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

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In the Matter of	)	
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Telecommunications Relay Services and	)	CC Docket No. 98-67
Speech-to-Speech Services for	)	
Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123

ORDER ON RECONSIDERATION

Adopted: July 14, 2005 **Released: July 19, 2005**

By the Commission: Chairman Martin; Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

I. INTRODUCTION

1. This *Order on Reconsideration* addresses petitions for reconsideration of the *2004 TRS Report & Order*[1] and, in so doing, reverses the Commission's conclusion that translation from American Sign Language (ASL) into Spanish is not a telecommunications relay service (TRS)[2] eligible for compensation from the Interstate TRS Fund.[3] Based on our review of the record on this issue, we conclude that non-shared language Spanish translation Video Relay Service (VRS) – *i.e.*, relay service in which the CA translates what is signed in ASL into spoken Spanish, and *vice versa* – is a form of TRS compensable from the Interstate TRS Fund. Therefore, although we do not mandate this service, providers offering ASL-to-Spanish VRS may be compensated from the Interstate TRS Fund.

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[1] *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 (June 30, 2004) (*2004 TRS Report & Order*).

[2] 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).

[3] *See 2004 TRS Report & Order*, 19 FCC Rcd at 12503-12505, paras. 55-62. The other issues raised in the petitions for reconsideration will be addressed separately.

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 the extent possible and in the most efficient manner to persons with hearing or speech disabilities in the United States.[4] TRS enables a person with a hearing or speech disability to have access to the telephone system to communicate with hearing individuals. The statute requires that TRS offers persons with hearing and speech disabilities telephone transmission services that are "functionally equivalent" to voice telephone services.[5] When TRS was first implemented in 1993, persons desiring to use TRS to call a hearing person through the telephone system generally used a TTY (text-telephone) device connected to the public switched telephone network (the PSTN). In what is now referred to as a "traditional" TRS call (*e.g.*, TTY text-based), the person with a hearing or speech disability dials (*i.e.*, types) a telephone number for a TRS facility using a TTY, and then types the number of the party he or she desires 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 from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user.[6]

3. The most striking development in the short history of TRS has been the enormous growth in the use of VRS.[7] As most frequently used, VRS allows a deaf person whose primary language is ASL to communicate in ASL with the CA through a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in 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 and in a faster and more articulate manner than with a TTY or text-based TRS call. As a result, VRS calls reflect a degree of "functional equivalency" that is not attainable with text-based TRS.

4. Section 225 creates a cost recovery framework whereby providers of TRS are compensated for their costs of providing TRS.[8] This framework is based on a "jurisdictional separation

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[4] 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.*

[5] 47 U.S.C. § 225(a)(3).

[6] As noted below, other forms of TRS include non-English shared language relay services, Speech-to-Speech services (STS), and VRS. *See* 47 C.F.R. § 64.601 (9), (12), and (17), respectively. TRS also includes IP Relay, another form of text-based relay where the user connects to a TRS facility via a computer (or other similar device) through the Internet, and captioned telephone service, which permits a user – typically someone who has the ability to speak and some residual hearing – to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying.

[7] *See* 47 C.F.R. § 64.601(17) (defining VRS); *see generally 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*) (recognizing VRS as a form of TRS). In January 2002, the first month VRS was generally offered, there were 7,215 minutes of use; in January 2003, there were 128,114 minutes of use; in January 2004, there were 477,538 minutes of use; and in January 2005, there were 1,634,316 minutes of use.

[8] 47 U.S.C. § 225(d)(3). Persons who use TRS do not pay for the service.

of costs."[9] As a general matter, providers of *intra*state TRS are compensated by the states, and providers of *inter*state TRS are compensated from the Interstate TRS Fund (Fund).[10] The Interstate TRS Fund is funded by contributions from all carriers providing interstate telecommunications services, and is administered by the TRS fund administrator, currently the National Exchange Carrier Association, Inc. (NECA).[11] The fund administrator uses these funds to compensate "eligible" TRS providers[12] for the costs of providing the various forms of TRS. Fund distributions are made on the basis of a payment formula initially computed by NECA in accordance with the Commission's rules, and then approved or modified by the Commission.[13] The per-minute compensation rates are presently based on the projected average cost per minute for each service.[14]

B. The Evolution of TRS

5. Since TRS became available on a nationwide basis in July 1993, the Commission has addressed the provision, regulation, and compensation of TRS on numerous occasions.[15] As the Commission has noted, in adopting Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.[16] 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.[17] To this end, the Commission must ensure that persons with hearing and

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[9] *Id.*

[10] On an interim basis, the costs of providing both *intra*state and *inter*state VRS and IP Relay are paid from the Interstate TRS Fund. *See Improved TRS Order & FNPRM*, 15 FCC Rcd at 5153, para. 24 (addressing VRS); *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, 7786, para. 20 (April 22, 2002) (*IP Relay Declaratory Ruling & FNPRM*) (addressing IP Relay).

[11] 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).

[12] *See* 47 C.F.R. § 64.604(c)(5)(iii)(E) & (F) (setting forth, among other things, the eligibility requirements for TRS providers seeking to receive compensation from the Interstate TRS Fund).

[13] 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) (emphasis added).

[14] *See generally Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order, 17 FCC Rcd 8840, 8840-8841, para. 2 (May 16, 2002) (order modifying compensation rates of various TRS services).

[15] *See generally 2004 TRS Report & Order*, 19 FCC Rcd at 12477-12486, paras. 1-13 (overview of recent TRS orders).

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

[17] *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). Congress found (continued....)

speech disabilities have adequate means of accessing the telephone system. At its inception, TRS was limited to the use of a TTY connected *via* the PSTN to the CA, who would then make a voice call to the other party to the call. In 1998, however, the Commission issued a Notice of Proposed Rulemaking seeking comment on whether Title IV applies to other forms of TRS that go beyond the TTY-to-speech and speech-to-TTY model.[18] The Commission tentatively concluded that "improved" TRS services, such as STS and VRS, fall within the scope of Title IV because its "language and structure establish that Congress intended TRS to be an evolving service that would expand beyond traditional TTY relay service as new technologies developed."[19] The Commission therefore proposed recognizing new forms of TRS that it believed would "broaden the potential universe of TRS users" and "further promote access to telecommunications for the millions of persons with disabilities who might otherwise be foreclosed from participating in our increasingly telecommunications and information-oriented society."[20]

6. In March 2000, the Commission adopted its tentative conclusions that STS and VRS are forms of TRS. The Commission found that STS "would help break the insularity barriers that confine members of the community of people with speech disabilities and offer them opportunities for education, employment, and other, more tangible benefits ... that are concomitant with independence."[21] The Commission further concluded that TRS encompasses VRS, and that VRS would make relay services functionally equivalent to conventional telephone service for individuals whose first language is ASL.[22] The Commission did not mandate the provision of VRS, given its technological infancy.[23] The Commission nevertheless encouraged the use and development of VRS, and to this end stated that, on an interim basis, all VRS calls would be eligible for cost recovery from the Interstate TRS Fund.[24] Finally, as discussed more fully below, the Commission also concluded that any non-English language relay services in a shared language, such as Spanish-to-Spanish, are telecommunications relay services, and required interstate common carriers to provide interstate Spanish relay service.[25]

(Continued from previous page)
TRS important to "bridge the gap between the communications-impaired telephone user and the community at large," and emphasized that to "participate actively in society, one must have the ability to call friends, family, business and employers." *Id.*

[18] *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990,* CC Docket No. 90-571, Notice of Proposed Rulemaking, 13 FCC Rcd 14187 (May 20, 1998) (*1998 TRS NPRM*). This NPRM followed a Notice of Inquiry. *See Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996*, CC Docket No. 90-571, Notice of Inquiry, 12 FCC Rcd 1152 (Jan. 14, 1997).

[19] *1998 TRS NPRM,* 13 FCC Rcd at 14193, para. 14.

[20] *Id.,* 13 FCC Rcd at 14188-14189, para. 2.

[21] *Improved TRS Order & FNPRM,* 15 FCC Rcd at 5149-5150, paras. 15, 16 (quoting reply comments of Katherine Keller at 4). The Commission made STS a mandatory service, requiring all common carriers to offer the service throughout their service areas. *Id.,* 15 FCC Rcd at 5149, para. 15.

[22] *Id.* 15 FCC Rcd at 5152-5153, para. 23.

[23] *Id.,* 15 FCC Rcd at 5152, para. 22.

[24] *Id.,* 15 FCC Rcd at 5152-5154, paras. 23-27.

[25] *Id.,* 15 FCC Rcd at 5154-5155, para. 29; *see* paras. 9-11, *infra.*

7. In April 2002, the Commission further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS.[26] In reaching this conclusion, the Commission noted that Congress did not adopt a narrow definition of TRS, but rather "used the broad phrase 'telephone transmission service' that was constrained only by the requirement that such service provide a specific functionality."[27] In June 2003, the Commission released the *Second Improved TRS Order & NPRM*, again expanding the scope of TRS to encompass new types of TRS calls, including two-line voice carry-over (VCO) and two-line hearing carry-over (HCO).[28] The Commission stated that "[a]s technology has further developed, new variations of traditional TRS are now available to support the preferences and needs of persons with hearing and speech disabilities."[29]

8. Finally, in August 2003, the Commission concluded that captioned telephone VCO service is a type of TRS eligible for cost recovery under Section 225.[30] In reaching this conclusion, the Commission noted that "the types and forms of relay services that we have found to fall within the definition of TRS have neither been static nor limited to relay services involving a TTY or the PSTN."[31] The Commission also emphasized that "captioned telephone service ... will reach a segment of the population [persons who develop a hearing disability later in life and have some residual hearing] that

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[26] *IP Relay Declaratory Ruling & FNPRM*, 17 FCC Rcd at 7779-7780, para. 1.

[27] *Id.*, 17 FCC Rcd at 7783, para. 10 (quoting 47 U.S.C. § 225((d)(2)). In concluding that TRS "should be interpreted broadly," the Commission also emphasized that "Section 225 specifically directs us to 'ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of the Act, the use of existing technology and do not discourage or impair the development of improved technology.'" *Id.*

[28] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, 18 FCC Rcd 12379, at 12401-12404, paras. 28-34 (June 17, 2003) (*Second Improved TRS Order & NPRM*). VCO service is a form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation. 47 C.F.R. § 64.601(18); *see generally Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, CC Docket No. 90-571, 6 FCC Rcd. 4657, at 4662, para. 24 (July 26, 1991) (*TRS I*). HCO service is a form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. 47 C.F.R § 64.601(8); *see generally TRS I*, 6 FCC Rcd at 4662, para. 24.

[29] *Second Improved TRS Order & NPRM*, 18 FCC Rcd at 12396, para. 26.

[30] *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, 18 FCC Rcd 16121, para. 1 (August 1, 2003) (*Captioned Telephone Declaratory Ruling*). Captioned telephone service uses a special telephone that has a text display. It permits the user – typically someone who has the ability to speak and some residual hearing – to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying. A CA using specially developed voice recognition technology generates the captions. No typing is involved. Providers of *interstate* captioned telephone service may be compensated from the Interstate TRS Fund; providers of *intra*state captioned telephone service are compensated from the states. *See generally id.* at 16121-16123, 16127-16130, paras. 1-6, 18-23 (describing how captioned telephone works and cost recovery for providers of captioned telephone service). On July 14, 2005, the Commission adopted an order recognizing two-line captioned telephone service as a form of TRS. *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, FCC 05-141 (2005).

[31] *Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 16124-16125, para. 10.

has traditionally not been well serviced by current TRS options," and that "just as VRS has allowed greater functional equivalence in telecommunications for callers who use sign language, ... captioned telephone ... service will provide greater functional equivalence for those people who prefer VCO TRS and use this technology."[32]

C. Non-Shared Language Relay Service

9. In 1998, the Commission first raised the issue whether "multilingual relay services" (MRS), *i.e.*, relay service in a *shared* foreign language (such as Spanish-to-Spanish), and "translation services," *i.e.*, relay services between two parties who each use a *different* language, were TRS services under Section 225.[33] The Commission tentatively concluded that Title IV of the ADA, as a general matter, only encompasses "same-language MRS,"[34] and that such calls, to the extent voluntarily provided, should be compensated by the intrastate jurisdiction or the Interstate TRS Fund, as appropriate.[35] The Commission also tentatively concluded that "translation TRS," especially foreign language translation services, are "value-added TRS offerings that go beyond the 'relaying' of conversations between two end users," and therefore should not be compensable from the Interstate TRS Fund.[36] The Commission sought comment on whether an exception should be made for ASL translation services, explaining that because ASL is a language unique to the deaf community, "ASL translation services may be necessary to provide 'functional equivalency' to ASL users."[37]

10. In March 2000, the Commission concluded that MRS – non-English language relay services that relay conversations in a *shared* language – are TRS services compensable by either the intrastate jurisdiction or the Interstate TRS Fund.[38] The Commission recognized that "Spanish is the most widely spoken non-English language in the United States," and that "the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing."[39] The Commission concluded that "[t]his warrants the availability of interstate Spanish relay service," and therefore mandated that interstate common carriers provide interstate Spanish relay services

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[32] *Id.*, 18 FCC Rcd at 16127, para. 16.

[33] *1998 TRS NPRM*, 13 FCC Rcd at 14201-14202, paras. 35-39.

[34] *Id.*, 13 FCC Rcd at 14202, para. 39 (for example, Spanish-to-Spanish relay, so that a deaf person who uses the Spanish language could communicate with a voice telephone user in Spanish through a CA who was fluent in Spanish).

[35] *Id.*, 13 FCC Rcd at 14202, para. 38.

[36] *Id.*, 13 FCC Rcd at 14202, para. 39.

[37] *Id.* At the time, the Commission had not yet recognized VRS as a form of TRS, and therefore the Commission was referring to ASL translation services involving the translation of *typed* ASL into English. The Commission noted that "ASL is primarily a visual language, and not a written or text-based language," and therefore sought comment on "whether ASL, when not presented visually but 'typed' on a TTY, is capable of being translated to English in an objective and reliable manner, with a low risk of misunderstanding or CA error." *Id.*

[38] *Improved TRS Order & FNPRM*, 15 FCC Rcd at 5154-5155, para. 29; *see generally* 47 C.F.R. § 64.601(9) (defining "[n]on-English language relay service" as using a shared language other than English; for example, when a deaf person using Spanish language makes a relay call to a Spanish-speaking person through a CA that reads and speaks Spanish).

[39] *Improved TRS Order & FNPRM*, 15 FCC Rcd at 5155, para. 30.

by March 1, 2001.[40] The Commission added that while it was mandating only interstate Spanish relay service, any non-English language relay service provided by an interstate relay provider would be compensable from the Interstate TRS Fund.[41] The Commission also stated that although it was not requiring each state TRS program to offer intrastate Spanish (or any other non-English language) relay service, it urged states to consider offering such services if the need arose, noting that there could otherwise be "an adverse effect on the personal and economic well-being of individuals who speak a language other than English, making employment and education more difficult for them to attain."[42]

11. With respect to non-shared language relay service, the Commission concluded that the translation of typed ASL to English was TRS because it was necessary to provide "functional equivalency" to ASL users.[43] The Commission noted that "where a TTY user's message is in ASL, the CA will, upon request of the TTY user, repeat the message to the hearing person using standard spoken English, and the CA will repeat the hearing person's message by typing in ASL."[44] The Commission stated that "because the grammar and syntax of ASL are different from English, if this were not done, the hearing party may not understand the information as well as if it is presented in English, and vice versa."[45] The order did not otherwise address non-shared language TRS.

12. The Texas Public Utilities Commission (TX PUC) filed a petition for reconsideration, requesting that the Commission allow other non-shared language relay translation service (beyond ASL to English translation service) to be compensable from the Interstate TRS Fund.[46] The TX PUC stated that there is a great demand for such service, and that the need for this service is particularly important for many deaf children of Latino origin.[47] The TX PUC explained that many such children live in homes where Spanish is the spoken language, but the children are educated at school in ASL and English.[48] Therefore, many deaf children of Spanish-speaking families are not able to participate in family communications.[49] Sprint filed comments supporting the petition, stating that the provision of Spanish-to-English relay service is necessary to enable deaf children of Spanish-speaking parents to communicate

[40] *Id.*, 15 FCC Rcd at 5154-5155, paras. 29-30. Accordingly, since March 1, 2001, interstate common carriers have been required to provide interstate Spanish relay service.

[41] *Id.*, 15 FCC Rcd at 5155, para. 30.

[42] *Id.*, 15 FCC Rcd at 5155, para. 31.

[43] *Id.*, 15 FCC Rcd at 5160-5161, paras. 44-46.

[44] *Id.*, 15 FCC Rcd at 5161, para. 46.

[45] *Id.*

[46] Public Utilities Commission of Texas (TX PUC), CC Docket No. 98-67, Petition for Reconsideration (filed March 24, 2000) (TX PUC *Petition*); *see generally Second Improved TRS Order & NPRM,* 18 FCC Rcd at 12435-12436, para. 113.

[47] TX PUC *Petition* at 1-3.

[48] *Id.* at 1.

[49] *Id.* at 1-3.

with their families.[50] Sprint also asserted that the incremental cost of providing such servi ould be *de minimis*.[51]

13. In response to the TX PUC petition, the Commission sought comment o *non-shared* (or multi-lingual) language translation service through relay is a form of TRS co ble from the Interstate TRS Fund.[52] The Commission noted that "[s]ince the time we addressed this issue in the [*1998 TRS NPRM*], the Commission has developed a better understanding of the needs of certain TRS consumers in this area, and recognizes that multi-lingual translation service through TRS may meet the unique needs of certain identifiable TRS users."[53] The Commission sought comment on whether provision of this service is consistent with, or necessary under, the functional equivalency mandate.[54] The Commission also sought comment on how multilingual translation service for TRS would be implemented with VRS, STS, and other forms of TRS.[55]

14. Several parties filed comments responding to this issue. Commenters representing TRS providers and disability advocacy groups asserted that non-shared language relay should be recognized as TRS, because it provides functionally equivalent relay service for millions of deaf children, parents, or friends who wish to communicate by telephone with Spanish-speaking Americans but cannot, because the persons who are deaf have been educated in ASL and English.[56] Commenters in opposition generally maintained that non-shared language translation goes beyond the functional equivalency mandate because it provides relay users with a service not offered to non-relay voice telephone users, *i.e.*, the ability, as part of their basic telephone services, to call and communicate with a person who speaks a different language.[57]

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[50] Comments and Opposition of Sprint Corporation, CC Docket No. 98-67 (filed Aug. 22, 2000).

[51] Sprint Comments at 4.

[52] *Second Improved TRS Order & NPRM*, 18 FCC Rcd at 12436, para. 114. The Commission stated that because it was not clear whether the petition sought compensation for all multi-lingual VRS calls or only for ASL-to-Spanish VRS, it would seek comment on the compensability of non-shared language relay services generally, rather than any specific variety thereof. *Id.*, 18 FCC Rcd at 12435-12436, para. 113 n.341.

[53] *Id.*, 18 FCC Rcd at 12436, para. 114.

[54] *Id.*

[55] *Id.*

[56] *See, e.g.*, Comments filed by Communication Services for the Deaf, Inc. (CSD) (Sept. 24, 2003) at 5-6; Comments filed by Hands On Video Relay Services, Inc. (Hands On) (Sept. 24, 2003) at 4; Comments filed by Sprint Corp. (Sprint) (Sept. 24, 2003) at 8-9; Comments filed by Telecommunications for the Deaf, Inc. *et al* (TDI Coalition) (Sept. 24, 2003) at 9-10; Reply Comments filed by the TDI Coalition (Oct. 30, 2003) at 5-6; Comments filed by The State of Maryland Department of Budget & Management (MD DBM) (Oct. 10, 2003) at 4.

[57] *See, e.g.*, Comments filed by AT&T (Sept. 24, 2003) at 8-9; Comments filed by the Public Service Commis of the State of Missouri (MO PSC) (Sept. 23, 2003) at 3; Reply Comments filed by the Iowa Utilities Board UB) (Aug. 1, 2003) at 3; Reply Comments filed by SBC (Oct. 9, 2003) at 4; Comments filed by Verizon (Se 2003) at 12; *see also* Comments filed by the California Public Utilities Commission (CA PUC) (Sept. 24, 2 6; Reply Comments filed by WorldCom, Inc. d/b/a MCI (Oct. 9, 2003); Reply Comments filed by Verizon (2003) at 5.

15. In 2004, the Commission found that non-shared language TRS is value-added translation service that is not compensable from the Interstate TRS Fund.[58] At the same time, the Commission recognized that states, in their efforts to tailor intrastate TRS to meet the needs of their citizenry, may identify the need to offer non-shared language TRS.[59] The Commission stated that "[w]e support, and in fact encourage, states to assess the need for, and if appropriate offer, non-shared language intrastate TRS."[60] In this regard, the Commission noted that it was not concluding that offering non-shared language TRS conflicts with Commission rules, but rather that the offering of such a service is an example of an entity permissibly exceeding the mandatory minimum standards.[61]

D. The Petitions for Reconsideration

16. Three parties seek reconsideration of the Commission's conclusion that non-shared language TRS service is not a form of TRS compensable from the Interstate TRS Fund.[62] Specifically, they assert that non-shared language Spanish translation Video Relay Service – *i.e.*, VRS where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and *vice versa* – is a form of TRS compensable from the Interstate TRS Fund.[63]

17. CSD argues that "the enormous size of America's Spanish-speaking population means that the provision of VRS between ASL and Spanish-speaking users is needed to achieve functional equivalent relay service."[64] CSD notes that the recent growth of the Spanish-speaking population in America has been "extraordinary," and that the Commission's disability access rules already reflect this fact. CSD notes, for example, that the Commission has already required Spanish-to-Spanish interstate relay services, "singling out this language only because '[t]he number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing.'"[65] CSD further argues that it is inconsistent to permit reimbursement for ASL-to-English VRS, but not ASL-to-Spanish VRS.[66] CSD asserts, in other words, that having recognized "at least one translation relay service" to achieve functional equivalency, it "makes little sense to deny reimbursement for relay translation between ASL and Spanish-speaking people," particularly because after English, Spanish is the next most widely spoken language in the country.[67] Further, CSD emphasizes that authorizing ASL-to-

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[58] *2004 TRS Report & Order,* 19 FCC Rcd at 12504-12505, paras. 60-61.

[59] *Id.,* 19 FCC Rcd at 12504-12505, para. 61.

[60] *Id.*

[61] *Id.*

[62] Petitions for reconsideration of this issue were filed by Communication Services for the Deaf, Inc. (CSD) (Sept. 30, 2004) (CSD *Petition*), the National Video Relay Service Coalition (NVRSC) (Oct. 1, 2004) (NVRSC *Petition*), and Hands On (petition for partial reconsideration) (Oct. 1, 2004) (Hands On *Petition*). The petitions filed by CSD and Hands On also seek reconsideration of other aspects of the *2004 TRS Report & Order,* which we will address separately.

[63] These parties do not argue for the recognition of non-shared language TRS services outside the context of ASL-to-Spanish VRS, and such services are beyond the scope of our holding here.

[64] CSD *Petition* at 2; *see generally* CSD *Petition* at 2-13.

[65] *Id.* at 3-4 (quoting *Improved TRS Order & FNPRM,* 15 FCC Rcd at 5155, para. 30).

[66] *Id.* at 6-7.

[67] *Id.* at 7.

Spanish VRS is particularly critical for deaf Latino children because such children are educated in ASL and therefore can communicate by telephone with their relatives and other Spanish-speaking persons only through non-shared language TRS.[68] Finally, CSD suggests that the cost to provide non-shared language ASL-to-Spanish calls would not be any greater than that for ASL-to-English calls, and that ASL-to-Spanish calls would likely constitute no more than one to two percent of all VRS calls.[69] NVRSC makes similar arguments.[70]

18. In response to the petitions for reconsideration, eighteen individuals filed comments in support, making many of the same arguments made by petitioners.[71] These comments generally express the desire of deaf members of the Latino community to have the ability to communicate over the telephone via VRS in ASL, their native language, with the members of the Spanish-speaking community who are not deaf.[72] No comments opposed recognizing Spanish translation VRS as a form of TRS compensable from the Interstate TRS Fund.

III. DISCUSSION

19. We reverse the Commission's prior ruling on this issue and conclude that ASL-to-Spanish VRS – *i.e.*, relay service where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and *vice versa* – is a form of TRS compensable from the Interstate TRS Fund. Accordingly, we grant the petitions for reconsideration on this issue filed by CSD, NVRSC, and Hands On.[73] NECA shall compensate providers of this service at the same rate we adopt for VRS when a Spanish translation service is not involved. In reaching this conclusion, we find that it is essential that members of the large Spanish-speaking population in this country who are deaf, hard of hearing, or have a hearing disability, and for whom ASL is their primary language, have the means to communicate via

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[68] *Id.* at 10. CSD states that "deaf children have two disadvantages when communicating over the telephone – first, they cannot communicate in Spanish because the deaf schools have not taught them Spanish, and second, they cannot communicate orally because they are deaf. Without VRS access, they are left with virtually no way to communicate over the telephone with their Spanish-speaking family and friends." CSD *Petition* at 11.

[69] *Id.* at 7 n.20, 9 n.25.

[70] *See, e.g.*, NVRSC *Petition* at 6-7. Hands On's petition for reconsideration incorporates CSD's arguments on this issue. Hands On *Petition* at 23.

[71] Other comments in response to other issues in the petitions for reconsideration were filed by CSD (Nov. 15, 2004), Sprint Corporation (Sprint) (Nov. 15, 2004), the United States Telecom Association (USTA) (Nov. 15, 2004), and MCI, Inc. (MCI) (Nov. 15, 2004). Hamilton filed reply comments (Nov. 30, 2004); Sorenson Media, Inc. (Sorenson) filed an opposition to the petitions for reconsideration (Nov. 15, 2004); Hands On (Nov. 24, 2004) and NVRSC (Nov. 30, 2004) filed replies to Sorenson's opposition; and the Registry of Interpreters for the Deaf, Inc. (RID) filed a reply to a reply to the Sorenson opposition (Feb. 14, 2005). Only the individual commenters addressed the non-shared language TRS issue. *See 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, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 04-137*, Public Notice, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, 19 FCC Rcd 19929 (Oct. 15, 2004).

[72] *See, e.g.*, Comments of Debbie Alonso (filed Nov. 8, 2004); Comments of Lydia Esqueda (filed Nov. 8, 2004); Comments of Yolanda Rios (filed Nov. 19, 2004); Comments of John A. Serrano (filed Nov. 8, 2004).

[73] We note that the petitions for reconsideration only addressed Spanish language translation VRS, *i.e.*, ASL-to-Spanish VRS. *See* note 63, *supra*.

the telephone system with persons without such disabilities who speak Spanish, in keeping with the goal of universal service.

A. ASL-to-Spanish VRS Meets the Needs of an Identifiable Segment of the Population of Persons with Hearing and Speech Disabilities

20. As explained above, the Commission has recognized that Congress intended TRS to be an evolving service that would encompass new developments in technology and meet the needs of identifiable segments of the population of persons with hearing and speech disabilities.[74] The Commission has also recognized Congress' clear direction that Title IV and the TRS regime are intended to further the goals of universal service by bringing persons with hearing and speech disabilities into the "telecommunications mainstream" and facilitating their educational and employment opportunities.[75] To this end, Section 225 specifically directs the Commission to ensure that TRS is available "to the extent possible" to persons with hearing and speech disabilities in the United States.[76]

21. The Commission's recognition of new forms of TRS to meet the particularized needs of certain persons with hearing and speech disabilities has not been confined to addressing the needs of persons with certain disabilities (*e.g.*, Speech-to-Speech)[77] or the use of new technologies (*e.g.*, VRS and captioned telephone service). It has also included recognizing that persons with hearing and speech disabilities who do not speak English should have access to the telephone system, and therefore that some non-English language relay service should be provided. As stated above, the Commission has concluded that the provision of Spanish language relay service is essential to ensuring that the nation's large Spanish-speaking population has access to the telephone system.[78]

22. We find that the recognition of ASL-to-Spanish VRS as a form of TRS compensable from the Interstate TRS Fund serves once again to meet the needs of an identifiable segment of the population of persons with hearing and speech disabilities, and therefore to further the goal of universal service, consistent with the Commission's decisions noted above. The record reflects both that there is a large and growing Spanish-speaking population in this country, and that deaf members of this population, educated in ASL, cannot communicate with their family and friends who speak only Spanish. Indeed, the Commission has previously recognized that "the provision of non-shared language relay service may satisfy a particular need of persons with hearing or speech disabilities."[79] Further, the Commission has specifically recognized both shared non-English language relay service and VRS as forms of TRS

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[74] *See* paras. 5-8, *supra*.

[75] House Report at 129.

[76] 47 U.S.C. § 225(b)(1).

[77] The Commission has recognized, for example, that Speech-to-Speech is a form of TRS because it enables persons with speech disabilities to have access to the telephone system in a manner similar to persons without such a disability, and that in the absence of this service, persons with speech disabilities would remain more isolated and less able to enjoy the educational and employment opportunities available to others. *Improved TRS Order & FNPRM*, 15 FCC Rcd at 5149-5150, para. 16.

[78] *Id.*, 15 FCC Rcd at 5155, para. 30. The Commission also noted that both intrastate and interstate Spanish relay service was available in 18 states "that have recognized the need for Spanish relay service." *Id.*

[79] *2004 TRS Report & Order*, 19 FCC Rcd at 12504, para. 60.

compensable from the Interstate TRS Fund, and that precluding such services through a narrow reading of the statute would be inconsistent with Congress' intent in enacting Title IV of the ADA.[80]

23. First, the record reflects that there are nearly 40 million Latinos living in the United States, and that number will increase to over 60 million by 2025, representing over 18% of the population.[81] This is the largest minority population in the nation, and Spanish is the most widely used non-English language spoken in the United States.[82] The record also reflects that, as reported by Gallaudet University, as many as 24.5% of all deaf and hard of hearing students age three and over are Latino.[83] We have previously acknowledged that Hispanics are the fastest growing minority group in the deaf school age population.[84] Relatedly, we note that Spanish is the predominant language in Puerto Rico, which has a certified state relay program under the Commission's rules.[85] As NVRSC has noted, in Puerto Rico, where Spanish is the primary language, failure to compensate for ASL-to-Spanish VRS "leads to the absurd result that ... Hispanic people who are deaf or hard of hearing using ASL must have their VRS conversations translated into English, a language that is either not spoken or is a second language for most Puerto Ricans."[86]

24. Second, the Commission has also acknowledged that for many deaf Hispanic persons, particularly children, ASL is their primary language, even though it is not the language used in their home.[87] As a result, as CSD has noted, "[b]ecause they do not learn Spanish in the deaf and residential day schools they attend, the only way for these children to communicate with their relatives by telephone – especially because many are young and cannot yet type – is through non shared-language VRS."[88] In other words, the particular communications needs of deaf children raised in Spanish-speaking households arise precisely because the children are deaf, and therefore learn ASL as their primary language and not Spanish. Recognizing non shared-language Spanish translation VRS as a form of TRS therefore empowers these persons to have access to the telephone system to communicate with their families, and also to become more fully integrated into society. The legislative history of Title IV makes clear that the lack of telephone access for persons with certain disabilities relegated them to "second-class citizenship," and that the relay system was intended to empower such persons to have greater control over their own

[80] *Improved TRS Order & FNPRM,* 15 FCC Rcd at 5153-5154, paras. 24-27 (VRS); at 5155, paras. 30-31 (shared non-English language relay service).

[81] CSD *Petition* at 3.

[82] *Id.* at 3; *Improved TRS Order,* 15 FCC Rcd at 5155, para. 30.

[83] *See* CSD *Petition* at 10.

[84] *2004 TRS Report & Order,* 19 FCC Rcd at 12503, para. 57 nn.196, 198.

[85] Territories such as Puerto Rico are encompassed by Section 225 and the TRS regulations. *See* 47 U.S.C. § 225(b)(1); 42 U.S.C. § 12102(3). Puerto Rico's state TRS program was re-certified by the Commission on July 24, 2003. *Notice of Certification of State Telecommunications Relay Service (TRS) Programs,* Public Notice, CC Docket No. 98-67, 18 FCC Rcd 15322 (July 24, 2003); *see generally* http://welcome.topuertorico.org/descrip.shtml (noting that language has been a central issue in Puerto Rican education and culture since 1898, and that now English and Spanish are both official languages in Puerto Rico).

[86] NVRSC *Petition* at 10.

[87] *2004 TRS Report & Order,* 19 FCC Rcd at 12503, para. 57 n.198.

[88] CSD *Petition* at 10.

lives and greater opportunities.[89] Therefore, we agree with CSD that "[p]recisely because Spanish-speaking Latino Americans make up so large a portion of the American population, [the Commission] should be taking actions to enhance, not reduce communication between deaf people and Americans who speak Spanish. Denying people who are deaf and hard of hearing the right to use VRS to communicate with the overwhelming number of individuals who speak Spanish violates the[] ADA goals [of] improv[ing] the independence, productivity, and integration of relay users."[90]

B. Recognition of ASL-to-Spanish VRS as a Form of TRS is Consistent with the Recognition of VRS as a Form of TRS

25. In reaching the conclusion that ASL-to-Spanish VRS is TRS, we find significant, as have petitioners and commenters, that TRS already entails translation between two languages, English and ASL.[91] The Commission has previously recognized that ASL is not English.[92] For two persons to communicate with each other using these languages there must be a translation between a spoken language (English) and a visual language (ASL), each with its own grammatical structure and syntax.[93]

26. Further, we now conclude that the Commission's previous characterization of ASL-to-Spanish translation VRS as a "value added" service was misplaced.[94] As we have noted, for certain identifiable segments of the population, the only way to communicate via telephone in a functionally equivalent manner is by ASL-to-Spanish translation VRS. Therefore, although a translation to Spanish may be a value added service for *hearing persons*, or in other contexts, we do not believe it can be fairly characterized as such for the deaf community for whom ASL is their primary language. As the record reflects, for deaf children who are raised in Spanish-speaking homes, and who are taught ASL in school as their primary language, without this service it is virtually impossible to communicate with their Latino communities.[95]

27. We also believe that the statutory mandate of functional equivalency must serve primarily as a benchmark for determining those services and features that TRS must offer, not as a barrier that precludes the recognition of new forms of TRS that give access to the nation's telephone system to identifiable groups of persons with hearing and speech disabilities. Significantly, the Commission has made clear that functional equivalency is reflected in the services and features required by the mandatory minimum standards that a provider must offer to receive compensation from the Interstate TRS Fund.[96] At the same time, the TRS regulations recognize that states may offer services that exceed the mandatory

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[89] *Id.* at 8 (citing legislative history).

[90] *Id.* at 8-9.

[91] *See, e.g.,* NVRSC *Petition* at 6-7.

[92] *See, e.g., 1998 TRS NPRM,* 13 FCC Rcd at 14202, para. 39; *Improved TRS Order & FNPRM,* 15 FCC Rcd at 5160-5161, paras. 45-46.

[93] *See also* CSD *Petition* at 6. CSD adds that "[i]t was for this very reason that VRS was first created – it was seen as a means of enabling ASL users who were not sufficiently acquainted with the English language to be able to communicate with hearing people who did not know ASL." CSD *Petition* at 6.

[94] *See 2004 TRS Report & Order,* 19 FCC Rcd at 12504, para. 60.

[95] *See* CSD *Petition* at 10.

[96] *See, e.g., 2004 TRS Report & Order,* 19 FCC Rcd at 12547-12548, para. 189.

minimum standards, as long as they do not conflict with the existing standards; indeed, in the past the Commission has encouraged states to do so with regard to non-shared language TRS.[97] The determination of whether a particular service falls within the scope of TRS and is compensable from the Fund must take into account the purpose of the service and whether it affords persons with hearing and speech disabilities a means of functionally equivalent access to the nation's telephone system.

C. Recognition of ASL-to-Spanish VRS as a Form of TRS is Consistent with the Commission's Focus on Spanish Language Access in Other Contexts

28. The conclusion that ASL-to-Spanish VRS falls within the scope of TRS compensable from the Interstate TRS Fund is also supported by the special emphasis the Commission has placed on providing the nation's Spanish-speaking population with access to communications in other contexts. First, as we have noted above, the Commission concluded that the provision of Spanish-to-Spanish relay service is essential to ensuring that the nation's large Spanish-speaking population has access to the telephone system. The Commission explained that "[j]ust as the voice telephone network allows for a Spanish-speaking user to call a parent and speak in Spanish, TRS users should have the same functional equivalency."[98] The Commission found that because Spanish is the most widely spoken non-English language in the country, it was appropriate that the Commission mandate the availability of interstate Spanish relay service; at the same time, the Commission left to the states the determination whether particular demographics made it appropriate to offer other non-English language relay service.[99]

29. Second, the Commission has adopted captioning rules for Spanish language programming because there was already a market for such programming in the United States.[100] The Commission explained that it was extending its disability access obligations only to Spanish video programmers because "the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing."[101] The Commission also noted that it was appropriate to require Spanish language captioning because the captioning rules applied to programming in Puerto Rico.[102]

30. Third, the Commission's website has a homepage that contains information written in Spanish about its rules and regulations.[103] Consumers also have access to numerous Commission

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[97] *Id.*, 19 FCC Rcd at 12504-12505, para. 61.

[98] *Improved TRS Order*, 15 FCC Rcd at 5155, para. 30.

[99] *Id.*, 15 FCC Rcd at 5155, para. 31.

[100] *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973 (Oct. 2, 1998) (*1998 Order on Reconsideration*).

[101] *Id.*, 13 FCC Rcd at 20015-20016, para. 95.

[102] *Id.*, 13 FCC Rcd at 20015, para. 95 n.312. We note that Spanish language programming is required to be closed captioned "using a longer transition period to allow Spanish language programmers to develop the means to accommodate the logistical difficulties associated with captioning such programming and for the market for Spanish language captioning to develop." *Id.*, 13 FCC Rcd at 20015-20016, para. 95. As of January 1, 2010, 100% of new nonexempt Spanish language video programming must be captioned; as of January 1, 2012, 75% of pre-rule Spanish language programming must be captioned. *See* 47 C.F.R. § 79.1(b)(4).

[103] *See* http://www.fcc.gov/cgb/consumerfacts/spanish/spanish.html, which is entitled "Bienvenidos" (welcome) and highlights important consumer issues for Spanish-speaking consumers.

Factsheets and other documents that have been translated to Spanish.[104] In sum, the Commission has endeavored in a variety of contexts to make its services and information accessible to the nation's large population of Spanish-speaking persons.

D. Recognition of ASL-to-Spanish VRS as a Form of TRS Will Not Have an Undue Impact on the Interstate TRS Fund

31. Finally, the record reflects that allowing compensation from the Interstate TRS Fund for ASL-to-Spanish VRS will not have an appreciable impact on the required size of the Fund. We are mindful that the size of the Interstate TRS Fund has been rapidly increasing in recent years, largely due to the popularity of the two Internet-based relay services (IP Relay and VRS), and that a larger Fund size requires a higher carrier contribution factor, with costs ultimately passed on to all consumers. But as we have noted, the record indicates that ASL-to-Spanish VRS calls should constitute no more than one to two percent of all VRS calls.[105] Therefore, as the Commission stated when it recognized STS as a form of TRS, we find that "no information has been presented that demonstrates that [ASL-to-Spanish VRS] is too costly relative to the benefit derived from [this service]."[106] Further, the record also reflects that the operational cost of providing ASL-to-Spanish VRS is not likely to be significantly more than ASL-to-English VRS.[107] Prior to the *2004 TRS Report and Order*, CSD had been providing ASL-to-Spanish VRS service for a period in 2002 and 2003 at the same rate as ASL-to-English VRS service.[108]

E. Conclusion

32. We therefore conclude that ASL-to-Spanish VRS – *i.e.*, relay service where the CA translates what is signed from ASL to spoken Spanish, and *vice versa* – is a form of TRS compensable from the Interstate TRS Fund.[109] Accordingly, providers offering ASL-to-Spanish VRS may be

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[104] The Commission has endeavored to provide Spanish translations of Commission Factsheets and Consumer Advisories. In addition, because we receive a large number of inquiries about charges on telephone bills, we have sample telephone bills available (both wireline and wireless) with definitions in Spanish of all line item terms. We also have translated telephone complaint Form 475, and "slamming" complaint Form 501, into Spanish to allow Spanish-speaking consumers to easily file complaints with the Commission.

[105] CSD *Petition* at 9 n.25.

[106] *Improved TRS Order,* 15 FCC Rcd at 5151, para. 19.

[107] *See, e.g.,* CSD *Petition* at 7 n.20, 9 n.25; Hands On's petition for reconsideration incorporates CSD's arguments on this issue. Hands On *Petition* at 23; NVRSC *Petition* at 6-7.

[108] CSD *Petition* at 9.

[109] We remind providers (and consumers) that VRS is not the same as Video Remote Interpreting (VRI), and that VRS, including the ASL-to-Spanish VRS that we recognize in this *Order on Reconsideration,* may not be used when two persons are together and an interpreter is needed. As the Commission has explained, VRI is a service that is used when an interpreter cannot be physically present to interpret for two persons who are together at the same location (for example, at a meeting or in a doctor's office). *See Federal Communications Commission Clarifies That Certain Telecommunications Relay Services (TRS) Marketing And Call Handling Practices Are Improper And Reminds That Video Relay Service (VRS) May Not Be Used As A Video Remote Interpreting Service*, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123 (Jan. 26, 2005). In that situation, an interpreter at a remote location may be used via a video connection. A fee is generally charged by companies that offer this service. By contrast, VRS, like all forms of TRS, is a means of giving access to the telephone system. Therefore, VRS is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system (or (continued....)

compensated from the Interstate TRS Fund. Because presently VRS is not a mandatory service, we also do not make ASL-to-Spanish VRS a mandatory service at this time.[110] Further, NECA shall compensate providers of this service at the same rate we adopt for VRS when a Spanish translation service is not involved.[111]

IV. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Certification

33. The Regulatory Flexibility Act of 1980, as amended (RFA),[112] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[113] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[114] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[115] 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).[116] Nationwide, there are approximately 1.6 million small organizations.[117]

34. This *Order on Reconsideration* addresses three petitions for reconsideration of the Commission's prior conclusion that non-shared language TRS service is not a form of TRS compensable

(Continued from previous page)
when, in the reverse situation, the hearing person desires to make such a call to a person with a hearing disability). In circumstances where a person with a hearing disability desires to communicate with someone in person, he or she may not use VRS but must either hire an "in-person" interpreter or a VRI service.

[110] We note that presently we have not mandated the provision of VRS, and that the issue whether the service should be mandatory was raised in the FNPRM in the *2004 TRS Report & Order,* and is presently pending. *See 2004 TRS Report & Order,* 19 FCC Rcd at 12567-12568, paras. 243-245.

[111] We note that the petitions for reconsideration only addressed Spanish language translation VRS, *i.e.,* ASL-to-Spanish VRS. *See* note 63, *supra.* As noted above, the record suggests that compensation of ASL-to-Spanish VRS will not impose costs significantly greater than those associated with ASL-to-English VRS. We leave open the issue whether providers, after the 2005-2006 fund year, may include in their submitted projected costs any additional costs caused by providing ASL-to-Spanish VRS translation service we recognize in this *Order on Reconsideration.*

[112] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[113] 5 U.S.C. § 605(b).

[114] 5 U.S.C. § 601(6).

[115] 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 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."

[116] 15 U.S.C. § 632.

[117] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

from the Interstate TRS Fund.[118] This item reverses the Commission's prior conclusion that non-shared language Spanish translation Video Relay Service—*i.e.*, VRS where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and *vice versa*—is a not a form of TRS compensable from the Interstate TRS Fund. The Commission concludes that the public interest is best served by requiring the Interstate Fund Administrator to pay to eligible providers of ASL-to-Spanish VRS the costs of providing interstate service. We find that it is essential that members of the large Spanish-speaking population in this country who are deaf, hard of hearing, or have a hearing disability, and for whom ASL is their primary language, have the means to communicate via the telephone system with persons without such disabilities who speak Spanish, in keeping with the goal of universal service. In addition, as noted in paragraph 31 of the item, the record reflects that allowing compensation from the Interstate TRS Fund for ASL-to-Spanish VRS will not have an appreciable impact on the required size of the Fund, or that ASL-to-Spanish VRS is too costly relative to the benefit derived from this service. Therefore, given the lack of a significant economic impact, we certify that the requirements of the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

35. 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.[119] 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 ASL-to-Spanish VRS the costs of providing interstate service. The Commission will send a copy of this *Order on Reconsideration*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[120] This certification will also be published in the Federal Register.[121]

B. Paperwork Reduction Act Analysis

36. 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, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

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[118] *See* petitions filed by CSD (Sept. 30, 2004), NVRSC (Oct. 1, 2004), and Hands On (Oct. 1, 2004).

[119] 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.").

[120] 5 U.S.C. § 605(b).

[121] 5 U.S.C. § 605(b).

C. Congressional Review Act

37. The Commission will send a copy of this *Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Materials in Accessible Formats

38. 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 on Reconsideration* can also be downloaded in Word and Portable Document Formats (PDF) at http://www.fcc.gov/cgb.dro.

V. ORDERING CLAUSES

39. 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 *Order on Reconsideration* IS hereby ADOPTED.

40. IT IS FURTHER ORDERED that the Petition for Partial Reconsideration filed by Hands On is GRANTED IN PART, as provided herein; the Petition for Reconsideration filed by CSD is GRANTED IN PART, as provided herein; and the Petition for Reconsideration filed by NVRSC IS GRANTED, as provided herein.

41. IT IS FURTHER ORDERED that this *Order on Reconsideration* shall be effective 30 days after publication in the Federal Register.

42. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *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

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

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), FCC 05-141

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (CG Docket No. 03-123, CC Docket No. 98-67), FCC 05-140

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

Closed Captioning of Video Programming Telecommunications for the Deaf, Inc. Petition for Rulemaking, Notice of Proposed Rulemaking (CG Docket No. 05-231), FCC 05-142

The items that we adopt today should improve the quality of life for individuals with hearing or speech disabilities. One of the critical functions of the Commission is to ensure that these individuals have access to communications technologies in the same manner as people without hearing or speech disabilities. Those consumers that rely on Telecommunications Relay Services and Closed Captioning Services must not be left out of the telecommunications revolution. In each of the orders adopted today, we take measures to fulfill our statutory goal of ensuring that every person has equal access to this nation's communications services.

The four items adopted today coincide with the upcoming 15th anniversary of President George H. W. Bush's signing of the Americans with Disabilities Act (ADA) on July 26th and the recent 25th anniversary of closed captioning which occurred last March. With the passage of the ADA in 1990, the Commission was directed to ensure that hearing or speech disabilities not pose an impediment to communication. I take this charge very seriously. Accessing communication services is vital to the ability of the individuals with disabilities to participate fully in society. The ADA specifically requires the Commission to ensure that Telecommunications Relay Services (TRS) "are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States." In honor of the 15th anniversary of this very important statute, we adopt several items that make TRS more accessible to this community.

During the past 15 years, we have seen the evolution of TRS. Traditional TTY service over regular phone lines has evolved into IP Relay and Video Relay Services (VRS) used over Internet connections. VRS permits users to participate in near real-time conversations in the users' primary language, American Sign Language (ASL). Because of these features, its popularity in the deaf and hard of hearing community has soared. For example, the minutes of use of VRS have increased ten-fold in the past two years and are continuing to grow at a phenomenal rate.

With the steps we take today, we expand the reach of the TRS fund to compensate VRS translations between spoken Spanish and ASL as well as two-line captioned phone service. In addition,

we take an important step to achieving adequate service quality of VRS by, for the first time, imposing speed of answer and hours of service requirements. Just as a hearing person can pick up the phone and immediately place a call, a person with a disability should be able to reach his or her VRS provider to place a call without experiencing unreasonable delays. We also begin a rulemaking on whether our closed captioning rules are achieving our goal of making video programming accessible to the millions of deaf and hard of hearing Americans, and we ask whether any revisions should be made to make these rules more effective.

The Commission is more committed than ever to ensuring that the goals of the ADA are achieved. The actions we take today join the many others that the Commission has taken over the years to eradicate the barriers that stand in the way of functional equivalency. Functional equivalency means individuals with disabilities having access to the same services as everyone else. This equal access is vital to accessing jobs, education, public safety, and simple communications with family, friends, and neighbors.

Although there is still more to do in order to achieve functional equivalence, I am proud of the items adopted today. I want to assure those of you with hearing or speech disabilities that we will not stop actively working to fulfill your need for functional equivalence. We could not have taken today's actions without your valuable input. We thank you for your participation in our proceedings and look forward to working with you and the service providers to come up with solutions to the next set of challenges that we intend to tackle. It is by working together that we can best ensure that the tremendous advances in communications are enjoyed by *all* Americans.

STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123), FCC 05-141

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03-123 and CC Docket No. 98-67), FCC 05-140

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67 and CG Docket No. 03-123), FCC 05-139

Re: Closed Captioning of Video Programming and Telecommunications for the Deaf, Inc. Petition for Rulemaking (CG Docket No. 05-231), FCC 05-142

Lou Ann Walker, a noted advocate for the hearing-impaired, once said that the inability to *hear* is a nuisance, but the inability to *communicate* is a tragedy. These four items will allow consumers with hearing or speech impediments to communicate better by enabling them to receive improved service from their telephones and televisions.

Many of the decisions this Commission is called upon to make involve arcane matters with sometimes ambiguous results. That is not the case here. The issues in these items could not be clearer, and the effects of our rulings could not be more concrete. Today's decisions promise to have a profound and positive impact on the lives of millions of Americans living with hearing and speech disabilities. In short, I am hopeful that by expanding access to TRS and VRS offerings, and by opening a new proceeding to consider our closed captioning rules for video programming, we are helping to turn tragedies into nuisances.

Of course, whenever we enhance offerings such as TRS, VRS, and closed captioning, we must bear in mind the costs imposed by those offerings, which are borne by all consumers. I am pleased that the TRS and VRS items will dramatically expand access to these services *without* significantly increasing the costs involved. I am also satisfied that the *Notice of Proposed Rulemaking* on closed captioning seeks comment on issues relating to cost and practicality, and will produce a full record on those matters for the Commission's consideration.

Finally, I am particularly pleased that we have been able to resolve the cost-containment questions raised by compensating Spanish-language VRS from the Interstate TRS Fund. The record shows that Spanish is, by far, the most widely used non-English language spoken in the United States. It also demonstrates that the costs of providing ASL-to-Spanish VRS service are not significantly greater than the costs associated with ASL-to-English VRS service, a factor that was not clearly evident from the prior record. In my judgment these factors warranted reevaluation, and ultimately reversal, of our earlier decision denying compensation for such services.

One of our most important responsibilities is to make sure that there are no telecom "have-nots," and that the wealth of services provided by today's new technologies are available to *all* consumers. These four items, taken together, help to do just that.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

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), FCC 05-141

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (CG Docket No. 03-123, CC Docket No. 98-67), FCC 05-140

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration (CC Docket No. 98-67, CG Docket No. 03-123), FCC 05-139

Closed Captioning of Video Programming Telecommunications for the Deaf, Inc. Petition for Rulemaking, Notice of Proposed Rulemaking (CG Docket No. 05-231), FCC 05-142

We all join in celebrating the fifteenth anniversary of the Americans with Disabilities Act. It's hard to believe it's already been fifteen years since Congress directed the Commission to ensure that people with disabilities have access to functionally equivalent communications services. "Functional equivalency" may sound like Washington jargon, but for 54 million Americans it translates into equal opportunity, equal rights and fuller participation in society.

We have come a long way in these fifteen years. And I am pleased that the Commission has been a part of some of that progress—expanding TRS, bringing new services like IP relay and VRS into the TRS fold, ensuring hearing aid compatibility with wireless phones. But this would be a hollow celebration if we did not also use this anniversary as a time of rededication, a time of commitment to new goals and new challenges. Because while the old obstacles of access and education and outreach have not been resolved completely, new challenges, born of technology and economic change, rise up to confront us.

The Commission takes on some of these challenges today. By finding that two-line captioned telephone service is eligible for support from the TRS fund, we expand functional equivalency for millions of Americans who are hard of hearing. By developing speed of answer requirements for VRS, we recognize that the ability to make a telephone call without delay is fundamental to our concept of a "rapid, efficient, Nation-wide" communications system. To date, VRS customers have endured unacceptably long waiting times—sometimes, I am told, up to 30 minutes—before being able to place a call. This kind of delay undermines functional equivalency. So I am pleased that today we introduce speed of answer standards that will pare down waiting time, without sacrificing the quality of the interpreting service.

We also reverse last year's misguided decision to exclude some forms of non-shared language TRS from reimbursement. As I pointed out at the time, Spanish speakers are the fastest growing minority group in the deaf school age population in the United States. For this population to communicate in a functionally equivalent manner with their Spanish-speaking parents, American Sign Language-Spanish VRS should be eligible for compensation from the TRS fund. I am pleased that we finally reach this conclusion here.

In addition to these actions on the TRS front, the Commission initiates a Notice of Proposed Rulemaking to update our closed captioning policies. For individuals who are deaf and hard of hearing, closed captions provide a critical link to news, entertainment and emergency information. By granting the petition for rulemaking filed by Telecommunications for the Deaf, the National Association of the Deaf, Self Help for Hard of Hearing People, the Association for Late Deafened Adults and the Deaf and Hard of Hearing Consumer Advocacy Network, we make an effort to keep our rules current and ensure that video programming is accessible to everyone.

Though we make progress today, there are many issues that still need our attention. There are open questions about equipment interoperability and certification for national VRS providers. There is the need always for more outreach and education. And, on another front, the disability community is justly concerned about fallout from the U.S. Supreme Court decision in *Brand X*. They do not want to see semantic exercises in classification and reclassification deny them the victories they have already won and the opportunities that new technologies hold for the future.

So we have our work cut out for us. Even as we celebrate this fifteenth anniversary, there is still a long and winding road to travel—rules to be adopted, jobs to be secured, people to be appreciated for their talents and humanity, hearts and minds to be really won over. Our actions today represent some good strides down that road. I am pleased to support them in full.

Finally, a note of appreciation for the Consumer and Governmental Affairs Bureau. The Disability Rights Office is not the largest office in this agency. But millions of Americans with disabilities—and their friends, and their families, and their co-workers—are better off because of the work of this office. Their efforts keep us all better connected. Thank you.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123 and CC Docket No. 98-67; FCC 05-139, FCC 05-140, FCC 05-141 (July 14, 2005).

In keeping with the fifteenth anniversary of the Americans with Disabilities Act, which we celebrate this summer, we adopt today three items that will improve the quality of and access to important communications services for the deaf and hard of hearing community. These individuals rely on telecommunications relay service (TRS) not only to communicate with friends and family, but also to run successful businesses, reach operators in the event of an emergency, and complete everyday tasks that many of us take for granted. Having been a staff member in the U.S. Senate when the ADA was enacted and having worked on its passage, I remain committed to the goals of the ADA and its requirement that telecommunications services for hearing and speech –disabled individuals be "functionally equivalent" to those services provided to hearing individuals. We must continue our efforts to ensure that these services are available and of high quality. With an understanding of how critical these services are, I approve these Orders, each of which brings us closer to ensuring functionally equivalent services for millions of hearing-impaired and speech-impaired Americans.

I am particularly pleased that the Commission found non-shared language Spanish translation Video Relay Service (VRS) to be a form of TRS compensable from the Interstate TRS Fund. Non-shared language Spanish translation VRS allows a person signing in American Sign Language to communicate with a Spanish speaker through a communications assistant, who translates what is signed into spoken Spanish. When we addressed this same issue in 2004, I emphasized how our country is growing increasingly multi-ethnic and multi-cultural and that I believe the FCC must be responsive to these communities. Today's Order does just that. As a result of this measure, deaf individuals, particularly children who are raised in Spanish-speaking homes but who are taught ASL in school as their primary language, will again be able to harness the power of VRS to communicate with their families and community members.

Today's Order also adopts a speed of answer rule for VRS, requires that VRS be offered around the clock, and provides compensation for VRS Mail from the Interstate TRS Fund. Each of these measures ensures that VRS will remain a high quality service. While many hearing persons take it for granted that they will hear a dial tone when they pick up their telephone, this is not always the case for the millions of hearing-impaired or speech-impaired Americans. We received comments indicating that some individuals have had to wait up to twenty minutes before reaching a communications assistant to begin taking information for their call. These delays are unacceptable, especially considering that the person waiting could be trying to call for an ambulance or to report a crime.

By adopting a phased-in approach for the speed of answer requirement, this Order also responds to concerns that there may not be enough interpreters today to meet our ultimate goals for speed of answer. I'm pleased that we state clearly our intent to re-examine the speed of answer rule in 2007 to determine whether to further tighten this rule, even as we afford VRS providers a reasonable time to reduce their speed of answer times. I appreciate how providers, community organizations, and state and local governments have worked together to support schools across the country in their efforts to recruit and train more qualified interpreters. I hope that this kind of cooperation will continue as more and more interpreters are needed to meet the growing demand for VRS.

Finally, we clarify that two-lined captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund and adopt a specific methodology for compensating such calls. Like one-line captioned telephone service, two-lined captioned telephone service allows the user, typically someone who has the ability to speak and some residual hearing, to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying. Two-lined captioned telephone service also offers several additional benefits, like call waiting and call forwarding. More important, this service also allows users to directly access 911 emergency services. Today's action not only takes another step forward toward securing functional equivalency of TRS services, but it also ensures that this critical service will continue to be offered to the hard of hearing community.

I want to thank Chairman Martin and my colleagues for their commitment on these issues, particularly for their willingness to look again at the question of Spanish-language VRS, which was particularly important to me. I also want to thank Monica Desai and the staff of our Consumer and Governmental Affairs Bureau for their hard work and dedication on these items. I look forward to working with my colleagues and with the hearing and speech impaired communities as we continue to work towards the ADA's enduring standard of accessibility and functional equivalency for all Americans.