

EXHIBIT 5

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

In the Matter of)
)
)
Telecommunications Relay Services and)
Speech-to-Speech Services for) CG Docket No. 03-123
Individuals with Hearing and Speech Disabilities)

REPORT AND ORDER AND ORDER ON RECONSIDERATION

Adopted: December 8, 2005

Released: December 12, 2005

By the Commission:

I. INTRODUCTION

1. This Report and Order, and Order on Reconsideration (*Order*) addresses the issue of the certification and oversight of telecommunications relay service (TRS)¹ providers seeking compensation from the Interstate TRS Fund raised in the Notice of Proposed Rulemaking (NPRM) in the *Second Improved TRS Order*,² and the Further Notice of Proposed Rulemaking (FNPRM) in the *2004 TRS Report & Order*.³ It also addresses the related issue raised in Hands On Video Relay Services, Inc.'s (Hands On) petition for reconsideration of the *2004 TRS Report & Order*, which challenges the Commission's dismissal of Hands On's application for certification as a VRS provider eligible for compensation from the Interstate TRS Fund (Fund).⁴ As set forth below, we amend the TRS regulations

¹ TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. See generally 47 U.S.C. § 225(a)(3). Video Relay Service (VRS) and Internet Protocol (IP) Relay, two Internet-based forms of TRS, are discussed below.

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, at 12443-12445, paras. 134-140 (June 17, 2003) (*Second Improved TRS Order*).

³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12570, para. 250 (June 30, 2004) (*2004 TRS Report & Order*).

⁴ See Hands On, Petition for Partial Reconsideration, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123 (Oct. 1, 2004) (*Hands On Petition*), seeking reconsideration of *2004 TRS Report & Order*, 19 FCC Rcd at 12531, paras 147-148, which denied Hands On's Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification Pending Processing (Aug. 30, 2002). We note that the Commission has previously addressed some of the other issues raised in Hands On's petition for (continued....)

to permit common carriers seeking to offer VRS and IP Relay and receive compensation from the Interstate TRS Fund to apply to the Commission for certification as an entity providing these services in compliance with the TRS rules, and therefore eligible for compensation from the Fund.⁵ This certification procedure will permit common carriers desiring to offer VRS or IP Relay, and not the other forms of TRS, to do so without having to meet one of the existing eligibility criteria set forth in the rules.⁶ With regard to the *Hands On Petition*, because we adopt a new eligibility rule that permits Hands On to seek certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS program, we conclude that this issue is moot.

II. BACKGROUND

A. Telecommunications Relay Service

2. Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that TRS is available to persons in the United States with hearing and speech disabilities.⁷ TRS enables a person with a hearing or speech disability to communicate through the telephone system. The statute requires that TRS offer persons with hearing or speech disabilities telephone transmission services that are “functionally equivalent” to voice telephone services.⁸ As the Commission has noted, in adopting Title IV of the ADA Congress recognized that persons with hearing or speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.⁹ The intent of Title IV, therefore, is to further the Communications Act’s goal of universal service by ensuring that individuals with hearing or speech disabilities have access to the nation’s telephone system.¹⁰

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reconsideration. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Order on Reconsideration, 20 FCC Rcd 13140 (July 19, 2005) (addressing ASL-to-Spanish VRS); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, CG Docket No. 98-67, Report and Order, 20 FCC Rcd 13165 (July 19, 2005) (*2005 VRS Order*) (addressing VRS speed of answer, VRS hours of service, and VRS Mail). The remaining issues (principally addressing the adoption of the 2003-2004 VRS rate and the recovery of providers’ costs directed at meeting waived mandatory minimum standards) will be addressed in a future order.

⁵ See generally 47 C.F.R. § 64.601 *et seq.* (the TRS regulations).

⁶ See 47 C.F.R. § 64.604(c)(5)(iii)(F) (setting forth three eligibility categories for receiving compensation from the Interstate TRS Fund).

⁷ Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Act), as amended, 47 U.S.C. § 225; implementing regulations at 47 C.F.R. § 64.601 *et seq.*

⁸ 47 U.S.C. § 225(a)(3).

⁹ See generally *2004 TRS Report & Order*, 19 FCC Rcd at 12479-12480, para. 3 (discussing legislative history of Title IV of the ADA).

¹⁰ See, e.g., 47 U.S.C. § 225(a)(3). The legislative history of Title IV reflects that the “goal of universal service has governed the development of the nation’s telephone system for over fifty years,” and that “the inability of over 26 million Americans to access fully the Nation’s telephone system poses a serious threat to the full attainment of [this goal].” See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. at 129 (1990) (House Report).

3. Section 225 requires certain common carriers to offer TRS throughout the areas in which they offer service.¹¹ When Section 225 was enacted, and TRS was implemented, TRS calls were placed using a TTY connected to the Public Switched Telephone Network (PSTN).¹² As a result, it was possible to automatically determine for every TRS call whether it was an interstate or intrastate TRS call. States were intended to have primary jurisdiction over the provision of intrastate TRS through certified state TRS programs,¹³ and were also responsible for compensating the TRS providers for the costs of intrastate service.¹⁴ When the TRS providers handled calls that were interstate, those calls would be billed to, and compensated by, the Interstate TRS Fund.¹⁵

4. The Interstate TRS Fund is funded by contributions from all common carriers providing interstate telecommunications services, and is administered by the TRS fund administrator, currently the National Exchange Carrier Association, Inc. (NECA).¹⁶ The fund administrator uses these funds to compensate TRS providers for the costs of providing the various forms of TRS. Under the TRS regulations, providers "eligible for receiving payments from the [Interstate] TRS Fund"¹⁷ must fall under one of three categories: (1) TRS facilities operated under contract with and/or by certified state TRS programs;¹⁸ (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services;¹⁹ or (3) interstate common carriers offering TRS.²⁰ These three categories reflect the

¹¹ 47 U.S.C. § 225(c) (requiring common carriers "providing telephone voice transmission services" to provide TRS).

¹² In a "traditional" TTY text-based TRS call, the user dials the telephone number for a TRS provider using a TTY. This first step for the TRS user, the completion of the outbound call to the TRS provider, is the equivalent to reaching a "dial tone." The caller then types the number of the person he or she wishes to call. 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 typed by the caller into voice messages, and all voice messages from the called party into typed text messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. *See generally 2004 TRS Report & Order*, 19 FCC Rcd at 12480, para. 3 n.18.

¹³ *See* 47 C.F.R. § 64.605 ("State Certification"); *see also 2004 TRS Report & Order*, 19 FCC Rcd at 12517-12518, para. 103.

¹⁴ 47 U.S.C. § 225(c)(3)(B).

¹⁵ *Id.*; *see also* 47 C.F.R. § 64.604(c)(5)(iii)(E) & (F).

¹⁶ The amount of each carrier's contribution is the product of the carrier's interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission. *See* 47 C.F.R. § 64.604(c)(5)(iii)(A) & (B).

¹⁷ 47 C.F.R. § 64.604(c)(5)(iii)(F).

¹⁸ 47 C.F.R. § 64.604(c)(5)(iii)(F)(1). As the Commission has explained, common carriers providing *intrastate* TRS through a certified state program are eligible for compensation from the Interstate TRS Fund for their costs of providing eligible TRS services if they satisfy the requirements of the state program. Because of the centrality of certified state programs to the provision and oversight of TRS, this was intended to be the primary method by which providers would be eligible for compensation from the Fund. *See 2004 TRS Report & Order*, 19 FCC Rcd at 12516, para. 99, and 12517-12518, para. 103.

¹⁹ 47 C.F.R. § 64.604(c)(5)(iii)(F)(2). In practical terms, this category allows common carriers obligated to provide TRS (*i.e.*, TRS providers that offer TRS through a certified state program) to subcontract with other (continued....)

statutory regime that requires common carriers offering voice telephone service to also provide TRS,²¹ distinguishes between interstate and intrastate TRS, and gives states the option to have “certified” state TRS programs.²² Fund payments are made at per-minute compensation rates proposed each year by the fund administrator, and then approved or modified by the Commission in accordance with the Commission’s rules.²³ The per-minute compensation rates are presently based on the projected average cost per minute for providing each service.²⁴

5. In March 2000, the Commission recognized VRS as a form of TRS.²⁵ VRS requires the use of a broadband Internet connection between the VRS user and the CA, which allows users to communicate in sign language via a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in American Sign Language (ASL) with the deaf person and by voice with the hearing person. As a result, the conversation between the two end users, deaf and hearing, flows in near real time. VRS therefore provides a degree of “functional equivalency” that is not attainable with text-based TRS by allowing those persons whose primary language is ASL to communicate in ASL, just as a hearing person does with, e.g., spoken English. As a result, VRS has quickly become a very popular service.²⁶

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vendors to assist them in their provision of TRS. *See 2004 TRS Report & Order*, 19 FCC Rcd at 12517-12518, para. 103.

²⁰ 47 C.F.R. § 64.604(c)(5)(iii)(F)(3).

²¹ 47 U.S.C. § 225(c). Common carriers may offer TRS “individually, through designees, through a competitively selected vendor, or in concert with other carriers.” *Id.* Therefore, every common carrier required to offer TRS need not necessarily do so individually. *See 2004 TRS Report & Order*, 19 FCC Rcd at 12480, para. 3 n.19.

²² Currently all 50 states, Puerto Rico, and the District of Columbia have certified state programs. The legislative history of Section 225 makes clear that Congress “hope[d] and expect[ed] that all states would promptly adopt a certified state program.” House Report at 130.

²³ 47 C.F.R. § 64.604(c)(5)(iii). The regulations provide that “TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by 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.” 47 C.F.R. § 64.604(c)(5)(iii)(E).

²⁴ *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Order, 20 FCC Rcd 12237 (June 28, 2005) (adopting TRS compensation rates for the July 2005 through June 2006 fund year).

²⁵ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, at 5152-5154, paras. 21-27 (March 6, 2000) (*Improved TRS Order & FNPRM*); *see also* 47 C.F.R. § 64.601(17) (defining VRS).

²⁶ In January 2002, the first month VRS was generally offered, there were 7,215 minutes of use; in January 2004, there were 477,538 minutes of use; and in October 2005, there were approximately 2.8 million minutes of use.

6. In April 2002, the Commission recognized a second Internet-based form of TRS – IP Relay.²⁷ IP Relay calls are text-based calls, but the user connects to the TRS facility via a computer (or other similar device) and the Internet, rather than via a TTY and the PSTN. A user establishes a local connection to an Internet service provider using a computer, web phone, personal digital assistant, or other IP-enabled device, selects the Internet address of an IP Relay provider, and is connected to a CA who handles the call in the same way that TTY-based calls are handled. IP Relay, like VRS, has become a popular service because the user can make a relay call with any computer (or similar device) connected to the Internet, rather than with a dedicated TTY.²⁸

B. The Provision of VRS and IP Relay and Eligibility for Compensation from the Interstate TRS Fund

7. Because the two Internet based forms of TRS – VRS and IP Relay – use the Internet for one leg of the call, it is currently not possible to determine the geographic location of the party using the service, and therefore to determine whether a particular call is interstate or intrastate. As a result, on an interim basis, the costs of providing both *intrastate* and *interstate* VRS and IP Relay are compensated from the Interstate TRS Fund.²⁹ In addition, because VRS and IP Relay are services that are not tied to the PSTN or the provision of voice telephony, it became possible for entities that are not traditional voice telephone companies to offer these services. In particular, some entities sought to provide only VRS service under the third category of eligible TRS providers in the Commission's regulations – “Interstate common carriers offering TRS” – even though they were not traditional common carriers (*i.e.*, voice telephone companies) under the statute.³⁰

8. As a result, in the NPRM accompanying the June 2003 *Second Improved TRS Order*, the Commission sought comment on “whether, and if so, how, the Commission should amend its rules to address the provision of TRS in circumstances not presently covered by the regulations, including a provider's eligibility for cost recovery for services currently reimbursed solely from the Interstate TRS Fund.”³¹ The Commission noted the absence of a Commission-level certification process for TRS providers, leaving TRS providers not participating in a certified state program without a method for

²⁷ See *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (April 22, 2002) (*IP Relay Declaratory Ruling & FNPRM*).

²⁸ See *Improved TRS Order & FNPRM*, 15 FCC Rcd at 5149, para. 15 (VRS); *IP Relay Declaratory Ruling & FNPRM*, 17 FCC Rcd 7779, at 7786, para. 20 (IP Relay).

²⁹ The Commission reasoned that Section 225 of the Act requires that “regulation governing TRS cost recovery shall ‘generally’ provide that costs caused by interstate TRS shall be recovered from all subscribers for every interstate service and costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction.” *IP Relay Declaratory Ruling & FNPRM*, 17 FCC Rcd at 7786, para. 21. The Commission “interpreted the term ‘generally’ to give [it] the discretion to fund intrastate service from the interstate jurisdiction.” See *id.* (IP Relay); see also *Improved TRS Order & FNPRM*, 15 FCC Rcd at 5154, para. 26 (applying same reasoning to VRS).

³⁰ Such entities could provide VRS and receive compensation from the Fund either by becoming part of a certified state program (first eligibility category) or subcontracting with an entity offering TRS and eligible for compensation from the Fund (second eligibility category).

³¹ *Second Improved TRS Order*, 18 FCC Rcd at 12444, para. 136.

qualifying for compensation for interstate TRS.³² The Commission therefore sought comment on whether it should establish a federal certification process, either generally or specifically for IP Relay, VRS, and “any other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate.”³³

9. The Commission tentatively concluded that under such a process TRS providers would apply to the Commission for certification as an interstate TRS provider, “providing evidence that they are in compliance with the mandatory minimum standards found in section 64.604 of our rules.”³⁴ In addition, the Commission proposed requiring such TRS providers to keep a log of any complaints received and their disposition of those complaints, detailing compliance with the mandatory minimum standards and listing the resolution of each complaint filed against the provider.”³⁵ The Commission included proposed rules of such a certification process, adding a fourth prong to the eligibility criteria for interstate TRS providers “certified by the Commission” pursuant to new certification rules.³⁶

10. In response to this NPRM, nine comments and four reply comments were filed.³⁷ The commenters generally agreed that a federal certification requirement is appropriate if a TRS provider does not participate in a state TRS program, is not a traditional common carrier, and is providing Internet-based TRS, such as IP Relay and VRS.³⁸ In this regard, several providers asserted that a federal certification process should be an alternative to participating in a state TRS program, and not an additional regulatory requirement for new or existing TRS providers.³⁹ SBC, for example, opposed a certification requirement for existing TRS providers, and believed that imposing the proposed federal certification or other requirements on TRS providers that already qualify for federal reimbursement is wholly unnecessary and would prove duplicative, inefficient, wasteful, and ultimately burdensome for

³² *Id.*

³³ *Id.*, 18 FCC Rcd at 12445, para. 139; *see also id.*, 18 FCC Rcd at 12444, para. 137.

³⁴ *Id.*, 18 FCC Rcd at 12444, para. 137.

³⁵ *Id.*

³⁶ *Id.*, 18 FCC Rcd at 12467-12468, Appendix E (setting forth proposed rule).

³⁷ Comments were filed by six TRS providers: Hands On (Sept. 24, 2003); Hamilton Relay, Inc. (Hamilton) (Sept. 24, 2003); WorldCom, Inc. d/b/a MCI (MCI) (Sept. 24, 2003); SBC Communications, Inc. (SBC) (Sept. 24, 2003); Sprint Corporation (Sprint) (Sept. 24, 2003); and Sorenson Media, Inc. (Sorenson) (Sept. 24, 2003). One consumer coalition organization also filed comments: Telecommunications Services for the Deaf, Inc. *et al.* (TDI Coalition) (Sept. 24, 2003). Two state utility commissions filed comments: California Public Utilities Commission (CA PUC) (Sept. 24, 2003), and the Public Service Commission of the State of Missouri (MO PSC) (Sept. 23, 2003). Reply comments were filed by Hands On (Oct. 9, 2003), MCI (Oct. 9, 2003), TDI Coalition (Oct. 10, 2003), and the Maryland Department of Budget and Management (MD DBM) (Oct. 10, 2003).

³⁸ *See, e.g.*, CA PUC Comments at 13; Hamilton Comments at 8; Hands On Comments at 12-14, Hands On Reply Comments at 4-5; MD DBM Reply Comments at 7; Sorenson Comments at 2-4; TDI Comments at 14; TDI Coalition Reply Comments at 9-10.

³⁹ *See, e.g.*, Hamilton Comments at 9; SBC Comments at 6-7; Sorenson Comments at 4.

these providers.⁴⁰ TDI more broadly asserted that it is vital that measures be implemented to ensure that interstate TRS providers provide quality service, and that a federal certification program can ensure a baseline national level of quality, consistency of service, and outreach requirements.⁴¹ TDI strongly urged the Commission to establish a federal TRS certification program to ensure the quality provision of TRS when there is no state program oversight of interstate TRS providers.⁴²

11. MCI supported Commission certification for TRS providers that are not participating in a certified state TRS program.⁴³ MCI also asserted, however, that such entities must be common carriers or affiliated with common carriers.⁴⁴ Sorenson, however, stated that a requirement that a non-common carrier be associated with a certified state program to be eligible for compensation from the Interstate TRS Fund creates a burden for potential TRS providers, discouraging potential TRS providers that are unfamiliar with state regulatory processes.⁴⁵ Sorenson therefore contended that a federal certification process would reduce the administrative and regulatory costs experienced by potential TRS providers.⁴⁶ Sprint opposed a federal certification program on the grounds that such a program "could severely strain the Commission's already thin resources."⁴⁷ Sprint asserted that if the Commission adopted a certification program it would need to continually monitor the entities that it had certified in the same manner that the states currently do.⁴⁸

12. All supporting commenters agreed that the Commission-certified providers should also be required to submit annual complaint logs and waiver reports presently required of the existing VRS and IP Relay providers.⁴⁹ Hands On recommended that, instead of the proposed one-year certification period, the certification period should be five years, the same as the certification period for state TRS programs.⁵⁰ Sorenson also proposed that a new VRS or IP Relay provider be required to submit financial

⁴⁰ SBC Comments at 6-7. *But see* Hands On Comments at 13-14 (a federal certification program would promote competition and innovation and decrease the cost of service by allowing the providers actually delivering the service to bill the Interstate TRS Fund directly).

⁴¹ TDI Comments at 14.

⁴² TDI Comments at 14; TDI Reply Comments at 10.

⁴³ MCI Comments at 12-13.

⁴⁴ *Id.* at 14 (noting the language of Section 225 referring to common carriers).

⁴⁵ Sorenson Comments at 2.

⁴⁶ *Id.*

⁴⁷ Sprint Comments at 18.

⁴⁸ *Id.*

⁴⁹ Hamilton Comments at 9; Hands On Comments at 14; SBC Comments at 18; Sorenson Comments at 20.

⁵⁰ Hands On Comments at 13.

records to the Commission in order to be certified as a TRS provider eligible for compensation from the Fund.⁵¹

C. *The 2004 TRS Report & Order*

13. In the *2004 TRS Report & Order*, the Commission deferred a decision on this issue but invited further comment in the accompanying FNPRM.⁵² The Commission characterized the underlying issue as two-fold: “(1) how to define those entities providing TRS that are eligible for compensation from the Interstate TRS Fund for providing eligible services; and (2) how to ensure that such entities are providing TRS in compliance with the TRS mandatory minimum standards.”⁵³ The Commission sought additional comment on whether it should separately “certify” and/or oversee providers of IP Relay and VRS.⁵⁴

14. In response to the FNPRM, four TRS providers filed comments.⁵⁵ Hands On, Hamilton, and Sorenson support a federal certification process as a way to promote competition and innovation while decreasing administrative costs by allowing providers actually providing the service to bill the Fund directly.⁵⁶ Hamilton asserts that a certification system would assure provider compliance with minimum TRS standards.⁵⁷ Sorenson asserts that the state certification process is slow and costly, and that most states will certify only one provider.⁵⁸ Sorenson also asserts that to ensure the integrity of the Fund new entrants should be required to file financial reports demonstrating financial stability, and that all certified providers should be required to file detailed complaint logs, annual waiver reports, and annual detailed call audit reports for all calls submitted for payment.⁵⁹ Sprint, however, opposes

⁵¹ Sorenson Comments at 2. Sorenson asserts that because “financially unstable providers could drain the TRS Fund without expanding the availability of TRS Services,” the Commission should ensure that potential providers seeking compensation from the Fund through the federal certification process are aware of the high start-up expenses associated with becoming a TRS provider and are capable of handling them. Sorenson Comments at 3.

⁵² *2004 TRS Report & Order*, 19 FCC Rcd at 12517-12518, para. 103.

⁵³ *Id.*

⁵⁴ *Id.*, 19 FCC Rcd at 12570, para. 250. The Commission noted that “because for both of these services there are presently only a handful of national providers, which consumers can access via computer without regard to geographic location, it may be either unnecessary or unworkable to have all 50 states oversee these providers.” *Id.*

⁵⁵ Comments were filed by Hamilton (Oct. 18, 2004), Hands On (Oct. 15, 2004), Sorenson (Oct. 18, 2004), and Sprint (Oct. 18, 2004).

⁵⁶ Hands On Comments at 12.

⁵⁷ Hamilton Comments at 12.

⁵⁸ Sorenson Comments at 18. Relatedly, comments filed by the National Association for State Relay Administration (NASRA) directed at funding issues noted that most states would opt for one VRS provider, which would eliminate the benefits of a competitive multi-vendoring environment for VRS. NASRA Comments at 3-4 (Oct. 15, 2004).

⁵⁹ Sorenson Comments at 19-20. Sorenson and Hands On also assert that existing providers should either be “grandfathered” into certification or presumed to meet the certification requirements. Sorenson Comments at 19; Hands On Comments at 13.

Commission certification of providers, stating that the Commission should make the provision of VRS and IP Relay mandatory and make the states responsible for compensating intrastate minutes, therefore also making the states responsible for ensuring compliance with the mandatory minimum standards.⁶⁰ Sprint also asserts that the current complaint procedures are sufficient to keep the Commission informed about service problems, making the federal certification program an unnecessary use of Commission resources.⁶¹

D. Hands On's Application for "Certification" as a VRS Provider

15. On August 30, 2002, Hands On filed an application for "certification" as a VRS provider eligible for compensation from the Interstate TRS Fund.⁶² The application indicated that Hands On sought to provide only VRS, and not any of the mandatory relay services traditional common carriers are required to provide.⁶³ Further, Hands On sought to provide VRS neither as part of a certified state program nor as a service operated in contract with a common carrier providing interstate TRS.⁶⁴ Hands On argued eligibility under the third prong; *i.e.*, as an "Interstate common carrier offering TRS pursuant to § 64.604."⁶⁵ In the *2004 TRS Report & Order*, the Commission dismissed Hands On's application without prejudice, based on the lack of a Commission certification process.⁶⁶

E. Hands On's Petition for Reconsideration

16. On October 1, 2004, Hands On filed a petition for reconsideration of, *inter alia*, the Commission's dismissal of its application for certification.⁶⁷ Hands On seeks a ruling that it is entitled to

⁶⁰ Sprint Comments at 13.

⁶¹ *Id.*

⁶² Hands On's filing is captioned: "Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification Pending Processing" (*Hands On Application*).

⁶³ 47 U.S.C. § 225(c) requires that "telecommunications relay services" be provided by common carriers in compliance with regulations developed by the Commission as mandated by 47 U.S.C. § 225(b). To date, the Commission has required traditional TTY-based TRS, STS, and interstate Spanish Relay Services as mandatory TRS Services. See, *e.g.*, *Improved TRS Order & FNPRM*, 15 FCC Rcd at 5147-5152, paras. 13-20 (requiring STS), at 5154-5155, paras. 28-30 (requiring interstate Spanish Relay Services).

⁶⁴ See 47 C.F.R. § 64.604(c)(5)(iii)(F).

⁶⁵ *Hands On Application* at 5; see 47 C.F.R. § 64.604(c)(5)(iii)(F)(3). Hands On also acknowledged that the regulations do not specify any requirement for "certification" of TRS providers as eligible for compensation from the Interstate TRS Fund. *Hands On Application* at 5.

⁶⁶ *2004 TRS Report & Order*, 19 FCC Rcd at 12531, para.148 (citing, in part, 47 C.F.R. § 64.605) (footnote omitted); see also *Second Improved TRS Order*, 18 FCC Rcd at 12444-12445, paras. 137-140 (in FNPRM Commission sought further comment on whether the Commission should adopt rules to certify VRS and IP Relay providers).

⁶⁷ See *Hands On Petition*, note 4, *supra*. See also *Communication Services for the Deaf, Inc., Hands On Video Relay Service, Inc., National Video Relay Service Coalition, and Hamilton Relay, Inc., File Petitions for Reconsideration of Telecommunications Relay Service Requirements from the Report and Order, and Order on* (continued....)

receive compensation from the Interstate TRS Fund without either providing its service as part of a certified state program or operating under contract with a common carrier providing interstate TRS and eligible for compensation from the Interstate TRS Fund. Hands On asserts that it falls under the third eligibility prong of Section 64.604(c)(5)(iii)(F)(3) – “Interstate common carriers offering TRS pursuant to § 64.604” – and that under that prong it is entitled to compensation for its service from the Interstate TRS Fund upon giving notice as provided in Section 64.604(c)(5)(iii)(G), whether or not the Commission has a separate certification process.⁶⁸ MCI, the only commenter responding to the *Hands On Petition*, agrees that no Commission-wide certification is necessary for reimbursement from the Interstate TRS Fund.⁶⁹

III. DISCUSSION

A. Report and Order

17. We conclude that the present eligibility criteria for compensation from the Interstate TRS Fund set forth in the Commission’s rules do not reflect advances in the way that TRS is offered, particularly with respect to the two Internet-based forms of TRS, VRS and IP Relay. Therefore, we amend the Commission’s rules to permit common carriers desiring to offer VRS and IP Relay and receive compensation from the Interstate TRS Fund to seek certification from the Commission. In so doing, we largely adopt the proposal set forth in *Second Improved TRS Order’s* NPRM.⁷⁰ This certification procedure will permit common carriers desiring to offer only VRS and/or IP Relay, and not the other forms of TRS, to receive compensation from the Fund without having to meet one of the existing three eligibility criteria set forth in the rules.

18. The present three categories for eligibility for compensation from the Interstate TRS Fund were adopted at a time when *all* TRS calls were carried over telephone lines, and therefore all calls could be categorized as either interstate or intrastate.⁷¹ As a result, the states were given the primary role of regulating, and compensating, the provision of intrastate TRS through the state certification process.⁷² The third eligibility category – “Interstate common carriers offering TRS pursuant to § 64.604”⁷³ – has been the means by which some entities that are not voice telephone service providers have sought to offer

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⁶⁸ Section 64.604(c)(5)(iii)(G) requires providers eligible for compensation from the Fund to notify the fund administrator of their intent to participate in the Fund 30 days prior to submitting minutes of use for payment.

⁶⁹ MCI Comments (Nov. 15, 2004) at 4-5 (asserting that only compliance with mandatory minimum standards is necessary for reimbursement).

⁷⁰ See *Second Improved TRS Order*, 18 FCC Rcd at 12443-12445, paras. 134-140.

⁷¹ See *Telecommunications Relay Services, and the Americans With Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (July 20, 1993) (adopting TRS cost recovery rules).

⁷² See generally *2004 TRS Report & Order*, 19 FCC Rcd at 12480-12483, paras 4-8 (noting that Title IV of the ADA puts the obligation on the entities providing telephone transmission service to also offer TRS, and also grants states the primary jurisdiction over the provision of TRS); see also House Report at 131.

⁷³ 47 C.F.R. § 64.604(c)(5)(iii)(F)(3).

VRS, and not the other forms of TRS, and be compensated for doing so from the Interstate TRS Fund. The Commission previously construed the third eligibility prong, however, as applying to common carriers obligated to provide TRS in a state that does not have a certified program.⁷⁴ Because we now adopt a fourth eligibility criterion, which will allow common carriers seeking to offer VRS or IP Relay and receive compensation to do so without being part of a certified state program or contracting with an entity that is, it is not necessary at this time to revisit this construction of the third eligibility category. Moreover, in the event that in the future a state either declines to seek recertification or fails to qualify for recertification, common carriers in that state may need to rely on the third eligibility category to receive compensation from the Interstate TRS Fund for eligible TRS services.

19. In this *Order*, we specifically allow common carriers seeking to offer VRS or IP Relay, that are not part of a certified state program or have not contracted with an entity that is, to qualify for compensation from the Interstate TRS Fund through a Commission-level certification process. We recognize that with the advent of Internet-based forms of TRS, and particularly with the required expertise of sign language interpreters necessary for the provision of VRS, entities that have not offered voice telephony service or traditional TRS may desire to offer VRS or IP Relay. We further recognize that requiring such entities to either contract with a state or with another provider – opportunities over which, as a practical matter, a new provider has little control – both elevates form over substance and artificially precludes new providers from offering service, thereby depriving consumers of additional choices. The record reflects that many states have been reluctant to accept VRS providers into their certified state programs.⁷⁵ States have little incentive to assume oversight responsibility for these services, which are offered on a nationwide basis, particularly since presently the states are not paying for the services. In addition, contracting with a provider that already offers TRS as part of a state program has made it uneconomical for some new providers to offer service and, as a practical matter, may not add extra value to the service.⁷⁶

20. We therefore conclude that common carriers seeking to provide VRS or IP Relay, and only those services, should not be precluded from doing so simply because they cannot contract with a

⁷⁴In the *2004 TRS Report & Order*, the Commission noted that, as a general matter, the Commission has construed the eligibility requirements to require eligible providers to be either part of a state program or to provide service under contract with another provider obligated to provide TRS services. *Id.*, 19 FCC Rcd at 12517-12518, para. 103 n.304. In this way, the Commission also noted, the three eligibility categories were modeled upon the ways in which common carriers may be deemed to be in compliance with their underlying obligation under Sections 225(c)(1)-(2) of the Act. *Id.* We note that presently every state has a certified state TRS program, although there is no obligation that they do so. *See generally id.*, 19 FCC Rcd at 12481, para. 6 n.25.

⁷⁵Presently, three VRS providers qualify for compensation from the Interstate TRS Fund because they are part of a certified state program: Hands On (Washington); Sorenson (Utah); and Communication Access Center (CAC) (Michigan). The record reflects that other entities that desire to offer VRS have been unable to join a certified state program. *See, e.g., Ex Parte* Submission of Daryl Crouse, President, Snap Telecommunications, Inc. (Snap) (July 1, 2005) (submitted by counsel) (Snap *Ex Parte*) (asserting that Snap, which desires to offer VRS and receive compensation from the Fund, sought state certification but no state expressed an interest); *see also* NASRA Comments at 3-4 (noting that most states would opt for one VRS provider).

⁷⁶As Hands On has asserted, a “direct certification by the Commission of VRS providers is likely to decrease the cost of service by allowing providers actually delivering the service to bill the Interstate TRS Fund directly, rather than contracting with a state agency or existing telephone carrier (that would demand a substantial share of the compensation).” Hands On Comments at 12.

state or another eligible TRS provider. This conclusion is supported by the record. As noted above, for example, Snap asserts it cannot offer VRS because no state has been willing to accept it into the state's certified TRS program.⁷⁷ Moreover, as Hamilton, Sorenson, and the TDI Coalition have suggested, a federal certification program for VRS and IP Relay will allow the Commission to ensure that consumers receive high quality service without unduly burdening IP Relay and VRS providers.⁷⁸ Sorenson, for example, states that "a federal certification process—if properly administered—will encourage additional TRS providers to enter the market, ensuring the widespread availability of TRS services."⁷⁹ Hands On similarly contends that a federal certification process including entities not necessarily affiliated with a state plan "would plainly benefit" the public.⁸⁰

21. Permitting common carriers to provide VRS and IP Relay and receive compensation from the Fund through certification by the Commission furthers the goals of Section 225. First, Commission certification will allow providers to offer service without contracting with a state or another TRS provider, possibly reducing the cost of providing service. Second, this *Order* will enhance competition in the provision of VRS and IP Relay by permitting new entities to offer service, thereby giving consumers greater choice. In addition, we anticipate that new providers will bring innovation to the provision of VRS and IP Relay, both with new equipment and new service features. Finally, and more broadly, because VRS requires broadband Internet service, new VRS providers may stimulate greater broadband deployment.⁸¹

22. As a result, we conclude that common carriers seeking to offer VRS or IP Relay and receive compensation from the Interstate TRS Fund, independent of a certified state program or a common carrier offering TRS, may seek certification from the Commission to do so by providing documentation to the Commission as outlined below (and in amended Section 64.605).⁸² This documentation shall include, in narrative form: (1) a description of the forms of TRS to be provided; (2) a description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered;⁸³ (3) a description of the provider's procedures for ensuring ongoing compliance with all applicable TRS rules; (4) a description of the provider's complaint procedures; (5) a

⁷⁷ See Snap *Ex Parte* at 2. According to Snap, the first eligibility category "is no longer a viable option for new entrants because states are either completely uninformed about TRS Fund eligibility for VRS providers (since VRS is a *non-mandatory* service under the FCC's rules), or they are reluctant to certify and vouch for a new VRS provider due to the additional costs and burdens that might entail in terms of the state's oversight and audit responsibilities." *Id.* (emphasis in original).

⁷⁸ Hamilton Comments to *Second Improved TRS Order* at 9; Sorenson Comments at 19; TDI Coalition Comments to *Second Improved TRS Order* at 14.

⁷⁹ Sorenson Comments to *Second Improved TRS Order* at 1-2.

⁸⁰ Hands On Comments to *Second Improved TRS Order* at 13.

⁸¹ See *2004 TRS Report & Order*, 19 FCC Rcd at 12568, para. 243 (as the Commission "embarks on a broader initiative to stimulate the deployment of broadband services, ... VRS can improve existing services for persons with disabilities and can be a demand driver for broadband connections").

⁸² See Appendix for text of final rules.

⁸³ See generally *2004 TRS Report & Order*, 19 FCC Rcd at 12594, Appendix E (summarizing waivers of TRS mandatory minimum standards for VRS and IP Relay).

narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards; (6) a narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards; (7) demonstration of status as common carrier;⁸⁴ and (8) a statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.⁸⁵

23. After review of this documentation, the Commission shall certify that the provider is eligible for compensation from the Fund for the provision of TRS if the Commission finds that: (1) the provision of VRS or IP Relay will meet or exceed all non-waived operational, technical, and functional mandatory minimum standards contained in the Commission's rules; (2) the VRS or IP Relay provider makes available adequate procedures and remedies for ensuring ongoing compliance with the Commission's rules, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and (3) where the VRS or IP Relay provider's service differs from the mandatory minimum standards, the TRS provider establishes that its service does not violate applicable mandatory minimum standards. The Commission will issue a Public Notice certifying that a VRS or IP Relay provider is eligible for compensation from the Interstate TRS Fund under this new provision.⁸⁶ After a VRS or IP Relay provider obtains certification under the fourth eligibility prong, the provider need only submit a letter of intent to the fund administrator in order to become eligible to receive compensation from the Interstate TRS Fund.⁸⁷

24. We further amend Section 64.605 to provide that the certification granted under new Section 64.604(c)(5)(iii)(F)(4) shall remain in effect for five years, and that a certified provider must file for renewal at least 90 days prior to the expiration of certification by filing the documentation required for certification. Although the Commission proposed a one year certification period, the record reflects that a five year period is preferable for administrative reasons and for consistency with the certification of state programs.⁸⁸ In addition, we amend Section 64.605 to provide that the Commission may suspend or revoke certification if the Commission determines that certification is no longer warranted, and may require certified VRS or IP Relay providers to submit documentation demonstrating ongoing compliance

⁸⁴ Although *non-common carriers* seeking to offer VRS or IP Relay may continue to do so by joining a certified state program or subcontracting with an entity offering TRS and eligible for compensation from the Fund, *see* note 30, *supra*, we require providers to be common carriers under the Commission certification procedure adopted in this *Order* because Section 225 is expressly directed at common carriers providing TRS. *See* 47 U.S.C. § 225(c); *see also* 47 U.S.C. § 225(a)(1) (defining "common carrier" for purposes of Section 225).

⁸⁵ These procedures largely mirror those proposed in the NPRM in the *Second Improved TRS Order*. *See Second Improved TRS Order*, 18 FCC Rcd at 12443-12445, paras. 134-140. Although Sprint opposed the adoption of a federal certification process, it did not address the specific elements of such a process were one to be adopted. *See* Sprint Comments to *Second Improved TRS Order* at 17-18; Sprint Comments at 13-14.

⁸⁶ A provider seeking eligibility for compensation from the Interstate TRS Fund under this new subsection must also comply with all applicable TRS regulations, including Sections 64.604(c)(5)(iii)(C), (D), (E), & (G).

⁸⁷ *See* 47 C.F.R. § 64.604(c)(5)(iii)(G) (requiring an eligible provider to notify the TRS fund administrator of its intent to participate in the Fund at least 30 days prior to seeking compensation from the Fund).

⁸⁸ *See* 47 C.F.R. § 64.605(c); Hands On Comments at 13 (recommending five year certification period).

with Commission rules and all applicable TRS mandatory minimum standards. These provisions largely mirror the existing certification requirements for state TRS programs.

25. We also amend Section 64.605 to require VRS or IP Relay TRS providers certified under the fourth prong to notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes may occur, and to certify that they continue to meet federal minimum standards after implementing the substantive change. Finally, we amend Section 64.605 to require these certified VRS or IP Relay providers to file with the Commission, on an annual basis, a detailed report providing evidence of ongoing compliance with all applicable TRS mandatory minimum standards.⁸⁹ We believe that these requirements, taken together, will be sufficient to ensure that providers certified under this new provision will offer service in compliance with our rules, and will also provide a means by which the Commission can monitor compliance and service quality.⁹⁰

26. In sum, we have adopted a new eligibility category for VRS and IP Relay providers seeking compensation from the Interstate TRS Fund to reflect the present reality that the provision of TRS is migrating to these Internet-based services, and that VRS and IP Relay are presently operated as national services without regard to the provision of traditional PSTN-based telephony or the physical location of the users and the relay facilities. Persons with hearing and speech disabilities, entitled by Section 225 to functionally equivalent telephone services, will benefit by having a greater choice of VRS and IP Relay providers. We anticipate that the addition of new providers will not only enhance competition, but advance technological development, increase quality of service, and reduce costs. In this way, we further fulfill two statutory mandates under Section 225: ensuring that TRS is available “to the extent possible and in the most efficient manner” to persons with hearing and speech disabilities,⁹¹ and “encourage[ing] ... the use of existing technology and ... not discourage[ing] or impair[ing] the development of improved technology.”⁹²

B. Order On Reconsideration

27. Hands On seeks reconsideration of the Commission’s dismissal in the *2004 TRS Report & Order* of its application for certification as a VRS provider eligible for compensation from the Interstate TRS Fund.⁹³ Because we adopt a new eligibility rule that permits Hands On to seek certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS program, we conclude that this issue is moot.

⁸⁹ Among other TRS mandatory minimum standards, we note that certified VRS or IP Relay providers must comply with Section 64.604(c)(1), addressing consumer complaint logs and the filing of complaint log summaries with the Commission. Certified VRS and IP Relay providers must also file any annual reports required by the Commission’s waiver of applicable mandatory minimum standards. See generally *2004 TRS Report & Order*, 19 FCC Rcd at 12520-12521, para. 111.

⁹⁰ We therefore decline to require the filing of financial statements indicating financial stability. We believe that a provider meeting the requirements adopted herein will be sufficiently qualified to offer VRS or other service without a showing of its financial standing.

⁹¹ 47 U.S.C. § 225(b)(1)

⁹² 47 U.S.C. § 225(d)(2).

⁹³ *2004 TRS Report & Order*, 19 FCC Rcd at 12531, paras. 147-148.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Certification

28. The Regulatory Flexibility Act of 1980, as amended (RFA)⁹⁴ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”⁹⁵ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹⁷ 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).⁹⁸ Nationwide, there are approximately 1.6 million small organizations.⁹⁹

29. This *Order* addresses a petition for reconsideration of the Commission’s prior conclusion not to certify common carriers providing Telecommunications Relay Service (TRS) as eligible to receive compensation from the Interstate TRS Fund.¹⁰⁰ The *Order* reverses the Commission’s prior determination in this regard and concludes that the Commission will certify common carriers desiring to offer Video Relay Service (VRS) – a form of TRS in which one leg of the call is processed over broadband facilities (cable modem or DSL facilities) and communications between a deaf or hard of hearing individual and a hearing individual are facilitated by a Communications Assistant (CA) using American Sign Language (ASL) – and IP Relay service – a form of TRS in which one leg of the call is processed over broadband facilities and the CA converts text to spoken language and vice versa – as TRS service providers eligible for compensation from the Interstate TRS Fund (Fund). The Commission concludes that the public interest is best served by Commission certification of common carriers providing VRS and IP Relay service as eligible for Interstate TRS funding. The Commission finds that by so certifying common carriers providing VRS and IP Relay services the Commission will enhance competition in the provision of VRS and IP Relay by permitting new entities to offer service, thereby giving consumers greater choice. In addition, the Commission anticipates that new providers will bring innovation to the provision of VRS and IP Relay, both with new equipment and new features. Moreover,

⁹⁴ The RFA, *see* 5 U.S.C. §§ 601-612, 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 Act of 1996 (SBREFA).

⁹⁵ 5 U.S.C. § 605(b).

⁹⁶ *Id.*

⁹⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

⁹⁸ 15 U.S.C. § 632.

⁹⁹ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁰⁰ *See Hands On Petition*, note 4, *supra*.

the Commission does not believe that the certification of additional VRS or IP Relay service providers will have an appreciable impact on the required size of the Fund. Indeed, the Commission expects that federal certification is likely to reduce the costs of entry of new service providers (by eliminating the need to seek state certification or contracting with a state or another TRS provider) and that additional competition will help to lower the cost of VRS and IP Relay services. Therefore, given the lack of a significant economic impact, we certify that the requirements of the *Order* will not have a significant economic impact on a substantial number of small entities.

30. We also note that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.¹⁰¹ Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson and Sprint. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of VRS and IP Relay services the costs of providing interstate service. The Commission will send a copy of this *Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.¹⁰² This certification will also be published in the *Federal Register*.¹⁰³

B. Paperwork Reduction Act Analysis

31. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."¹⁰⁴

32. In this present document, we have assessed the effects of the new TRS eligibility rules that will allow more entities to become VRS and IP Relay providers. We find that some entities that may seek to become providers eligible for compensation from the Interstate TRS Fund may be business entities with fewer than 25 employees.

¹⁰¹ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.")

¹⁰² 5 U.S.C. § 605(b).

¹⁰³ *Id.*

¹⁰⁴ See 44 U.S.C. § 3506 (c)(4).

C. Congressional Review Act

33. The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁰⁵

D. Materials in Accessible Formats

34. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

V. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225, this *Report and Order*, and *Order on Reconsideration* IS hereby ADOPTED.

36. IT IS FURTHER ORDERED that the Petition for Partial Reconsideration filed by Hands On IS MOOT, as provided herein, to the extent it addresses Hands On's application for certification as a VRS provider.

37. IT IS FURTHER ORDERED that the amendments to Sections 64.604 and 64.605 of the Commission's rules in the Appendix to this *Report and Order and Order on Reconsideration* SHALL BE EFFECTIVE 30 days after publication in the *Federal Register*, except §§ 47 CFR 64.605 (a)(2), (c)(2), (e)(2), (f)(2), and (g) which contains information collection requirements are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the *Federal Register* announcing the effective date for those rules.

¹⁰⁵ See 5 U.S.C. § 801(a)(1)(A).

38. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, and *Order on Reconsideration*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

RULE CHANGES

For the reasons discussed in the preamble, the Commission amends 47 C.F.R. Part 64 subpart F as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

2. Section 64.604 is amended by adding paragraph (c)(5)(iii)(F)(4) to read as follows:

§ 64.604 Mandatory minimum standards.

(c) ***

(5) ***

(iii) ***

(F) ***

(4) Video Relay Service (VRS) and Internet Protocol (IP) Relay providers certified by the Commission pursuant to § 64.605.

3. Section 64.605 is revised to read as follows:

§ 64.605 VRS and IP Relay Provider and State TRS Program Certification.

(a) **Documentation.** (1) **Certified State Program.** Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the *Federal Register*.

(2) **VRS and IP Relay Provider.** Any entity desiring to provide VRS or IP Relay services, independent from any certified state TRS program or any TRS provider otherwise eligible for compensation from the Interstate TRS Fund, and to receive compensation from the Interstate TRS

Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "VRS and IP Relay Certification Application." The documentation shall include, in narrative form:

(i) a description of the forms of TRS to be provided (*i.e.*, VRS and/or IP Relay); (ii) a description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered; (iii) a description of the provider's procedures for ensuring compliance with all applicable TRS rules; (iv) a description of the provider's complaint procedures; and (v) a narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards; (vi) a narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards; (vii) demonstration of status as a common carrier; and (viii) a statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(b) (1) **Requirements for State Certification.** After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(i) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(2) **Requirements for VRS and IP Relay Provider FCC Certification.** After review of certification documentation, the Commission shall certify, by Public Notice, that the VRS or IP Relay provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) establishes that the provision of VRS and/or IP Relay will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604;

(ii) establishes that the VRS and/or IP Relay provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) where the TRS service differs from the mandatory minimum standards contained in § 64.604, the VRS and/or IP Relay provider establishes that its service does not violate applicable mandatory minimum standards.

(c) (1) **State Certification Period.** State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(2) **VRS and IP Relay Provider FCC Certification Period.** Certification granted under this section shall remain in effect for five years. A VRS or IP Relay provider may apply for renewal of its

certification by filing documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in paragraph (a)(2) of this section.

(d) Method of funding. Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e) (1) Suspension or Revocation of State Certification. The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS. The Commission may, on 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 minimum standards.

(2) Suspension or Revocation of VRS and IP Relay Provider FCC Certification. The Commission may suspend or revoke the certification of a VRS or IP Relay provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified VRS or IP Relay provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified VRS or IP Relay provider may not be in compliance with the minimum standards.

(f) Notification of substantive change. (1) States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604.
