

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

SUPPORTING STATEMENT

A. Justification

Background:

1. Section 225 of the Communications Act requires the Commission to promulgate regulations governing the provision of telecommunications relay services (TRS)¹ by common carriers offering telephone voice transmission service. The Commission's regulations governing the provision of TRS are codified in 47 CFR Part 64, Subpart F. These rules include operational, technical, and functional standards required of all TRS providers and procedures for the certification of state relay programs.

In 2000, the Commission released the *2000 TRS Order*,² which, among other things, amended the TRS rules by recognizing Speech-to-Speech (STS)³ and Video Relay Service (VRS)⁴ as new forms of TRS, and directed the Interstate TRS Fund Administrator (TRS Fund Administrator)⁵ and Interstate TRS Advisory Council to develop recommendations on how the new forms of TRS should be compensated.

In 2006, the Commission released the *2006 Cost Recovery FNPRM*⁶ seeking comment on, in part:

¹ TRS is a telephone transmission service that allows persons with a hearing or speech disability to engage in communications by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. See 47 CFR 64.601(14). TRS facilities are staffed by communications assistants (CAs) who relay conversations between people who use text telephone devices (TTY's) or other devices and people who communicate by voice.

² *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140 (March 6, 2000) (*2000 TRS Order*).

³ STS is a form of TRS that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person. See 47 CFR 64.601(12).

⁴ VRS is a form of TRS that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller. See 47 CFR 64.601(17).

⁵ On July 20, 1993, the National Exchange Carrier Association (NECA) was appointed the TRS Fund Administrator. Currently, NECA's contract as the TRS Fund Administrator has been extended on a month-to-month basis.

⁶ *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379 (July 20, 2006) (*2006 Cost Recovery FNPRM*),

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

- (a) Hamilton Relay Inc.'s proposed Multi-state Average Rate Structure (MARS) plan and alternative cost recovery methodologies for traditional TRS,⁷ STS, and captioned telephone service (CTS).⁸ Under the MARS plan, interstate TRS compensation rates are determined by weighted average of the states' intrastate compensation rates;
- (b) the appropriate cost recovery methodology for IP Relay;⁹
- (c) whether, under the MARS plan or any other cost recovery methodology for traditional TRS, STS, and IP Relay, there should be a "true-up" at the end of the Fund year based on actual reasonable costs. Under a true-up, providers would be required to reimburse the Fund for any amount by which their payments exceed actual reasonable costs;
- (d) the appropriate cost recovery methodology for VRS, including using competitive bids; and
- (e) the nature of the "reasonable" costs of providing service that should be compensable under the cost recovery methodology, including marketing and outreach expenses, overhead costs and executive compensation.

New PRA Requirements Which Require OMB Review and Approval:

On November 19, 2007, the Commission released the *2007 Cost Recovery R&O and Declaratory Ruling*,¹⁰ in which the Commission:

- (a) adopted a new cost recovery methodology for interstate traditional TRS and interstate Speech-to-Speech (STS) based on the MARS plan;
- (b) adopted a new cost recovery methodology for interstate CTS, and interstate and intrastate Internet Protocol captioned telephone service (IP CTS)¹¹ based on the MARS plan;

⁷ References to traditional TRS include Spanish-to-Spanish traditional TRS.

⁸ CTS is a form of TRS generally used by someone who has the ability to speak and some residual hearing. It uses a special telephone that has a text display, so that on one standard telephone line, the user can both listen to what is said over the telephone (to the extent possible) and simultaneously read captions of what the other person is saying.

⁹ IP (Internet-Protocol) Relay is a text-based form of TRS where the connection to the CA is via the Internet (rather than the PSTN) and a personal computer or other Web-enabled device.

¹⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007) Erratum, 22 FCC Rcd 21842 (Cons. Govt. Aff. Bur. 2007) (*2007 Cost Recovery R&O and Declaratory Ruling*).

¹¹ IP CTS is a type of captioned telephone service where the captions are delivered to the user via the Internet, rather than a standard telephone line. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (January 11, 2007) (*2007 IP CTS Order*).

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

- (c) adopted a cost recovery methodology for IP Relay based on price caps;
- (d) adopted a cost recovery methodology for VRS that adopted tiered rates based on call volume;
- (e) clarified the nature and extent that certain categories of costs are compensable from the Fund; and
- (f) addressed certain issues concerning the management and oversight of the Fund, including financial incentives offered to consumers to make relay calls and the role of the Interstate TRS Fund Advisory Council.

Therefore, Section 64.604(c)(5)(iii)(C), Mandatory Minimum Standards, requires that

TRS providers must submit to the TRS Fund Administrator the following information annually, for intrastate traditional TRS, STS, and CTS:

- (a) the per-minute compensation rate(s);
- (b) whether the rate applies to session minutes or conversation minutes¹²;
- (c) the number of intrastate session minutes; and
- (d) the number of intrastate conversation minutes.

Also, STS providers must file a report annually with the TRS Fund Administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

Existing Information Collection Requirements:

In 2001, the Commission released the *2001 TRS Cost Recovery MO&O and FNPRM*,¹³ in which the Commission:

- (a) directed the TRS Fund Administrator to continue to use the average cost per minute compensation methodology for the traditional TRS compensation rate;
- (b) required TRS providers to submit certain projected TRS-related cost and demand data to the TRS Fund Administrator to be used to calculate the rate¹⁴; and

¹² Conversation minutes are a subset of session minutes.

¹³ See *Telecommunications Services for Individuals with Hearing and Speech Disabilities; Recommended TRS Cost Recovery Guidelines; Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948 (2001) (*2001 TRS Cost Recovery MO&O and FNPRM*).

¹⁴ These costs and demand data are “total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment,” as well as “other historical or projected information reasonably

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

- (c) directed the TRS Fund Administrator to expand its TRS Center Data Request Form, a form for providers to itemize their actual and projected costs and demand data, to include specific sections to capture STS and VRS costs and minutes of use.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; therefore, the Privacy Act is not implicated. The rules only request aggregate rate data and information, which would not identify specific individuals or households.

The statutory authority can be found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990, Public Law 101-336, 104 Stat. 327.

2. The *2007 Cost Recovery R&O and Declaratory Ruling* adopting new information collections was promulgated pursuant to section 225 of the Communications Act. This data will assist the Commission and TRS Fund Administrator in determining future compensation rates for traditional TRS, STS, and CTS. The new information collections augment existing information collections of other relay-related cost and demand data, including data related to minutes of use.
3. At this time, the Commission is not considering the use of improved information technology in furtherance of this collection. The Commission believes that automated, electronic processes already are being employed by respondents to collect minutes of use data.
4. The information collection requirements do not duplicate any currently existing federal regulatory obligation.
5. The Commission believes that this information collection will not have a significant economic impact on a substantial number of small entities/businesses.
6. The reporting requirements in the *2007 Cost Recovery R&O and Declaratory Ruling* require:
 - (a) TRS providers to submit the rate and demand data to the TRS Fund Administrator for their respective intrastate relay services; and
 - (b) STS providers to file a report annually with the TRS Fund Administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

Therefore, if this information collection was not to be conducted, or conducted less frequently, Commission and TRS Fund Administrator efforts to reevaluate compensation rates based on the MARS plan for traditional TRS, STS, and CTS would be thwarted, thus undermining the efficacy of those programs. The Commission believes that the burdens associated with these collections already are minimal. Furthermore, without the collection the providers may not be eligible for reimbursement from the Fund, and could lead them to suspend operation of their important services.

requested by the administrator for purposes of computing payments and revenue requirements.” 47 C.F.R. § 64.604(c)(5)(iii)(C).

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

7. No special circumstances exist that would cause this collection to be conducted in a manner inconsistent with the guidelines and/or requirements set forth in the Paperwork Reduction Act of 1995.
8. The Commission placed a notice in the Federal Register as required by 5 CFR 1320.8(d). *See* 73 FR 3254, dated January 17, 2008. No comments were received.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. For several years, the Commission has received projected cost and demand data submitted by the TRS providers, in order to help set annual interstate relay compensation rates. This data may be confidential proprietary information protected from disclosure under the Freedom of Information Act (FOIA) and the Commission's rules implementing FOIA. The data that the Commission has requested in the *2007 Cost Recovery R&O and Declaratory Ruling* is similar to data already submitted by TRS providers, and the Commission is not requesting respondents to submit any other confidential information. Thus, the Commission has experience in protecting the confidentiality of such information, as appropriate.

Furthermore, if the Commission requests information from respondents which the respondents believe is confidential, respondents may request confidential treatment of such information pursuant to 47 CFR 0.459. Moreover, the Commission requires the TRS Fund Administrator to keep all data and information received from contributors, TRS providers, and state TRS administrators confidential.¹⁵ The *2007 Cost Recovery R&O and Declaratory Ruling* also states that the Commission or TRS Fund Administrator will ask each state and TRS provider to indicate what information should be considered confidential, and that the specifics of such information will not be released.¹⁶

11. There are no questions of a sensitive nature with respect to the information collected.
12. Estimates of the burden hours to comply with the existing collection and new collection of information are as follows:

Existing Information Collection Requirements (2001 TRS Cost Recovery MO&O and FNPRM, approved by OMB on June 21, 2007)

Total Number of Annual Respondents: 5,045

Total Number of Annual Responses: 5,045

Total Annual Burden Hours: 25,717

Total Annual In-House Costs: \$0

¹⁵ *See* 47 CFR 64.604(c)(5)(iii)(I).

¹⁶ *2007 Cost Recovery R&O and Declaratory Ruling*, 22 FCC Rcd at 20154, para. 28.

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

New Information Collection Requirements (2007 Cost Recovery R&O and Declaratory Ruling)

A. Section 64.604(c)(5)(iii)(C) – Data collection from TRS Providers

Total Number of Annual Respondents: 8¹⁷

In the *2007 Cost Recovery R&O and Declaratory Ruling*, the Commission established reporting requirements associated with new TRS cost recovery methodologies for compensation from the Fund.

TRS providers must submit to the TRS Fund Administrator the following information annually, for intrastate traditional TRS, STS, and CTS:

- (a) the per-minute compensation rate(s);
- (b) whether the rate applies to session minutes or conversation minutes;
- (c) the number of intrastate session minutes; and
- (d) the number of intrastate conversation minutes.

The Commission estimates that up to three reports will be necessary, per state/territory, to reflect rate data and information for Respondents traditional TRS, STS, and/or CTS services. This process will be done annually.

Responses:

53 states/territories x 3 reports (traditional TRS/STS/CTS) = **159 responses**

Total Annual Burden Hours:

The Commission estimates that it will require approximately 10 hours to submit the data and information for each response.

159 responses x 10 hours/response = **1,590 hours**

Total “In-House” Costs: \$0

Because Respondents receive reimbursement from the Fund for the costs associated with their submissions, there are no cost burdens to the Respondents.

B. STS Annual Reports on Outreach Efforts

¹⁷ Currently, eight different Respondents are certified to offer interstate TRS, STS and/or CTS, these respondents can be from 50 states and the District of Columbia, Puerto Rico and the Virgin Islands, and thus are affected by the new data collection from TRS providers. These eight are included in the 5,045 Respondents from the existing collection.

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

In the *2007 Cost Recovery R&O and Declaratory Ruling*, the Commission also established reporting requirements for STS providers (Respondents). Respondents must file a report annually with the TRS Fund Administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

Total number of Respondents: 7¹⁸

Currently, there are seven STS providers. Therefore, the Commission estimates that 7 Respondents will be required to submit a report annually on specific outreach efforts.

Responses: 7 responses

7 Respondents x 1/report/annually = 7 responses

Total Annual Burden Hours:

The Commission estimates that each Respondent will require approximately 15 hours to submit the report:

7 responses x 15 hours/STS report = **105 hours/annum**

Total “In-House” Costs: \$0

Because Respondents receive reimbursement from the Fund for the costs associated with their submissions, there are no cost burdens to the Respondents.

CUMULATIVE TOTAL FOR EXISTING AND NEW INFORMATION COLLECTION REQUIREMENTS:

Cumulative Total Number of Respondents: 5,045

Cumulative Total Number of Responses: 5,045 + 159 + 7 = 5,211

Cumulative Total Annual Burden Hours: 25,717 + 1,590 + 105 = 27,412

Cumulative Total Annual “In-House” Costs: \$0

13. Traditional TRS, STS, and CTS providers may incur some costs for the submission of rate data and information, and, in the case of STS, for the filing of reports on their specific outreach efforts. The Commission, however, believes that most of the work to comply with these information collection requirements will be done “in house.” Moreover, because providers receive reimbursement from the Fund even for the outside costs associated with their submissions, effectively there are no cost burdens. Thus:

(a) Total annualized capital/start-up cost: **\$0**

(b) Total annual costs (operation and maintenance): **\$0**

¹⁸ These seven Respondents, affected by the new reporting requirements for STS providers, are included in the 5,045 Respondents from the existing collection.

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

(c) Total annualized cost requested: **\$0**

14. The Commission believes that the cost to the Federal Government will be the collecting, processing, and analysis of rate data and information, and reports on outreach efforts submitted by STS providers:

(a) The Commission will use staff attorneys at the GS-14/Step 5 level to collect, process and analyze the rate data and information, and reports on outreach efforts submitted by STS providers.

(b) The Commission estimates the time to process each submission to be approximately 3 hours.

(c) On average, the Commission estimates that it will receive approximately 166 submissions (159 rate data and information submissions + 7 STS outreach effort reports) annually:

$$166 \text{ submissions} \times 3 \text{ hours/submission} \times \$53.24 = \$26,513.52$$

$$30\% \text{ overhead} = \underline{\$7,954.06}$$

Total cost to the Federal Government: \$34,467.58

15. As noted above, on November 19, 2007, the Commission released the *2007 Cost Recovery R&O and Declaratory Ruling*, and is adding a new information collection to augment the existing information collection requirements contained in the *2001 TRS Cost Recovery MO&O and FNPRM*, as approved by OMB, as revised, on June 21, 2007.

The Commission has revised its assessments of the various burdens for this information collection, to account for both the existing and new information collection requirements. As a result of this revision:

(1) The Commission's estimate for the total number of responses has increased from 5,045 to 5,211 responses; and

(2) The Commission's estimate for the total annual burden hours has increased from 25,717 to 27,412.

16. There are no plans to publish the result of the collection of information.

17. The Commission is not seeking approval not to display the expiration date for OMB approval of this information because the collection does not include a form number

18. In the 60 day *Federal Register* Notice published at 73 FR 3254, January 17, 2008, the Commission reported the number of respondents to be 5,053; the estimated time per response to be 10 to 25 hours; and inadvertently omitted the number of responses. The Commission corrects the number of respondents to be 5,045 respondents; the estimated time per response to be 10 to 15 hours; and reports the number of responses to be 5,211. There are no other exceptions to Item 19, "Certification for Paperwork Reduction Act Submissions," on OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

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June 2008

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03-123, FCC 07-186

The Commission does not anticipate that the collections of information will employ statistical methods.