BRIEF FOR RESPONDENTS

Oral Argument Not Yet Scheduled

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 17-1198, 17-1202

SORENSON COMMUNICATIONS, LLC, *ET AL.*,

PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION
AND
THE UNITED STATES OF AMERICA,

RESPONDENTS

ON PETITIONS FOR REVIEW OF AN ORDER OF
THE FEDERAL COMMUNICATIONS COMMISSION

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STATEMENT OF PARTIES, RULINGS AND RELATED CASES

1. ***Parties***

All parties appearing in this Court are listed in petitioners' briefs.

2. ***Ruling Under Review***

Structure and Practices of the Video Relay Service Program, 32 FCC Rcd 5891 (2017) (JA --).

3. ***Related Cases***

The order on review has not previously been before this Court or any other court. We are not aware of any related case pending before this Court or any other court.

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2007 TRS Rate Order	*Telecommunications Relay Services and Speech-to-Speech Services*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007)
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Sorenson II	*Sorenson Communications v. FCC*, 765 F.3d 37 (D.C. Cir. 2014)
TRS	Telecommunications Relay Service
VRS	Video Relay Service

VRS Partial Rate Freeze Order	*Structure and Practices of the Video Relay Services Program, et al.*, Report and Order, 31 FCC Rcd 2339(2016) (JA --)

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BRIEF FOR RESPONDENTS

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Pursuant to Section 225 of the Communications Act, 47 U.S.C. § 225, the Federal Communications Commission supports Video Relay Service (VRS), which allows people who are deaf and hard-of-hearing or have speech disabilities to call others using American Sign Language and a videophone. The order on review, *Structure and Practices of the Video Relay Service Program*, 32 FCC Rcd 5891 (2017) (*2017 Order*) (JA --), implements the FCC's latest steps in its ongoing

efforts to reform and improve this service for users, reduce costs to the government fund that supports VRS, and eliminate incentives for waste that have burdened VRS and related services in the past.

Among other things, the Commission adopted VRS rates for the period 2017-2021. Objecting to the "tiered" nature of these rates – although not the rates themselves – Sorenson Communications, Inc. petitioned for review (as it has done twice before, unsuccessfully, with respect to prior rate orders). Video Relay Services Consumer Association (VRSCA), which describes itself as "an information forum" for VRS users that is funded by Sorenson, has filed a separate petition for review that seeks primarily to relitigate the question whether VRS rates should reimburse providers for the cost of providing free equipment to users. The questions presented are:

1. Whether the Commission's tiered rate structure for VRS advances 47 U.S.C. § 225's goals that persons who are deaf and hard-of-hearing be provided with telecommunications service that (a) is "functionally equivalent" to that available to hearing persons and (b) is made "available to the extent possible and in the most efficient manner."

2. Whether petitioner VRSCA has standing.

3. Assuming VRSCA has standing, whether the rate levels the Commission set for VRS undermine 47 U.S.C. § 225's functional equivalence goal, or is otherwise arbitrary and capricious.

JURISDICTION

This Court has jurisdiction to review the *2017 Order* pursuant to 47 U.S.C. § 402(a) and 28 U.S.C. § 2342(1). The order was released on July 6, 2017, and a summary was published in the Federal Register on August 22, 2017, 82 Fed.Reg. 39673. The petitions for review were filed within 60 days of that date, as required by 28 U.S.C. § 2344 and 47 C.F.R. § 1.4(b)(1). The Court lacks jurisdiction to review VRSCA's petition for review because VRSCA lack standing.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are set out in the Statutory Addendum to this brief.

COUNTERSTATEMENT OF THE CASE

a. TRS and VRS.

Telecommunications relay services (TRS) are telephone transmission services that enable persons with hearing or speech disabilities to communicate with hearing individuals "in a manner that is functionally equivalent" to the ability of persons without such disabilities to communicate using voice communications services. 47 U.S.C. § 225(a)(3). There are several types of TRS. The one at issue here is known as Video Relay Service (VRS).

VRS "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment." 47 C.F.R. § 64.601(a)(26). The user with a hearing or speech disability communicates

using sign language via an Internet-based video link with a third-party communications assistant or video interpreter. That assistant interprets the sign language into speech for the hearing person. The other user communicates by using the process in reverse. *See Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035, 1039 (10th Cir. 2011) ("*Sorenson I*"); *Sorenson Communications, Inc. v. FCC*, 765 F.3d 37, 40 (D.C. Cir. 2014) ("*Sorenson II*").

Congress adopted Section 225 of the Communications Act, 47 U.S.C. § 225, in 1990 as part of the Americans With Disabilities Act.[1] The statute requires the FCC "to make available telecommunications relay services (TRS), of which VRS is one, so that individuals with hearing or speech disabilities may have telephone service that is 'functionally equivalent' to the voice system used by hearing individuals." *Sorenson II*, 765 F.3d at 41; *see* 47 U.S.C. § 225(a)(3). It also directed the FCC to ensure that TRS is "available, to the extent possible and in the most efficient manner," to persons with hearing and speech disabilities. 47 U.S.C. § 225(b)(1).

Congress placed the burden of providing TRS directly on "common carrier[s] providing telephone voice transmission services," 47 U.S.C. § 225(c) (*i.e.*, local and long-distance telephone companies), but the FCC additionally authorized third parties that are not traditional telephone companies, such as

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[1] *See* Pub. L. No. 101-336, Title IV, 104 Stat. 327 (1990).

Sorenson, to provide the service. *See Telecommunications Relay Services*, 20 FCC Rcd 20577, 20586-20589 (2005); 47 C.F.R. § 64.603. Now, with the exception of some services provided to the federal government, all VRS is provided by such third parties.

b. TRS/VRS Funding

Just as voice users pay for a wireline, wireless, or broadband connection to get access to voice telephone services, VRS users pay for broadband to get access to video communication services. However, because Section 225 dictates that users of TRS not pay rates greater than the rates paid for functionally equivalent voice communication services, VRS users do not pay an additional amount to use VRS. *See* 47 U.S.C. § 225(d)(1)(D). Instead of collecting money from users, VRS providers are reimbursed directly from a fund, known as the Interstate TRS Fund, that the FCC established pursuant to Section 225. *See* 47 U.S.C. § 225(d)(3)(B). Almost all providers of interstate and international telecommunications services, as well as VoIP (voice over internet protocol) providers, must contribute a percentage of their revenues to this fund, 47 C.F.R. § 64.604(c)(5)(iii)(A), which is administered by an independent entity under contract with the FCC, Rolka Loube Associates. Because these providers typically pass along to their users the costs of contributing to the TRS Fund, the Fund ultimately is financed by all consumers of

covered telecommunications and VoIP services. *Telecommunications Relay Services*, 22 FCC Rcd 20140, 20161 (2007).

Congress directed that VRS providers be allowed to recover "costs caused by" the provision of TRS services and delegated to the Commission the authority to "prescribe regulations governing" the recovery of those costs. 47 U.S.C. §§ 225(d)(3)(A) & (B). Under the Commission's rules, VRS providers are paid by the Fund under per-minute rates established by the agency. *See* 47 C.F.R. § 64.604(c)(5)(iii)(E). Currently, and for a number of years, Sorenson has provided approximately 80 percent of all VRS minutes. *See 2017 Order* ¶30 (JA --); *Sorenson II*, 765 F.3d at 42.

In order to reflect principles of fiscal responsibility, accountability, and administrative efficiency, in 2004 the Commission determined that TRS reimbursement rates should only "cover the reasonable costs incurred in providing the TRS services." *2004 TRS Order*, 19 FCC Rcd at 12543 ¶179; 47 C.F.R. § 64.604(c)(5)(iii)(E) (rates must be set to recover only "reasonable costs"). The FCC has determined that reimbursable costs include only those costs directly incurred to provide TRS service. The Commission thus excludes from reimbursement other, indirect costs – such as research and development costs unrelated to meeting FCC minimum service standards, costs of providing video equipment, software, and technical assistance with VRS user equipment. *See 2004 TRS Order*,

19 FCC Rcd at 12545-12550; *Telecommunications Relay Services*, 21 FCC Rcd 8063, 8070 ¶15-16 & n.50 (2006); *2007 TRS Rate Order*, 22 FCC Rcd at 20175 ¶¶73-82.

Until 2007, the Commission established VRS rates every year based on providers' projections of their costs for the upcoming year. Under that regime, rates were unpredictable and swung widely, ranging from a low of $5.14 to a high of $17.04 per minute. *See 2007 TRS Rate Order*, 22 FCC Rcd at 20145 ¶6. The Commission sought to bring greater predictability to rates to facilitate planning by VRS providers, and accordingly set rates to govern a three-year period. It also established a three-tiered rate structure under which a VRS provider was paid a given rate for minutes in each tier, reflecting the fact that average costs generally decrease as a provider's service volume increases. *Id.* at 20163.

c. Sorenson I

In 2010, the Commission issued an order setting forth interim rates for the following Fund Year (July 1, 2010 through June 30, 2011). *Telecommunications Relay Services*, 25 FCC Rcd 8689 (2010) ("*2010 TRS Rate Order*"). The rates were "interim" because they filled a gap until the Commission completed a review of the VRS program.

Sorenson sought judicial review of the *Interim Rate Order* in the U.S. Court of Appeals for the Tenth Circuit. In a 2011 decision, that court affirmed the Commission's 2010 order in its entirety, rejecting Sorenson's array of challenges to the Commission's rate methodology for VRS and the rates themselves. The court held that the agency's action was consistent with its statutory mandate in Section 225 and was not arbitrary and capricious. *Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035 (10th Cir. 2011).

d. Sorenson II

At the same time as it adopted the 2010 interim rates, the Commission also began an inquiry to take a "fresh look" at VRS rates. *Structure and Practices of the Video Relay Service*, Notice of Inquiry, 25 FCC Rcd 8597, 8598 ¶1 (2010). "Over the past few years," the Commission found, "the per-minute compensation rates have significantly exceeded the estimated average per-minute costs of providing VRS." *Id*. at 8607 ¶30. The entire VRS program, the agency observed, "is fraught with inefficiencies (at best) and opportunities for fraud and abuse (at worst)." *Id*. Review was therefore necessary to "ensure that this vital program is effective, efficient, and sustainable." *Id*. at 8598 ¶1.

In a June 2013 order, the Commission adopted a number of VRS structural reforms, initiated a further rulemaking proceeding to support the adoption of more

far-reaching reforms in the VRS program, and adopted new rates for VRS reimbursement for the upcoming four-year period. Employing essentially the same judicially approved methodology it had used in adopting the 2010 interim rates (relying on the fund administrator's analysis of providers' projected costs and actual historical costs), the Commission adopted a multi-year rate plan that continued to employ a tiered rate structure. The Commission explained that it believed this plan would enable "the VRS industry to transition towards cost-based rates." *2013 Order*, 28 FCC Rcd 8618, 8695 ¶191 (2013).

In addition to revising the VRS reimbursement rate schedule, the Commission also addressed several issues regarding allowable categories of costs and the setting of rate tiers. For example, it rejected Sorenson's "continued urging that we should include user equipment as allowable costs" in determining VRS rates. *2013 Order*, 28 FCC Rcd at 8697 ¶194. The Commission explained that it had "consistently held that costs attributable to the user's relay hardware and software, including installation, maintenance, and testing, are not compensable from the Fund." *Id.* at ¶193. Expenses for which providers are compensated, the Commission pointed out, "'must be *the providers'* expenses in making the service available and not the customer's costs of receiving the equipment. Compensable expenses, therefore, do

not include expenses for customer premises equipment – whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software.'" *Id.*

The Commission also had sought comment on the justification for continuing to maintain a tiered rate structure in which smaller, less efficient VRS providers are reimbursed at a higher rate. The Commission found that there were substantial cost differences between Sorenson, the largest VRS provider, and its smaller competitors. *2013 Order*, 28 FCC Rcd at 8700 ¶203. As a result, the Commission concluded that there was no "compelling reason" to eliminate the tiered structure at that time, even as it sought, by implementing further structural reforms, to "eliminate any residual need for tiered rates." *Id*. 8698 ¶199. The Commission found that it was "worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient providers in the future, in the more competition-friendly environment that we expect to result from our structural reforms." *Id.* 8699 ¶200.

Sorenson sought judicial review of the *2013 Order* in this Court, which for the most part affirmed the order. The Court first found that several of Sorenson's challenges essentially repeated arguments it had earlier made before the Tenth Circuit in *Sorenson I* and were precluded by that court's decision in that case.

Sorenson II, 765 F.3d 37. These issues included a claim that the Commission was required to adopt rates that reimbursed VRS providers for the costs of providing free equipment to users. *See id.* at 45. The Court otherwise concluded that the rates and applicable rules, including the tiered rate structure, were consistent with the statute and were not arbitrary and capricious. *See id.* at 45-52.[2]

e. The Order On Review

In March 2017, the Commission proposed a new four-year plan for VRS rates based, as in prior years, on a tiered rate structure. The Commission explained that, despite the expectation expressed in the *2013 Order* that it might by now be able to move to "a unitary compensation rate for all minutes," its tentative conclusion was that "maintaining a tiered rate structure continues to be necessary to allow smaller providers a reasonable opportunity to continue providing service." *Structure and Practices of the Video Relay Service Program*, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking and Order, 32 FCC Rcd 2436, 2470 ¶83, 2473 ¶88 (2017) ("*2017 FNPRM*") (JA --).[3]

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[2] The Court vacated and remanded one revised rule relating to how quickly VRS providers must answer calls, the "speed-of-answer" requirement, finding that there was not adequate support in the record for the Commission's tightening of the rule. 765 F.3d at 49-50.

[3] Responding to a 2015 proposal from all VRS providers, the Commission in March 2016 had frozen the compensation rates of the smallest VRS providers, which would otherwise have decreased based on the rate plan adopted in 2013, to allow those providers additional time to "reach the optimum scale to compete

Recognizing that the structural reforms initiated in 2013 had been slow to arrive, that VRS providers' market shares had changed little since then, and that smaller providers had per-minute costs substantially higher than those of Sorenson, the dominant, low-cost provider, the Commission proposed to maintain the tiered compensation-rate structure in a modified form. It tentatively concluded that applying a tiered structure for the next four years would best balance the need to maintain a multi-provider VRS market, reflect providers' differing cost structures, and provide compensation rate stability, while minimizing the cost burden on TRS Fund contributors. *Id.*

In July 2017, the Commission adopted a new four-year provider compensation plan for VRS, effective from July 1, 2017 through June 30, 2021. *Structure and Practices of the Video Relay Service Program*, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking and Order, 32 FCC Rcd 5891, 5916-24 ¶¶49-64 (2017) ("*2017 Order*") (JA --).

After examining developments since it had last adopted VRS compensation rates in 2013, the Commission concluded that the "best available alternative at present" for establishing rates for the next four years was to maintain a tiered rate structure. *2017 Order* ¶33 (JA --). The Commission acknowledged that in the *2013*

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effectively …." *Structure and Practices of the Video Relay Services Program, et al.*, Report and Order, 31 FCC Rcd 2339, 2345 ¶12(2016) (JA --) ("*VRS Partial Rate Freeze Order*").

Order it had expressed an anticipation to move away from a tiered rate structure after the 2013-2017 rate plan. But, the Commission explained that most of the considerations underlying that expectation "have not been borne out by experience." *2017 Order* ¶28 (JA --); *see 2017 FNPRM* ¶¶86-87 (JA --).

Rather, the Commission found that continued use of tiered rates would "help ensure that there continue to be competitive options for VRS users," an important factor in light of the reduced number of VRS providers. *Id.* ¶34 (JA --). In the Commission's view, the "presence of multiple competitors, even if less efficient than the lowest-cost provider, may enhance functional equivalence by ensuring that VRS users have a choice among diverse service offerings." *Id.* In addition, the Commission explained, adopting an approach that allows for participation by less-efficient providers can "produce[] other benefits in the way of improved services for consumers," such as meeting the "needs of niche populations, including people who are deaf-blind or speak Spanish, enabling the entrance of new companies that can introduce technological innovations into the VRS program, and ensuring that consumers with hearing and speech disabilities can select among multiple VRS providers – just as voice telephone users do." *Id.* at ¶36 (JA --).

The Commission recognized that it is "obligated to ensure the efficiency of the VRS program," but explained that it could not "sacrifice functional equivalency in doing so." *Id.* The Commission also acknowledged a "statutory obligation

not to merely seek a short-term savings in an accounting sense," but also to "consider the consequences of our actions in the long run." *Id.* The Commission concluded that setting a single VRS compensation rate – as Sorenson urged – would force it "to choose between setting a lower level that is likely to force competitors out of the market, and a higher level that wastes Fund resources while producing major windfall profits for the lowest-cost VRS provider." *Id.* ¶37 (JA --). Under a tiered rate structure, the Commission concluded, it could "ensure greater efficiency without sacrificing competition, by tailoring compensation rates more closely to the costs of those competitors falling within each tier." *Id.* ¶37 (JA --).

The Commission examined a number of alternative approaches to setting VRS rates, which it had identified in the *2017 FNPRM & Order* – price caps, a reverse auction, requiring common carriers to provide VRS directly or through contracts with TRS providers and market-based pricing. It found them all deficient. *See 2017 Order* ¶¶45-48 (JA --). The Commission made clear, however, that it was adopting a tiered rate structure only for the next four years, and that it would "revisit the VRS compensation rate structure as necessary, in light of future developments." *Id.* ¶43 (JA --); *see also id.* ¶58 (JA --) (four-year period "is short enough to allow an opportunity for the Commission to reset the rates in response to substantial cost changes or other significant developments that may occur over time").

Based on its experience and the record compiled in this proceeding, the Commission altered the 2013-2017 rate schedule by changing the number of minutes defining each tier and the rates applicable to each tier. The adjustments were based on record data concerning provider costs, as well as the Commission's efforts to strike a "balance that emphasizes preserving competition" (*id.* ¶53 (JA --)) and to "limit any risk of eroding a provider's incentive to continue growing as its monthly minutes approach a tier boundary." *Id.* ¶54 (JA --).

For the Tier I (up to one million minutes per month) and Tier II (between one and 2.5 million minutes per month) rates, the Commission adopted a single rate for each tier to apply for the four-year period of the rate schedule - $4.82 per minute for the former and $3.97 per minute for the latter. For Tier III, applicable to minutes above 2.5 million per month (a level only Sorenson currently reaches), the Commission adopted rates that will decline from $3.21 per minute beginning in 2017 to $2.63 in 2020. The Commission found that the lowest rate level applicable to Tier III, *i.e.*, $2.63 per minute in 2020, "is higher than the average allowable expenses per minute for [Sorenson]." *Id.* ¶62 (JA --). But the Commission concluded that "because this rate is a substantial reduction from the current Tier III rate, … a gradual transition to reach this rate level is appropriate." *Id.* The Commission found no basis for Sorenson's proposal of a rate "no lower than $3.73 per minute," finding that the proposed rate was based on projected costs that had been

unreliable in the past, included costs the Commission had previously held not allowable and relied on an operating margin well outside the zone of reasonableness that the Commission had adopted. *Id.* ¶63 (JA --).

In addition to the primary three-tier rate structure, the Commission also added a tier for "emergent" VRS providers, defined as providers that provide no more than 500,000 total monthly minutes as of July 1, 2017. These providers, the Commission determined, would be reimbursed at a rate of $5.29 per minute. The Commission concluded that "a separate rate structure for such providers is appropriate for a limited period to take into account the generally much higher cost of service for very small providers, encourage new entry into the program, and give such providers and new entrants appropriate incentives to grow." *Id.* ¶49 (JA --).

SUMMARY OF ARGUMENT

In furtherance of its statutory mandate to ensure that VRS provides "functionally equivalent" service to deaf and hard-of-hearing individuals, 47 U.S.C. § 225(a)(3), that is "available to the extent possible and in the most efficient manner," 47 U.S.C. § 225(b)(1), the FCC in the *2017 Order* continued its efforts to move VRS compensation rates closer to the providers' costs of providing the service while at the same time ensuring that there will be multiple VRS providers to provide competitive options to VRS users.

1. Petitioner Sorenson raises a single issue on review – the lawfulness of the Commission's continued reliance on a tiered rate structure for VRS. Sorenson does not challenge the level of any rate adopted in the *2017 Order*.

a. Sorenson first contends that a tiered rate schedule is prohibited by Section 225. But in two previous cases – in this Court and in the Tenth Circuit – Sorenson had both the opportunity and the incentive to argue that the tiered rate schedules adopted by the Commission in those prior proceedings were inconsistent with the statute. It chose not to do so, claiming only that the tiered rate schedules in those cases were arbitrary and capricious. The doctrine of res judicata, or claim preclusion, precludes relitigation in a subsequent proceeding of matters either actually determined in previous litigation or that a party could have raised.

If considered, Sorenson's claim that the tiered rate structure is prohibited by the statute is without foundation. In Section 225, Congress delegated to the FCC authority to ensure that "functionally equivalent" telecommunications services "are available" to people who are deaf and hard-of-hearing "to the extent possible and in the most efficient manner." The statute does not define these terms or otherwise limit the manner in which the Commission may take these considerations into account.

The Commission found that maintaining a tiered rate structure would advance the statutory goal of "functional[] equivalen[ce]" by preserving a choice of VRS providers available to VRS users. The Commission found that, in addition,

competition would encourage higher standards of service quality than if no competition existed, which it predicted would be the result of eliminating the tiered schedule and adopting a single VRS compensation rate. Ensuring that there are multiple providers of VRS also helps to ensure that niche services are "available" to VRS consumers.

Sorenson contends that the statutory goal of functional equivalence statute limits the Commission simply to setting minimum technical standards for operation of VRS. But there is nothing in the statute that prevents the Commission from promoting functional equivalence through its VRS rate structure, nor is there any basis for Sorenson's contention that the statute's efficiency mandate must control over all of the statute's other goals.

Sorenson also complains that the Commission has not adhered to its 2013 intention to eliminate tiered rates. But as the Commission explained, that intention was based on a predictive judgment about the likelihood of improved competition in the VRS marketplace that was itself founded on expectations and assumptions that have not come to pass. An agency is under a continuing obligation to ensure that its rules comport with the facts on the ground, and the FCC fulfilled that obligation here.

b. Sorenson also argues that the tiered rate structure is arbitrary and capricious, even if permitted by Section 225, reiterating its same arguments that underlie its statutory challenge – essentially that the tiered rate structure sacrifices

efficiency to preserve competition, i.e., a choice of VRS providers, and that it was unreasonable for the Commission to preserve competitors when they are (allegedly) less efficient. But the Commission provided a reasonable explanation of the substantial benefits of a VRS rate structure that would ensure multiple VRS providers – the availability of choice for VRS users as well as an incentive to Sorenson to maintain higher standards of service than if it faced no competition, the likely result if the tiered rate structure were abandoned at this time. The Commission found that those benefits would be enough to justify maintaining the tiered rate structure, even if that structure were slightly more costly to the TRS Fund, although the Commission pointed out that the specific proposals for a single VRS rate structure that *Sorenson* had made were actually more costly to the Fund.

Arbitrary and capricious review is highly deferential, especially where agency ratemaking is concerned. The Commission's decision in the *2017 Order* to retain a tiered rate structure was entirely reasonable, particularly considering that the single VRS rate alternative proposed by Sorenson would likely have eliminated most or all of its remaining competitors.

2. Unlike Sorenson, which argues that the Commission failed to adopt the most efficient rate structure, petitioner VRSCA contends that the Commission gave too much weight to efficiency.

a. At the outset, VRSCA lacks standing to seek review. It claims to represent members who have standing, but it has not demonstrated that it actually

has members or that it is a membership organization that can make such a claim. VRSCA may not rely on Sorenson's standing because its separate petition for review raises entirely separate issues from Sorenson's.

b. On the merits, although VRSCA takes no position on what appropriate VRS rates should be, it makes a generalized claim, unsupported by reference to the record, that the rates adopted in the *2017 Order* fail to ensure functional equivalence. In fact, the Commission took care to adopt rates that were based on record evidence and that would promote functional equivalence by promoting competition in the VRS marketplace.

VRSCA's argument that the Commission was required to include costs for VRS providers to provide free equipment to VRS users was considered and rejected in *Sorenson I* and *Sorenson II*. The argument still has no merit. The Commission repeatedly has found that Section 225 focuses only on the provision of services and does not cover the provision of free equipment for any form of TRS.

Finally, VRSCA contends that the Commission failed to respond adequately to comments it and other consumer groups filed concerning adoption of rates that would adequately compensate VRS providers to ensure VRS interpreter quality. But the Commission pointed out that it had begun a separate proceeding to study VRS service quality and determine if it should adopt additional tools to measure the quality and accuracy of interpretation. Moreover, it discussed at length the

steps it was taking regarding both competition and VRS compensation levels to limit the possibility that providers' total compensation will be inadequate in light of allowable expenses.

STANDARD OF REVIEW

Section 706 of the Administrative Procedure Act provides that a court must uphold an agency's decision unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "Under this 'highly deferential' standard of review, the court presumes the validity of agency action … and must affirm unless the Commission failed to consider relevant factors or made a clear error in judgment." *Cellco Partnership v. FCC*, 357 F.3d 88, 93-94 (D.C. Cir. 2004).

Judicial review of the Commission's interpretation of 47 U.S.C. § 225, which governs the FCC's administration of the provision of TRS, is subject to the well-settled two-step framework set forth in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *See Sorenson I*, 659 F.3d at 1042. Under *Chevron*, if "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. Unless the statute "unambiguously forecloses the agency's interpretation," a reviewing court must "defer to that interpretation so long as it is reasonable." *National Cable & Tel. Ass'n v. FCC*, 567 F.3d 659, 663 (D.C. Cir. 2009).

"[C]ourts are 'particularly deferential' when reviewing ratemaking orders," given that "agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise." *Southwestern Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999) (citations and internal quotations omitted); *accord Sorenson I*, 659 F.3d at 1046. "'As long as the Commission makes a 'reasonable selection from the available alternatives,' the selection of methods will be upheld 'even if the court thinks [that] a different decision would have been more reasonable or desirable.'" *Southwestern Bell*, 168 F.3d at 1352 (citation omitted).

ARGUMENT

I. SORENSON'S CHALLENGE TO THE TIERED STRUCTURE OF VRS COMPENSATION RATES IS UNPERSUASIVE.

Sorenson raises only one issue on review – the validity of the FCC's decision to retain a tiered rate structure in which VRS providers are compensated at different rates based on the number of minutes of VRS provided. Sorenson alleges that this approach to adopting VRS compensation rates is precluded by Section 225 of the Act because it is not the "most efficient," 47 U.S.C. § 225(b)(1), and that, even if statutorily authorized, it constitutes arbitrary and capricious action under the Administrative Procedure Act.

Neither of Sorenson's arguments has merit. The Commission's construction of Section 225 as authorizing a tiered rate schedule was a permissible interpretation of the statute, and the Commission's decision to retain that structure in the *2017 Order* was reasonable.

A. Sorenson Is Precluded From Arguing That Section 225 Prohibits A Tiered Rate Schedule.

At the outset, Sorenson's statutory challenge to the Commission's tiered rate structure for VRS is foreclosed by well-settled principles of claim preclusion. This is the third time that Sorenson has challenged the Commission's adoption of VRS compensation rates that involved a tiered rate schedule. If, as Sorenson claims, Section 225 prohibits tiered rates, the statute prohibited the tiered rate structures adopted by the FCC in both 2010 and 2013. And Sorenson challenged each of those orders. But in neither *Sorenson I* nor *Sorenson II* did Sorenson claim that Section 225 precluded tiering.

Although Sorenson contended that the actual rates set by the Commission in 2010 were so low that they violated Section 225's goals, *see Sorenson I*, 659 F.3d at 1042-45, it made no such claim regarding the tiered rate structure adopted at the

same time. Instead, Sorenson challenged the tiered rate structure solely as arbitrary and capricious under the APA, a challenge the court rejected. *Id.* at 1048-50.[4]

In *Sorenson II*, Sorenson pressed the argument that the 2013 tiered rate structure was arbitrary and capricious, including for the reason that the tiers were "inefficient;" but again, Sorenson did not contend that that rate structure was outside the agency's authority under Section 225. *See Sorenson II*, 765 F.3d at 51.

"The federal courts have traditionally adhered to the ... doctrine[] of res judicata," or claim preclusion. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Thus, a final judgment on the merits precludes relitigation in a subsequent proceeding of all issues arising out of the same cause of action between the same parties or their privies, whether or not the issues were raised in the first case. *See SBC Communications, Inc. v. FCC*, 407 F.3d 1223, 1230 (D.C. Cir. 2005). "[C]laim preclusion is intended "to prevent litigation of matters that *should have been* raised in an earlier suit," *Marrese v. Am. Academy of Orthopaedic Surgeons*, 470 U.S. 373, 376 n.1 (1985), and thus "bars relitigation not only of matters determined in a previous

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[4] A sentence in Sorenson's brief in *Sorenson I* might be read as raising a statutory claim that Section 225 prohibits tiered rates. *See* Sorenson 10th Cir. Br. 39 (Section 225's "requirement that VRS services be provided 'in the most efficient manner' undermines the FCC's decision to use tiered rates."). However, the language is hardly clear, neither the FCC's brief nor Sorenson's reply brief addressed the issue, the court apparently did not read it as raising a statutory challenge to tiered rates, and, finally, if the sentence were read to have raised the issue, that hardly helps Sorenson to counter a preclusion argument in this case.

litigation but also ones that a party could have raised." *NRDC v. Thomas*, 838 F.2d 1224, 1252 (D.C. Cir.1988).

Those requirements are satisfied in this case. Sorenson could have raised its claim that Section 225 prohibited the Commission's tiered rate structure in either of its earlier court challenges to the Commission's VRS rates, and it can claim no recognized exception to claim preclusion in its defense. *See, e.g.*, Wright & Miller, 18 FED. PRAC. & PROC., Juris. § 4408 (3d ed).

Having twice passed up an opportunity to assert in prior cases that Section 225 precludes a tiered rate structure and having shown no special or changed circumstances that would justify its belated claims, Sorenson is precluded from raising its statutory claim in this case.

B. The 2017 Order's Tiered Rate Structure Is Based On A Permissible Construction of Section 225.

In any event, the Commission reasonably interpreted Section 225 to permit tiering of VRS rates. Congress expressly delegated to the FCC the authority to establish regulations governing the provision of telecommunications services to persons who are deaf and hard-of-hearing that are "functionally equivalent" to services available to hearing persons. 47 U.S.C. § 225(a)(3). The Commission is also charged with regulating the recovery of "costs caused by" the provision of such services, 47 U.S.C. § 225(d)(3)(B), and is directed to ensure that such services be "available, to the extent possible and in the most efficient manner." 47

U.S.C. § 225(b)(1). Finally, the Commission is directed to implement the statute in a manner that "encourage[s] the use of existing technology," and does not "discourage or impair the development of improved technology." 47 U.S.C § 225(d)(2).

Nothing in the statute limits the manner in which the Commission may take these various considerations into account. Indeed, the terms themselves are left undefined by Congress. "[W]here Congress leaves a statutory term undefined, it makes an implicit delegation of authority to the agency to elucidate a specific provision of the statute through reasonable interpretation." *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 474 (D.C. Cir. 1998) (quotation marks omitted). Thus, as the Tenth Circuit recognized in *Sorenson I*, because the term "functionally equivalent" is not defined by section 225, the definition is left "to the FCC." 659 F.3d at 1042. "Ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in a reasonable manner." *NCTA v. Brand X Internet Serv.*, 545 U.S. 967, 980 (2005).

In the order under review, the Commission determined that maintaining a tiered rate structure for VRS would advance the statutory goal of functional equivalence by preserving the ability of VRS consumers to choose among providers. As the Commission explained, it "has consistently sought to encourage and preserve the availability of competitive choice for VRS users because it ensures a

range of service offerings analogous to that afforded voice service users and because it provides a competitive incentive to improve VRS offerings." *2017 Order* ¶31 (JA --). In addition, the Commission found, "the continuing presence of such competitive offerings is likely to encourage the lowest-cost provider to maintain higher standards of service quality than if it faced no competition." *Id*. On the other hand, the Commission pointed out, "given the current disparate cost structures in the VRS market," if it eliminated tiering and "adopted a single rate set at the allowable costs of the lowest-cost provider, or alternatively, at the allowable costs for the VRS industry," it would "likely … eliminate all VRS competition." *Id*. In the Commission's judgment, the "presence of multiple competitors, even if less efficient than the lowest-cost provider, may enhance functional equivalence by ensuring that VRS users have a choice among diverse service offerings," *id*. ¶34 (JA --), "just as voice telephone users do," *id*. ¶36 (JA --). The Commission also noted the benefits in supporting less efficient providers that may "meet the needs of niche populations, including people who are deaf-blind or speak Spanish," and that such support may "enable[e] the entrance of new companies that can introduce technological innovation into the VRS program." *Id*. ¶36 (JA --).

1. Sorenson nowhere disputes the Commission's conclusion that the single rate structure it advocates would eliminate most, if not all, of the four other remaining providers of VRS and thus further entrench Sorenson's dominance of

that marketplace. *See 2017 Order* ¶34 (JA --). And, as the Commission noted, in the proceeding below Sorenson "occasionally acknowledge[d] the benefits of maintaining a choice of VRS providers." *2017 Order* n.100, citing [Sorenson 6-13-17 letter] (JA --); *see also* [Sorenson Reply Comm. 5-4-17 at 16] (JA --) ("Sorenson agrees that consumer choice is beneficial because competition encourages VRS providers to invest in and improve their services."). Because smaller providers may meet the needs of certain niche or underserved populations, setting tiered rates that benefit such providers helps ensure that VRS is "available" to all members of the public who need it, as the statute commands. *See* 47 U.S.C. § 225(b)(1).

Before this Court, however, the company contends that "Section 225 does not permit the FCC to sacrifice efficiency in order to preserve providers in the market." Sorenson Br. 19. In Sorenson's view, "preserving VRS providers" is "an extra-statutory consideration," *id*. at 22, and therefore impermissible. Not so. As the Commission explained, preserving the ability of other VRS providers to compete against Sorenson – and forestalling a Sorenson monopoly – advances the statutory goal of functional equivalence by ensuring that individuals with hearing and speech disabilities have available to them a variety of choices among their providers of telecommunications services, while at the same time ensuring that

Sorenson remains subject to competitive incentives to improve its VRS offerings. *2017 Order* ¶31 (JA --).

Sorenson also claims that, in advancing the statute's goal of functional equivalence, the Commission is limited to setting forth the minimum technical standards for operation of the service. Br. 29-30; *see* 47 C.F.R. § 64.604. In putting forth this contention, Sorenson relies on a 2004 FCC order in which the agency stated that individual VRS providers would meet their functional equivalence responsibilities so long as their operations complied with the Commission's minimum technical standards for VRS. Br. 23, 30; *see 2004 TRS Order*, 19 FCC Rcd at 12548 ¶189 (2004). But that order was defining the "functionality" obligations "[f]or a particular provider" in order to ensure that the TRS Fund did not become an "unbounded source of funding." *Id*. By specifying minimum operational standards for VRS, which themselves were not intended to be "static," *id*., the Commission did not purport to limit the tools by which it could advance functional equivalence more generally, nor did it deprive itself of the ability to guard against market structures that pose "the risks to functional equivalence associated with eliminating competitive choice." *2017 Order* ¶ 31 (JA --).

2. Sorenson further contends that the "FCC must set the compensation rates for … functionally equivalent service using efficiency as its primary considera-tion." Br. 24. But the principal goal of Section 225, as its terms make clear, is to

ensure that persons who are deaf and hard-of-hearing have access to telecommunications service that is "functionally equivalent" to service available to hearing persons. 47 U.S.C. § 225(a)(3). The *manner* in which the Commission is directed to ensure that such service is "available, to the extent possible and in the most efficient manner." Section 225(b)(1). By elevating efficiency over functional equivalence, and making it the sole criterion by which the Commission must ensure availability, Sorenson would invert the statute's priorities.

Moreover, as the Commission pointed out, a tiered rate structure would be more likely "to *improve* the efficiency with which the TRS Fund supports VRS" than any other proposal before it in the rulemaking proceeding. *2017 Order* ¶35 (JA --). This was because Sorenson's proposed single rate of "no lower than $3.73 per minute," *id*. ¶63 (JA --), "would cost the TRS Fund more in overall compensation than the tiered rate structure" the Commission adopted, *id*. ¶35 (JA --). Sorenson does not contest the Commission's determination that Sorenson's proposed minimum rate would result in higher – in Sorenson's view, "slightly higher" – TRS Fund expenditures, but suggests that the Commission "could have considered setting the single rate lower than Sorenson's proposed rate." Br. 34 n.3. But neither Sorenson – nor any other party – proposed any lower unitary rate, and it is not open to Sorenson to make such a suggestion now when it was not first presented to the agency. *See* 47 U.S.C. § 405(a). In any event, as the Commission also

explained, a tiered rate structure is an efficient (and effective) way of "encourag-[ing] the lowest-cost provider" – Sorenson – "to maintain higher standards of service quality than if it faced no competition." *Id.* ¶31 (JA --). *See also id.* ¶40 (JA --) (noting that VRS providers do not charge users any price and that the "price signals necessary for a competitive market are entirely absent from the VRS market"). Sorenson has no response to this point.

"[T]o the extent that a tiered rate structure is more effective than a single rate in preventing further erosion of the competitiveness of the VRS environment," the Commission stated, "it may be justifiable on that ground alone, even if overall efficiency would be somewhat reduced." *2017 Order* ¶34 (JA --). In the Commission's judgment, however, "a tiered rate approach" is "most likely to ensure that functionally equivalent VRS remains available and is provided in the most efficient manner with respect to TRS Fund resources." *Id.* ¶33 (JA --).

3. Lastly, Sorenson contends that the Commission's explanation constitutes an unexplained "change in position" from the views expressed in 2013 regarding the statutory benefits of the preservation of competitors. Sorenson Br. 33. That is not correct.[5] The Commission in the *2013 Order* did not conclude that preservation of competitors in the VRS marketplace was irrelevant under the statute. Instead, it

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[5] It is also largely irrelevant to the legal issue Sorenson presents as there is no question that the Commission in 2010 and 2013 thought it had the legal authority under Section 225 to promulgate a tiered rate plan.

found that its proposed "structural reforms, once implemented, will eliminate any residual need for tiered rates" by "address[ing] many of the issues that have made it difficult for small providers to operate efficiently." *2013 Order*, 28 FCC Rcd at 12553 ¶199. Indeed, the Commission determined that it should retain rate tiers during the 2013-2017 period precisely because eliminating them immediately "could force out some of the smallest providers, unnecessarily constricting the service choices available to VRS consumers." *Id*. ¶200.

In the *2017 Order*, the Commission explained that the "expectations and assumptions" regarding enhanced competition on which the agency's plan to transition to a unitary rate of compensation for VRS was based had not been "borne out by experience," *2017 Order*, ¶28 (JA --). These included the delayed rollout of "interoperability standards," lack of industry consensus on "aspects of equipment portability," and the impracticability of "a neutral video communications platform," which was intended to be "a key element in enabling small providers to compete effectively." *Id*. In short, as the Commission made clear, it preserved rate tiers because its hopes for improved competition had not panned out.

"A 'reasonable' explanation of how an agency's interpretation serves the statute's objectives is the stuff of which a 'permissible' construction is made." *Northpoint Tech., Ltd. v. FCC*, 412 F.3d 145, 151 (D.C. Cir. 2005)

(citing *Chevron*, 467 U.S. at 863). In the order under review, the Commission reasonably explained how a tiered rate structure for VRS would promote functionally equivalent telecommunications service for people with hearing and speech disabilities by preserving choice among VRS providers, while at the same time minimizing the cost to the TRS Fund. No more is required.

C. The Tiered Rated Structure Adopted In The 2017 Order Was Reasonable And Reasonably Explained.

Sorenson also argues that, whether or not the Commission's retention of a tiered rate structure for VRS violates Section 225, the agency's decision was arbitrary and capricious and therefore violated the Administrative Procedure Act. Br. 35-55. Essentially recapitulating the same arguments that underlay its statutory challenge, Sorenson contends that it was unreasonable for the Commission to preserve multiple competitors in the VRS marketplace when they are less efficient. Br. 35.

But as we have shown above, the Commission explained that there were substantial benefits to adopting a VRS rate structure that would ensure the presence of multiple VRS providers, including, among other things, "ensur[ing] a "range of consumer choice" and preserving "a competitive incentive to improve VRS offerings." *2017 Order* ¶31 (JA --). Moreover, the Commission observed, "the continuing presence of such competitive offerings" would be likely to prod

Sorenson "to maintain higher standards of service quality than if it faced no competition." *Id*. The Commission found that those benefits alone would be enough to justify a tiered rate structure, even if a unitary structure would be somewhat less costly to the TRS Fund. *Id*. ¶34 (JA --). But in fact, as the Commission pointed out, the unitary rate proposals before it would have cost the TRS Fund more in overall compensation than the tiered rate structure it adopted, which more closely aligned rates with VRS provider costs. *Id*. ¶35 (JA --).[6]

Arbitrary and capricious review is "highly deferential," *Cellco Partnership*, 357 F.3d at 93-94, and this is particularly so where agency ratemaking is concerned. *See, e.g., Time Warner Entertainment Co. v. FCC*, 56 F.3d 151, 163 (D.C. Cir. 1995). As this Court has made clear, "[a]s long as the Commission makes a 'reasonable selection from the available alternatives,' its selection of methods will be upheld 'even if the court thinks that a different decision would have been more

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[6] Sorenson repeatedly claims that, because they have higher cost structures, the smaller VRS providers are "inefficient." *See, e.g.*, Br. 35, 36, 51, 53. That is by no means clear. On the contrary, the Commission found that "there are likely to be significant economies of scale in administrative costs, marketing, and other areas" that contribute to the disparities in VRS provider cost structures, and to Sorenson's lower per-minute costs. *2017 Order* ¶52 (JA --). *See also id*. n.163 (noting a generally "consistent overall pattern of relationships between volume of minutes and per-minute costs"). The Commission did not definitively resolve whether economies of scale, inefficiencies, or some combination of the two had resulted in the disparate cost structures of VRS providers, because the existence of such disparities was "undisputed" and needed to be "taken into account." *Id*. at ¶53 (JA --).

reasonable or desirable.'" *Southwestern Bell*, 168 F.3d at 1352 (quoting *MCI Tel. Corp. v. FCC*, 675 F.2d 408, 413 (D.C. Cir. 1982)); *see Sorenson I*, 659 F.3d at 1046. Particularly given that the flat rate alternative proposed by Sorenson would likely have eliminated most or all of its remaining competitors, the Commission's decision to retain a tiered rate structure for VRS was entirely reasonable.

1. Sorenson renews its complaint – this time as part of its APA challenge – that the Commission "reversed," without justification, the plan announced in the *2013 Order* to adopt a unitary rate for VRS in 2017. Br. 39. But as we have explained, the intentions expressed in the *2013 Order* were based on assumptions about hoped-for competition that, to date, have not come to pass. *2017 Order* ¶28 (JA --). The Commission reasonably determined that, on the current record, the benefits of retaining a tiered-rate structure for VRS – for consumer choice, service competition, and functional equivalence – outweighed the costs that would result from a flat rate, which would further entrench Sorenson's dominance. *2017 Order* ¶¶31-37 (JA --).

Under the APA, an agency is free to change its position if it sets forth reasonable grounds for doing so. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Indeed, it is entirely appropriate for an agency to revisit its policies in light of experience. As this Court has explained, "[t]he Commission's necessarily wide latitude to make policy based upon predictive judgments deriving

from its general expertise … implies a correlative duty to evaluate its policies over time to ascertain whether they work – that is, whether they actually produce the benefits the Commission originally predicted they would." *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992). In this case, the *2013 VRS Reform Order*'s "expectations and assumptions" regarding the VRS market in 2017, and in particular the development of sufficient competition to support a unitary rate, were not "borne out by experience." *2017 Order* ¶28 (JA --). The Commission therefore reasonably decided in 2017 to retain a tiered rate structure for the next four years.

Sorenson contends that the Commission has decided to retain a tiered rate system for VRS "indefinitely." Br. 35. But that is not correct. The *2017 Order* adopted a tiered rate schedule only for the four year period from July 1, 2017 to June 30, 2021. *See 2017 Order* ¶¶ 58, 68 (JA --). In doing so, the Commission made clear that it would continue to monitor VRS compensation with an eye to revisiting the appropriate rate structure at the end of that period. The Commission observed that "while the anticipated developments that the Commission thought would eliminate any need for tiered rates have not materialized, … [w]ith additional time this situation may change." *2017 Order* ¶41 (JA --). It noted, for example, that full implementation of "interoperability and portability standards, as well as introduction of some new reforms in other areas, may offer greater opportunities for providers to compete with one another." *Id.* The Commission also

pointed out that in a separate proceeding, it is developing standards that would "enhance VRS competition by enabling consumers to make more informed decisions in their selection of their VRS provider." *Id.* (citing *2017 FNPRM* ¶¶61-77 (JA --)). The Commission stressed that "[a]t a later time, we can revisit the compensation rate structure issue as appropriate in light of such developments." *Id. See also 2017 Order* ¶45 (JA --) (noting that the agency will have another opportunity to revisit a "price cap" alternative when it "approach[ed] the end of the 2017-2021 rate plan").

Sorenson argues that the Commission's retention of a tiered rate system can be justified "only if there were some reason to think that" its smaller competitors might become more efficient "in the next four years." Br. 40. In the first place, the Commission disagreed with Sorenson that no such efficiency improvements could be expected, explaining that the continued implementation of VRS interoperability, portability, and service quality reforms "may offer greater opportunities for providers to compete more effectively with one another." *2017 Order* ¶ 41 (JA --); *see also 2017 Interoperability Order/FNPRM*, 32 FCC Rcd 687 (JA --) (discussing continuing implementation of interoperability and portability standards); *2017 FNPRM* ¶¶61-77 (JA --) (adopting inquiry on service quality metrics). Such predictive judgments by the expert agency are entitled to "substantial deference." *National Ass'n of Broadcasters v. FCC*, 789 F.3d 165, 182 (2015); *In re Core*

Communications, Inc., 455 F.3d 267, 282 (D.C. Cir. 2006) ("[A]gency's predictive judgments about areas that are within the agency's field of discretion and expertise are entitled to particularly deferential review.")

The Commission's conclusions, moreover, are supported in the record. ZVRS/Purple stated that "[t]he need for true VRS interoperability and portability is just as dire as it was in 2013, and provides equally sufficient justification for the employment of a tiered-rate structure as reforms to address these issues begin to take hold." [ZVRS Reply 5/4/17 at 17] (JA --)*; see also* [*id.* at 16] (JA --) ("interoperability issues continue to afflict VRS providers and users"); [Convo Comm.4/24/17 at 10] (JA --) ("The lack of interoperability of the dominant provider's videophones is the primary drag on the mobility of customers in using other competitor's."); [Convo Reply Comm. 5/4/17 7-8] (JA --) ("Sorenson alone maintains that 'interoperability problems have been resolved.' … The current environment of inadequate interoperability among VRS provider videophones in itself is sufficient justification for the Commission to adopt tiered rates to ensure that providers can catch up and compete in a market captured by the dominant VRS provider's use of purpose built videophones."); [Joint Provider Comments 4/24/17 7] (JA --) ("Interoperability has not been solved. … The record on consumer complaints demonstrates that interoperability remains a problem in the VRS market and continues to tie users to the Sorenson service.").

In any event, in light of the undeniable differences in cost structures among VRS providers, the Commission found that its "most realistic option" was "[t]o maintain a competitive environment for the near term" by setting "compensation rates that allow the few remaining VRS competitors an additional period of time to offer a competitive alternative to" Sorenson. *2017 Order* ¶ 53 (JA --). The agency's decision to proceed with caution before adopting a unitary VRS rate structure that would likely eliminate many, if not all, of the remaining VRS providers, thereby undermining consumer choice and removing competitive pressures on Sorenson's quality of service, was entirely justified. This is the case regardless of whether the Commission could identify some future date at which a different cost structure or methodology could better fulfill its statutory mandate.

2. Sorenson also contends that the Commission constructed its rate tiers "in a manner that will entrench smaller providers' existing inefficiencies" and "thwart" Sorenson's own efforts to become more efficient. Br. 44. Neither contention is correct.

As the Commission explained, it constructed the tiers, including the tier for the smallest, emergent providers, in a manner that would, in its judgment, appropriately take account of the providers' disparate costs and preserve competition, while at the same time protecting the TRS Fund so that, to the extent possible, no

provider receives compensation out of proportion to its allowable costs.[7] *See 2017 Order* ¶¶ 49-54 (JA --).

Because there is a single rate of compensation within each tier, *see 2017 Order* ¶¶ 50, 60-62 (JA --), providers continue to have an incentive to lower their costs in order to "increase profits and minimize losses," *id*. ¶38 (JA --). Sorenson acknowledges this incentive, Br. 43, although it attempts to relegate it to the "background," *id*. 48. Sorenson nevertheless contends that the Commission should have gone further and continued to reduce the rates for lower-volume (emergent, Tier I and Tier II) providers over the next four years. Br. 46. But the Commission had already found itself required to freeze the *2013 VRS Reform Order's* planned VRS rate decreases for the smallest providers in light of evidence that the decreased rates were no longer covering those providers' costs and threatening the "'continuation of service,'" *see VRS Partial Rate Freeze Order*, 31 FCC Rcd 2339, 2342-43 ¶¶ 7-8 (2016) (citation omitted) (JA --); the agency was hardly required to repeat that error. Instead, the Commission explained, providing a compensation

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[7] Sorenson criticizes the Commission's decision to structure rates to take into account the costs of the two smallest providers, contending that because they "represent less than 3% of the market," they "cannot have a meaningful effect on consumer choice." Br. 52. But adopting a rate structure that would eliminate two of the remaining competitors would plainly reduce the choices available to VRS consumers. *See 2017 Order* ¶34 (JA --) ("Further attrition . . . would further limit the ability of consumers to select providers based on service quality and features.").

rate applicable over a four-year period "is long enough to offer a substantial degree of rate stability," but "short enough to allow the Commission to reset the rates in response to substantial cost changes or other significant developments that may occur over time." *2017 Order* ¶58 (JA --).[8]

Sorenson raised similar challenges in *Sorenson II* as to the specifics of the tier levels, which the Court properly rejected as "no more than a quibble over the precise cut-off that would be most efficient," 765 F.3d at 51 – the Court reiterated that the level of precision in rate making is "'whether the agency's numbers are within a zone of reasonableness, not whether its numbers are precisely right.'" *Id.*; *see also Sorenson I*, 659 F.3d at 1049.

Still less does the rate structure adopted by the Commission pose an obstacle to Sorenson's ability to seek to become a more efficient provider. On the contrary, the Tier III rates to which Sorenson is subject are set to decrease annually over the next four years, from $3.21 in the first year to $2.63 per minute in the final year, *2017 Order* ¶ 62 (JA --), and thereby gives the company an undoubted reason to

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[8] Sorenson (Br. 48-49) criticizes the Commission's decision to permit two VRS providers (ZVRS and Purple) that recently merged to count their VRS minutes separately for rate purposes. But as the Commission explained, pursuant to a consent decree, the two companies are not required to consolidate their operations, and may operate separately, until February 2020. *2017 Order* ¶57 (JA --). *See Matter of Purple Communications, Inc.*, 32 FCC Rcd 1608 (2017) (Consent Decree ¶¶ 9, 17). It was thus entirely appropriate for the Commission to treat the two companies as separate entities for rate purposes until they actually consolidate their operations. *Id.*

reduce its costs. Sorenson contends that it is "irrational" for the Commission "to encourage Sorenson to lower its costs while failing to provide the same incentive for less-efficient providers." Br. 49. But the rate structure simply recognizes that a company like Sorenson, which provides more than 2.5 million minutes of VRS, not only has by far the lowest costs, but is also in the best position to improve the efficiency of its operations. And the FCC explained why Sorenson's claim that less efficient providers had no incentive to lower costs was wrong. *See 2017 Order* ¶58 (JA --).

Moreover, the Commission found, the $2.63 rate applicable in the fourth year for Tier III, is still higher than Sorenson's "average allowable expenses per minute," and thus, in conjunction with Sorenson's higher compensation for minutes provided under Tier I and Tier II, would have permitted Sorenson to earn a reasonable return even at the outset. *2017 Order* ¶ 62 (JA --).[9] The Commission nevertheless concluded that in light of the fact that the $2.63 rate would have been

[9] As noted above, Sorenson's first 2.5 million minutes per month are compensated at the same Tier I and Tier II rates as the much smaller VRS providers. Thus, a significant portion of Sorenson's monthly minutes are compensated at the Tier I and Tier II rates that far exceed its costs. *See* E. Greenwald 2/19/18 letter to M. Dortch Att. A (JA --) (showing VRS providers' actual and projected minutes compensated from 2015-2018); *see also 2017 Order* ¶62 (JA --) (finding that Sorenson's allowable expenses are less than $2.63 per minute, compared to the adopted Tier I and Tier II rates of $4.82 and $3.97 per minute).

a "substantial" reduction from the rate then applicable to Tier III, it was appropriate to provide for a multi-year transition to that level, starting at $3.25 for Tier III. *Id*. Thus, far from disadvantaging Sorenson, the transitional rate plan for Tier III served as an alternative to an abrupt reduction in compensation that would have had a much greater impact on the provider.[10]

"[A]gency ratemaking," as this Court has recognized, "is far from an exact science." *Time Warner*, 56 F.3d at 163. It rests, instead, on "policy determinations in which the agency is acknowledged to have expertise." *Id*. *Accord Southwestern Bell*, 168 F.3d at 1352. Here, the agency chose to retain, for an additional four-year period, tiered rates for VRS providers in order to preserve consumer choice and promote competition in VRS services. That decision, which was well within the agency's considerable discretion to further the goals of Section 225, was entirely reasonable.

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[10] Sorenson claims that its costs "likely will increase in the future," and that this will reduce the amount that Sorenson can spend "on new technologies and other improvements to services." Br. 49-50. But the company nowhere challenges the Commission's determination that it will be able to earn a reasonable return on the compensation that will be provided to it over the next four-year period. *2017 Order* ¶ 62 (JA --). With reference to Sorenson's assertions concerning increased costs, and particularly the increased costs it anticipated for compensating interpreters, the Commission specifically found no basis in the record for those claims. *See 2017 Order*, n. 131 (JA --).

II. VRSCA'S CHALLENGES TO THE 2017 ORDER HAVE NO BASIS.

Unlike Sorenson, which challenges only the Commission's decision to retain a tiered rate structure for VRS for the period 2017-2021, VRSCA challenges the rate levels the Commission adopted. VRSCA claims standing as a representative of its "members," but it fails to make a showing that meets the well-established standards for associational standing.

In stark contrast to Sorenson – which argues that the *2017 Order* fails to adopt the most efficient rate structure – VRSCA contends that the Commission gave too much weight to efficiency, and therefore set rates that are inadequate to ensure the functional equivalence mandated by Section 225. Br. 11. In particular, VRSCA contends, the Commission is required to adopt rates that are sufficient to allow providers to distribute VRS equipment for free or at a discount. Br. 15.

VRSCA also argues that the Commission's decision was arbitrary and capricious because the rates the agency adopted do not further functional equivalence and its decision did not adequately respond to comments regarding the impact of those rates on that statutory goal.

Even assuming VRSCA has standing, its challenges to the *2017 Order* have no basis.

A. VRSCA Lacks Standing.

At the outset, VRSCA's petition for review should be dismissed for lack of jurisdiction because it has not demonstrated that it has standing to challenge the *2017 Order*. To satisfy the "irreducible constitutional minimum of standing," a litigant must show an actual or imminent injury that is fairly traceable to the challenged agency action and is likely to be redressed by a favorable decision. *See, e.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *National Ass'n of Reg. Util. Comm'rs v. FCC*, 851 F.3d 1324, 1327 (D.C. Cir. 2017). "When the … petitioner's standing is not apparent from the administrative record," its opening "brief must include arguments and evidence establishing the claim of standing." D.C. Cir. Rule 28(a)(7) (citing *Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002)).

VRSCA states that it is "an association of deaf, hard-of-hearing, deaf-blind, speech-disabled, and hearing individuals who use VRS to communicate," and that it "receives funding from Sorenson Communications, LLC." Br. 8, iv. VRSCA adds that it seeks review in this case "on behalf of its members" and that "any individual member of VRSCA … would have standing to sue in his or her own right as a VRS user …," apparently on the ground that all VRS users will be

harmed by the order on review. Br. 8; *see also* Br. 4-5.[11] VRSCA's website describes the organization as an "informational forum for Deaf, Hard-of-Hearing and hearing persons who use Video Relay Services." (http://vrsca.org/ - 12/6/2017). It adds that "VRSCA is led by regional managers and *supported by* Deaf, hard-of-hearing, and hearing individuals who share a common mission – making VRS more accessible. Any VRS user or provider is invited to sign up for email updates. … *[A]ll VRS users and VRS providers can participate in the organization* and are encouraged to be involved to help make VRS more accessible to the thousands of Deaf individuals across the United States." (emphasis added) (http://vrsca.org/faq/index.html - 12/6/2017).

Although VRSCA states in its brief that it is "an unincorporated association whose members … are individuals" (Br. i), there is no other indication in its brief or on its web site that VRSCA in fact has "members" at all or that it is a membership organization that can make such a claim. It asserts that "[a]ll VRS users may participate in the organization at no cost and are encouraged to sign up for email updates." Br. iii. It is not clear whether the VRS users who have signed up for email updates are considered by VRSCA to constitute its members and, if so, what role those individuals have, if any, in directing the organization's activities.

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[11] VRSCA does not claim standing to seek review on its own behalf and asserts no cognizable injury to the organization itself. There is nothing in its brief to suggest that it could do so.

VRSCA does not include with its brief any affidavit or other statement from any such individuals attesting to VRSCA's assertions or any other specific evidence of the nature of VRSCA's organization.

A membership association has standing to sue on behalf of its members when certain conditions are met. *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *see NARUC v. FCC*, 851 F.3d at 1327. Where an association's members are not themselves directly regulated by the challenged agency action, standing is "substantially more difficult to establish." *Id*. at 1328, *quoting Lujan*, 504 U.S. at 562. "Bare allegations are insufficient [] to establish a petitioner's standing," and where that standing is not self-evident, the petitioner in its opening brief "must support each element of its claim to standing by affidavit or other evidence." *Sierra Club*, 292 F.3d at 898, 899.

The Court has previously rejected the notion that an association may litigate on behalf of "supporters," *i.e.*, that "an organization can premise associational standing on the claims of individuals who are not *members* of the organization." *American Legal Found. v FCC*, 808 F.2d 84, 89 (D.C. Cir. 1987). In that case, this Court found that the American Legal Foundation had none of the indicia of a traditional membership organization. For example, it served "no discrete, stable group of persons with a definable set of interests." *Id.* at 90. It thus lacked standing to sue on behalf of its supporters. Similarly in *Gettman v. DEA*, 290 F.3d 430, 435

(D.C. Cir. 2002), the Court dismissed a petition for review, explaining that "the question is whether the organization is the functional equivalent of a traditional membership organization." *Id.*

VRSCA asserts only that it is an association of "individuals who use VRS to communicate" (Br. 8) and that "all VRS users," as well as "VRS providers" such as Sorenson, "can participate in the organization." (http://vrsca.org/faq/index.html 12/6/2017). As in *American Legal Foundation*, "it does not appear from the record that [VRSCA's] 'supporters' play any role in selecting [VRSCA's] leadership, guiding [VRSCA's] activities, or financing those activities." 808 F.2d at 90. *See also Gettman*, 290 F.3d at 245 (no showing that "magazine's 'readers and subscribers' played any role in selecting its leadership, guiding its activities, or financing [them]."). Similarly, the only thing that can be gleaned from VRSCA's brief is that Sorenson, not VRS users, funds VRSCA's activities. Because VRSCA has failed to demonstrate that it is a membership organization that may claim standing to challenge the *2017 Order* on behalf of members, its petition for review should be dismissed.

B. VRSCA's Challenges To The 2017 Order Are Without Merit.

1. The VRS Rates Adopted By The Commission Do Not Undermine Functional Equivalence.

VRSCA's "takes no position on what specific compensation rates are appropriate for any particular VRS provider." Br. 11. It nonetheless makes a generalized claim that the rates adopted in the *2017 Order* "fail to ensure the functional equivalence required by the ADA." *Id.* at 13. VRSCA does not support this claim by reference to any record evidence. Instead, it simply asserts that "it is elementary that a further reduction in rates will be detrimental to the future quality of VRS." *Id.* at 14. That statement is belied by the record.

The Commission followed essentially the same procedures in adopting rates in this proceeding as it has in prior cases, based on reported cost and demand data submitted to the VRS fund administrator by VRS providers. As the Commission explained, "Under the rate plan we adopt today, there will remain … a substantial 'cushion' between the weighted-average VRS compensation rate over the next four years and weighted-average VRS provider costs, even if a reasonable operating margin, which exceeds the return on investment previously allowed, is included." *2017 Order* n.44 (JA --). VRSCA offers nothing to dispute this conclusion, and, as noted, neither Sorenson nor any other VRS provider has challenged any of the specific rates adopted by the Commission. Moreover, as we have discussed, the Commission took care to construct the VRS rate tiers expressly to promote

functional equivalence by preserving competition in the VRS marketplace. *2017 Order* ¶¶ 31, 33-34 (JA --).

VRSCA contends that the rates the Commission adopted are "unguided by any understanding of the effect [of VRS compensation rate levels] on functional equivalence." Br. 14. But VRSCA offers no factual basis for its claim and does not assert that the rates preclude any individual provider from obtaining a reasonable return on the costs of providing service, or that any provider will be unable to comply with the applicable standards for providing VRS. *See* 47 C.F.R. § 64.604.

Instead VRSCA claims, without further elaboration, that with lowered VRS rates, it has "seen a reduction in the quality of VRS interpreting." Br. 14. But the Commission has undertaken a proceeding that is "gathering comment on service quality metrics," *2017 Order* ¶41 (JA --), including whether the agency should adopt additional tools to measure the quality and accuracy of interpretation, *see 2017 FNPRM*, ¶¶61-77 (JA --). The Commission was not compelled to await the conclusion of that proceeding before adjusting VRS rates to ensure that they remained in line with provider costs.

2. The Commission Was Not Required to Reimburse Equipment Costs.

VRSCA also argues that functional equivalence requires the Commission to allow VRS users "to receive VRS equipment without charge or at a reduced charge." Br. 15. *Sorenson I* and *Sorenson II* both directly considered and rejected

that reading of the statute. *See Sorenson I*, 659 F.3d at 1044 ("the suggestion that the statute is violated by Sorenson's inability to provide free phones to new users has no merit. The statute only requires that VRS be made 'available' and that users pay no higher rates for calls than others pay for traditional phone services. … It does not require that VRS users receive free equipment and training."); *Sorenson II*, 765 F.3d at 45 (holding that "Tenth Circuit's determination [in *Sorenson I* that] the statute does not require that 'VRS users receive free equipment,' … is preclusive"). VRSCA does not even acknowledge these prior holdings, much less offer any suggestion why the Court in this case should ignore these controlling precedents and address this settled question yet again.

In any event, the Commission adequately explained again in the *2017 Order* why it was not including the costs for VRS providers to give free equipment to users among reimbursable costs. The Commission noted that it had "long ago decided that costs attributable to a TRS (including VRS) user's relay hardware and software, including installation, maintenance, and testing, are not compensable from the TRS Fund. *2017 Order* ¶12 (JA --). The Commission pointed out that in 2006 it had ruled that "'Section 225 focuses on the provision of relay *service*,'" explaining that "'this is apparent from the plain language of Section 225, which is directed at "services" that carriers must offer in their service areas that enable communication between persons who use a TTY or other non-voice terminal

device and an individual who does not use such device.'" *Id.* (*quoting Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and FNPRM, 21 FCC Rcd 5442, 5447, 5457-58 ¶¶ 15, 38, n.129 (2006)). Costs associated with VRS equipment are not part of a provider's expenses in making relay *services* available; rather they must be incurred by consumers to receive these services – to the same extent that people who do not use relay services must purchase their phones. The Commission has repeatedly reaffirmed the disallowance of reimbursement for VRS user equipment costs. *See 2017 Order* ¶12.[12] And, as noted, the Tenth Circuit has agreed that "[j]ust as users of traditional telephone service do not receive their telephones for free, § 225 does not require that VRS users receive free videophones." *Sorenson I*, 659 F.3d at 1045. *See also Sorenson II*, 765 F.3d at 44-45 (rejecting Sorenson's attempt to relitigate the compensability of VRS equipment).

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[12] *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, 21 FCC Rcd at 8071 ¶17 ("Compensable expenses … do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or any necessary software"); *2007 TRS Rate Order*, 22 FCC Rcd at 20170-71, ¶82 ("Because some providers appear to continue the practice of giving video equipment to consumers and installing it at no cost to the consumer, we also reiterate that costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing are not compensable from the Fund.") (footnotes omitted); *2013 VRS Reform Order*, 28 FCC Rcd 8618, 8696, ¶193.

In short, the Commission reasonably determined that it was not required to set VRS rates so as to allow providers to furnish free equipment.

3. The Commission's Adoption of VRS Rates Was Not Arbitrary and Capricious.

VRSCA contends that, in addition to violating the statutory requirement of functional equivalence, the Commission's adoption of VRS rates was arbitrary and capricious. That contention does not withstand examination.

VRSCA reasserts that the Commission failed to consider whether "the service provided to VRS users would suffer" as the result of lower rates. Br. 23. But as we have shown above (p. 49) , the Commission expressly determined that the rates it adopted would permit VRS providers to recover their costs for providing VRS and earn a reasonable return on their investment. *2017 Order* n.44 (JA --). There is thus no basis for VRSCA's claim that service to VRS users will suffer under the revised rates.

VRSCA also contends that the Commission failed to respond adequately to comments submitted by VRSCA and others on this issue. Br. 23. It is, of course, true that an agency must address significant comments submitted during a rule-making; but the agency's obligation is not "particularly demanding." *Public Citizen, Inc. v. FAA*, 988 F.2d 186, 197 (D.C. Cir. 1993). "The failure to respond to comments is significant only insofar as it demonstrates that the

agency's decision was not based on a consideration of the relevant factors." *Covad Communications v. FCC*, 450 F.3d 528, 550 (D.C. Cir. 2006).

VRSCA claims that the Commission "entirely ignored" comments from VRSCA and eight consumer groups "that inadequate VRS compensation rates were likely to result in decreased quality of service or the cessation of service by providers altogether." Br. 24 (citing VRSCA Comments (Feb. 1, 2016) at 3-4 (JA --); Consumer Group Comments (received Dec. 9, 2015), at 4-5 (JA --). The only issue identified in VRSCA's comments concerns interpreter quality and, as the Commission pointed out in the *2017 Order* ¶41 (JA --), it is addressing that matter its service metrics proceeding. The Consumer Groups simply asked the Commission to make sure that VRS providers were "adequately compensate[d]." Consumer Group Comments, at 4 (JA --), which the Commission has done.

Indeed, as we have shown, the Commission discussed at length the steps it had taken to preserve VRS competitors, both in structuring compensation tiers, *see 2017 Order* ¶¶31, 34 (JA --), as well as compensation levels, *id*. ¶¶59-63 (JA --). And it expressly stated that it adopted VRS rate levels "to limit the likelihood that any provider's total compensation will be insufficient to provide a reasonable margin over its allowable expenses." *Id*. 59 (JA --); *see also id*. n.44 (JA --) (rates set will provide a "reasonable cushion" between the weighted-average rate and weighted-average costs, even including a "reasonable operating margin"). By any

measure, therefore, the Commission satisfied its obligation to address commenter concerns that VRS rates might be insufficient to maintain quality service.

CONCLUSION

In sum, the Commission acted within its broad discretion in setting VRS rates for the 2017-2021 period. Its adoption of a tiered rate structure was consistent with Section 225 and was both reasonable and reasonably explained, and the compensation rates were well within the zone of reasonableness.

Respectfully submitted,

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January 19, 2018

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CERTIFICATE OF FILING AND SERVICE

I, C. Grey Pash, Jr., hereby certify that on January 19, 2018, I filed the foregoing Brief for Respondents with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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Statutory Addendum

47 U.S.C. § 225

§ 225. Telecommunications services for hearing-impaired and speech-impaired individuals

Effective: October 8, 2010

(a) Definitions

As used in this section--

(1) Common carrier or carrier

The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(b) and 221(b) of this title.

(2) TDD

The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) Telecommunications relay services

The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

(b) Availability of telecommunications relay services

(1) In general

In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication

service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) Use of general authority and remedies

For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this chapter by a common carrier engaged in interstate communication.

(c) Provision of services

Each common carrier providing telephone voice transmission services shall, not later than 3 years after July 26, 1990, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations--

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d) of this section; or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) of this section for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in ompliance with the program certified under subsection (f) of this section for such State.

(d) Regulations

(1) In general

The Commission shall, not later than 1 year after July 26, 1990, prescribe regulations to implement this section, including regulations that--

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c) of this section;

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) Technology

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

(3) Jurisdictional separation of costs

(A) In general

Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) Recovering costs

Such egulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f) of this section, a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) Enforcement

(1) In general

Subject to subsections (f) and (g) of this section, the Commission shall enforce this section.

(2) Complaint

The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) Certification

(1) State documentation

Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) Requirements for certification

After review of such documentation, the Commission shall certify the State program if the Commission determines that--

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d) of this section; and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding

Except as provided in subsection (d) of this section, the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification

The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint

(1) Referral of complaint

If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) of this section is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of Commission

After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if--

(A) final action under such State program has not been taken on such complaint by such State--

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f) of this section.

47 U.S.C. § 405(a)

§ 405(a). Petition for reconsideration; procedure; disposition; time of filing; additional evidence

(a) After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 155(c)(1) of this title, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 155(c)(1) of this title, in its discretion, to grant such a reconsideration if sufficient reason therefor be made to appear. A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for reconsideration shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for reconsideration or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided,* That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Reconsiderations shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration. The time within which a petition for review must be filed in a proceeding to which section 402(a) of this title applies, or within which an appeal must be taken under section 402(b) of this title in any case, shall be computed from the date upon which the Commission gives public notice of the order, decision, report, or action complained of.

47 C.F.R. § 64.601

§ 64.601 Definitions and provisions of general applicability.

Effective: September 21, 2017

(a) For purposes of this subpart, the terms Public Safety Answering Point (PSAP), statewide default answering point, and appropriate local emergency authority are defined in 47 CFR 64.3000; the terms pseudo–ANI and Wireline E911 Network are defined in 47 CFR 9.3; the term affiliate is defined in 47 CFR 52.12(a)(1)(i), and the terms majority and debt are defined in 47 CFR 52.12(a)(1)(ii).

(1) 711. The abbreviated dialing code for accessing relay services anywhere in the United States.

(2) ACD platform. The hardware and/or software that comprise the essential call center function of call distribution, and that are a necessary core component of Internet-based TRS.

(3) American Sign Language (ASL). A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(4) ANI. For 911 systems, the Automatic Number Identification (ANI) identifies the calling party and may be used as the callback number.

(5) ASCII. An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(6) Authorized provider. An iTRS provider that becomes the iTRS user's new default provider, having obtained the user's authorization verified in accordance with the procedures specified in this part.

(7) Baudot. A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(8) Call release. A TRS feature that allows the CA to sign-off or be "released" from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.

(9) Common carrier or carrier. Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(10) Communications assistant (CA). A person who transliterates or interprets conversation between two or more end users of TRS. CA supersedes the term "TDD operator."

(11) Default provider. The iTRS provider that registers and assigns a ten-digit telephone number to an iTRS user pursuant to § 64.611.

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

(13) Hearing carry over (HCO). 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. Two-line HCO is an HCO service that allows TRS users to use one telephone line for hearing and the other for sending TTY messages. HCO–to–TTY allows a relay conversation to take place between an HCO user and a TTY user. HCO–to–HCO allows a relay conversation to take place between two HCO users.

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

(15) Interconnected VoIP service. The term "interconnected VoIP service" has the meaning given such term under § 9.3 of this chapter, as such section may be amended from time to time.

(16) Internet-based TRS (iTRS). A telecommunications relay service (TRS) in which an individual with a hearing or a speech disability connects to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network. Except as authorized or required by the Commission, Internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected voice over Internet Protocol service.

(17) Internet Protocol Captioned Telephone Service (IP CTS). A telecommunications relay service that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the Internet, rather than the public switched telephone network.

(18) Internet Protocol Relay Service (IP Relay). A telecommunications relay service that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet, rather than using a text telephone (TTY) and the public switched telephone network.

(19) IP Relay access technology. Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive an IP Relay call.

(20) iTRS access technology. Any equipment, software, or other technology issued, leased,

or provided by an Internet-based TRS provider that can be used to make and receive an Internet-based TRS call.

(21) New default provider. An iTRS provider that, either directly or through its numbering partner, initiates or implements the process to become the iTRS user's default provider by replacing the iTRS user's original default provider.

(22) Non–English language relay service. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

(23) Non-interconnected VoIP service. The term "non-interconnected VoIP service"—

(i) Means a service that—

(A) Enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(B) Requires Internet protocol compatible customer premises equipment; and

(ii) Does not include any service that is an interconnected VoIP service.

(24) Numbering partner. Any entity with which an Internet-based TRS provider has entered into a commercial arrangement to obtain North American Numbering Plan telephone numbers.

(25) Original default provider. An iTRS provider that is the iTRS user's default provider immediately before that iTRS user's default provider is changed.

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

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

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

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

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

(31) Registered Location. The most recent information obtained by a VRS or IP Relay provider that identifies the physical location of an end user.

(32) Sign language. A language which uses manual communication and body language to convey meaning, including but not limited to American Sign Language.

(33) Speech-to-speech relay service (STS). A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.

(34) Speed dialing. A TRS feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a short-hand" name or number for the user's most frequently called telephone numbers.

(35) Telecommunications relay services (TRS). Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non–English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

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

(37) Three-way calling feature. A TRS feature that allows more than two parties to be on the telephone line at the same time with the CA.

(38) TRS Numbering Administrator. The neutral administrator of the TRS Numbering Directory selected based on a competitive bidding process.

(39) TRS Numbering Directory. The database administered by the TRS Numbering Administrator, the purpose of which is to map each registered Internet-based TRS user's NANP telephone number to his or her end device.

(40) TRS User Registration Database. A system of records containing TRS user identification data capable of:

(i) Receiving and processing subscriber information sufficient to identify unique TRS users and to ensure that each has a single default provider;

(ii) Assigning each VRS user a unique identifier;

(iii) Allowing VRS providers and other authorized entities to query the TRS User Registration Database to determine if a prospective user already has a default provider;

(iv) Allowing VRS providers to indicate that a VRS user has used the service; and

(v) Maintaining the confidentiality of proprietary data housed in the database by protecting it from theft, loss or disclosure to unauthorized persons. The purpose of this database is to ensure accurate registration and verification of VRS users and improve the efficiency of the TRS program.

(41) Unauthorized provider. An iTRS provider that becomes the iTRS user's new default provider without having obtained the user's authorization verified in accordance with the procedures specified in this part.

(42) Unauthorized change. A change in an iTRS user's selection of a default provider that was made without authorization verified in accordance with the verification procedures specified in this part.

(43) Video relay service (VRS). A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.

(44) Visual privacy screen. A screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call.

(45) Voice carry over (VCO). 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. Two-line VCO is a VCO service that allows TRS users to use one telephone line for voicing and the other for receiving TTY messages. A VCO–to–TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user. VCO–to–VCO allows a relay conversation to take place between two VCO users.

(46) VRS access technology. Any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make and receive a VRS call.

(47) VRS Access Technology Reference Platform. A software product procured by or on behalf of the Commission that provides VRS functionality, including the ability to make and receive VRS and point-to-point calls, dial-around functionality, and the ability to update user registration location, and against which providers may test their own VRS access technology and platforms for compliance with the Commission's interoperability and portability rules.

(b) For purposes of this subpart, all regulations and requirements applicable to common carriers shall also be applicable to providers of interconnected VoIP service.

47 C.F.R. § 64.603

§ 64.603 Provision of services.

Effective: February 22, 2017

(a) Each common carrier providing telephone voice transmission services shall provide, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Interstate Spanish language relay service shall be provided. Speech-to-speech relay service also shall be provided, except that speech-to-speech relay service need not be provided by IP Relay providers, VRS providers, captioned telephone relay service providers, and IP CTS providers. In addition, each common carrier providing telephone voice transmission services shall provide access via the 711 dialing code to all relay services as a toll free call. CMRS providers subject to this 711 access requirement are not required to provide 711 dialing code access to TTY users if they provide 711 dialing code access via real-time text communications, in accordance with 47 CFR part 67.

(b) A common carrier shall be considered to be in compliance with this section:

(1) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.606 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(2) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.606 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.606 for such state.

47 C.F.R. § 64.604

§ 64.604 Mandatory minimum standards.

Effective: October 17, 2017

The standards in this section are applicable December 18, 2000, except as stated in paragraphs (c)(2) and (c)(7) of this section.

(a) Operational standards—

(1) Communications assistant (CA).

(i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A "qualified interpreter" is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY–based TRS or VRS call shall stay with the call for a minimum of ten minutes. CAs answering and placing an STS call shall stay with the call for a minimum of twenty minutes. The minimum time period shall begin to run when the CA reaches the called party. The obligation of the CA to stay with the call shall terminate upon the earlier of:

(A) The termination of the call by one of the parties to the call; or

(B) The completion of the minimum time period.

(vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

(viii) STS providers shall offer STS users the option to have their voices muted so that the other party to the call will hear only the CA and will not hear the STS user's voice.

(2) Confidentiality and conversation content.

(i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

(3) Types of calls.

(i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call. Providers of Internet-based TRS need not provide the same billing options (e.g., sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services if they allow for long distance calls to be placed using calling cards or credit cards or do not assess charges for long distance calling. Providers of Internet-based TRS need not allow for long distance calls to be placed using calling cards or credit cards if they do not assess charges for long distance calling.

(iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.

(iv) Relay services other than Internet-based TRS shall be capable of handling pay-per-call calls.

(v) TRS providers are required to provide the following types of TRS calls:

(A) Text-to-voice and voice-to-text;

(B) One-line VCO, two-line VCO, VCO–to–TTY, and VCO–to–VCO; and

(C) One-line HCO, two-line HCO, HCO–to–TTY, HCO–to–HCO. VRS providers are

not required to provide text-to-voice and voice-to-text functionality. IP Relay providers are not required to provide one-line VCO and one-line HCO. IP Relay providers and VRS providers are not required to provide:

(1) VCO–to–TTY and VCO–to–VCO; and

(2) HCO–to–TTY and HCO–to–HCO. Captioned telephone service providers and IP CTS providers are not required to provide:

(i) Text-to-voice functionality; and

) One-line HCO, two-line HCO, HCO–to–TTY, and HCO–to–HCO. IP CTS providers are not required to provide one-line VCO.

(vi) TRS providers are required to provide the following features:

(A) Call release functionality (only with respect to the provision of TTY–based relay service);

(B) Speed dialing functionality; and

(C) Three-way calling functionality.

(vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

(viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.

(4) Emergency call handling requirements for TTY–based TRS providers. TTY–based TRS providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

(5) STS called numbers. Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(6) Visual privacy screens/idle calls. A VRS CA may not enable a visual privacy screen or similar feature during a VRS call. A VRS CA must disconnect a VRS call if the caller or the called party to a VRS call enables a privacy screen or similar feature for more than five

minutes or is otherwise unresponsive or unengaged for more than five minutes, unless the call is a 9–1–1 emergency call or the caller or called party is legitimately placed on hold and is present and waiting for active communications to commence. Prior to disconnecting the call, the CA must announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates continued engagement with the call.

(7) International calls. VRS calls that originate from an international IP address will not be compensated, with the exception of calls made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States.

(b) Technical standards—

(1) ASCII and Baudot. TTY–based relay service shall be capable of communicating with ASCII and Baudot format, at any speed generally in use. Other forms of TRS are not subject to this requirement.

(2) Speed of answer.

(i) TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(ii) TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network. A TRS facility shall ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(A) The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility.

(B) Abandoned calls shall be included in the speed-of-answer calculation.

(C) A TRS provider's compliance with this rule shall be measured on a daily basis.

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(iii) Speed of answer requirements for VRS providers. VRS providers must answer 80% of

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

(3) Equal access to interexchange carriers. TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users. This requirement is inapplicable to providers of Internet-based TRS if they do not assess specific charges for long distance calling.

(4) TRS facilities.

(i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(iii) A VRS CA may not handle VRS calls from a location primarily used as his or her home unless as part of the voluntary at-home VRS call handling pilot program as provided for by paragraph (b)(8) of this section.

(iv) A VRS provider leasing or licensing an automatic call distribution (ACD) platform must have a written lease or license agreement. Such lease or license agreement may not include any revenue sharing agreement or compensation based upon minutes of use. In addition, if any such lease is between two eligible VRS providers, the lessee or licensee must locate the ACD platform on its own premises and must utilize its own employees to manage the ACD platform.

(5) Technology. No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 CFR 64.1600 et seq.

(6) Caller ID. When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10–digit number of the calling party.

(7) STS 711 Calls. An STS provider shall, at a minimum, employ the same means of enabling an STS user to connect to a CA when dialing 711 that the provider uses for all other forms of TRS. When a CA directly answers an incoming 711 call, the CA shall transfer the STS user to an STS CA without requiring the STS user to take any additional steps. When an interactive voice response (IVR) system answers an incoming 711 call, the IVR system shall allow for an STS user to connect directly to an STS CA using the same level of prompts as the IVR system uses for all other forms of TRS.

(8) Voluntary at-home VRS call handling pilot program. Any VRS provider that holds a conditional or full certification to receive compensation from the TRS Fund pursuant to § 64.606 as of March 23, 2017 may participate in the voluntary at-home VRS call handling pilot program. The pilot program shall be in effect for one year, for service provided by participants beginning November 1, 2017, and ending October 31, 2018.

(i) Notification of intent to participate. A VRS provider seeking to participate in the pilot program shall notify the Commission of its intent to participate on or before September 1, 2017, and shall include in such notification a detailed plan demonstrating that the VRS provider intends to achieve compliance with the mandatory minimum standards applicable to VRS and with the safeguards enumerated in this paragraph (b)(8). Plans submitted by VRS providers shall specify the following:

(A) A description of the screening process used to select CAs for the at-home call handling program;

(B) A description of specific training to be provided for at-home CAs;

(C) A description of the protocols and CA expectations developed for the at-home call handling program;

(D) A description of the grounds for dismissing a CA from the at-home program and the process for such termination in the event that the CA fails to adhere to applicable requirements;

(E) A description of all steps that will be taken to install a workstation in a CA's home, including evaluations that will be performed to ensure all workstations are sufficiently secure and equipped to prevent eavesdropping and outside interruptions;

(F) A description of the monitoring technology to be used by the provider to ensure that off-site supervision approximates the level of supervision at the provider's call center;

(G) An explanation of how the provider's workstations will connect to the provider's network, including how they will be integrated into the call center routing, distribution, tracking, and support systems, and how the provider will ensure system redundancy in the event of service disruptions in at-home workstations;

(H) A signed certification by an officer of the provider that the provider will conduct random and unannounced inspections of at least five percent (5%) of all at-home workstations during the pilot program; and

(I) A commitment to comply with all other safeguards enumerated in this paragraph (b)(8) and the applicable rules in this chapter governing TRS.

(ii) Authorization for at-home VRS call handling. Upon Commission approval of a VRS provider's plan, the provider may conduct at-home VRS call handling during the period of the pilot program. The Commission may cancel such approval if a VRS provider fails to comply with any of the safeguards enumerated in this paragraph (b)(8) or other applicable mandatory minimum TRS standards. VRS providers may be subject to withholding,

forfeitures, and penalties for noncompliant minutes handled by at-home workstations, as is the case for non-compliant minutes handled by call centers.

(iii) Limit on minutes handled. In any month of the program, a VRS provider may be compensated for minutes served by at-home CA workstations up to a maximum of either thirty percent (30%) of a VRS provider's total minutes for which compensation is paid in that month or thirty percent (30%) of the provider's average monthly minutes for the 12 months ending October 31, 2017, whichever is greater.

(iv) Personnel safeguards. Before permitting CAs to handle VRS calls from at-home workstations, VRS providers shall:

(A) Ensure that each CA handling calls from an at-home workstation has the experience, skills, and knowledge necessary to effectively interpret from these workstations, including a thorough understanding of the TRS mandatory minimum standards and at least three years of experience as a call center CA.

(B) Establish protocols for the handling of calls from at-home workstations (to the extent there are additional protocols that differ from those applicable to the provider's call centers) and provide training to at-home CAs on such protocols, in addition to all applicable training that is required of CAs working from call centers.

(C) Provide each CA working from an at-home workstation equivalent support to that provided to CAs working from call centers, as needed to effectively handle calls, including, where appropriate, the opportunity to team interpret and consult with supervisors, and ensure that supervisors are readily available to a CA working from home to resolve problems that may arise during a relay call, such as difficulty in understanding a VRS user's signs, the need for added support for emergency calls, and relieving a CA in the event of the CA's sudden illness.

(D) Establish grounds for dismissing a CA from the at-home VRS call handling program (i.e., for noncompliance with the standards and safeguards enumerated in this paragraph (b)(8) and the rules governing TRS), including a process for such termination in the event that the CA fails to adhere to these requirements, and provide such grounds and process in writing to each CA participating in the pilot program.

(E) Obtain from each CA handling calls from an at-home workstation a certification in writing of the CA's understanding of and commitment to complying with the rules in this chapter governing TRS, including rules governing caller confidentiality and fraud prevention, and the CA's understanding of the reasons and process for dismissal from the at-home VRS call handling program.

(v) Technical and environmental safeguards. Participating VRS providers shall ensure that each home environment used for at-home VRS call handling enables the provision of confidential and uninterrupted services to the same extent as the provider's call centers and is seamlessly integrated into the provider's call routing, distribution, tracking, and support systems. VRS providers shall ensure that each at-home workstation:

(A) Resides in a separate, secure location in the CA's home, where access is restricted solely to the CA;

(B) Allows a CA to use all call-handling technology to the same extent as other CAs, including the ability to transition a non-emergency call to an emergency call, engage in virtual teaming with another CA, and allow supervisors to communicate with and oversee calls;

(C) Is capable of supporting VRS in compliance with the applicable mandatory minimum technical and emergency call handling standards to the same degree as these are available at call centers, including the ability to route VRS calls around individual CA workstations in the event the CA experiences a network outage or other service interruption;

(D) Is equipped with an effective means to prevent eavesdropping, such as white noise emitters or soundproofing, and to ensure that interruptions from noises outside the room do not adversely affect a CA's ability to interpret a call accurately and effectively; and

(E) Is connected to the provider's network over a secure connection to ensure caller privacy.

(vi) Monitoring and oversight obligations. VRS providers shall:

(A) Inspect and approve each at-home workstation before activating a CA's workstation for use;

(B) Assign a unique call center identification number (ID) to each VRS at-home workstation and use this call center ID to identify all minutes handled from each such workstation in its call detail records submitted monthly to the TRS Fund administrator;

(C) Equip each at-home workstation with monitoring technology sufficient to ensure that off-site supervision approximates the level of supervision at the provider's call center, including the ability to monitor both ends of a call, i.e., video and audio, to the same extent as is possible in a call center, and regularly analyze the records and data produced by such monitoring to proactively address possible waste, fraud, and abuse;

(D) Keep all records pertaining to at-home workstations, including the data produced by any at-home workstation monitoring technology, except for any data that records the content of an interpreted conversation, for a minimum of five years; and

(E) Conduct random and unannounced inspections of at least five percent (5%) of all at-home workstations during the pilot program.

(vii) Commission audits and inspections. At-home workstations and workstation records shall be subject to review, audit, and inspection by the Commission and the Fund administrator and unannounced on-site inspections by the Commission to the same extent as other call centers and call center records subject to the rules in this chapter.

(viii) Monthly reports. Each participating VRS provider shall report the following

information to the TRS Fund administrator with its monthly requests for compensation:

(A) The call center ID and full street address (number, street, city, state, and zip code) for each at-home workstation and the CA ID number for each individual handling VRS calls from that workstation; and

(B) The location and call center IDs of call centers providing supervision for at-home workstations, plus the names of persons at such call centers responsible for oversight of such workstations.

(ix) Six-month report. Each participating VRS provider shall submit, no later than seven months after the start of its program, a report covering the first six months of its program, containing the following information:

(A) A description of the actual screening process used to select CAs for the at-home call handling program;

(B) Copies of training materials provided to at-home CAs;

(C) Copies of written protocols used for CAs working from home;

(D) The total number of CAs handling VRS calls from at-home workstations over the first six months of the program;

(E) The number of 911 calls handled by the provider's at-home workstations;

(F) A description and copies of any surveys or evaluations taken of CAs concerning their experience using at-home workstations and participating in an at-home call handling program;

(G) The total number of CAs terminated from the program;

(H) The total number of complaints, if any, submitted to the provider regarding its at-home call handling program or calls handled by at-home CAs;

(I) The total number of on-site inspections conducted of at-home workstations and the date and location of each inspection;

(J) A description of the monitoring technology used to monitor CAs working at home and an analysis of the experience of supervisors overseeing at-home CAs compared to overseeing CAs in a call center;

(K) Copies of any reports produced by tracking software and a description explaining how the provider analyzed the reports for anomalies; and

(L) Detailed documentation of costs incurred in the use of at-home workstations, including any costs associated with CA recruitment, training, and compensation, engineering and technical set-up (including workstation set-up), and administrative and management support (including oversight, evaluation, and recording).

(c) Functional standards—

(1) Consumer complaint logs.

(i) States and interstate providers must maintain a log of consumer complaints including all complaints about TRS in the state, whether filed with the TRS provider or the State, and must retain the log until the next application for certification is granted. The log shall include, at a minimum, the date the complaint was filed, the nature of the complaint, the date of resolution, and an explanation of the resolution.

(ii) Beginning July 1, 2002, states and TRS providers shall submit summaries of logs indicating the number of complaints received for the 12–month period ending May 31 to the Commission by July 1 of each year. Summaries of logs submitted to the Commission on July 1, 2001 shall indicate the number of complaints received from the date of OMB approval through May 31, 2001.

(2) Contact persons. Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following:

(i) The name and address of the office that receives complaints, grievances, inquiries, and suggestions;

(ii) Voice and TTY telephone numbers, fax number, e-mail address, and web address; and

(iii) The physical address to which correspondence should be sent.

(3) Public access to information. Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population. In addition, each common carrier providing telephone voice transmission services shall conduct, not later than October 1, 2001, ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible.

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

(5) Jurisdictional separation of costs—

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

(ii) Cost recovery. Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, with respect to VRS, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.

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

(A) Contributions. Every carrier providing interstate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund on the basis of interstate end-user revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) Contribution computations. Contributors' contributions to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least $25 per year. Contributors whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the Federal Register). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer and Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that

prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) Registration Requirements for Providers of Non–Interconnected VoIP Service—

(1) Applicability. A non-interconnected VoIP service provider that will provide interstate service that generates interstate end-user revenue that is subject to contribution to the Telecommunications Relay Service Fund shall file the registration information described in paragraph (c)(5)(iii)(C)(2) of this section in accordance with the procedures described in paragraphs (c)(5)(iii)(C)(3) and (c)(5)(iii)(C)(4) of this section. Any non-interconnected VoIP service provider already providing interstate service that generates interstate end-user revenue that is subject to contribution to the Telecommunications Relay Service Fund on the effective date of these rules shall submit the relevant portion of its FCC Form 499–A in accordance with paragraphs (c)(5)(iii)(C)(2) and (3) of this section.

(2) Information required for purposes of TRS Fund contributions. A non-interconnected VoIP service provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(1) of this section shall provide the following information:

(i) The provider's business name(s) and primary address;

(ii) The names and business addresses of the provider's chief executive officer, chairman, and president, or, in the event that a provider does not have such executives, three similarly senior-level officials of the provider;

(iii) The provider's regulatory contact and/or designated agent;

(iv) All names that the provider has used in the past; and

(v) The state(s) in which the provider provides such service.

(3) Submission of registration. A provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(1) of this section shall submit the information described in paragraph (c)(5)(iii)(C)(2) of this section in accordance with the Instructions to FCC Form 499–A. FCC Form 499–A must be submitted under oath and penalty of perjury.

(4) Changes in information. A provider must notify the Commission of any changes to the information provided pursuant to paragraph (c)(5)(iii)(C)(2) of this section within no more than one week of the change. Providers may satisfy this requirement by filing the relevant portion of FCC Form 499–A in accordance with the Instructions to such form.

(D) Data Collection and Audits.

(1) TRS providers seeking compensation from the TRS Fund shall provide the administrator with true and adequate data, and other historical, projected and state

rate related information reasonably requested to determine the TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS investment in general in accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements.

(2) Call data required from all TRS providers. In addition to the data requested by paragraph (c)(5)(iii)(C)(1) of this section, TRS providers seeking compensation from the TRS Fund shall submit the following specific data associated with each TRS call for which compensation is sought:

(i) The call record ID sequence;

(ii) CA ID number;

(iii) Session start and end times noted at a minimum to the nearest second;

(iv) Conversation start and end times noted at a minimum to the nearest second;

Incoming telephone number and IP address (if call originates with an IP–based device) at the time of the call;

(vi) Outbound telephone number (if call terminates to a telephone) and IP address (if call terminates to an IP–based device) at the time of call;

(vii) Total conversation minutes;

(viii) Total session minutes;

(ix) The call center (by assigned center ID number) that handled the call; and

(x) The URL address through which the call is initiated.

(3) Additional call data required from Internet-based Relay Providers. In addition to the data required by paragraph (c)(5)(iii)(C)(2) of this section, Internet-based Relay Providers seeking compensation from the Fund shall submit speed of answer compliance data.

(4) Providers submitting call record and speed of answer data in compliance with paragraphs (c)(5)(iii)(C)(2) and (c)(5)(iii)(C)(3) of this section shall:

(i) Employ an automated record keeping system to capture such data required pursuant to paragraph (c)(5)(iii)(C)(2) of this section for each TRS call for which minutes are submitted to the fund administrator for compensation; and

(ii) Submit such data electronically, in a standardized format. For purposes of this subparagraph, an automated record keeping system is a system that captures data in a computerized and electronic format that does not allow human intervention

during the call session for either conversation or session time.

(5) Certification. The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, when submitting a request for compensation from the TRS Fund must, with each such request, certify as follows:
I swear under penalty of perjury that:

(i) I am _____ (name and title)___, an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate; and

(ii) The TRS calls for which compensation is sought were handled in compliance with Section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

(6) Audits. The fund administrator and the Commission, including the Office of Inspector General, shall have the authority to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments. TRS providers must submit to audits annually or at times determined appropriate by the Commission, the fund administrator, or by an entity approved by the Commission for such purpose. A TRS provider that fails to submit to a requested audit, or fails to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of payment until it submits to the requested audit or provides sufficient documentation.

(7) Call data record retention. Internet-based TRS providers shall retain the data required to be submitted by this section, and all other call detail records, other records that support their claims for payment from the TRS Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form, in an electronic format that is easily retrievable, for a minimum of five years.

(E) Payments to TRS providers.

(1) TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. The formulas should appropriately compensate interstate providers for the provision of TRS, whether intrastate or interstate.

(2) TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit.

(3) In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments.

(4) The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in this section, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with 47 CFR parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers.

(5) The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

(6) The administrator shall not be obligated to pay any request for compensation until it has been established as compensable. A request shall be established as compensable only after the administrator, in consultation with the Commission, or the Commission determines that the provider has met its burden to demonstrate that the claim is compensable under applicable Commission rules and the procedures established by the administrator. Any request for compensation for which payment has been suspended or withheld in accordance with paragraph (c)(5)(iii)(L) of this section shall not be established as compensable until the administrator, in consultation with the Commission, or the Commission determines that the request is compensable in accordance with paragraph (c)(5)(iii)(L)(4) of this section.

(F) Eligibility for payment from the TRS Fund.

(1) TRS providers, except Internet-based TRS providers, eligible for receiving payments from the TRS Fund must be:

(i) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.606; or

(ii) TRS facilities owned or operated under contract with a common carrier

providing interstate services operated pursuant to this section; or

(iii) Interstate common carriers offering TRS pursuant to this section.

(2) Internet-based TRS providers eligible for receiving payments from the TRS fund must be certified by the Commission pursuant to § 64.606.

(G) Any eligible TRS provider as defined in paragraph (c)(5)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of the TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM) and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall account for the financial transactions of the TRS Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the TRS Fund in accordance with the United States Government Standard General Ledger. When the administrator, or any independent auditor hired by the administrator, conducts audits of providers of services under the TRS program or contributors to the TRS Fund, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the TRS Fund, the administrator shall also comply with all relevant and applicable federal financial management and reporting statutes. The administrator shall establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of the advisory committee deliberations.

(I) Information filed with the administrator. The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a provider submitting minutes to the Fund for compensation must, in each instance, certify, under penalty of perjury, that the minutes were handled in compliance with section 225 and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls. The CEO, CFO, or other senior executive of a provider submitting cost and demand data to the TRS Fund administrator shall certify under penalty of perjury that such information is true and correct. The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in

company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer and Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (see § 54.701 of this chapter), the North American Numbering Plan administration cost recovery (see § 52.16 of this chapter), and the long-term local number portability cost recovery (see § 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

(J) [Reserved by 76 FR 63563]

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

(L) Procedures for the suspension/withholding of payment.

(1) The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.

(2) If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, a TRS provider will be notified within two months from the date for the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. TRS providers then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If a TRS provider does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.

(3) If the TRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes

of use in dispute, within eight months after submission of such additional justification.

(4) If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use. Any payment by the Commission will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.

(5) If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the provider of this decision within one year of the initial request for payment.

(6) If the VRS provider submits a waiver request asserting exigent circumstances affecting one or more call centers that will make it highly improbable that the VRS provider will meet the speed-of-answer standard for call attempts occurring in a period of time identified by beginning and ending dates, the Fund administrator shall not withhold TRS Fund payments for a VRS provider's failure to meet the speed-of-answer standard during the identified period of time while the waiver request is under review by the Commission. In the event that the waiver request is denied, the speed-of-answer requirement is not met, and payment has been made to the provider from the TRS Fund for the identified period of time or a portion thereof, the provider shall return such payment to the TRS Fund for any period of time when the speed-of-answer requirement was not met.

(M) Whistleblower protections. Providers shall not take any reprisal in the form of a personnel action against any current or former employee or contractor who discloses to a designated manager of the provider, the Commission, the TRS Fund administrator or to any Federal or state law enforcement entity, any information that the reporting person reasonably believes evidences known or suspected violations of the Communications Act or TRS regulations, or any other activity that the reporting person reasonably believes constitutes waste, fraud, or abuse, or that otherwise could result in the improper billing of minutes of use to the TRS Fund and discloses that information to a designated manager of the provider, the Commission, the TRS Fund administrator or to any Federal or state law enforcement entity. Providers shall provide an accurate and complete description of these TRS whistleblower protections, including the right to notify the FCC's Office of Inspector General or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to its employees in writing (e.g. in employee handbooks, policies and procedures manuals, or bulletin board postings—either online or in hard copy) must include an accurate and complete description of these TRS whistleblower protections in those written materials.

(N) In addition to the provisions set forth above, VRS providers shall be subject to the following provisions:

(1) Eligibility for reimbursement from the TRS Fund.

(i) Only an eligible VRS provider, as defined in paragraph (c)(5)(iii)(F) of this section, may hold itself out to the general public as providing VRS.

(ii) VRS service must be offered under the name by which the eligible VRS provider offering such service became certified and in a manner that clearly identifies that provider of the service. Where a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider. Providers must route all VRS calls through a single URL address used for each name or sub-brand used.

(iii) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible provider.

(iv) To the extent that an eligible VRS provider contracts with or otherwise authorizes a third party to provide any other services or functions related to the provision of VRS other than interpretation services or call center functions, that third party must not hold itself out as a provider of VRS, and must clearly identify the eligible VRS provider to the public. To the extent an eligible VRS provider contracts with or authorizes a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, those VRS minutes are not compensable on a per minute basis from the TRS fund.

(v) All third-party contracts or agreements entered into by an eligible provider must be in writing. Copies of such agreements shall be made available to the Commission and to the TRS Fund administrator upon request.

(2) Call center reports. VRS providers shall file a written report with the Commission and the TRS Fund administrator, on April 1st and October 1st of each year for each call center that handles VRS calls that the provider owns or controls, including centers located outside of the United States, that includes:

(i) The complete street address of the center;

(ii) The number of individual CAs and CA managers; and

(iii) The name and contact information (phone number and e-mail address) of the manager(s) at the center. VRS providers shall also file written notification with the Commission and the TRS Fund administrator of any change in a center's location, including the opening, closing, or relocation of any center, at least 30 days prior to any such change.

(3) Compensation of CAs. VRS providers may not compensate, give a preferential work schedule or otherwise benefit a CA in any manner that is based upon the number of VRS minutes or calls that the CA relays, either individually or as part of a group.

(4) Remote training session calls. VRS calls to a remote training session or a comparable activity will not be compensable from the TRS Fund when the provider submitting minutes for such a call has been involved, in any manner, with such a training session. Such prohibited involvement includes training programs or comparable activities in which the provider or any affiliate or related party thereto, including but not limited to its subcontractors, partners, employees or sponsoring organizations or entities, has any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities.

(6) Complaints—

(i) Referral of complaint. If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.606 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Intrastate complaints shall be resolved by the state within 180 days after the complaint is first filed with a state entity, regardless of whether it is filed with the state relay administrator, a state PUC, the relay provider, or with any other state entity.

(iii) Jurisdiction of Commission. After referring a complaint to a state entity under paragraph (c)(6)(i) of this section, or if a complaint is filed directly with a state entity, the Commission shall exercise jurisdiction over such complaint only if:

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

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

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

(B) The Commission determines that such state program is no longer qualified for certification under § 64.606.

(iv) The Commission shall resolve within 180 days after the complaint is filed with the Commission any interstate TRS complaint alleging a violation of section 225 of the Act or any complaint involving intrastate relay services in states without a certified program. The Commission shall resolve intrastate complaints over which it exercises jurisdiction under paragraph (c)(6)(iii) of this section within 180 days.

(v) Complaint procedures. Complaints against TRS providers for alleged violations of this subpart may be either informal or formal.

(A) Informal complaints—

(1) Form. An informal complaint may be transmitted to the Consumer & Governmental Affairs Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

(2) Content. An informal complaint shall include the name and address of the complainant; the name and address of the TRS provider against whom the complaint is made; a statement of facts supporting the complainant's allegation that the TRS provided it has violated or is violating section 225 of the Act and/or requirements under the Commission's rules; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the defendant TRS provider (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's hearing or speech disability).

(3) Service; designation of agents. The Commission shall promptly forward any complaint meeting the requirements of this subsection to the TRS provider named in the complaint. Such TRS provider shall be called upon to satisfy or answer the complaint within the time specified by the Commission. Every TRS provider shall file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Such designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address.

(B) Review and disposition of informal complaints.

(1) Where it appears from the TRS provider's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and defendant in the manner requested by the complainant (e.g., letter, facsimile transmission, telephone (voice/TRS/TTY) or Internet e-mail.

(2) A complainant unsatisfied with the defendant's response to the informal complaint and the staff's decision to terminate action on the informal complaint may file a formal complaint with the Commission pursuant to paragraph (c)(6)(v)(C) of this section.

(C) Formal complaints. A formal complaint shall be in writing, addressed to the Federal Communications Commission, Enforcement Bureau, Telecommunications Consumer Division, Washington, DC 20554 and shall contain:

(1) The name and address of the complainant,

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

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

(4) The relief sought.

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

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

(F) Service.

(1) Except where a complaint is referred to a state pursuant to § 64.604(c)(6)(i), or where a complaint is filed directly with a state entity, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

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

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

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

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

be dismissed.

(7) Treatment of TRS customer information. Beginning on July 21, 2000, all future contracts between the TRS administrator and the TRS vendor shall provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS user. Such information shall not be sold, distributed, shared or revealed in any other way by the relay center or its employees, unless compelled to do so by lawful order.

(8) Incentives for use of IP CTS.

(i) An IP CTS provider shall not offer or provide to any person or entity that registers to use IP CTS any form of direct or indirect incentives, financial or otherwise, to register for or use IP CTS.

(ii) An IP CTS provider shall not offer or provide to a hearing health professional any direct or indirect incentives, financial or otherwise, that are tied to a consumer's decision to register for or use IP CTS. Where an IP CTS provider offers or provides IP CTS equipment, directly or indirectly, to a hearing health professional, and such professional makes or has the opportunity to make a profit on the sale of the equipment to consumers, such IP CTS provider shall be deemed to be offering or providing a form of incentive tied to a consumer's decision to register for or use IP CTS.

(iii) Joint marketing arrangements between IP CTS providers and hearing health professionals shall be prohibited.

(iv) For the purpose of this paragraph (c)(8), a hearing health professional is any medical or non-medical professional who advises consumers with regard to hearing disabilities.

(v) Any IP CTS provider that does not comply with this paragraph (c)(8) shall be ineligible for compensation for such IP CTS from the TRS Fund.

(9) IP CTS registration and certification requirements.

(i) IP CTS providers must first obtain the following registration information from each consumer prior to requesting compensation from the TRS Fund for service provided to the consumer. The consumer's full name, date of birth, last four digits of the consumer's social security number, address and telephone number.

(ii) Self-certification prior to August 28, 2014. IP CTS providers, in order to be eligible to receive compensation from the TRS Fund for providing IP CTS, also must first obtain a written certification from the consumer, and if obtained prior to August 28, 2014, such written certification shall attest that the consumer needs IP CTS to communicate in a manner that is functionally equivalent to the ability of a hearing individual to communicate using voice communication services. The certification must include the consumer's certification that:

(A) The consumer has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users;

(B) The consumer understands that the captioning service is provided by a live communications assistant; and

(C) The consumer understands that the cost of IP CTS is funded by the TRS Fund.

(iii) Self-certification on or after August 28, 2014. IP CTS providers must also first obtain from each consumer prior to requesting compensation from the TRS Fund for the consumer, a written certification from the consumer, and if obtained on or after August 28, 2014, such certification shall state that:

(A) The consumer has a hearing loss that necessitates use of captioned telephone service;

(B) The consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone;

(C) The consumer understands that the cost of captioning each Internet protocol captioned telephone call is funded through a federal program; and

(D) The consumer will not permit, to the best of the consumer's ability, persons who have not registered to use Internet protocol captioned telephone service to make captioned telephone calls on the consumer's registered IP captioned telephone service or device.

(iv) The certification required by paragraphs (c)(9)(ii) and (iii) of this section must be made on a form separate from any other agreement or form, and must include a separate consumer signature specific to the certification. Beginning on August 28, 2014, such certification shall be made under penalty of perjury. For purposes of this rule, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(v) Third-party certification prior to August 28, 2014. Where IP CTS equipment is or has been obtained by a consumer from an IP CTS provider, directly or indirectly, at no charge or for less than $75 and the consumer was registered in accordance with the requirements of paragraph (c)(9) of this section prior to August 28, 2014, the IP CTS provider must also obtain from each consumer prior to requesting compensation from the TRS Fund for the consumer, written certification provided and signed by an independent third-party professional, except as provided in paragraph (c)(9)(xi) of this section.

(vi) To comply with paragraph (c)(9)(v) of this section, the independent professional providing certification must:

(A) Be qualified to evaluate an individual's hearing loss in accordance with applicable professional standards, and may include, but are not limited to, community-based social service providers, hearing related professionals, vocational rehabilitation counselors, occupational therapists, social workers, educators, audiologists, speech pathologists, hearing instrument specialists, and doctors, nurses and other medical or health professionals;

(B) Provide his or her name, title, and contact information, including address, telephone number, and email address; and

(C) Certify in writing that the IP CTS user is an individual with hearing loss who needs IP CTS to communicate in a manner that is functionally equivalent to telephone service experienced by individuals without hearing disabilities.

(vii) Third-party certification on or after August 28, 2014. Where IP CTS equipment is or has been obtained by a consumer from an IP CTS provider, directly or indirectly, at no charge or for less than $75, the consumer (in cases where the equipment was obtained directly from the IP CTS provider) has not subsequently paid $75 to the IP CTS provider for the equipment prior to the date the consumer is registered to use IP CTS, and the consumer is registered in accordance with the requirements of paragraph (c)(9) of this section on or after August 28, 2014, the IP CTS provider must also, prior to requesting compensation from the TRS Fund for service to the consumer, obtain from each consumer written certification provided and signed by an independent third-party professional, except as provided in paragraph (c)(9)(xi) of this section.

(viii) To comply with paragraph (c)(9)(vii) of this section, the independent third-party professional providing certification must:

(A) Be qualified to evaluate an individual's hearing loss in accordance with applicable professional standards, and must be either a physician, audiologist, or other hearing related professional. Such professional shall not have been referred to the IP CTS user, either directly or indirectly, by any provider of TRS or any officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity (collectively "affiliate") of any TRS provider. Nor shall the third party professional making such certification have any business, family or social relationship with the TRS provider or any affiliate of the TRS provider from which the consumer is receiving or will receive service.

(B) Provide his or her name, title, and contact information, including address, telephone number, and email address.

(C) Certify in writing, under penalty of perjury, that the IP CTS user is an individual with hearing loss that necessitates use of captioned telephone service and that the third party professional understands that the captioning on captioned telephone service is provided by a live communications assistant and is funded through a federal program.

(ix) In instances where the consumer has obtained IP CTS equipment from a local, state, or federal governmental program, the consumer may present documentation to the IP CTS

provider demonstrating that the equipment was obtained through one of these programs, in lieu of providing an independent, third-party certification under paragraphs (c)(9)(v) and (vii) of this section.

(x) Each IP CTS provider shall maintain records of any registration and certification information for a period of at least five years after the consumer ceases to obtain service from the provider and shall maintain the confidentiality of such registration and certification information, and may not disclose such registration and certification information or the content of such registration and certification information except as required by law or regulation.

(xi) IP CTS providers must obtain registration information and certification of hearing loss from all IP CTS users who began receiving service prior to March 7, 2013, within 180 days following August 28, 2014. Notwithstanding any other provision of paragraph (c)(9) of this section, IP CTS providers shall be compensated for compensable minutes of use generated prior to February 24, 2015 by any such users, but shall not receive compensation for minutes of IP CTS use generated on or after February 24, 2015 by any IP CTS user who has not been registered.

(10) IP CTS settings. Each IP CTS provider shall ensure that each IP CTS telephone they distribute, directly or indirectly, shall include a button, icon, or other comparable feature that is easily operable and requires only one step for the consumer to turn on captioning.

(11) IP CTS Equipment.

(i) [Reserved by 79 FR 51450]

(ii) No person shall use IP CTS equipment or software with the captioning on, unless:

(A) Such person is registered to use IP CTS pursuant to paragraph (c)(9) of this section; or

(B) Such person was an existing IP CTS user as of March 7, 2013, and either paragraph (c)(9)(xi) of this section is not yet in effect or the registration deadline in paragraph (c)(9)(xi) of this section has not yet passed.

(iii) IP CTS providers shall ensure that any newly distributed IP CTS equipment has a label on its face in a conspicuous location with the following language in a clearly legible font: “FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING THIS DEVICE WITH THE CAPTIONS ON.” For IP CTS equipment already distributed to consumers by any IP CTS provider as of July 11, 2014, such provider shall, no later than August 11, 2014, distribute to consumers equipment labels with the same language as mandated by this paragraph for newly distributed equipment, along with clear and specific instructions directing the consumer to attach such labels to the face of their IP CTS equipment in a conspicuous location. For software applications on mobile phones, laptops, tablets, computers or other similar devices, IP CTS providers shall ensure that, each time the consumer logs into the application, the notification language required by this paragraph appears in a conspicuous location on the device screen immediately after log-in.

(iv) IP CTS providers shall maintain, with each consumer's registration records, records describing any IP CTS equipment provided, directly or indirectly, to such consumer, stating the amount paid for such equipment, and stating whether the label required by paragraph (c)(11)(iii) of this section was affixed to such equipment prior to its provision to the consumer. For consumers to whom IP CTS equipment was provided directly or indirectly prior to the effective date of this paragraph (c)(11), such records shall state whether and when the label required by paragraph (c)(11)(iii) of this section was distributed to such consumer. Such records shall be maintained for a minimum period of five years after the consumer ceases to obtain service from the provider.

(12) Discrimination and preferences. A VRS provider shall not:

(i) Directly or indirectly, by any means or device, engage in any unjust or unreasonable discrimination related to practices, facilities, or services for or in connection with like relay service,

(ii)[1] Engage in or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or

(ii)[1] Subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(13) Unauthorized and unnecessary use of VRS. A VRS provider shall not engage in any practice that causes or encourages, or that the provider knows or has reason to know will cause or encourage:

(i) False or unverified claims for TRS Fund compensation,

(ii) Unauthorized use of VRS,

(iii) The making of VRS calls that would not otherwise be made, or

(iv) The use of VRS by persons who do not need the service in order to communicate in a functionally equivalent manner. A VRS provider shall not seek payment from the TRS Fund for any minutes of service it knows or has reason to know are resulting from such practices. Any VRS provider that becomes aware of such practices being or having been committed by any person shall as soon as practicable report such practices to the Commission or the TRS Fund administrator.

(14) TRS calls requiring the use of multiple CAs. The following types of calls that require multiple CAs for their handling are compensable from the TRS Fund:

(i) VCO–to–VCO calls between multiple captioned telephone relay service users, multiple IP CTS users, or captioned telephone relay service users and IP CTS users;

(ii) Calls between captioned telephone relay service or IP CTS users and TTY service users; and

(iii) Calls between captioned telephone relay service or IP CTS users and VRS users.

(d) Other standards. The applicable requirements of §§ 64.605, 64.611, 64.615, 64.617, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 of this part are to be considered mandatory minimum standards.