

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) Notification Requirements: BMW must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.
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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64****[CC Docket No. 98–67 and CG Docket No. 03–123; FCC 05–139]****Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities****AGENCY:** Federal Communications Commission.**ACTION:** Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission grants petitions for reconsideration of the *2004 TRS Report & Order*. Through this action, the Commission reverses its conclusion that translation from American Sign Language (ASL) into Spanish is not a telecommunications relay service (TRS) eligible for compensation from the Interstate TRS Fund. This decision will allow Spanish-speaking people who are deaf to communicate with others who speak only Spanish and will allow them to integrate more fully into society.

DATES: Effective September 30, 2005.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, FCC 05–139, adopted July 14, 2005, and released July 19, 2005, in CC Docket 98–67 and CG Docket 03–123. This *Order on Reconsideration* does not contain new or modified information collections requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified “information collection burden for

small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The full text of the *Order on Reconsideration* and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Order on Reconsideration* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site: <http://www.bcpweb.com> or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The *Order on Reconsideration* can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

Synopsis

Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that TRS is available to the extent possible in the most effective manner to persons with hearing or speech disabilities in the United States. TRS enables a person with a hearing or speech disability to have access to the telephone system to communicate with hearing individuals. The statute requires that TRS offers persons with hearing and speech disabilities telephone transmission services that are functionally equivalent to voice telephone services. When TRS was first implemented in 1993, persons desiring to use TRS to call a hearing person through the telephone system generally used a TTY (text-telephone)

device connected to the public switched telephone network (the PSTN). In what is now referred to as a traditional TRS call (*e.g.*, TTY text-based), the person with a hearing or speech disability dials (*i.e.*, types) a telephone number for a TRS facility using a TTY, and then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the link in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user.

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

Section 225 of the Communications Act, creates a cost recovery framework whereby providers of TRS are compensated for their costs of providing TRS. This framework is based on a jurisdictional separation of costs. As a general matter, providers of *intrastate* TRS are compensated by the states, and providers of *interstate* TRS are compensated from the Interstate TRS Fund (Fund). The Interstate TRS Fund is funded by contributions from all carriers providing interstate telecommunications services, and is administered by the TRS fund administrator, currently the National Exchange Carrier Association, Inc.

(NECA). The Fund administrator uses these funds to compensate eligible TRS providers for the costs of providing the various forms of TRS. Fund distributions are made on the basis of a payment formula initially computed by NECA in accordance with the Commission's rules, and then approved or modified by the Commission. The per-minute compensation rates are presently based on the projected average cost per minute of each service.

The Evolution of TRS

Since TRS became available on a nationwide basis in July 1993, the Commission has addressed the provision, regulation, and compensation of TRS on numerous occasions. As the Commission has noted, in adopting Title IV of the ADA, Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services. The intent of Title IV, therefore, is to further the Communications Act's goal of universal service by ensuring that individuals with hearing or speech disabilities have access to the nation's telephone system. To this end, the Commission must ensure that persons with hearing and speech disabilities have adequate means of accessing the telephone system. At its inception, TRS was limited to the use of a TTY connected via the PSTN to the CA, who would then make a voice call to the other party to the call. In 1998, however, the Commission issued a Notice of Proposed Rulemaking, seeking comment on whether Title IV applies to other forms of TRS that go beyond the TTY-to-speech and speech-to-TTY model. The Commission tentatively concluded that improved TRS services, such as speech-to-speech (STS) and VRS, falls within the scope of Title IV because its language and structure establish that Congress intended TRS to be an evolving service that would expand beyond traditional TTY relay service as new technologies developed. The Commission therefore proposed recognizing new forms of TRS that it believed would broaden the potential universe of TRS users and further promote access to telecommunications for the millions of persons with disabilities who might otherwise be foreclosed from participating in our increasingly telecommunications and information-oriented society.

In March 2000, the Commission adopted its tentative conclusions that STS and VRS are forms of TRS. The Commission found that STS would help break the insularity barriers that confine members of the community of people

with speech disabilities and offer them opportunities for education, employment, and other, more tangible benefits that are concomitant with independence. The Commission further concluded that TRS encompasses VRS, and that VRS would make relay services functionally equivalent to conventional telephone service for individuals whose first language is ASL. The Commission did not mandate the provision of VRS, given its technological infancy. The Commission nevertheless encouraged the use and development of VRS, and to this end stated that, on an interim basis, all VRS calls would be eligible for cost recovery from the Interstate TRS Fund. Finally, as discussed more fully below, the Commission also concluded that any non-English language relay services in a shared language, such as Spanish-to-Spanish, are telecommunications relay services, and required interstate common carriers to provide interstate Spanish relay service.

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

Finally, in August 2003, the Commission concluded that captioned telephone VCO service is a type of TRS eligible for cost recovery under Section 225. In reaching this conclusion, the Commission noted that the types and forms of relay services that we have found to fall within the definition of TRS have neither been static nor limited to relay services involving a TTY or the PSTN. The Commission also emphasized that captioned telephone service will reach a segment of the population persons who develop a hearing disability later in life and have some residual hearing that has traditionally not been well serviced by current TRS options, and that just as VRS has allowed greater functional equivalence in telecommunications for callers who use sign language,

captioned telephone service will provide greater functional equivalence for those people who prefer VCO TRS and use this technology.

Non-Shared Language Relay Service

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

In March 2000, the Commission concluded that MRS—non-English language relay services that relay conversations in a shared language—are TRS services compensable by either the intrastate jurisdiction or the Interstate TRS Fund. The Commission recognized that Spanish is the most widely spoken non-English language in the United States, and that the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing. The Commission concluded that this warrants the availability of interstate Spanish relay service, and therefore mandated that interstate common carriers provide interstate Spanish relay services by March 1, 2001. The Commission added that while it was mandating only interstate Spanish relay service, any non-English language relay service provided by an interstate relay provider would be compensable from the Interstate TRS Fund. The Commission also stated that although it was not requiring each state TRS program to offer intrastate Spanish (or any other non-English language) relay service, it urged states to consider offering such services if the need arose, noting that there could otherwise be an

adverse effect on the personal and economic well-being of individuals who speak a language other than English, making employment and education more difficult for them to attain.

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

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

In response to the TX PUC petition, the Commission sought comment on whether non-shared (or multi-lingual) language translation service through relay is a form of TRS compensable from the Interstate TRS Fund. The Commission noted that since the time we addressed this issue in the 1998 TRS NPRM, the Commission has developed a better understanding of the needs of certain TRS consumers in this area, and recognizes that multi-lingual translation service through TRS may meet the unique needs of certain identifiable TRS users. The Commission sought comment

on whether provision of this service is consistent with, or necessary under, the functional equivalency mandate. The Commission also sought comment on how multilingual translation service for TRS would be implemented with VRS, STS, and other forms of TRS.

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

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

The Petitions for Reconsideration

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

Communication Services for the Deaf (CSD) argues that the enormous size of America's Spanish-speaking population means that the provision of VRS

between ASL and Spanish-speaking users is needed to achieve functional equivalent relay service. CSD notes that the recent growth of the Spanish-speaking population in America has been extraordinary, and that the Commission's disability access rules already reflect this fact. CSD notes, for example, that the Commission has already required Spanish-to-Spanish interstate relay services, singling out this language only because the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is rapidly growing. CSD further argues that it is inconsistent to permit reimbursement for ASL-to-English VRS, but not ASL-to-Spanish VRS. CSD asserts, in other words, that having recognized at least one translation relay service to achieve functional equivalency, it makes little sense to deny reimbursement for relay translation between ASL and Spanish-speaking people, particularly because after English, Spanish is the next most widely spoken language in the country. Further, CSD emphasizes that authorizing ASL-to-Spanish VRS is particularly critical for deaf Latino children because such children are educated in ASL and therefore can communicate by telephone with their relatives and other Spanish-speaking persons only through non-shared language TRS. Finally, CSD suggests that the cost to provide non-shared language ASL-to-Spanish calls would not be any greater than that for ASL-to-English calls, and that ASL-to-Spanish calls would likely constitute no more than one to two percent of all VRS calls. The National Video Relay Service Coalition (NVRSC) makes similar arguments.

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

Discussion

We reverse the Commission's prior ruling on this issue and conclude that ASL-to-Spanish VRS—*i.e.*, relay service where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and *vice versa*—is a

form of TRS compensable from the Interstate TRS Fund. Accordingly, we grant the petitions for reconsideration on this issue filed by CSD, NVRSC, and Hands On. (We note that the petitions for reconsideration only addressed Spanish language translation VRS, *i.e.*, ASL-to-Spanish VRS). NECA shall compensate providers of this service at the same rate we adopt for VRS when a Spanish translation service is not involved. In reaching this conclusion, we find that it is essential that members of the large Spanish-speaking population in this country who are deaf, hard of hearing, or have a hearing disability, and for whom ASL is their primary language, have the means to communicate via the telephone system with persons without such disabilities who speak Spanish, in keeping with the goal of universal service.

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

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

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

population has access to the telephone system.

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

First, the record reflects that there are nearly 40 million Latinos living in the United States, and that number will increase to over 60 million by 2025, representing over 18% of the population. This is the largest minority population in the nation, and Spanish is the most widely used non-English language spoken in the United States. The record also reflects that, as reported by Gallaudet University, as many as 24.5% of all deaf and hard of hearing students age three and over are Latino. The Commission has previously acknowledged that Hispanics are the fastest growing minority group in the deaf school age population. Relatedly, we note that Spanish is the predominant language in Puerto Rico, which has a certified state relay program under the Commission's rules. (Territories such as Puerto Rico are encompassed by Section 225 and the TRS regulations. *See* 47 U.S.C. 225(b)(1); 42 U.S.C. 12102(3). Puerto Rico's state TRS program was re-certified by the Commission on July 24, 2003. *Notice of Certification of State Telecommunications Relay Service (TRS) Programs*, Public Notice, CC Docket No. 98-67, 18 FCC Rcd 15322, (2003), published at 68 FR 45819, August 4, 2003; *see generally* <http://welcome.topuertorico.org/descrip.shtml> (noting that language has been a central issue in Puerto Rican education and culture since 1898, and that now English and Spanish are both official

languages in Puerto Rico)). As NVRSC has noted, in Puerto Rico, where Spanish is the primary language, failure to compensate for ASL-to-Spanish VRS leads to the result that Puerto Ricans who are deaf or hard of hearing using ASL must have their VRS conversations translated into English, a language that is either not spoken or is a second language for most Puerto Ricans. (NVRSC Petition at 10).

Second, the Commission has also acknowledged that for many deaf Hispanic persons, particularly children, ASL is their primary language, even though it is not the language used in their home. As a result, as CSD has noted, because many do not learn Spanish in the deaf and residential day schools they attend, the only way for these children to communicate with some relatives by telephone—especially because many are young and cannot yet type—is through non shared-language VRS. (CSD Petition at 10). In other words, the particular communications needs of deaf children raised in Spanish-speaking households arise precisely because the children are deaf, and therefore learn ASL as their primary language and not Spanish. Recognizing non shared-language Spanish translation VRS as a form of TRS therefore empowers these persons to have access to the telephone system to become more fully integrated into society. The legislative history of Title IV makes clear that the lack of telephone access for persons with certain disabilities relegated them to second-class citizenship, and that the relay system was intended to empower such persons to have greater control over their own lives and greater opportunities. Therefore, we agree with CSD that precisely because Spanish-speaking Latino Americans make up so large a portion of the American population, the Commission should be taking actions to enhance, not reduce communication between deaf people and Americans who speak Spanish.

Recognition of ASL-to-Spanish VRS as a Form of TRS Is Consistent With the Recognition of VRS as a Form of TRS

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

and syntax. (See also CSD Petition at 6. CSD adds that it was for this very reason that VRS was first created—it was seen as a means of enabling ASL users who were not sufficiently acquainted with the English language to be able to communicate with hearing people who did not know ASL).

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

We also believe that the statutory mandate of functional equivalency must serve primarily as a benchmark for determining those services and features that TRS must offer, not as a barrier that precludes the recognition of new forms of TRS that give access to the nation's telephone system to identifiable groups of persons with hearing and speech disabilities. Significantly, the Commission has made clear that functional equivalency is reflected in the services and features required by the mandatory minimum standards that a provider must offer to receive compensation from the Interstate TRS Fund. At the same time, the TRS regulations recognize that states may offer services that exceed the mandatory minimum standards, as long as they do not conflict with the existing standards; indeed, in the past the Commission has encouraged states to do so with regard to non-shared language TRS. The determination of whether a particular service falls within the scope of TRS and is compensable from the Fund must take into account the purpose of the service and whether it affords persons with hearing and speech disabilities a means of functionally equivalent access to the nation's telephone system.

Recognition of ASL-to-Spanish VRS as a Form of TRS Is Consistent With the Commission's Focus on Spanish Language Access in Other Contexts

The conclusion that ASL-to-Spanish VRS falls within the scope of TRS

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

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

Third, the Commission's Web site has a homepage that contains information written in Spanish about its rules and regulations. Consumers also have access to numerous Commission Factsheets and other documents that have been translated to Spanish. (The Commission has endeavored to provide Spanish translations of Commission Factsheets and Consumer Advisories. In addition, because we receive a large number of inquiries about charges on telephone bills, we have sample telephone bills available (both wireline and wireless) with definitions in Spanish of all line item terms. We also have translated telephone complaint Form 475, and "slamming" complaint Form 501, into Spanish to allow Spanish-speaking consumers to easily file complaints with the Commission). In sum, the Commission has endeavored in a variety of contexts to make its services and information accessible to the nation's

large population of Spanish-speaking persons.

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

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

Conclusion

We therefore conclude that ASL-to-Spanish VRS—i.e., relay service where the CA translates what is signed from ASL to spoken Spanish, and *vice versa*—is a form of TRS compensable from the Interstate TRS Fund. (We remind providers (and consumers) that VRS is not the same as Video Remote Interpreting (VRI), and that VRS, including the ASL-to-Spanish VRS that we recognize in this *Order on Reconsideration*, may not be used when two persons are together and an interpreter is needed. As the Commission has explained, VRI is a service that is used when an interpreter cannot be physically present to interpret for two persons who are together at the same location (for example, at a meeting or in a doctor's office). See *Federal Communications Commission Clarifies That Certain Telecommunications Relay Services (TRS) Marketing And Call Handling Practices Are Improper And Reminds That Video Relay Service (VRS) May Not Be Used As A Video Remote Interpreting Service*, Public Notice, CC Docket No. 98–67, CG Docket No. 03–123, 20 FCC Rcd 1471, (2005),

published at 70 FR 8034, February 17, 2005. In that situation, an interpreter at a remote location may be used via a video connection. A fee is generally charged by companies that offer this service. By contrast, VRS, like all forms of TRS, is a means of giving access to the telephone system. Therefore, VRS is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system (or when, in the reverse situation, the hearing person desires to make such a call to a person with a hearing disability). In circumstances where a person with a hearing disability desires to communicate with someone in person, he or she may not use VRS but must either hire an "in-person" interpreter or a VRI service). Accordingly, providers offering ASL-to-Spanish VRS may be compensated from the Interstate TRS Fund. Because presently VRS is not a mandatory service, we also do not make ASL-to-Spanish VRS a mandatory service at this time. Further, NECA shall compensate providers of this service at the same rate we adopt for VRS when a Spanish translation service is not involved. (We note that the petitions for reconsideration only addressed Spanish language translation VRS, *i.e.*, ASL-to-Spanish VRS. As noted above, the record suggests that compensation of ASL-to-Spanish VRS will not impose costs significantly greater than those associated with ASL-to-English VRS. We leave open the issue whether providers, after the 2005–2006 fund year, may include in their submitted projected costs any additional costs caused by providing ASL-to-Spanish VRS translation service we recognize in this *Order on Reconsideration*).

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." (See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Statute 857 (1996)). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." (5 U.S.C. 601(6)). In

addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. (5 U.S.C. 601(3) incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**). 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). (15 U.S.C. 632). Nationwide, there are approximately 1.6 million small organizations. (Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002)).

This *Order on Reconsideration* addresses three petitions for reconsideration of the Commission's prior conclusion that non-shared language TRS service is not a form of TRS compensable from the Interstate TRS Fund. (See petitions filed by CSD (September 30, 2004), NVRSC (October 1, 2004), and Hands On Video Relay Services, Inc. (Hands On) (October 1, 2004)). This item reverses the Commission's prior conclusion that non-shared language Spanish translation Video Relay Service—*i.e.*, VRS where the CA translates what is signed in American Sign Language (ASL) into spoken Spanish, and *vice versa*—is a not a form of TRS compensable from the Interstate TRS Fund. The Commission concludes that the public interest is best served by requiring the Interstate Fund Administrator to pay to eligible providers of ASL-to-Spanish VRS the costs of providing interstate service. We find that it is essential that members of the large Spanish-speaking population in this country who are deaf, hard of hearing, or have a hearing disability, and for whom ASL is their primary language, have the means to communicate via the telephone system with persons without such disabilities who speak Spanish, in keeping with the goal of universal service. In addition, as noted in paragraph 31 of the item, the record reflects that allowing compensation from the Interstate TRS Fund for ASL-to-Spanish VRS will not

have an appreciable impact on the required size of the Fund, or that ASL-to-Spanish VRS is too costly relative to the benefit derived from this service. Therefore, given the lack of a significant economic impact, we certify that the requirements of the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

We also note that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. (13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002)). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more"). Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson and Sprint. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of ASL-to-Spanish VRS the costs of providing interstate service. The Commission will send a copy of this *Order on Reconsideration*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. (5 U.S.C. 605(b)).

Congressional Review Act

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

Ordering Clauses

Pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, this *Order on Reconsideration* is hereby adopted.

The Petition for Partial Reconsideration filed by Hands On is granted in part, as provided herein; the Petition for Reconsideration filed by CSD is granted in part, as provided herein; and the Petition for Reconsideration filed by NVRSC is granted, as provided herein.

This *Order on Reconsideration* shall be effective September 30, 2005.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Order on Reconsideration*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Jacqueline R. Coles,

Associate Secretary.

[FR Doc. 05-17110 Filed 8-30-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98-67 and CG Docket No. 03-123; FCC 05-140]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, the Commission concludes that because speed of answer is central to the provision of "functionally equivalent" telecommunications relay service (TRS), and video relay service (VRS) is now widely used—if not the preferred form of TRS, VRS providers must provide service in compliance with the speed of answer rule adopted to be eligible for compensation from the Interstate TRS Fund. The rule establishes for the first time, mandatory speed of answer requirement for VRS, requires VRS to be officered 24/7, and permit VRS providers to be compensated for providing VRS mail. Also, in this document, the Commission closes TRS Docket No. CC 98-67.

DATES: Effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT:

Thomas Chandler, Consumer & Government Affairs Bureau, Disability Rights Office at (202) 418-1475 9 (voice), (202) 418-0597 (TTY), or e-mail at Thomas.Chandler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 05-140, adopted July 14, 2005, and released July 19, 2005, in CC Docket 98-67 and CG Docket 03-123. The Commission addresses three issues related to the provision of Video Relay Services, a form of telecommunications relay service (TRS): (1) The adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail. This *Report and Order* does not contain new or modified information collections requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4). The full text of the *Report and Order* and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, NW., CY-A257, Washington, DC 20554. The *Report and Order* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contract, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI at their Web site www.bepiweb.com or call 1-800-378-3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fee504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). The *Report and Order* can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

Synopsis

Title IV of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 401, 104 Statute 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Communications Act), as amended, 47 U.S.C. 225; implementing regulations at

47 CFR 64.601 *et seq.*), requires common carriers offering telephone voice transmission services to provide TRS throughout the area in which they offer service so that persons with disabilities will have access to telecommunications services, and provides that they will be compensated for their just and reasonable costs of doing so. Title IV is intended to further the universal service goal set out in the Communications Act of 1934 (Act), as amended, by providing to individuals with hearing or speech disabilities telephone services that are "functionally equivalent" to those available to individuals without such disabilities. Congress recognized that persons with hearing and speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services.

The advent of VRS as a form of TRS has been one of the most important developments in the short history of TRS. VRS allows a deaf person whose primary language is ASL to communicate in ASL with the CA, a qualified interpreter, through a video link; the CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the deaf person and by voice with the hearing person. As a result, the conversion between the two end users, deaf and hearing, flows in near real time and in a faster and more articulate manner than with a TTY or text-based TRS world. The use of VRS reflects this reality. In April 2005 the monthly minutes of use were approximately 1.8 million, a ten-fold increase in the past two years, and more than the number of interstate traditional TRS minutes. (See TRS Fund Performance Status Report as of May 31, 2005, <http://www.neca.org> (under Resources, then TRS Fund)).

Discussion

Speed of Answer

The TRS Speed of Answer Rule

TRS became available on a nationwide basis in July 1993. Initially, the Commission's regulations required the provision of only "traditional," or text (TTY)-based TRS, and the Commission adopted mandatory minimum standards to govern the provision of this service. Providers seeking compensation from the Interstate TRS Fund for providing any form of TRS must offer service in compliance with the applicable mandatory minimum standards, unless waived. In the initial Notice of Proposed Rulemaking following the adoption of Section 225, the Commission explained