

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

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

58. Discussion. We are concerned about the allegations of TRS users that CA quality appears to vary widely, and in many cases may be substandard. We tentatively conclude, however, that a federal rule imposing a minimum typing speed for **CAs** is not appropriate at this time. Our tentative conclusion is based upon our concern that imposing a federal standard could actually harm TRS users by constraining the labor pool for **CAs** and therefore, could adversely impact the ability of the TRS providers to offer TRS on a ubiquitous, around-the-clock basis. We request comment on this tentative conclusion. Commenters objecting to our tentative conclusion should specifically discuss the effect of establishing of a minimum typing speed requirement for **CAs** on the CA labor pool. We also invite comments on whether TRS providers are experiencing any labor shortages or difficulties in hiring and retaining competent **CAs**, and the extent to and manner in which TRS providers currently screen and test potential **CAs** for typing competency. Finally, we agree with commenters that new technologies, such as enhanced TTY protocols and enhanced computer software, could greatly increase TRS transmission times and, consequently, CA typing speeds. We seek comment, however, on the extent to which such technologies have been adopted by TRS users and TRS providers.

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

¹³⁴ See, e.g., SHHH Comments at 5.

¹³⁵ See Sprint Reply Comments at 2.

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

¹³⁷ Id.

¹³⁸ Id.

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

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

3. In-Call Replacement of CAs

61. Background and Comments. In the *NOI*, the Commission sought comment on call suspensions initiated by CAs (e.g., changes in CAs between shifts), and the impact of the suspensions, if any, on TRS users.¹⁴⁰ Numerous parties representing TRS users assert that during relay calls, a CA may transfer a call to another CA, and that these transfers are very **disruptive.**¹⁴¹ Ameritech and MCI, on the other hand, assert that in-call CA transfers are **rare.**¹⁴² AT&T, MCI and GTE state that in-call transfers are sometimes necessary to avoid CA fatigue or repetitive-motion injuries during extended **calls.**¹⁴³ AT&T notes that collective

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

¹⁴⁰ *NOI*, 12 FCC Rcd at 1167-68.

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

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

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

bargaining agreements may require TRS providers to ensure that CAs do not work longer than their established **shift** and that they receive adequate **breaks**.¹⁴⁴ Several commenters suggest that the Commission specify a minimum period of time in which a CA is required to stay with a TRS call, to avoid CA transfers within the first few minutes of a **call**.¹⁴⁵ MCI also asserts that in-call CA replacement is “rare,” and notes that, based on its experience as a TRS provider, the average length of a TRS call appears to be six (6) minutes.* Texas PUC recommends that the Commission adopt a rule permitting TRS users to request a specific CA gender when a CA transfer **occurs**.¹⁴⁷

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

C. Competition Issues

1. Multivendoring

63. Background and Comments. Commission rules allow common carriers to provide TRS within their service areas “individually, through a competitively selected vendor,

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

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

¹⁴⁶ MCI Comments at 9.

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

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

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

65. Discussion. As an initial matter, we note that the Telecommunications Act of 1996 ("1996 Act")¹⁵¹ obligates the Commission to facilitate the introduction of competition to telecommunications markets.* We believe that, while regulated single-vendor markets may result in reasonably low prices or reasonably high quality services, the greatest benefits of TRS will be realized when vendors directly compete for TRS consumers. Although requiring intrastate TRS multivendoring would comport with the overall policy goals of the Act and proposals for multivendoring advanced by commenters hold out substantial promise, we do

¹⁴⁸ 47 C.F.R. § 64.603.

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

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

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

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

not propose to require intrastate TRS multivendoring at this time. Instead, we invite comment on the following issues: (a) the Commission's jurisdiction to require intrastate multivendoring; (b) the correlation between the single-vendor model and problems with intrastate TRS; and (c) the structuring of an intrastate multivendor environment.

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

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

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

2. Treatment of TRS Customer Information

69. Background and Comments. In the **current TRS environment, statewide TRS** service contracts frequently are awarded to a single TRS provider for a specified contract term, e.g., three to five years. During a specific TRS providers' **term**, that provider may develop databases consisting of information on relay customer preferences or calling patterns.

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

¹⁵⁴ See 47 U.S.C. § 225 (d)(3)(B).

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

This information, **often** referred to as “caller profiles,” is used by the TRS provider to deliver more efficient and individualized service to TRS users. If an incumbent TRS provider fails to win renewal of its contract, a dispute may arise between the outgoing TRS provider and the state as to the ownership of **this** customer information, with the state seeking to turn the customer **information** over to the new TRS provider, to ease the transition between providers.

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

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

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

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

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

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

¹⁵⁸ See generally Sprint Reply Comments, *passim*.

¹⁵⁹ See *id* at 3-5.

¹⁶⁰ See 47 U.S.C. § 222(c)(1).

used in, the provision of such telecommunications service, including the publishing of **directories**.¹⁶¹

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

D. Enforcement and Certification Issues

73. Background and Comments. Section 225(b)(2) of the Communications Act, as amended, provides the Commission with jurisdiction to administer and enforce the obligations of both interstate and intrastate common carriers to provide TRS.¹⁶⁶ Pursuant to the enforcement scheme established by Congress, which includes a voluntary state certification

¹⁶¹ 47 U.S.C. § 222(c)(1).

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

¹⁶³ See 47 U.S.C. § 222(c)(1).

¹⁶⁴ See *supra* at para. 6.

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

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

process and a complaint **process**,¹⁶⁷ states that apply for and receive Commission certification of their TRS program are subject to modified enforcement standards. In general, **those** standards require all complaints filed against the certified state program to be addressed in the first instance by the **state**.¹⁶⁸ Although no specific period is required by the statute, the Commission's rules set five (5) years as the certification period for state **programs**.¹⁶⁹ State TRS programs are not required to amend their certification application at any point during the five-year period under the Commission's current TRS rules.

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

75. Discussion. To increase the effectiveness of the Commission's certification process, we tentatively conclude that the Commission's certification rules should be amended in the following manner. First, we tentatively conclude that the states be required to notify the Commission of substantive changes in their state TRS program within 60 days of the effective date of the change and to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards. The Commission may suspend or revoke a certification if, after notice and an opportunity for

¹⁶⁷ 47 U.S.C. § 225(e) - (g).

¹⁶⁸ See 47 U.S.C. § 225(g)(1).

¹⁶⁹ See 47 C.F.R. § 64.605(c).

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

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

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

¹⁷³ See 47 U.S.C. § 225(g)(2)(A)(i).

hearing, the Commission determines that the state certification is no longer **warranted**.¹⁷⁴ We further note that the Commission may, upon its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the Commission's mandatory minimum standards. We tentatively conclude that "substantive changes" include, but are not limited to: (1) the replacement of the state's TRS vendor; (2) the opening of the state TRS program to allow multiple vendors; and (3) changes in the underlying state rules governing the TRS program involving any of the mandatory minimum standards for TRS. Second, we tentatively conclude that we should amend our rules to require that, as a condition of certification, a state TRS program must demonstrate that its program makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints. We seek comment on our tentative conclusions."

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

E. Other Issues

77. In the *NOI*, the Commission sought comment on several other issues relating to TRS, including: (1) the extent to which carriers are currently offering TTY users the option of having their number designated as a TTY number, either in published directories or through

¹⁷⁴ See 47 C.F.R. § 64.605(e).

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

¹⁷⁶ 47 U.S.C. § 225(f)(2)(B).

Directory Assistance (DA) service;¹⁷⁷ (2) the extent to which states have implemented TTY, Telebraille and other specialized consumer premises equipment distribution programs;^{**} and (3) the effectiveness of carrier information and outreach activities.” While the Commission received a variety of comments from interested parties on these issues in response to the *NOI*, we are not proposing rules addressing these areas and do not seek comment on them. We will continue to monitor these issues, and will revisit them as appropriate.

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

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

80. Finally, parties representing TRS users recommend that the Commission require TRS providers to implement certain TRS features and capabilities. For example, several parties request that the Commission require “call release” as a mandatory TRS feature.^{**} Other features proposed by the parties include Caller ID recognition, the ability to conduct

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

¹⁷⁸ *NOI*, 12 FCC Rcd at 1168 - 1169.

¹⁷⁹ *NOI*, 12 FCC Rcd at 1169.

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

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

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

conference calls through TRS, “two-line VCO,” and automatic call **forwarding**.¹⁸³ In this *Notice*, we do not propose that any additional TRS features, other than those proposed in other areas of this *Notice*, be required under our rules at this time. These and other important aspects of TRS may be addressed in further proceedings in this docket.

IV. CONCLUSION

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

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

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

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

83. The *Notice* is based upon the record developed in a *Notice of Inquiry* on improving telecommunications relay services (TRS), released by the Commission on January 14, 1997 (FCC 97-7). The goal of this proceeding is to consider ways in which TRS can be improved, both to better serve current TRS users and to ensure that TRS serves the broadest possible population of persons with hearing and speech disabilities, consistent with Congress’ direction at 47 U.S.C. § 225(d)(2) to the Commission to ensure that its regulations encourage the use of existing technology and do not discourage or impair the development of improved technology. Specifically, the *Notice* proposes to require nationwide speech-to-speech (STS)

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

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

service for persons with severe speech disabilities as a mandatory TRS feature within two years of publication of final rules in this proceeding, and requests comment on this proposal. The *Notice* also proposes a number of rule amendments based upon the comments submitted by *parties* in the *Notice of Inquiry*, and seeks comment on those proposals. The overall intent of these proposed rules is to improve the effectiveness of TRS service and the Commission's oversight of TRS, and to clear up ambiguities surrounding several of the Commission's current TRS rules.

B. Legal Basis

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

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

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

86. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.¹⁸⁹ The SBA defines such establishments to be small businesses when they have no more than 1,500

¹⁸⁵ 5 U.S.C. § 603(b)(3).

¹⁸⁶ *Id.* § 601(6).

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

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

¹⁸⁹ *Id.*

employees.¹⁹⁰ According to our most recent data, there are 12 interstate TRS providers, and these consist of interexchange carriers, local exchange carriers, and state-managed entities. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 12 small TRS providers that may be affected by the proposed rules, if adopted. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for Regulatory Flexibility Act purposes, that any TRS providers are small entities.

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

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

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

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

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

designees, through a competitively selected vendor, or in concert with other **carriers**.¹⁹¹ For this reason, the Commission expects that the proposed rule amendments will have a minimal impact on small entities. Moreover, the *Notice* does not propose any reporting requirements applicable to small entities. We tentatively conclude that our proposals in the *Notice* would impose minimum burdens on small entities. We encourage comment on this tentative conclusion.

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

89. None.

VI. PROCEDURAL MATTERS

A. Ex Parte Presentations

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

B. Initial Paperwork Reduction Act of 1995 Analysis

91. This Notice contains proposed information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the **Office** of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-1 3. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collections of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

¹⁹¹ 47 U.S.C. § 225(c).

¹⁹² See paras. 92-95, infra.

C. Comment Filing Procedures

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

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

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

95. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing

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

requirements addressed above. Parties submitting diskettes should submit them to Carmell Weathers, Network Services Division, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly **labelled** with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

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

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

VII. ORDERING CLAUSES

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

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

FEDERAL COMMUNICATIONS COMMISSION

Maggie Roman Salas
Secretary

**APPENDIX A
LIST OF COMMENTERS**

Comments

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

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

Reply Comments

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

30. sprint
31. Texas Advisory Committee on State Emergency Communications (TX-ACSEC)
32. Ultratec, Inc.
33. UCPA of San Diego County
34. United States Telephone Association (UCPA)

APPENDIX B
PROPOSED RULES

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

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

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

AUTHORITY: 47 U.S.C. § 154.

2. Section 64.601 is revised to read as follows:

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

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

(6) * * *

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

(8) *Telecommunications Relay Services (TRS)*. Telephone **transmission** services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio * * *

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

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

3. Section 64.603 is revised to read as follows:

§ 64.603 Provision of services.

* * *

(a) * * *

(b) * * *

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

4. Section 64.604 is revised to read as follows:

§ 64.604. Mandatory minimum standards.

(a) *Operational standards -*

(1) * * *

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

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

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

(b) *Technical standards -*

(1) * * *

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

(3) * * *

(4) * * *

(5) * * *

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

§ 64.605. State certification.

* * *

(b) * * *

(1) * * *

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

(3) * * *

(c) * * *

(d) * * *

(e) * * *

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

APPENDIX C
47 C.F.R § 64.604

§ 64.604 **Mandatory minimum standards.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) *Contribution computations.* Contributors' contribution to the TRS Fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined **annually** by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to total interstate revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the **fund** administrator may request authority from the Commission to borrow **funds** commercially, with such debt secured by future years contributions. Each subject carrier must contribute at least \$100 per year. Service providers whose annual contributions total less than

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

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

58. Discussion. We are concerned about the allegations of TRS users that CA quality appears to vary widely, and in many cases may be substandard. We tentatively conclude, however, that a federal rule imposing a minimum typing speed for **CAs** is not appropriate at this time. Our tentative conclusion is based upon our concern that imposing a federal standard could actually harm TRS users by constraining the labor pool for **CAs** and therefore, could adversely impact the ability of the TRS providers to offer TRS on a ubiquitous, around-the-clock basis. We request comment on this tentative conclusion. Commenters objecting to our tentative conclusion should specifically discuss the effect of establishing of a minimum typing speed requirement for **CAs** on the CA labor pool. We also invite comments on whether TRS providers are experiencing any labor shortages or difficulties in hiring and retaining competent **CAs**, and the extent to and manner in which TRS providers currently screen and test potential **CAs** for typing competency. Finally, we agree with commenters that new technologies, such as enhanced TTY protocols and enhanced computer software, could greatly increase TRS transmission times and, consequently, CA typing speeds. We seek comment, however, on the extent to which such technologies have been adopted by TRS users and TRS providers.

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

¹³⁴ See, e.g., SHHH Comments at 5.

¹³⁵ See Sprint Reply Comments at 2.

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

¹³⁷ *Id*

¹³⁸ *Id*.

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

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

3. In-Call Replacement of CAs

61. Background and Comments. In the *NOI*, the Commission sought comment on call suspensions initiated by CAs (e.g., changes in CAs between shifts), and the impact of the suspensions, if any, on TRS users.¹⁴⁰ Numerous parties representing TRS users assert that during relay calls, a CA may transfer a call to another CA, and that these transfers are very **disruptive.**¹⁴¹ Ameritech and MCI, on the other hand, assert that in-call CA transfers are **rare.**¹⁴² AT&T, MCI and GTE state that in-call transfers are sometimes necessary to avoid CA fatigue or repetitive-motion injuries during extended **calls.**¹⁴³ AT&T notes that collective

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

¹⁴⁰ *NOI*, 12 FCC Rcd at 1167-68.

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

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

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

bargaining agreements may require TRS providers to ensure that CAs do not work longer than their established **shift** and that they receive adequate **breaks**.¹⁴⁴ Several commenters suggest that the Commission specify a minimum period of time in which a CA is required to stay with a TRS call, to avoid CA transfers within the first few minutes of a **call**.¹⁴⁵ MCI also asserts that in-call CA replacement is “rare,” and notes that, based on its experience as a TRS provider, the average length of a TRS call appears to be six (6) minutes.* Texas PUC recommends that the Commission adopt a rule permitting TRS users to request a specific CA gender when a CA transfer **occurs**.¹⁴⁷

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

C. Competition Issues

1. Multivendoring

63. Background and Comments. Commission rules allow common carriers to provide TRS within their service areas “individually, through a competitively selected vendor,

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

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

¹⁴⁶ MCI Comments at 9.

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

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

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

65. Discussion. As an initial matter, we note that the Telecommunications Act of 1996 ("1996 Act")¹⁵¹ obligates the Commission to facilitate the introduction of competition to telecommunications markets.* We believe that, while regulated single-vendor markets may result in reasonably low prices or reasonably high quality services, the greatest benefits of TRS will be realized when vendors directly compete for TRS consumers. Although requiring intrastate TRS multivendoring would comport with the overall policy goals of the Act and proposals for multivendoring advanced by commenters hold out substantial promise, we do

¹⁴⁸ 47 C.F.R. § 64.603.

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

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

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

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

not propose to require intrastate TRS multivendoring at this time. Instead, we invite comment on the following issues: (a) the Commission's jurisdiction to require intrastate multivendoring; (b) the correlation between the single-vendor model and problems with intrastate TRS; and (c) the structuring of an intrastate multivendor environment.

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

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

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

2. Treatment of TRS Customer Information

69. Background and Comments. In the **current TRS environment, statewide TRS** service contracts frequently are awarded to a single TRS provider for a specified contract term, e.g., three to five years. During a specific TRS providers' **term**, that provider may develop databases consisting of information on relay customer preferences or calling patterns.

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

¹⁵⁴ See 47 U.S.C. § 225 (d)(3)(B).

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

This information, **often** referred to as “caller profiles,” is used by the TRS provider to deliver more efficient and individualized service to TRS users. If an incumbent TRS provider fails to win renewal of its contract, a dispute may arise between the outgoing TRS provider and the state as to the ownership of **this** customer information, with the state seeking to turn the customer **information** over to the new TRS provider, to ease the transition between providers.

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

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

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

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

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

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

¹⁵⁸ See generally Sprint Reply Comments, *passim*.

¹⁵⁹ See *id* at 3-5.

¹⁶⁰ See 47 U.S.C. § 222(c)(1).

used in, the provision of such telecommunications service, including the publishing of **directories**.¹⁶¹

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

D. Enforcement and Certification Issues

73. Background and Comments. Section 225(b)(2) of the Communications Act, as amended, provides the Commission with jurisdiction to administer and enforce the obligations of both interstate and intrastate common carriers to provide TRS.¹⁶⁶ Pursuant to the enforcement scheme established by Congress, which includes a voluntary state certification

¹⁶¹ 47 U.S.C. § 222(c)(1).

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

¹⁶³ See 47 U.S.C. § 222(c)(1).

¹⁶⁴ See *supra* at para. 6.

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

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

process and a complaint **process**,¹⁶⁷ states that apply for and receive Commission certification of their TRS program are subject to modified enforcement standards. In general, **those** standards require all complaints filed against the certified state program to be addressed in the first instance by the **state**.¹⁶⁸ Although no specific period is required by the statute, the Commission's rules set five (5) years as the certification period for state **programs**.¹⁶⁹ State TRS programs are not required to amend their certification application at any point during the five-year period under the Commission's current TRS rules.

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

75. Discussion. To increase the effectiveness of the Commission's certification process, we tentatively conclude that the Commission's certification rules should be amended in the following manner. First, we tentatively conclude that the states be required to notify the Commission of substantive changes in their state TRS program within 60 days of the effective date of the change and to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards. The Commission may suspend or revoke a certification if, after notice and an opportunity for

¹⁶⁷ 47 U.S.C. § 225(e) - (g).

¹⁶⁸ See 47 U.S.C. § 225(g)(1).

¹⁶⁹ See 47 C.F.R. § 64.605(c).

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

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

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

¹⁷³ See 47 U.S.C. § 225(g)(2)(A)(i).

hearing, the Commission determines that the state certification is no longer **warranted**.¹⁷⁴ We further note that the Commission may, upon its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the Commission's mandatory minimum standards. We tentatively conclude that "substantive changes" include, but are not limited to: (1) the replacement of the state's TRS vendor; (2) the opening of the state TRS program to allow multiple vendors; and (3) changes in the underlying state rules governing the TRS program involving any of the mandatory minimum standards for TRS. Second, we tentatively conclude that we should amend our rules to require that, as a condition of certification, a state TRS program must demonstrate that its program makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints. We seek comment on our tentative conclusions."

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

E. Other Issues

77. In the *NOI*, the Commission sought comment on several other issues relating to TRS, including: (1) the extent to which carriers are currently offering TTY users the option of having their number designated as a TTY number, either in published directories or through

¹⁷⁴ See 47 C.F.R. § 64.605(e).

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

¹⁷⁶ 47 U.S.C. § 225(f)(2)(B).

Directory Assistance (DA) service;¹⁷⁷ (2) the extent to which states have implemented TTY, Telebraille and other specialized consumer premises equipment distribution programs;^{**} and (3) the effectiveness of carrier information and outreach activities.” While the Commission received a variety of comments from interested parties on these issues in response to the *NOI*, we are not proposing rules addressing these areas and do not seek comment on them. We will continue to monitor these issues, and will revisit them as appropriate.

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

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

80. Finally, parties representing TRS users recommend that the Commission require TRS providers to implement certain TRS features and capabilities. For example, several parties request that the Commission require “call release” as a mandatory TRS feature.^{**} Other features proposed by the parties include Caller ID recognition, the ability to conduct

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

¹⁷⁸ *NOI*, 12 FCC Rcd at 1168 - 1169.

¹⁷⁹ *NOI*, 12 FCC Rcd at 1169.

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

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

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

conference calls through TRS, “two-line VCO,” and automatic call **forwarding**.¹⁸³ In this *Notice*, we do not propose that any additional TRS features, other than those proposed in other areas of this *Notice*, be required under our rules at this time. These and other important aspects of TRS may be addressed in further proceedings in this docket.

IV. CONCLUSION

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

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

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

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

83. The *Notice* is based upon the record developed in a *Notice of Inquiry* on improving telecommunications relay services (TRS), released by the Commission on January 14, 1997 (FCC 97-7). The goal of this proceeding is to consider ways in which TRS can be improved, both to better serve current TRS users and to ensure that TRS serves the broadest possible population of persons with hearing and speech disabilities, consistent with Congress’ direction at 47 U.S.C. § 225(d)(2) to the Commission to ensure that its regulations encourage the use of existing technology and do not discourage or impair the development of improved technology. Specifically, the *Notice* proposes to require nationwide speech-to-speech (STS)

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

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

service for persons with severe speech disabilities as a mandatory TRS feature within two years of publication of final rules in this proceeding, and requests comment on this proposal. The *Notice* also proposes a number of rule amendments based upon the comments submitted by *parties* in the *Notice of Inquiry*, and seeks comment on those proposals. The overall intent of these proposed rules is to improve the effectiveness of TRS service and the Commission's oversight of TRS, and to clear up ambiguities surrounding several of the Commission's current TRS rules.

B. Legal Basis

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

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

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

86. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.¹⁸⁹ The SBA defines such establishments to be small businesses when they have no more than 1,500

¹⁸⁵ 5 U.S.C. § 603(b)(3).

¹⁸⁶ *Id.* § 601(6).

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

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

¹⁸⁹ *Id.*

employees.¹⁹⁰ According to our most recent data, there are 12 interstate TRS providers, and these consist of interexchange carriers, local exchange carriers, and state-managed entities. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 12 small TRS providers that may be affected by the proposed rules, if adopted. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for Regulatory Flexibility Act purposes, that any TRS providers are small entities.

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

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

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

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

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

designees, through a competitively selected vendor, or in concert with other **carriers**.¹⁹¹ For this reason, the Commission expects that the proposed rule amendments will have a minimal impact on small entities. Moreover, the *Notice* does not propose any reporting requirements applicable to small entities. We tentatively conclude that our proposals in the *Notice* would impose minimum burdens on small entities. We encourage comment on this tentative conclusion.

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

89. None.

VI. PROCEDURAL MATTERS

A. Ex Parte Presentations

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

B. Initial Paperwork Reduction Act of 1995 Analysis

91. This Notice contains proposed information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the **Office** of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-1 3. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collections of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

¹⁹¹ 47 U.S.C. § 225(c).

¹⁹² See paras. 92-95, infra.

C. Comment Filing Procedures

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

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

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

95. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing

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

requirements addressed above. Parties submitting diskettes should submit them to Carmell Weathers, Network Services Division, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly **labelled** with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

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

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

VII. ORDERING CLAUSES

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

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

FEDERAL COMMUNICATIONS COMMISSION

Maggie Roman Salas
Secretary

**APPENDIX A
LIST OF COMMENTERS**

Comments

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

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

Reply Comments

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

30. sprint
31. Texas Advisory Committee on State Emergency Communications (TX-ACSEC)
32. Ultratec, Inc.
33. UCPA of San Diego County
34. United States Telephone Association (UCPA)

APPENDIX B
PROPOSED RULES

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

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

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

AUTHORITY: 47 U.S.C. § 154.

2. Section 64.601 is revised to read as follows:

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

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

(6) * * *

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

(8) *Telecommunications Relay Services (TRS)*. Telephone **transmission** services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio * * *

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

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

3. Section 64.603 is revised to read as follows:

§ 64.603 Provision of services.

* * *

(a) * * *

(b) * * *

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

4. Section 64.604 is revised to read as follows:

§ 64.604. Mandatory minimum standards.

(a) *Operational standards -*

(1) * * *

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

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

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

(b) *Technical standards -*

(1) * * *

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

(3) * * *

(4) * * *

(5) * * *

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

§ 64.605. State certification.

* * *

(b) * * *

(1) * * *

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

(3) * * *

(c) * * *

(d) * * *

(e) * * *

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

APPENDIX C
47 C.F.R § 64.604

§ 64.604 **Mandatory minimum standards.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) *Contribution computations.* Contributors' contribution to the TRS Fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined **annually** by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to total interstate revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the **fund** administrator may request authority from the Commission to borrow **funds** commercially, with such debt secured by future years contributions. Each subject carrier must contribute at least \$100 per year. Service providers whose annual contributions total less than