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
	)	
	)	CG Docket No. 03-123
	)	

ORDER

Adopted: June 28, 2005 **Released: June 28, 2005**

By the Commission: Commissioners Copps and Adelstein issuing separate statements.

I. INTRODUCTION

1. Each year, the Interstate Telecommunications Relay Services (TRS) Fund Administrator, the National Exchange Carrier Association, Inc. (NECA), collects and reviews projected cost and minutes of use data submitted by TRS providers to determine the annual TRS compensation rates for the various forms of TRS.[1] On April 25, 2005, NECA filed its annual Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate for the period of July 1, 2005 through June 30, 2006.[2] As set forth below, this *Order* adopts interstate TRS compensation rates for the July 1, 2005 through June 30, 2006 TRS Fund year. We adopt separate compensation rates for traditional TRS and Internet Protocol (IP) Relay.[3] We adopt per-minute compensation rates as follows for this fund year: for Speech-to-

[1] TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability. *See* 47 U.S.C. § 225(a)(3) (defining TRS). As noted below, TRS is provided in a variety of ways.

[2] NECA, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CC Docket No. 98-67, filed April 25, 2005 (*2005 NECA Filing*). As NECA explains in its filing, it performs a detailed analysis of the providers' data to determine, among other things, whether all of the costs submitted may be properly included in the rate calculations. *See id.* at 6-7. NECA notes that in determining rates for the 2005-2006 Fund year it disallowed costs in only two instances, and in each case the provider accepted NECA's decision. *See id.* at 6-7, 14-15 & n.27 (STS rate), 16 (VRS rate).

[3] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, 19 FCC Rcd 12475, 12564-12565, para. 233 (June 30, 2004) (*2004 TRS Report & Order*) (asking whether the Commission should adopt separate rates for traditional TRS and IP Relay).

Speech Service (STS),[4] $1.579; for traditional TRS,[5] $1.440; for IP Relay, $1.278; and for Video Relay Service (VRS),[6] $6.644.[7]

II. BACKGROUND

A. NECA's April 25, 2005, Filing

2. NECA proposes the following TRS provider compensation rates: $1.312 per minute for interstate traditional TRS and interstate and intrastate IP Relay, $1.579 per minute for interstate STS, and $5.924 per minute for interstate and intrastate VRS. Based on these figures, NECA proposes a total Interstate TRS Fund (Fund) size requirement and carrier contribution factor for the July 1, 2005 through June 30, 2006, Fund year of $413,737,460 and 0.00528, respectively.

1. Traditional TRS and IP Relay

3. As in prior years, NECA determined that the same compensation rate would apply to providers of *both* traditional TRS and IP Relay services.[8] This rate is determined by dividing the providers' total projected costs of providing these services by the providers' total projected minutes of use.[9] Based on the data provided, NECA's calculations resulted in a proposed compensation rate of $1.312 per minute.[10] There were no cost disallowances with respect to these services. This rate reflects a slight decrease from the 2004-2005 rate of $1.398.[11]

4. NECA notes that the Interstate TRS Fund Advisory Council (Council), at its April 19, 2005, meeting, expressed concern that combining the traditional TRS interstate and IP Relay

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[4] Speech-to-Speech (STS) is a form of TRS that allows persons with speech disabilities to communicate with voice telephone users through the use of specially trained communications assistants (CAs) who understand the speech patterns of persons with disabilities and can repeat the words spoken by that person. *See* 47 C.F.R. § 64.601(12).

[5] Traditional TRS is accomplished via text-to-voice or voice-to-text, with the text provided via a text telephone (TTY). *See* 46 C.F.R. § 64.601(14). IP Relay functions similarly with the text provided to, and received from, the CA via the TRS consumer's computer or other web-enabled device.

[6] Video Relay Service (VRS) is a form of TRS that allows persons with hearing disabilities to communicate with the CA in sign language via a video link. *See* 47 C.F.R. § 64.601(17).

[7] The resulting total Interstate TRS Fund size is $441,493,869, and the carrier contribution factor is 0.00564.

[8] When the Commission recognized IP Relay as a form of TRS, it directed that IP Relay providers would be compensated at the same rate as providers of traditional TRS. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, 17 FCC Rcd 7779, at 7786, para. 22 (April 22, 2002) (*IP Relay Declaratory Ruling & FNPRM*).

[9] *See 2005 NECA Filing* at 9-13 & Exs. 1A-1C. For traditional TRS, only the costs of providing interstate service are considered. *Id.* at 7-8.

[10] This figure was arrived at by dividing the 2005-2006 annualized average projected costs of $298,971,355 by the annualized average projected minutes of 213,112,677, and applying the 1.4 percent rate of return to an allowance for working capital to the resulting cost per minute. *Id.* at Ex. 1C. *See also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, 19 FCC Rcd 12224, at 12230, para. 16 & n.53 (June 30, 2004) (*2004 Bureau TRS Order*) (explaining allowance for working capital and derivation of the 1.4 percent figure).

[11] Since its inception, the compensation rate for traditional TRS has ranged from $1.168 to $1.705 per minute. A history of traditional TRS payment rates is set forth in the *2004 Bureau TRS Order. See 2004 Bureau TRS Order,* 19 FCC Rcd at 12231, para. 17 n.56.

reimbursement rate penalizes traditional TRS providers by under-compensating these providers.[12] NECA notes that if the rates were calculated separately, the traditional TRS rate would be $1.440 (up $0.128) and the IP Relay rate would be $1.278 (down $0.034).[13] NECA also notes that although in the early stages of IP Relay, providers indicated that the costs of providing traditional TRS and IP Relay were virtually the same, "the cost data no longer supports that early conclusion."[14] As a result, NECA offers the Council's recommendation to consider separate reimbursement rates for traditional TRS and IP Relay.[15]

5. For purposes of determining the Fund size requirement and carrier contribution rate, NECA projected demand for traditional TRS based on prior actual usage.[16] Using a growth rate derived from prior usage (an increase of 22,183 minutes per month), NECA forecasts 26.5 million minutes of use for the period of July 2005 through June 2006 for traditional TRS.[17] NECA used the same methodology to determine a growth rate for IP Relay to estimate minutes of use for the July 2005 through June 2006 Fund year.[18] Using this growth rate (an increase of 210,364 minutes per month), NECA forecasts 99.5 million minutes of use for the period of July 2005 through June 2006 for IP Relay.[19] Taken together, NECA therefore forecasts that there will be 126 million minutes of combined use for traditional TRS and IP Relay during the 2005-2006 Fund year.[20] By multiplying the proposed compensation rate ($1.312) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need $165.3 million to compensate TRS providers for providing these services.[21] NECA notes that if separate rates were adopted for traditional TRS and IP Relay, the total TRS Fund requirement would increase less than 12 thousand dollars, and the contribution factor of 0.00528 would remain the same.[22]

2. Speech-to-Speech (STS)

6. The compensation rate for providers of interstate STS is determined the same way, using the providers' total projected interstate costs of providing this service and the providers' total projected minutes of use.[23] As NECA explains, however, although most of the providers reflected an average cost

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[12] *2005 NECA Filing* at 20.

[13] *Id.* at 20-21 & n.40. NECA analyzes the cost and demand data separately for traditional TRS and IP Relay. *See id.* at Exs. 1A-1C.

[14] *Id.* at 21.

[15] *Id.*

[16] *Id.* at 10. NECA explains that although in calculating the compensation rates it uses the providers' own *projections* of minutes of use, in calculating the Fund size it uses *actual* growth rates to estimate minutes of use that will be paid by the Fund. NECA states that, in this case, it calculated a growth rate from the four-month period of October 2004 through January 2005, and applied this growth rate to the actual minutes of March 2005 to determine projected minutes for the twelve-month period of the July 2005 to June 2006 Fund year. *Id.* at 10-11 (explaining calculation).

[17] *Id.* at 10-11 & Ex. 2 (2A of 6).

[18] *Id.* at 12.

[19] *Id.* at 12 & Ex. 2 (2B of 6).

[20] *Id.* at Ex. 4.

[21] *Id.* at 13 & Ex. 4. The $165.3 million, added to the funding requirements for the projected use of STS and VRS, as noted below, plus certain administrative costs, determines the total projected Interstate TRS Fund size estimate. *See id.*

[22] *Id.* at 21 n.40.

[23] *Id.* at 14.

between approximately $1.30 and $2.70 per minute, one STS provider reported costs of more than $12 per minute, which NECA characterized as "significantly different from the norm and about seven times the average of the other five providers."[24] NECA notes that this provider had an exceptionally low occupancy rate for its STS CAs, which resulted in much higher labor costs.[25] As a result, "[a]fter several discussions with the provider to determine why their STS costs were so high," NECA excluded the provider's data from the rate development.[26] NECA notes that after informing the provider of its intent to exclude the data, the provider accepted NECA's decision.[27] Based on the data submitted (and considered), NECA calculations resulted in a proposed compensation rate for STS of $1.579 per minute.[28] This rate represents a slight decrease from the 2004-2005 rate of $1.596.[29]

7. For purposes of determining the Fund size requirement and carrier contribution rate, NECA projected demand based on a growth rate derived from the same methodology used for traditional TRS and IP Relay, which assessed growth for the period October 2004 through January 2005.[30] Using the average growth rate for this period of 283 minutes, NECA forecasts 187 thousand minutes of use for the period of July 2005 through June 2006 for STS.[31] By multiplying the proposed compensation rate ($1.579) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need $295,409 to compensate TRS providers for providing STS.[32]

3. Video Relay Service (VRS)

8. The compensation rate for providers of VRS is also determined based on the total projected costs of providing this service and the total projected minutes of use. NECA, however, did exclude certain costs of one provider. As NECA explains, one VRS provider included the expenses for keeping on staff Certified Deaf Interpreters, *i.e.*, "deaf interpreters who would help hearing interpreters on unusual or difficult calls."[33] NECA notes that no other VRS provider had such a position, and that after discussions with the provider the provider accepted NECA's decision not to include such costs in the rate development.[34] Based on the data submitted (and considered), NECA's calculations resulted in a proposed compensation rate of $5.924 per minute.[35] This rate represents a 22 percent decrease from the

[24] *Id.* at 14-15.

[25] *Id.* at 15 n.26.

[26] *Id.* at 15.

[27] *Id.* at 15 n.27.

[28] *See id.* at 15 & Ex.1D. This figure was calculated by dividing the 2005-2006 annualized average projected costs of $309,680 by the providers' 2005-2006 projected minutes of 198,860, and applying the 1.4 percent rate of return for an allowance for working capital to the resulting average cost per minute.

[29] Since its inception, the compensation rate for STS has ranged from $1.596 to $4.263 per minute. A history of STS payment rates is set forth in the *2004 Bureau TRS Order*. *See 2004 Bureau TRS Order*, 19 FCC Rcd at 12233, para. 21 n.63.

[30] *2005 NECA Filing* at 15.

[31] *Id.* at Ex. 2 (2C of 6).

[32] *Id.* at 15 & Ex. 4.

[33] *Id.* at 16.

[34] *Id.*

[35] *See id.* at 17 & Ex. 1E. This figure was calculated by dividing the 2005-2006 annualized average projected costs of $321,049,465 by providers' 2005-2006 annualized average projected minutes of 54,948,999, and applying the 1.4 percent rate of return for an allowance for working capital to the resulting average cost per minute.

2004-2005 rate of $7.596.[36]

9. NECA states that the proposed average rate of $5.924 "appears to be driven by the cost and demand characteristics of a single provider."[37] NECA notes that if the VRS rate was calculated by excluding the cost and demand data of the low cost provider, the proposed compensation rate would be $7.061 (an increase of $1.137 per minute).[38] NECA advises the Commission to "explore alternatives to the traditional rate calculation" for VRS because of several open issues relating to the provision of VRS, including "interoperability" and speed of answer.[39]

10. For purposes of determining the Fund size requirement and carrier contribution rate, NECA again projected demand based on a growth rate derived from the same four-month period of October 2004 through January 2005.[40] Using the average growth rate for this period of 120,845 minutes, NECA forecasts 35.5 million minutes of use for the period of July 2005 through June 2006, for VRS.[41] By multiplying the proposed compensation rate ($5.924) by NECA's projected minutes of use, NECA projects that the Interstate TRS Fund will need $210.5 million to compensate TRS providers for providing VRS.[42]

4. Interstate TRS Fund Size and Carrier Contribution Rate

11. Once NECA has calculated its proposed compensation rates for traditional TRS and IP Relay, STS, and VRS, NECA calculates the proposed Interstate TRS Fund size and the carrier contribution factor.[43] The total annual Fund requirement is determined by adding together the projected payments to TRS providers for the various forms of TRS, plus certain administrative expenses as well as

[36] Since its inception (March 2000) the compensation rate for VRS has ranged from $5.143 to $17.044 per minute. A history of VRS payment rates is set forth in the *2004 Bureau TRS Order*. *See 2004 Bureau TRS Order*, 19 FCC Rcd at 12234, para. 24 n.68.

[37] NECA states the "[t]he average produced by the traditional rate development methodology using all providers' data indicates that only one provider's cost per minute is below the average, while all other providers' costs are above the average." *2005 NECA Filing* at 17 n.32.

[38] *Id.* An increase of $1.137 per minute to the VRS rate would increase the required Fund size by over $40 million ($1.137 multiplied by the projected minutes of use of 35.5 million).

[39] *Id.* "Interoperability" refers to whether a consumer can use TRS equipment with any of the providers' relay service and not be limited to using only one provider (*e.g.*, the provider that gave the consumer the equipment). *See Petition for Declaratory Ruling Filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) Concerning Video Relay Service (VRS) Interoperability*, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, DA 05-509 (March 1, 2005) (seeking comment on interoperability issue). The Commission has presently waived the TRS speed of answer rule for VRS. That rule requires that 85 percent of all calls must be answered within 10 seconds. The waiver expires on January 1, 2006. *See 2004 TRS Report & Order*, 19 FCC Rcd at 12522-12524, 12568-12569, paras. 119-123 (speed of answer waiver), 246 (raising issue of appropriate VRS speed of answer in FNPRM). NECA also notes that the Interstate TRS Fund Advisory Council, at its April 19, 2005, meeting, expressed concern that decreasing the VRS rate from $7.596 to the proposed rate of $5.924 would under-compensate many VRS providers, threatening their continued provision of the service. *2005 NECA Filing* at 21. The Council recommended that the Commission leave open the opportunity to re-examine the VRS rate when decisions on VRS speed of answer and interoperability are reached. *Id.*

[40] *2005 NECA Filing* at 17 & Ex. 2 (2D of 6).

[41] *Id.* at 17-18 & Ex. 2 (2D of 6).

[42] *Id.* at 18 & Ex. 4.

[43] *Id.* at 18-19 & Ex. 4. Under the Commission's rules, "[e]very carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues." 47 C.F.R. § 64.604(c)(5)(iii)(A).

a 10 percent safety margin. The contribution factor is based on the ratio between total expected TRS Fund expenses and interstate end-user telecommunications revenues.[44]

12. Making these calculations, NECA determined that the total Fund size requirement – *i.e.*, the amount that would be necessary to compensate providers for providing all eligible TRS services for the period of July 2005 through June 2006 – would be $413,337,460.[45] NECA then divided that number by the total 2004 common carrier end user revenues ($78.2 billion) to arrive at a contribution factor of 0.00528.[46] NECA then submitted all of its data to the Commission for approval or modification.[47]

B. Commenters

13. On April 28, 2005, the Commission released a Public Notice requesting comment on NECA's filing.[48] Ten comments and six reply comments were filed.[49] In general, comments are directed at the proposed VRS rate,[50] whether IP Relay and traditional TRS should be compensated at different rates,[51] and the size of the Interstate TRS Fund and how it is funded.[52] We address the comments below.

III. DISCUSSION

14. We have reviewed the *2005 NECA Filing*, as well as the underlying cost data and the comments that were filed. Based on this review, we approve NECA's proposed compensation rate of $1.579 per minute for STS. We conclude, however, that the compensation rates for traditional TRS and IP Relay should reflect the cost and demand data unique to those services, and that, therefore, it is no longer appropriate to compensate these services at a single rate that reflects the combined projected costs

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[44] *2005 NECA Filing* at Ex. 4.

[45] *Id.* This amount includes the actual costs of providing TRS, NECA's administrative costs, and a 10 percent safety margin, less interest income on retained funds. *See id.*

[46] *Id.*

[47] *See* 47 C.F.R. §§ 64.604(c)(5)(iii)(E), (H). As we have noted, NECA states that if the Commission adopts separate compensation rates for traditional TRS and IP Relay, the effect on the total Fund size requirement would be negligible and the carrier contribution factor of 0.00528 would be the same. *2005 NECA Filing* at 21 n.40.

[48] *National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2005 through June 2006*, Public Notice, CC Docket No. 98-67, DA 05-1175 (April 28, 2005) (*2005 TRS Rate PN*).

[49] Comments were filed by Hands On Video Relay Services, Inc. (Hands On) (May 12, 2005); MCI, Inc. (MCI) (May 13, 2005); Nordia, Inc. (Nordia) (May 13, 2005); Sprint Corporation (Sprint) (May 13, 2005); Telco Group, Inc. (Telco Group) (May 13, 2005); Telecommunications for the Deaf, Inc. and Deaf and Hard of Hearing Consumer Advocacy Network (TDI/DHHCAN) (May 13, 2005); Ultratec, Inc. (Ultratec) (May 13, 2005); Communication Services for the Deaf, Inc. (CSD) (May 13, 2005); AT&T Corp. (AT&T) (May 13, 12005); and Hamilton Relay, Inc. (Hamilton) (May 13, 2005). Reply comments were filed by Hands On (May 25, 2005); MCI (May 25, 2005); CSD (May 25, 2005); Sorenson Communications, Inc. (Sorenson) (May 25, 2005); Verizon (May 25, 2005); and NECA (May 25, 2005).

[50] *See generally* Hands On Comments, CSD Comments, TDI/DHHCAN Comments, Hands On Reply Comments, CSD Reply Comments (proposed VRS rate is unfairly low); *see also* Sorenson Reply Comments.

[51] *Compare* MCI Comments, Nordia Comments, Hamilton Comments, and MCI Reply Comments (rates for IP Relay and traditional TRS should remain the same), *with* Sprint Comments, Ultratec Comments, and CSD Reply Comments (Commission should adopt separate rates).

[52] *See generally* Telco Group Comments (addressing payments into fund based on international revenues); AT&T Comments (asserting that projected size of Fund is too large and addressing related issues); Hands On Reply Comments; CSD Reply Comments; Verizon Reply Comments; NECA Reply Comments.

and minutes of use. Accordingly, as reflected in NECA's filing, we adopt a compensation rate of $1.440 per minute for traditional TRS, and a compensation rate of $1.278 per minute for IP Relay. With respect to VRS, we reject NECA's proposed rate and, as explained below, we adopt a rate of $6.644 per minute, reflecting the median rate of the rates of the seven providers that submitted VRS cost and demand data. Accordingly, we adopt a total Fund size of $441,493,869 and a carrier contribution factor of 0.00564.[53]

A. Compensation Rate for Speech-to-Speech (STS)

15. We conclude that STS shall be compensated at $1.579 per minute for interstate STS for the 2005-2006 Fund year, as recommended by NECA. As we have noted above, this rate was determined by dividing the providers' total projected interstate costs of $309,680 by the providers' total projected interstate minutes of 198,860.[54] We have reviewed NECA's proposed rate and its analysis of the relevant underlying data. We find that NECA's calculations with respect to this service are reasonable. Accordingly, the Interstate TRS Fund will pay $1.579 per minute for eligible interstate STS for the period of July 2005 through June 2006.

B. Compensation Rate for Traditional TRS and IP Relay

1. Separate Rates for Traditional TRS and IP Relay

16. Given the cost disparity between traditional TRS and IP Relay,[55] we conclude that these services should be compensated at separate rates based on the cost and demand projections specific to each service. We do not believe that it is fair or reasonable to use a combined rate ($1.312) that over-compensates IP Relay providers (by $0.034 per minute) and under-compensates traditional TRS providers (by $0.128 per minute).

17. NECA proposes a compensation rate of $1.312 applicable to both traditional TRS and IP Relay.[56] The Public Notice seeking comment on NECA's filing, however, specifically sought comment on whether the Commission should adopt separate compensation rates for traditional TRS and IP Relay.[57] Three parties support a single compensation rate for both services; three parties support separate compensation rates.

18. We note that the issue of whether separate compensation rates should be adopted for traditional TRS and IP Relay was initially raised in the FNPRM in the *2004 TRS Report & Order*.[58] In the FNPRM, the Commission observed that although the Interstate TRS Fund administrator requests and analyzes separate data for the costs of providing IP Relay and traditional TRS, the services are compensated at the same per-minute rate.[59] The Commission also recognized that "the cost of providing

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[53] The compensation rates for STS and VRS, and the fund size and carrier contribution factor, shall be effective upon the release of this *Order*. Because this *Order* adopts a new rule that requires separate compensation rates for traditional TRS and IP Relay, the compensation rates for traditional TRS and IP Relay shall be effective upon publication of this *Order* in the Federal Register, rather than simply upon release of this *Order*. Until such time, providers of traditional TRS and IP Relay shall be compensated at the 2004-2005 rate of $1.398.

[54] *Id.* at Ex. 1D.

[55] *See 2005 NECA Filing* at 13 n.21 (reflecting an 11 percent disparity between the average cost of providing traditional TRS and IP Relay).

[56] *See* para. 3, *supra*.

[57] *See 2005 TRS Rate PN* at 1.

[58] *2004 TRS Report & Order*, 19 FCC Rcd at 12564-12565, para. 233.

[59] *Id.*

IP Relay may be less than the cost of providing traditional TRS," and therefore [illegible] of IP Rel[illegible] may be over-compensated, and providers of traditional TRS may be under-co[illegible] The Commission therefore sought comment on whether to adopt separate compens[illegible] IP R[illegible] traditional TRS.[61] Four parties filed comments in response to this issue. All c[illegible] the I[illegible] asserted that the cost differences for providing these services are not significan[illegible] more th[illegible] should continue to be compensated at the same rate.

19. MCI, Nordia, and Hamilton assert that the Commission should continue to use the [illegible] compensation rate for traditional TRS and IP Relay.[62] MCI and Hamilton assert that the costs of providing these services are generally similar.[63] Sprint, Ultratec and CSD, on the other hand, ur[illegible] Commission to adopt separate compensation rates for these services.[64] They main[illegible] that comp[illegible] these services at the same rate is no longer warranted.[65] Sprint notes that the averag[illegible] per-minute traditional TRS is significantly more than for IP Relay, and asserts that this is because many man[illegible] minimum standards are waived for IP Relay and IP Relay providers avoid access charges.[66] Sprint [illegible] that unless the rates are separate, IP Relay providers "will continue to receive a windfall" while traditional TRS providers "will continue to lose money on every traditional TRS minute carried."[67] Ultratec similarly asserts that the combined rate fails to compensate traditional TRS providers for their reasonable costs, and that separate rates should be adopted that reflect the average actual costs associated with each of these services.[68] CSD also asserts that so long as the costs for providing each of these services differ, "it makes little sense to use a single rate for their reimbursement."[69]

20. We conclude that traditional TRS and IP Relay should be compensated at separate rates based on the cost and demand projections specific to these services. NECA's filing indicates that IP Relay costs are approximately 11 percent less than traditional TRS.[70] As NECA indicates, for the 2005-2006 Fund year, the average per-minute cost for IP Relay is $0.162 less than the average per-minute cost of traditional TRS.[71] We do not believe that it is fair or reasonable to use a combine[illegible] rate ($1.312) that over-compensates IP Relay providers (by $0.034 per minute) and under-compensate[illegible] traditional TRS

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[60] *Id.*

[61] *Id.*

[62] MCI Comments at 2-5; Nordia Comments at 1-3; Hamilton Comments at 4.

[63] *See* MCI Comments at 3-5; Hamilton Comments at 4; MCI Reply Comments at 4. MC[illegible] suggests that to the [illegible]nt the costs of providing traditional TRS may be higher, it is likely because of inefficiencie[illegible] the Commissi[illegible] should not reward inefficient providers. MCI Reply Comments at 7.

[64] Sprint Comments at 2-3; Ultratec Comments at 1-4; CSD Reply Comments at 4-5.

[65] Although in its comments to the *2004 TRS Report & Order's* FNPRM Sprint stated th[illegible] two service[illegible] be compensated at the same rate, in its subsequent comments in response to the Public N[illegible] Sprint asser[illegible] "given the cost differentials in providing traditional TRS and [IP Relay] service, a merge[illegible] rate can no lo[illegible] justified." Sprint Comments at 1.

[66] Sprint Comments at 2-3.

[67] Sprint Comment at 3.

[68] Ultratec Comments at 3-4.

[69] CSD Reply Comments at 4.

[70] *See 2005 NECA Filing* at 13 n.21.

[71] *Id.* (noting that the average rate for IP Relay ($1.278) is $0.162 (which is approx[illegible] 11 perc[illegible] than the average cost of traditional TRS ($1.440)).

providers (by $0.128 per minute).[72] As described below, we therefore adopt separate rates for traditional TRS and IP Relay, and instruct NECA to calculate and propose separate rates for these services in the future.[73]

2. Compensation Rate for Traditional TRS

21. We conclude that traditional TRS shall be compensated at $1.440 per minute. This is consistent with NECA's calculation based on the providers' projected cost and demand specific to traditional TRS.[74] This rate is determined by dividing the providers' total projected interstate costs for traditional TRS of $68,084,670 by the providers' total projected interstate minutes of traditional TRS of 47,948,559, and applying the 1.4 percent rate of return for an allowance for working capital to the resulting average cost per minute.[75] We have reviewed NECA's rate and its analysis of the relevant underlying data particular to traditional TRS. We find that NECA's calculations with respect to this service are reasonable. Therefore, we adopt a compensation rate for eligible traditional TRS calls of $1.440 per minute for the period of July 2005 through June 2006.[76]

3. Compensation Rate for IP Relay

22. We conclude that IP Relay shall be compensated at $1.278 per minute. This is consistent with NECA's calculation based on the providers' projected cost and demand specific to IP Relay.[77] This rate is determined by dividing the providers' total projected costs for IP Relay of $230,866,685 by the provider's total projected minutes of IP Relay of 183,164,118, and applying the 1.4 percent rate of return for an allowance for working capital to the resulting average cost per minute.[78] We have reviewed NECA's proposed rate and its analysis of the relevant underlying data particular to IP Relay. We find that NECA's calculations with respect to this service are reasonable. Therefore, we adopt a compensation rate for eligible traditional IP Relay calls of $1.278 per minute for the period of July 2005 through June

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[72] We also agree with CSD that the dispositive consideration is not whether adopting separate rates would reduce the size of the Interstate TRS Fund, but rather whether a particular rate compensates providers for the reasonable costs of providing the service. *See* CSD Reply Comments at 4-5. As an immediate matter, NECA indicates that the adoption of the separate rates for traditional TRS and IP Relay would have no material effect on the size of the fund. *See* para. 5, *supra*. However, because the growth of IP Relay will likely outpace the growth of traditional TRS, *see 2005 NECA Filing* at Exs. 2 (2A of 6) & 2 (2B of 6), over the long term adopting separate rates will likely lead to a decrease in the size of the Fund.

[73] In its comments, Hamilton urges the Commission to reject a "rate of return" cost recovery methodology for traditional TRS and IP Relay and instead adopt its "MARS" plan, which it proposed in its petition for reconsideration of the *2004 TRS Report & Order*. Hamilton Comments at 2-3. Under the MARS plan, the interstate TRS rate would be calculated based on an average of the *intrastate* TRS rates paid by the states. Hamilton requests that the Commission seek comment on the MARS plan when it adopts the 2005-2006 TRS rates. Hamilton Comments at 2. MCI also states that the Commission should adopt the MARS plan. MCI Comments at 5-6; MCI Reply Comments at 7-8. AT&T also urges the Commission to consider adopting this plan. AT&T Comments at 7 n.10. We will raise the issue of adopting the MARS plan in a future notice of proposed rulemaking. *See also* NECA Reply Comments at 9 (although the Commission may determine that such an approach is warranted in the future, it is outside the scope of this proceeding).

[74] *2005 NECA Filing* at 13 n.21, Exs. 1A & 1C.

[75] *Id.* at Ex. 1C.

[76] The compensation rate for traditional TRS shall be effective upon publication of this *Order* in the Federal Register. Until such time, providers of traditional TRS shall be compensated at the 2004-2005 rate of $1.398.

[77] *Id.* at 13 n.21, Exs. 1B & 1C.

[78] *Id.* at Ex. 1C.

2006.[79]

C. Compensation Rate for Video Relay Service (VRS)

23. We conclude that VRS shall be compensated at $6.644 per minute. NECA indicates that its proposed rate of $5.924 per minute appears to be driven by the costs and demand data of one provider, and that if the data from this provider was excluded the rate would be $7.061.[80] NECA also notes that the Council expressed concern over the proposed rate and the effect one provider had on the rate, and that there are several open issues with respect to VRS service that might affect the rate.[81] Accordingly, NECA suggests that the Commission may wish to explore alternatives to the traditional rate calculation for VRS.[82] No commenter filed comments in support of NECA's proposed rate.

24. In response to NECA's filing, several commenters urge the Commission to reject the proposed VRS rate of $5.924 and adopt a higher alternative rate that is more representative of the majority of the providers' costs in providing this service. Hands On, CSD, and TDI/DHHCAN assert that the proposed rate is skewed artificially low because there is currently no speed of answer or interoperability requirement, resulting in higher costs to those providers that do provide a faster speed of answer and interoperable service.[83] TDI/DHHCAN also asserts that NECA's proposed compensation rate may result in a reduction of the availability of the service, which would be contrary to the functional equivalency requirements of the ADA.[84] Hands On and CSD further assert that the proposed rate would adversely affect service quality.[85]

25. Hands On proposes several alternative ways to calculate the VRS rate. These alternatives include: a weighted average that excludes the dominant provider, which results in a rate of $7.061;[86] the median cost rate of all of the providers that submitted data, which results in a rate of $6.644; a weighted average that excludes the data of the high cost and low cost providers, which results in a rate of approximately $7.00; and a non-weighted average that includes all providers, which results in a rate of $7.325.[87] Hands On asserts that "[a]ny of these alternative rate calculations would be appropriate for the Commission to adopt on an interim basis pending action on outstanding [issues], including . . . answer

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[79] The compensation rate for IP Relay shall be effective upon publication of this *Order* in the Federal Register. Until such time, providers of IP Relay shall be compensated at the 2004-2005 rate of $1.398.

[80] *Id.* at 17 n.32; *see* para. 9, *supra.*

[81] *Id.* at 17 n.32, 21. These issues are speed of answer and interoperability. *See* note 39, *supra.*

[82] *Id.* at 17 n.32.

[83] Hands On Comments at ii-iii, 2-8; CSD Comments at 1-6; TDI/DHHCAN Comments at 2-4; Hands On Reply Comments at 1-4; CSD Reply Comments at 1-4.

[84] TDI/DHHCAN Comments at 3.

[85] Hands On Reply Comments at 1-4; CSD Reply Comments at 1-4. CSD also asserts that the proposed rate will reduce competition because the non-dominant providers will be forced to reduce the quality of their service and therefore will be even less able to compete with the dominant provider. CSD Reply Comments at 2-3.

[86] This is the alternative rate proposed in NECA's filing. *See 2005 NECA Filing* at 17 n.32.

[87] Hands On Comments at 10-13. In Hands On's view, the "most appropriate methodology is the use the weighted average method, but with the elimination of the low and high cost providers' estimates. *Id.* at 13. CSD also proposes alternative VRS rate calculations that exclude the dominant provider's data, use a non-weighted average of all providers' data, or tie the VRS compensation rate to service levels. CSD Comments at 6-8; *see also* CSD Reply Comments at 1-4. CSD suggests that one of these alternatives could be implemented on an interim basis until the Commission adopts service level standards (*e.g.,* speed of answer). CSD Comments at 6; *see also* CSD Reply Comments at 3. TDI/DHHCAN proposes that the Commission adopt the rate of $7.061 that is derived by excluding the data of the largest provider. TDI/DHHCAN Comments at 6.

speed and interoperability."[88]

26. We conclude that under the present circumstances, given the lack of certain standards for VRS, NECA's proposed VRS compensation rate of $5.924 would not be a fair and reasonable compensation rate for VRS providers. Therefore, we do not adopt that rate, but instead adopt a rate of $6.644 per minute for the 2005-2006 Fund year. This rate reflects the median rate of the individual rates of the seven VRS providers that submitted cost and demand data.

27. We conclude that the median rate is the most appropriate rate for the 2005-2006 Fund year. This rate is closest to a majority of the providers' proposed rates and is a better indicator of reasonable costs in this unique situation, where there are several pending issues under consideration impacting providers' costs. As we have noted, the Commission's rules mandate that providers be compensated for the "reasonable" costs of providing service.[89] The record reflects that the "reasonableness" of costs will vary depending on the level of service provided.[90] Because of open quality of service issues such as speed of answer and interoperability, the record reflects that the providers may not be offering consumers the same level of service. In these circumstances, where NECA's proposed rate was calculated at a time when certain key VRS rules are in flux, and where services are being provided at various levels of service quality, we believe that an alternative compensation rate is appropriate. We are concerned that both the overall quality and availability of the service may suffer under NECA's proposed rate.

28. In these circumstances, we reject NECA's proposed rate. On the present record, we find that a compensation rate based on the weighted average of the providers' costs would not fairly reflect the reasonable costs of providing service. As NECA and commenters have noted, NECA's proposed rate is below the rate of all providers except the one dominant, low cost provider.[91] Therefore, under NECA's proposed rate, all of the providers except the one dominant, low-cost provider will lose money on every minute of call carried. We also note that all commenters on this issue assert that NECA's proposed rate is too low and unfair,[92] and that the Interstate TRS Fund Advisory Council has expressed similar concerns.[93] Finally, we recognize that the Commission has not yet settled on a cost recovery methodology for VRS,

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[88] Hands On Comments at 13. Hands On also suggests that the Commission could adopt VRS rates that vary depending on the provider's speed of answer. Hands On asserts that such an approach would ensure that providers with lower costs (presumably because they employ fewer VRS CAs and therefore and have longer speed of answer times) will not be overcompensated. *See* Hands On Comments at 13-17. Sorenson, in its reply comments, asserts that adoption of Hands On's proposed plan would be premature until the Commission establishes a speed of answer requirement for VRS. Sorenson Reply Comments at 1-3. Because the speed of answer requirement for VRS is presently waived, and the issue of a speed of answer requirement for VRS is pending before the Commission, we decline to adopt this proposal at this time.

[89] *See* 47 C.F.R. § 64.604(c)(5)(iii)(E).

[90] *See* CSD Comments at 4-6; DHHCAN Comments at 2-5; Hands On Comments at 3-7.

[91] To determine a per-minute compensation rate that reflects reasonable costs, the Commission has used providers' projected costs and minutes of use data to determine a weighted average. As a result, the rate does not correlate with any provider's actual costs – it simply represents one estimate of what a reasonable compensation should be to fairly compensate all providers. The rate will, necessarily, result in some providers being over-compensated and some providers being under-compensated. In the past, the relative level of compensation as it affects each of the providers has not been an issue, likely because market share was more evenly divided and providers' level of service was similar.

[92] *See* para. 24, *supra*.

[93] *See 2005 NECA Filing* at 21.

and that this issue remains open.[94] We conclude that the median rate of $6.644 per minute represents a just and reasonable rate for compensating providers of VRS.[95] That rate is closest to a majority of the providers' proposed rates, and will result (by definition) in the same number of providers having costs above the rate as below the rate. That rate is also supported by at least one commenter.[96] We therefore adopt a VRS compensation rate of $6.644 per minute for the period of July 2005 through June 2006.[97]

D. Interstate TRS Fund Size and Carrier Contribution Rate

29. We adopt a total Interstate TRS Fund size of $441,493,869 and a carrier contribution factor of 0.00564 for the July 2005 through June 2006 Fund year.[98] That figure reflects the funds necessary to compensate providers for projected eligible minutes of use for the various forms of TRS, a 10 percent safety margin, and NECA's administrative costs, less interest income, and is based on the rates adopted in this Order.[99]

30. AT&T asserts that NECA has overstated the Fund size by inflating demand projections.[100] AT&T notes that NECA applied a growth rate based on a four-month period (October 2004 through January 2005), and argues that projecting demand based on this "arbitrary" four-month period has inflated the Fund size by $43 million.[101] AT&T asserts that NECA should have developed a

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[94] In the FNPRM in the *2004 TRS Report & Order,* the Commission sought comment on possible cost recovery approaches for VRS. *See 2004 TRS Report & Order*, 19 FCC Rcd at 12565-12567, paras. 234-240. Nothing in this order prejudges the outcome of that proceeding.

[95] Although in calculating the STS rate we excluded the costs of a provider that were substantially higher than the costs of the other providers, we see no need to exclude the costs of the low-cost provider in calculating the VRS rate. First, we note that in calculating the STS rate NECA made the decision to exclude the high-cost provider, and that decision was accepted by the provider. Second, the submitted costs of the high-cost STS outlier are approximately seven times the average of the costs of the other STS providers, whereas the low-cost VRS provider's costs are only approximately 25 percent less than the average costs of the other VRS providers. As NECA noted, the STS high-cost provider had an exceptionally low occupancy rate, which drove up its labor costs. *2005 NECA Filing* at 15 n.26. In addition, we excluded the STS providers' costs in calculating the 2004-2005 STS rate for the same reason. See *2004 Bureau TRS Order*, 19 FCC Rcd at 12233, para. 22. Further, because the providers' cost data determines the rate at which they will be compensated for providing service, we are less concerned about submitted costs that seem atypically low than we are about submitted costs that seem unusually high.

[96] *See* Hands On Comments at 12; *see also* CSD Reply Comments at 3 (noting that other proposed rates are more equitable than NECA's proposed rate).

[97] Because of the open "quality of service" issues regarding VRS, including speed of answer, interoperability, and whether the service should be required to be offered 24 hours a day, 7 days a week (*see 2004 TRS Report & Order,* 19 FCC Rcd at 12567-12569, paras. 243-246), the Commission may revisit the VRS compensation rate for the 2005-2006 Fund year, if new rules are adopted in these areas that would affect the cost of providing service. Moreover, we emphasize that the Commission's conclusion with respect to the VRS rate in this Order is based on the unique circumstances of the present record.

[98] We recognize that adopting a VRS rate of $6.644, rather than $5.924, increases the size of the Fund proposed by NECA by approximately $28 million (or nearly 7 percent). Although we remain concerned about the rapid growth in the size of the Fund, we are obligated to ensure that providers are compensated for their reasonable costs. We also note that the rate of $6.644 is significantly less than the previous rate of $7.596. Moreover, the size of the Fund is largely driven by the steadily increasing demand for IP Relay and VRS, all of which calls are currently compensated from the Fund.

[99] *See generally 2005 NECA Filing* at Ex. 4.

[100] AT&T Comments at 2-5.

[101] AT&T Comments at 3-4.

growth rate based on the prior twelve-month period.[102] AT&T also argues that NECA's inclusion of a 10 percent "safety margin" to cover possible shortfalls is unwarranted, excessive, and unnecessary, and that instead, NECA should request additional funding if and when there is such a shortfall.[103]

31. CSD, Hands On, and NECA filed reply comments in response to AT&T's assertions. First, NECA explains that it used this four-month period to establish a growth rate because of changes in the relay service marketplace and anomalies in the minutes of use for certain months in the prior twelve-month period.[104] NECA notes, for example, that because of the projected increased use of captioned telephone, it believes minutes of use of traditional TRS will increase, but that reliance on the historic twelve-month period would result in a decrease.[105] NECA further notes that there were two months in which the minutes of use for IP Relay and VRS were uncharacteristically low, and that therefore use of a twelve-month growth period that includes these months results in a growth rate that is significantly below the overall historic growth rate.[106] NECA states that the low growth of IP Relay minutes in April and May 2004 "appears to coincide with implementation of measures to control fraudulent calls from international locations."[107] As a result, NECA asserts that its usage projection is "far more reasonable" than using an historic twelve-month period as AT&T proposes. CSD and Hands On agree that NECA's reliance on the four-month period to project minutes of use was appropriate because of the increased use of new technologies and the need for adequate funding as demand for these new services continues to increase.[108]

32. Second, NECA explains that it has used a 10 percent safety margin every year since its first filing in 1994, "to insure smooth, efficient operation of the fund and to minimize the need for subsequent fund size revisions."[109] NECA also notes that unanticipated growth in the minutes of use required an additional assessment during the 2003-2004 Fund year, that in December 2004 the Commission increased the compensation rates retroactively to the beginning of the Fund year, and that minutes of use continue to grow.[110] In these circumstances, NECA suggests that a 10 percent safety margin is prudent, and will mitigate the possibility that NECA will have to bill and collect additional funds from over 4,300 contributors.[111]

33. Under these circumstances, we find that NECA's use of a four-month period to project demand and the inclusion of a 10 percent safety margin are reasonable. As NECA explains in its filing and reply comments, it used a four-month period to determine the growth rate for traditional TRS because

[102] AT&T Comments at 4.

[103] AT&T Comments at 5-6.

[104] NECA Reply Comments at 5-8.

[105] NECA Reply Comments at 5.

[106] NECA Reply Comments at 5-7.

[107] NECA Reply Comments at 6 n.15.

[108] CSD Reply Comments at 6; Hands on Reply Comments at 4-5. In its comments, Hamilton asserts that the significant increase in demand for IP Relay and VRS merit an increase in the overall fund size. Hamilton Comments at 3.

[109] NECA Reply Comments at 8. We note that NECA has not always referred to this margin as a "safety margin," but as, *e.g.*, an "uncollectable allowance."

[110] NECA Reply Comments at 8. In February 2004, the Commission increased the Fund size and carrier contribution factor because of the growth of IP Relay and VRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 04-465 (Feb. 24, 2004).

[111] NECA Reply Comments at 8.

that period reflected a steady growth in minutes of use, whereas in prior months traditional TRS minutes fluctuated up and down from month to month.[112] It also reasonably believes that traditional TRS minutes will increase in the 2005-2006 Fund year, because of the growth in the use of captioned telephone service.[113] NECA also explains that it used this same four-month growth period for STS because "a clear growth rate has not been discernable either annually or monthly," and for IP Relay and VRS because there is limited historical data for those services.[114] In addition, NECA explains that for IP Relay, there was steady growth in that period compared to fluctuations in prior months.[115] We find NECA's approach to be reasonable, particularly in view of the overall steady growth in the use of the two Internet-based forms of TRS, IP Relay and VRS.[116]

34. We also conclude that NECA's inclusion of the 10 percent safety margin is reasonable and appropriate given the continued growth in the overall minutes of use and the desire to avoid, if possible, having to increase the Fund size and seek additional contributions in the middle of a Fund year.

E. Other Issues

35. Commenters raise two other issues relating the funding mechanism for TRS. First, AT&T argues that the Commission should eliminate the ability of local exchange carriers (LECs) to recover their Interstate TRS Fund contributions through carrier access charges.[117] AT&T notes that it raised this issue in 2003, but that in the *2003 Bureau TRS Order* the Bureau stated that the rate order was not the appropriate proceeding in which to address this issue.[118] AT&T now asserts that this charge should be eliminated "either in a separate proceeding or as part of the Commission's comprehensive reform of intercarrier compensation."[119] In reply comments, NECA and Verizon assert that AT&T's argument is not germane to this proceeding.[120] Verizon also asserts that, in any event, it is neither unlawful nor inappropriate to require access customers to pay a portion of a LEC's Interstate TRS Fund contribution.[121] We again conclude, as the Bureau did in the *2003 Bureau TRS Order*,[122] that this issue falls outside the scope of this proceeding.

36. Second, Telco Group asserts that international revenues should be excluded from the revenue base used to calculate payments due the Interstate TRS Fund, "at least for those carriers whose international revenues comprise a significant proportion of their total interstate and international

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[112] *2005 NECA Filing* at 10-11; NECA Reply Comments at 5-8.

[113] *2005 NECA Filing* at 10 (explaining calculation); NECA Reply Comments at 5.

[114] *2005 NECA Filing* at 15; *id.* at 12, 17.

[115] *Id.* at 12.

[116] *See id.* at Exs. 2 (page 2B of 6), 2 (page 2D of 6) (setting forth historical and projected minutes of use for IP Relay and VRS); *see also id.* at 19 (NECA notes the "continued strong growth of Internet and video relay services, and the anticipated growth of captioned telephone VCO minutes").

[117] AT&T Comments at 6-7.

[118] AT&T Comments at 7. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, 18 FCC Rcd 12823, at 12837, para. 43 (June 30, 2003) (*2003 Bureau TRS Order*).

[119] AT&T Comments at 7.

[120] NECA Reply Comments at 9; Verizon Reply Comments at 1-3.

[121] Verizon Reply Comments at 2-3.

[122] *See* note 118, *supra*.

revenues."[123] As it notes, Telco Group filed a petition for a declaratory ruling on this issue, on which the Commission sought comment by public notice.[124] Accordingly, this issue will be addressed by the Commission in that proceeding.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

37. The Regulatory Flexibility Act of 1980, as amended (RFA),[125] 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."[126] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[127] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[128] 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.

38. The Commission concludes in this item that the public interest is best served by requiring and adopting separate compensation rates for traditional TRS and IP Relay based on the cost and demand data submitted by providers unique to those services. The Commission believes that it is no longer appropriate to use a combined rate to compensate providers of traditional TRS and IP Relay when doing so will result in IP Relay providers being over-compensated, and traditional TRS providers being under-compensated. Going forward, our action will result in both categories of providers receiving the amount of compensation commensurate with their costs and demand for their services. Although this action eliminates a future windfall for IP Relay providers, we do not view this result as an additional significant economic impact under the RFA. Rather, we believe that both types of providers have been receiving appropriate levels of compensation up to this time, and that our annual review with NECA has shown that the use of separate compensation rates is necessary to continue that state of affairs. 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.

39. 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

[123] Telco Group Comments at 1.

[124] *See Telco Group, Inc. Files Petition for Declaratory Ruling or Waiver to Exclude International Revenues from the Revenue Base Used to Calculate Payment to the Interstate TRS Fund,* Public Notice, CC Docket No. 98-67, DA 04-3352 (Oct. 25, 2004).

[125] 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).

[126] 5 U.S.C. § 605(b).

[127] *Id.*

[128] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless and 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*."

Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.[129] Currently, only seven providers are providing traditional TRS and being compensated from the Interstate TRS Fund: Ameritech, AT&T, Hamilton, Kansas Relay Service, Inc., MCI, Nordia, and Sprint. Currently, only six entities are providing IP Relay and being compensated from the Interstate TRS Fund: AT&T, Hamilton, MCI, Sprint, Nordia, and Sorenson. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard.

B. Paperwork Reduction Act

40. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.[130]

C. Congressional Review Act

41. The Commission will not send a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act of 1996[131] because the adopted rules are rules of particular applicability adopting the TRS provider compensation rates.

D. Materials in Accessible Formats

42. 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

43. Accordingly, IT IS ORDERED, 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, that this ORDER IS hereby ADOPTED.

44. IT IS FURTHER ORDERED that NECA shall compensate providers of Speech-to-Speech relay service (STS) and Video Relay Service (VRS) for the July 1, 2005 through June 30, 2006 Fund year at the following rates: STS providers - $1.579 per completed interstate conversation minute; and VRS providers - $6.644 per completed interstate and intrastate conversation minute.

45. IT IS FURTHER ORDERED that NECA shall compensate providers of traditional telecommunications relay service (TRS) and IP Relay, effective upon publication of this *Order* in the Federal Register through June 30, 2006, at the following rates: traditional TRS providers - $1.440 per

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[129] 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.")

[130] *See* 44 U.S.C. § 3506(c)(4).

[131] *See* 5 U.S.C. §§ 801(a)(1)(A), 804(3)(A).

completed interstate conversation minute; IP Relay providers - $1.278 per completed interstate and intrastate conversation minute. Prior to publication of this *Order* in the Federal Register, NECA shall compensate providers of traditional TRS and IP Relay at the 2004-2005 fund year rate.

46. IT IS FURTHER ORDERED that the Interstate TRS Fund size shall be $441,493,869 and the carrier contribution factor shall be 0.00564, for the July 1, 2005, through June 30, 2006, Fund year.

47. IT IS FURTHER ORDERED that this *Order* is effective upon publication in the Federal Register, except for the compensation rates for STS and VRS, and the Fund size and carrier contribution factor, which are effective upon release of this *Order*.[132]

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

[132] Because TRS payment formulas are to be effective for a one-year period beginning July 1 under 47 C.F.R. § 64.604(c)(5)(iii)(H), we find good cause, pursuant to 5 U.S.C.§ 553(d), to make this Order effective on less than thirty days notice.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Telecommunications Relay and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order (CC Docket No. 98-67, CG Docket No. 03-123)

The concept of "functional equivalency" is at the heart of the Americans with Disabilities Act. "Functional equivalency" means that 54 million Americans have a right to equal access to communications technologies and an equal opportunity to succeed.

Today's decision delves deep into the mechanics of "functional equivalency" by determining appropriate compensation rates. To this end, our Order separately accounts for IP Relay and traditional TRS. This approach allows service provider compensation to more accurately reflect cost.

This Order also adopts a compensation rate for VRS based on a median of the individual rates of providers submitting cost and demand data. I support this outcome, but remain concerned that our calculation of VRS rates has an ad hoc and last minute quality. This is not fair to VRS consumers or providers. We need to work harder to bring consistency and transparency to the calculation process. We also must provide an expeditious and thoughtful response to speed of answer and interoperability concerns raised by the deaf and hard-of-hearing community. With the "functional equivalency" standard as our guide, I look forward to working with my colleagues to do so.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order (CC Docket No. 98-67, CG Docket No. 03-123).

Through this Order, the Commission adopts compensation rates for the critical services supported through the Telecommunications Relay Service (TRS) Fund. These relay services serve as vital connections for and to millions of hearing-impaired and speech-impaired Americans. Without federal and state TRS services, these citizens would be left out of the vital communications networks that link our economy and society.

I support this Order because it adopts reasonable compensation rates for the traditional TRS, IP Relay Services, and Video Relay Services (VRS). Calculating the compensation rate for VRS, which is an increasingly important tool, proved particularly difficult this year because certain key VRS rules are in flux. I am pleased that the Commission was able to take into account these open questions and find a flexible approach to address the compensation of these services. The challenges presented here do underscore, however, the importance of moving forward to address open quality of service issues, such as the speed of answer and interoperability, and our open proceeding on improving our rules and process for setting the VRS compensation rate. I look forward to working closely with my colleagues to resolve these issues quickly.