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(4) the relief sought.

(B) *Amended complaints.* An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(C) *Number of copies.* An original and two copies of all pleadings shall be filed.

(D) *Service.* (1) Except where a complaint is referred to a state pursuant to § 64.604(c)(5)(i), or where a complaint is filed directly with a state, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(2) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(E) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as

affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(F) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(G) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.