

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

In the matter of
Provision of Improved Telecommunications Relay
Services and Speech-to-Speech
Services for Individuals with Hearing and Speech
Disabilities
Petition for Clarification of WorldCom, Inc.
CC Docket No. 98-67

DECLARATORY RULING
AND
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: April 18, 2002 Released: April 22, 2002

Comment Date: 30 days after Federal Register Publication
Reply Comment Date: 45 days after Federal Register Publication

By the Commission: Commissioners Abernathy and Copps issuing separate statements.

I. INTRODUCTION

1. In this Declaratory Ruling, we address a Petition for Clarification (Petition) filed by WorldCom, Inc. (WorldCom) on December 22, 2000. In its Petition, WorldCom explains its Internet protocol relay service (IP Relay) offering, and requests that the Commission clarify that IP Relay is eligible for reimbursement from the Interstate Telecommunications Relay Service (TRS) Fund. For the reasons discussed below, we find that IP Relay falls within the statutory definition of TRS and that such services are eligible to recover their costs in accordance with Section 225 of the Communications Act of 1934, as amended (Communications Act). Because there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate, we authorize, on an interim

1 WorldCom, Petition for Clarification, CC Docket No. 90-571, Telecommunications Services for Individuals with Hearing and Speech Disabilities, Dec. 22, 2000. Because CC Docket No. 90-571 is concluded, and because CC Docket No. 98-67 deals with improved telecommunications relay service, we are considering the petition under this proceeding.

2 The term "telecommunications relay service" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

47 U.S.C. § 225(a)(3).

3 See 47 U.S.C. § 225(d)(3).

basis, recovery of all costs of providing IP Relay from the Interstate TRS Fund. Additionally, from the effective date of this order, to the extent indicated herein, we grant WorldCom a waiver of certain TRS minimum standards. In addition, we grant the same waiver of TRS minimum standards to all other current and potential IP Relay providers, for the same periods of time indicated herein, beginning on the date of the release of the *Declaratory Ruling*.

2. In the *Second Further Notice of Proposed Rulemaking* portion, we inquire as to whether recovery of costs from the Interstate TRS Fund for IP Relay should be a temporary or a permanent measure. If this should be a temporary measure, we request comment from the public on how IP Relay providers can develop the capability to determine whether a call is intrastate or interstate.

II. BACKGROUND

3. TRS, which is usually provided through the public switched telephone network (PSTN), enables persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities.⁴ TRS facilities have special equipment and are staffed by communications assistants (CAs) who relay conversations between people who use text telecommunications devices and people who communicate by voice. The caller can use a text telephone (TTY) to dial the telephone number of the local TRS center.⁵ For the TTY user, the first step – the inbound call to the TRS center – is functionally equivalent to receiving a dial tone. The CA in turn places an outbound voice call from the TRS center to the called party. The CA serves as the link in the conversation, converting all typed TTY messages from the TTY 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 the call to a TTY user.⁶

4. WorldCom states that its IP Relay service is used in the following manner:

1. A user establishes a local connection to an Internet service provider (ISP) using a computer, web phone, personal digital assistant, or any other IP-capable device.
2. The user points the web browser to the Internet address --
"WWW.IP-Relay.COM," and clicks on the relay operator icon.
3. When the call reaches WorldCom's Internet platform, a java applet is launched, which then automatically establishes a connection, via an 800 number, to WorldCom's relay center.
4. The call is immediately routed to a calling assistant, and a regular relay session is

⁴ 47 C.F.R. § 64.601(5),(7).

⁵ Individual states have their own TRS access numbers (usually toll-free numbers). In addition, some state TRS programs have separate numbers for voice and TTY access. Effective October 1, 2001, TRS centers can be accessed through an abbreviated dialing arrangement by dialing 711. In addition to dialing their state TRS access numbers for both interstate and intrastate relay calls, TRS users may also dial a toll-free number to reach alternative providers for interstate service.

⁶ See *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5142 (2000) (*Improved Service Report and Order and Further Notice of Proposed Rulemaking*).

initiated.⁷

5. WorldCom asks the Commission to clarify that IP Relay falls within the definition of TRS, and is entitled to recover its operating costs under Section 225 of the Communications Act.⁸ WorldCom further requests that the Commission allow it to recover all of the costs of its IP Relay service from the Interstate TRS fund because calls come to IP relay via the Internet, and there is currently no automatic method by which the IP Relay center can tell whether a given call is intrastate or interstate, given that Internet addresses have no geographic correlates. This is in contrast to PSTN-based TRS, in which the TRS center uses the caller's Automatic Numbering Identification (ANI) to identify the location of the caller.

6. The Commission briefly addressed the potential impact of the Internet on TRS earlier in this proceeding.⁹ On June 29, 2001, the Commission's Consumer Information Bureau released a Public Notice requesting comment on the provision of improved TRS and on WorldCom's *Petition*.¹⁰ The Public Notice asked for public comment on the benefits of IP Relay, the appropriate means for allowing WorldCom to recover the costs of providing IP Relay, the minimum standards that should apply to IP Relay, and the security of IP Relay calls.¹¹ We received 12 comments and five reply comments from carriers, organizations representing the deaf community, and public officials, along with hundreds of e-mail comments and letters from individuals who use IP Relay.¹²

III. DISCUSSION

A. Benefits of IP Relay

7. In the *Public Notice*, we asked commenters to identify the benefits of handling TRS calls via IP Relay. Commenters identified several benefits of IP Relay, in quality and flexibility of service, in ease of use and convenience, and in the potential for additional service features in the future.¹³

⁷ *Petition*, at 2.

⁸ 47 U.S.C. § 225.

⁹ We solicited comment on the use of the World Wide Web for TRS voice communications in the *Improved Service Report and Order and Further Notice of Proposed Rulemaking*. "We also seek comment on improved transmission speed, wireless messaging services, use of the World Wide Web for voice communications, internet telephony, and any other technologies or changes to technology that may improve relay services or should be available via TRS." See *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5197.

¹⁰ Consumer Information Bureau Seeks Additional Comment on the Provision of Improved Telecommunications Relay Service, DA 01-1555, *Public Notice*, 16 FCC Rcd 13,100, Jun. 29, 2001; published at 66 Fed. Reg. 37,631 (Jul. 19, 2001).

¹¹ See *Public Notice*, 16 FCC Rcd., at 13,103. The Public Notice also sought comment on IP capabilities and outreach regarding TRS. While we do not reach these issues in our consideration of WorldCom's *Petition*, we will consider these comments along with the other comments received in response to our *Improved Service Report and Order and Further Notice of Proposed Rulemaking*.

¹² Comments were filed by AT&T, Inc. (AT&T), the California Public Utilities Commission (California), Katherine Keller, Dana Mulvany, the National Association for the Deaf (NAD), Self Help for Hard of Hearing People (SHHH), Sprint Corporation (Sprint), Charles Sterling, Telecommunications for the Deaf, Inc. (TDI), The United States Telecommunications Association (USTA), Ronald Vickery, and WorldCom. Additionally, over a hundred e-mails were sent by individuals. Reply comments were filed by California, Dana Mulvany, TDI, USTA, and WorldCom.

¹³ See WorldCom, Comments, Attachment 1, at 3; AT&T, Inc. Comments, at 3-4; Sprint Comments, at 2; NAD Comments, at 2-3; TDI Comments, at 4-5; SHHH Comments, at 4-7; California Comments, at 1-3; Dana Mulvany

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8. A number of commenters commend the ubiquity of IP Relay. Commenters state that IP Relay is available to anyone who has access to the Internet via computer, personal digital assistant (PDA), or Web-capable telephone or other device. Service accessibility is not limited to places that are equipped with TTYs or specialized software.¹⁴ They also state that, because IP Relay does not require a specialized piece of equipment (*i.e.*, a TTY), people who have computers or other Web-capable devices need not expend additional funds to purchase TTYs.¹⁵ Several commenters state that the quality of transmission is better via IP Relay, and that a computer screen and keyboard are easier to use than a standard TTY.¹⁶ Commenters also mention the convenience of being able to place calls through IP Relay while working on their computers, rather than having to go to a separate TTY, and sometimes having to log off the Internet to use the telephone line for a TTY.¹⁷ Commenters note that IP Relay users can initiate multiple calls simultaneously and even browse the Internet while making a call.¹⁸ Finally, commenters also note that TRS users will not be limited to their states' designated primary relay providers, but can choose an IP Relay provider without restrictions.¹⁹

9. Several commenters argue that IP Relay will offer greater benefits in the future because of the flexibility and power of computers and the Internet.²⁰ They argue that IP Relay makes two-line voice carryover (VCO) easier for people who are deaf or hard of hearing.²¹ Two-line VCO is an application where the person who is deaf or hard of hearing speaks to another party on a voice telephone line, and the other party's return speech is converted to text by the TRS center on another telephone line.²² This requires the expense of a second telephone line or the addition of three-way calling to the service of the person who is deaf or hard of hearing, but commenter's state that it is possible to accomplish two-line VCO functionality via IP Relay without an extra telephone line and three-way calling.²³ A number of commenters also identify conference calling, multiple simultaneous

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Comments, at 1-3; Ronald Vickery Comments, at 1-3; Katherine Keller Comments, at 1; e-mail comments from Connie Loper, Frank Mounts, Valerie Johnson, Afshan Hashim, *et. al.*

¹⁴ See WorldCom Comments, at 13; (NAD) Comments, at 3; Dana Mulvany Comments, at 2.

¹⁵ See AT&T, Inc. (AT&T) Comments, at 3; Ronald Vickery Comments, at 1-2; Dana Mulvany Comments at 2.

¹⁶ See AT&T Comments, at 3; California Comments, at 1; Dana Mulvany Comments, at 2; Ronald Vickery Comments, at 2.

¹⁷ See WorldCom Comments, at 20; AT&T Comments, at 4; Sprint Comments, at 2; (TDI) Comments, at 4; Dana Mulvany Comments, at 3.

¹⁸ See AT&T Comments, at 3; WorldCom *Petition*, at 4-5.

¹⁹ See AT&T Comments, at 3; TDI Comments, at 8-9.

²⁰ See WorldCom *Petition*, at 5; Sprint Corporation (Sprint) Comments, at 2; Telecommunications for the Deaf, Inc. (TDI) Comments, at 5; Self Help for Hard of Hearing People (SHHH) Comments, at 6; California Public Utilities Commission (California) Comments, at 2; Dana Mulvany Comments, at 2; Ronald Vickery Comments, at 2-3; Katherine Keller Comments, at 1-2.

²¹ See SHHH Comments, at 6; Dana Mulvany Comments, at 5-6; Ronald Vickery Comments, at 2-3; Katherine Keller Comments, at 2.

²² VCO is "[a] reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation." 47 C.F.R. §64.601(9). Two-line VCO "enables consumers to use one line for voicing and the other for receiving TTY transmissions in conference calls." *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5196, n.268. See SHHH Comments, at 6; Dana Mulvany Comments, at 5-6; Ronald Vickery Comments, at 2-3; Katherine Keller Comments, at 2.

²³ See SHHH Comments, at 6; Dana Mulvany Comments, at 5-6; Ronald Vickery Comments, at 2-3; Katherine Keller Comments, at 2.

calls, and the ability of IP Relay to convert one text protocol to another as added features that are possible with IP Relay.²⁴

B. Statutory Definition of TRS

10. The Communications Act provides for telecommunications relay services, defined as telephone transmission services that give an individual who has a hearing or speech disability the ability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio.²⁵ Such term includes services that enable two-way communication between an individual who uses a TTY or other nonvoice terminal device and an individual who does not use such a device. Our task is simply to determine whether IP Relay falls within this definition. We note at the outset that Congress did not narrow its definition of TRS only to a specific category of services otherwise defined in the Act, such as "telecommunications services" (in contradistinction to "information services").²⁶ Rather, Congress used the broad phrase "telephone transmission services" that was constrained only by the requirement that such service provide a specific functionality. The requisite functionality is that the service "provide[s] the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual . . . [without any such impairment] to communicate using voice communication services by wire or radio."²⁷ Under these circumstances, we find that the phrase "telephone transmission service" should be interpreted broadly, and in the context of both the sentence and section in which it appears, to include any transmission service involving [telephonic equipment or devices] to the extent that such transmission provides the particular functionality that the definition specifies. We note that the overall purpose of Section 225 is to "ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."²⁸ Further, Section 225 specifically directs us to "ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology."²⁹ We believe our interpretation of the definition is thus consistent with the mandate of section 225(d)(2) because it is technology-neutral and will not impair use of any existing technology or discourage development of new technology. Rather, it encompasses all transmission using telephonic equipment or devices, whether over the public switched network, cable, satellite, or any other means, so long as the requisite functionality is provided.

11. TRS calls handled via IP Relay allow people with hearing or speech disabilities to communicate with people who do not have such disabilities. IP Relay also enables two-way communication between an individual who uses a nonvoice terminal device (a computer, PDA,

²⁴ See SHHH Comments, at 7; California Comments, at 2; Dana Mulvany Comments, at 4.

²⁵ 47 U.S.C. § 225.

²⁶ Telecommunications service is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). Information service is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(46).

²⁷ 47 U.S.C. § 225(3)

²⁸ 47 U.S.C. § 225(b)(1)

²⁹ 47 U.S.C. § 225(d)(2)

Web-capable telephone, or pager device) and an individual who does not use such a device. Based on these factors, we conclude that IP Relay also meets the functionality requirements of Section 225 and thus satisfies the definition of "telecommunications relay services" pursuant to the Act.

12. For these reasons, as well, we disagree with the USTA that allowing IP Relay to recover its costs is only permissible under the Communications Act if we deem IP Relay a "telecommunications service," as opposed to an "information service," under the Communications Act.³⁰ USTA relies on the words "telecommunications" and "services" in the term "telecommunications relay services" in asserting that IP Relay can recover its costs only if it is deemed a telecommunications service. WorldCom, however, argues that Section 225 does not limit TRS solely to telecommunications services and that "Congress chose to include any service that enables communication between speech and hearing disabled persons and other persons"³¹

13. What is critical to our analysis is that TRS is specifically defined in Section 225, and thus our concern is whether IP Relay satisfies that definition. Whether a particular TRS service or methodology might also be a "telecommunications service" or an "information service" is not relevant to resolution of the issue as to whether providers of IP Relay are entitled to recover their costs from the states or the Interstate TRS Fund.³²

14. This conclusion is consistent with our earlier finding that "section 225 must be read to apply to any service that allows individuals with hearing and speech disabilities to communicate by wire or radio." Thus, we are not required to, and consequently do not, make a finding as to whether IP Relay constitutes telecommunications, telecommunications service, or information service.³³

C. Cost Recovery

15. In the cost recovery scheme for TRS, the costs of intrastate calls are recovered from the states, and the costs of interstate calls are recovered from the Interstate TRS Fund.³⁴ In its *Petition*, WorldCom requests that we allow it to recover all of the costs of providing IP Relay from the Interstate TRS Fund. WorldCom explains that because the first leg of an IP Relay call comes over the Internet, rather than from a telephone, there is no automatic way to determine whether any call is intrastate or interstate. This is because Internet addresses do not have geographic correlates, and there is currently no Internet address identifier that can automatically give the location of a caller, as is the case with the ANIs of telephone callers.³⁵

³⁰ See USTA Comments, at 4-5. See also 47 U.S.C. § 153(46).

³¹ WorldCom Reply Comments at 3.

³² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (Improved Service)*, CC Docket No. 98-67, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 5140, 5148 (2000).

³³ WorldCom asserts that IP Relay is an "Interstate Enhanced Service." For the reason stated above, we need not address WorldCom's assertion.

³⁴ ". . . costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction." 47 U.S.C. § 225(d)(3). The Interstate TRS Fund was established to administer the recovery of costs for interstate TRS. See *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990 (TRS Proceeding)*, CC Docket No. 90-571, *Third Report and Order*, 8 FCC Rcd 5300 (1993).

³⁵ See WorldCom Comments, at 1-2. Unlike telephone numbers, where the state can be determined by the area code, Internet addresses are assigned with no identifier of geographic location. Thus, when a caller contacts IP

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16. Section 225 does permit us, for good cause, to sometimes vary from strict jurisdictional separation of costs.³⁶ The Commission, in establishing that, as an interim measure, all the costs for Video Relay Services (VRS) would be recovered from the Interstate TRS fund, stated that “[w]e believe the word ‘generally’ [in Section 225] gives to the Commission some discretion to fund intrastate service from the interstate jurisdiction. We believe that our action, intended as an interim arrangement, is an appropriate exercise of this discretion.”³⁷ Consequently, the costs of providing VRS are recovered from the Interstate TRS Fund, regardless of whether the calls are intrastate or interstate. The Commission allowed this to promote the growth of VRS by allowing carriers to concentrate their VRS operations in a few sites around the country.³⁸ We follow this logic in authorizing recovery of the costs of IP Relay from the Interstate TRS Fund.

17. Nevertheless, there are two methods by which the costs of IP Relay could be allocated between the states and the Interstate TRS Fund. The first would require a determination of the best way to identify accurately the origination of an IP Relay call. One possible method of doing so would require IP Relay callers to establish profiles that identify the state from which they are calling.³⁹ Several commenters point out, though, that profiles have proven unpopular with TRS users, and in some cases, callers might have an incentive to give false information to the profile.⁴⁰ The second method would entail the development of a cost allocation formula based on an approximation of the mix of interstate/intrastate calls that were placed over IP Relay. One possible method of determining an allocator would entail conducting customer surveys to find out the state from which a customer is calling, and the state to which the call is placed.⁴¹

18. Alternatively, a determination could be made that cost allocation is not necessary. WorldCom advocates this position. WorldCom argues that IP Relay costs should permanently be recovered from the interstate jurisdiction. Currently, there is one TRS provider in each state except California,⁴² recovering its costs from the state pursuant to a contract between the state and the carrier providing TRS. Because IP Relay is nationwide, WorldCom states that recovery of its costs in providing intrastate calls would require it to go through the very difficult and lengthy process of negotiating contracts with all 50 states.⁴³

19. In addition to formal comments filed with the Commission supporting the promotion of IP Relay, we have received more than 100 comments by e-mail from individuals who use IP Relay.⁴⁴ All but one of these comments request that we move quickly to authorize recovery of costs for IP Relay, so

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Relay to make a call, it is impossible to determine the caller's location and whether the called party is in the same state or in another state.

³⁶ *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5154.

³⁷ *Id.*

³⁸ *See Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5153-54.

³⁹ *See Sprint Comments*, at 3.

⁴⁰ *See Sprint Comments*, at 3; *NAD Comments*, at 4; *WorldCom Comments*, at 3.

⁴¹ A survey of this sort could involve designating a specific time period during which the CA would be required to ask each IP Relay caller what state she is calling from and log this information, along with the state of the number being called. We are concerned, however, about the inconvenience and intrusion into caller privacy that such a survey would entail.

⁴² California provides TRS via multiple vendors. Currently, California has two TRS providers.

⁴³ *See WorldCom Comments*, at 3.

⁴⁴ *See, e.g.*, e-mail comments from Connie Loper, Frank Mounts, Valerie Johnson, Afshan Hashim.

that WorldCom can open more Internet ports to facilitate a greater volume of calls.⁴⁵ All commenters agree that IP Relay costs should be recovered from the Interstate TRS Fund at least in the near term. Even commenters who support allocation of costs between the states and the Interstate TRS Fund agree that cost recovery from the Interstate TRS Fund is appropriate until either a cost allocation formula is adopted or a methodology is developed for determining the precise jurisdictional nature of a call.⁴⁶

20. We decline at this time to adopt either of the methods discussed above of allocating costs between states and the Interstate TRS Fund. The first method, collection of profiles on TRS users, raises issues of caller privacy that would require more examination before we could take conclusive action. Further, we believe that requiring TRS customers to provide profile information could discourage use of IP Relay, contrary to the direction of Congress to encourage the use of new and improved technology to provide TRS. The second method, allocating costs according to a formula based on approximate percentages of intrastate and interstate calling, would require substantial research into IP Relay calling patterns. We find, however, that it is in the public interest to authorize a compensation methodology for IP Relay quickly, in order to encourage the development of this service, and that to delay compensation pending the development of a methodology to determine the cost allocation of IP Relay calls could impede the development of the service. Thus, on an interim basis, we authorize any current or prospective IP Relay provider to receive compensation for providing IP Relay-based TRS from the Interstate TRS Fund, using the same formula that is used for interstate PSTN-based TRS calls, until such time as a determination is made concerning the development of a permanent IP Relay cost recovery formula.

21. We believe that this determination is supported by Section 225 of the Communications Act, which states that regulation governing TRS cost recovery shall "generally" provide that costs caused by interstate TRS shall be recovered from all subscribers for every interstate service and costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction.⁴⁷ As discussed above, in determining that the costs of providing VRS are recovered from the Interstate TRS Fund, regardless of whether the calls are intrastate or interstate, we interpreted the term "generally" to give us the discretion to fund intrastate service from the interstate jurisdiction. Similarly, we believe that our action here, intended as an interim arrangement, is an appropriate use of our discretion.

22. Accordingly, we direct the administrator of the Interstate TRS Fund, the National Exchange Carriers Association (NECA), to pay eligible Internet-based relay services using the PSTN-based TRS formula rate per minute. This compensation level for IP Relay-based TRS is to be implemented upon release of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking* by the Commission, and shall be paid only for IP Relay services provided after the release of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*. Compensation shall be based on the monthly minutes of use, in accordance with the rules established for the Interstate TRS Fund.⁴⁸ WorldCom states that IP Relay and PSTN-based TRS calls exhibit very similar cost and demand characteristics.⁴⁹ Particularly, WorldCom notes that the cost savings it enjoys from the absence of certain network based charges is offset by the additional cost of establishing and maintaining the Internet gateway and the hardware and software to provide relay service via the Internet.⁵⁰ We therefore believe that, at least in the interim, the cost recovery for IP Relay-based TRS calls should be

⁴⁵ See, e.g., e-mail comments from Connie Loper, Frank Mounts, Valerie Johnson, Afshan Hashim.

⁴⁶ See, e.g., Sprint Comments, at 2-4; NAD Comments, at 4; Ronald Vickery Comments, at 3-4.

⁴⁷ See 47 U.S.C. § 225(d)(3)(B).

⁴⁸ See 47 C.F.R. § 64.604(c)(4)(iii)(E).

⁴⁹ See WorldCom Comments, at 5.

⁵⁰ See *id.*

the same as the cost of PSTN-based TRS calls.

23. We also direct NECA and the Interstate TRS Fund Advisory Council to develop cost recovery guidelines for IP Relay based on this *Declaratory Ruling* within six months of its release. As the Commission did in requiring the development of cost recovery guidelines for improved TRS,⁵¹ we direct NECA and the Interstate TRS Fund Advisory Council to consider comments in this proceeding in developing guidelines. NECA and the Interstate TRS Fund Advisory Council should carefully examine any differences in the costs of providing IP Relay and PSTN-based TRS. We will place the proposed guidelines on public notice to provide the public with an opportunity to comment on the guidelines before we give final approval.

24. WorldCom recommends that we approve compensation for IP Relay from the Interstate TRS Fund effective the release date of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, at the current per minute compensation for interstate PSTN-based TRS calls, and require providers of IP Relay to keep separate logs of Internet-based and PSTN-based TRS conversation minutes. This would permit the Interstate TRS Fund to "true-up" amounts paid to providers of IP Relay if a different cost recovery rate is later established for IP Relay, based on the actual costs of providing IP Relay.⁵² We decline to adopt WorldCom's recommendation. WorldCom has stated that the cost characteristics of IP Relay are very similar to those of PSTN-based TRS.⁵³ We therefore believe that WorldCom will be adequately compensated by recovering its costs at the current PSTN-based TRS rate.

25. We wish to make clear that our decision to provide for cost recovery for IP Relay from the Interstate TRS Fund in no way precludes the states from establishing IP Relay in addition to their current PSTN-based TRS, or from providing cost recovery from state funds.⁵⁴ Should a state choose to authorize and provide cost recovery for Internet-based relay, any costs recovered from the state would not be eligible for recovery from the Interstate TRS Fund.

26. We also agree with commenters that IP Relay is a valuable addition to TRS because of the availability of IP Relay. We believe that the availability of IP Relay may encourage competition in TRS, a regulated service that typically has only one provider per state. In addition to WorldCom, AT&T has tested an Internet-based relay service and has stated that it will launch such a service when we permit the recovery of costs.⁵⁵ We believe that these carriers, and others that may launch Internet-based relay services, will compete with each other for customer loyalty by providing the best quality service. This incentive to provide high quality and improved service features will augment the power and flexibility of the Internet in delivering improved services to the public.

D. Minimum Standards.

27. Our rules establish several operational, technical, and functional minimum standards that carriers must meet to be certified as TRS providers.⁵⁶ Several of these standards may not be applicable

⁵¹ See *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5156.

⁵² See Letter from L. Fenster, WorldCom, to M. Roman Salas, Federal Communications Commission, March 1, 2002, at 1.

⁵³ See WorldCom Comments, at 5.

⁵⁴ We are not aware of any mechanism for a state establishing a fund to differentiate on a per call basis the jurisdictional nature of the call thus creating at least the possibility that states may be funding interstate communications.

⁵⁵ See WorldCom *Petition*, at 3; AT&T Comments, at ii.

⁵⁶ See *id.*, § 64.604(c).

to the provision of IP Relay.⁵⁷ WorldCom has asked for a waiver of certain minimum standards. For this reason, we will consider the applicability of our TRS minimum standards to IP Relay.

28. *Waiver Standard.* In analyzing the applicability of our TRS minimum standards to IP Relay, we consider established legal standards for waiver of the Commission's rules. The Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."⁵⁸ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."⁵⁹ The Commission must take a "hard look" at applications for waiver⁶⁰ and must consider all relevant factors when determining if good cause exists.⁶¹ The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[an] applicant [for a waiver] faces a high hurdle even at the starting gate."⁶² In addition, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."⁶³ Finally, a waiver of one or more portions of the Commission's rules does not excuse an applicant from compliance with the Commission's other requirements.⁶⁴ As discussed below, we find good cause to believe that WorldCom's waiver requests are in the public interest and grant them to the extent indicated herein.

29. *Speed of Answer.* TRS minimum standards mandate that 85 percent of relay calls must be answered within ten seconds by any method which results in the caller's call being placed, not put on queue or hold.⁶⁵ These calls are measured on a daily basis and take into account abandoned calls.⁶⁶ WorldCom requests a waiver on the speed of answer standard for one year, while it gains the experience, hardware, and obtains the qualified CAs necessary to meet the standard.⁶⁷ Most commenters believe that our speed of answer standard should apply to IP Relay,⁶⁸ though some add that the standard should be modified for IP Relay so that it does not include the time needed for the caller to connect to the Internet, but should be measured from the time the caller connects with the IP Relay center.⁶⁹ We agree with commenters that the speed of answer standard should apply to IP Relay, and we note that our minimum standards currently measure speed of answer from "the time the call is delivered to the TRS center's network. The call is considered delivered when the relay center's

⁵⁷ Both WorldCom and commenters address minimum standards at considerable length. See WorldCom, Comments, at 5-7; AT&T, Inc. (AT&T) Comments, at 9-11; Sprint Corporation (Sprint) Comments, at 4-5; National Association for the Deaf (NAD) Comments, at 6-7; Telecommunications for the Deaf, Inc. (TDI) Comments, at 6; Self Help for Hard of Hearing People (SHHH) Comments, at 8; California Public Utilities Commission (California) Comments, at 3-4; Dana Mulvany Comments, at 5-6; Ronald Vickery Comments, at 4.

⁵⁸ *FPC v Texaco, Inc.*, 377 U.S. 33, 39 (1964).

⁵⁹ 47 C.F.R. § 1.3.

⁶⁰ *Id.*

⁶¹ *Citizens to Preserve Overton Park, Inc., v. Volpe*, 401 U.S. 402, 416 (1971).

⁶² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁶³ *Northeast Cellular Telephone Company, L.P v. FCC*, 897 F.2d 1164, 1166(D.C. Cir. 1990).

⁶⁴ See 47 C.F.R. § 1.3; *Part 68 Waiver Request of Alameda Engineering Inc., et al, Order*, 10 FCC Rcd. 12135, 12139 (1995).

⁶⁵ See 47 C.F.R. § 64.604(b)(2). This rule is also known as the "85/10" rule.

⁶⁶ *Id.*

⁶⁷ See WorldCom *Petition*, at 7.

⁶⁸ See, e.g., AT&T Comments, at 9; Sprint Comments, at 5.

⁶⁹ See TDI Comments, at 8; NAD Comments, at 6-7.

equipment accepts the call from the local exchange carrier and the public switched network actually delivers the call to the TRS center."⁷⁰ Similarly, we will consider the call delivered to the IP Relay center when the IP Relay center's equipment accepts the call from the Internet. Carriers providing IP Relay, in order to remain qualified to receive reimbursement from the Interstate TRS Fund, will have to maintain sufficient staffing to adhere to our speed of answer standard, therefore, we deny WorldCom's request to waive our speed of answer requirement.

30. *Emergency Call Handling.* WorldCom notes that it is not able to provide location information to Public Safety Answering Points (PSAPs) because it does not have the ANI of the calling party, and therefore does not have information to identify the caller's location. Therefore, WorldCom requests a waiver of the requirement that emergency caller information be passed on automatically to the PSAP.⁷¹ Commenters agree that, because ANI information is not available in Internet connections, this requirement should be waived.⁷² We agree that it would be unreasonable to require IP Relay to provide information that it does not possess, and we therefore grant a waiver of emergency call information requirements for a period of one year. We encourage WorldCom and others to work on developing a method by which it can rapidly get critical location information from emergency callers, and pass this information along to appropriate emergency services. AT&T has an Emergency Call Handling data base that allows for retrieval of emergency services by city/state, and can quickly connect a caller to the appropriate PSAP, once the caller identifies her city/state, address, and phone number.⁷³ One commenter envisions Internet-based relay services providing software by which callers can send a preset emergency message with the push of a single key or very few keys.⁷⁴ We strongly encourage other IP Relay providers to consider providing means to connect emergency callers expeditiously to the appropriate PSAPs, and to continue to work on methods by which automatic provision of critical emergency information can be achieved by IP Relay. At the end of the waiver period, we expect that WorldCom and other IP relay providers will have devised a method by which they can automatically transfer calls to emergency services providers, including location information.

31. *Equal Access to Interexchange Carriers.* WorldCom has asked us to waive the requirement that IP Relay provide long distance via the carrier of the customer's choice, stating that as an IP Relay provider it does not charge for long distance, and therefore carrier of choice is unnecessary.⁷⁵ Most commenters agree, stating that carrier of choice may be impossible because it is not possible to tell whether or not a call is long distance.⁷⁶ We agree that cost is a significant factor in carrier of choice, and we recognize the difficulty in determining whether a call is long-distance. We also believe that, as IP Relay develops, a consumer will be able to use the interexchange carrier of her choice by using that interexchange carrier's IP Relay offering. We will therefore waive the carrier of choice requirement for IP Relay permanently, provided that IP Relay providers continue their policy of not charging customers for long distance calls.

32. *Voice Initiated Calls.* WorldCom claims that it can provide VCO, hearing carry over

⁷⁰ 47 C.F.R. § 64.604(b)(2).

⁷¹ See WorldCom Comments, at 6.

⁷² See, e.g., Sprint Comments, at 4; SHHH Comments, at 8; TDI Comments, at 8-9.

⁷³ See AT&T Comments, at 10-11.

⁷⁴ See Ronald Vickery Comments, at 4.

⁷⁵ See WorldCom Comments, at 6-7.

⁷⁶ See AT&T Comment, at 10; SHHH Comments, at 8; TDI Comments, at 9-10.

(HCO),⁷⁷ and speech-to-speech (STS)⁷⁸ through IP Relay, provided that the customer has the appropriate customer premises equipment.⁷⁹ Other commenters, however, believe that technological limitations make these services impossible at this point.⁸⁰ We also note that, currently, IP Relay can only be accessed by text users. We believe that IP Relay should be available to voice users, but agree with commenters that technology and the marketplace should drive the pace at which Internet-based relay providers resolve the problems involved with providing voice access to IP Relay.⁸¹ We will therefore waive the requirement that IP Relay be accessible by voice for a period of one year, while we inquire further into the problems and possibilities presented by voice access. We emphasize, however, that if an Internet-based relay provider develops the technology to provide VCO and STS before the expiration of this waiver, it will be authorized to provide these services to customers who have the necessary equipment and to recover its costs from the Interstate TRS Fund. We see no reason why IP Relay cannot be used for the text leg of an HCO call, and therefore we do not waive this requirement.

33. *Minimum Standards.* We will apply all other TRS minimum standards to IP Relay.⁸² In order to be certified and eligible for reimbursement, IP Relay must meet these minimum standards, or request and receive waivers of the standards. We emphasize that these waivers are temporary and are intended to facilitate the growth of IP Relay as a new service. As Internet-based relay services grow, we will require them to meet minimum standards once the technology is sufficiently mature to permit them to do so. These waivers will apply to all other current or prospective IP Relay providers, for the time periods indicated herein. We note that our minimum standards do not currently require TRS providers to provide VRS, but these services are eligible for reimbursement from the Interstate TRS Fund if IP Relay provides them.⁸³

34. We previously required relay services to offer pay-per-call services, stating that it is technically feasible for relay centers to accommodate these services.⁸⁴ We see no reason why IP Relay cannot also accommodate pay-per-call, or "900" number, services. In cases where the pay-per-call service requires the use of a credit card, the CA can pass along credit card information provided by the customer. In cases of pay-per-call services that are billed by the minute, IP Relay will be able to provide the caller's telephone number to the pay-per-call service provider for billing. We find that the provision of pay-per-call services through IP Relay is another component of functional equivalency.

35. We note that the minimum standards require all providers of interstate TRS to submit a contact person or office to the Commission for TRS consumer information and complaints.⁸⁵ Providers

⁷⁷ HCO is "[a] reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation." 47 C.F.R. § 64.601(6).

⁷⁸ Speech-to-speech relay service is a telecommunications relay service that allows people with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with disabilities and can repeat the words spoken by that person. 47 C.F.R. § 64.601(10).

⁷⁹ See WorldCom Comments, at 7.

⁸⁰ See Sprint Comments, at 4-5; NAD Comments, at 7; TDI Comments, at 10-11.

⁸¹ See WorldCom Comments, at 7-8; Sprint Comments, at 5; AT&T Comments, at 11-12.

⁸² See 47 C.F.R. § 64.604.

⁸³ See *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5154. We also note that VRS has received waivers of several of our TRS minimum standards. See *Improved Service, Order*, DA-01-3029, 17 FCC Rcd 157, 161-164 (2001).

⁸⁴ See *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5181-82.

⁸⁵ See 47 C.F.R. § 64.604(c)(2)(ii).

of IP Relay must submit a contact person or office for TRS consumers' information and complaints about the provider's service. This information may be the same contact information that the provider submits for its PSTN-based TRS. IP Relay providers may also, if they so choose, designate a separate person or office as the contact for IP Relay consumer information and complaints.

E. Security

36. The *Public Notice* asked commenters to address what requirements would be needed to ensure the privacy of calls made via IP Relay and of the caller profiles of IP Relay users. The *Public Notice* also asked whether we need to take specific measures to protect users from Internet viruses.

37. Currently, our rules prohibit TRS CAs from disclosing the content of any relayed conversation, with limited exceptions for speech-to-speech CAs and as provided by Section 705 of the Communications Act.⁸⁶ We agree with commenters that these same standards should apply to IP Relay CAs,⁸⁷ and that confidentiality of calls via IP Relay should be protected.⁸⁸ As regards technical security, WorldCom notes that it encrypts all IP packets with 128-bit encryption and does not currently link IP Relay calls to customer profiles.⁸⁹ TDI approves of encryption, suggesting that the same level of encryption as that used to protect credit card transactions on the Internet should be used for IP Relay calls.⁹⁰ AT&T states that its trial IP Relay offering did not provide specialized encryption or message protection, but "agrees that the privacy considerations and policies associated with traditional relay should be enforced with Internet relay."⁹¹

38. We find that the application of the confidentiality requirements of our current TRS minimum standards is sufficient to protect consumer privacy for the time being. We applaud WorldCom's choice to apply encryption to IP Relay conversations, and we agree with AT&T that the encryption made possible by the Internet can enhance the security and privacy of TRS calls via the Internet.⁹² For this reason, we conclude that any provider of IP Relay should offer encryption of calls, using encryption of commercially reasonable quality. A provider of IP Relay that does not provide such encryption shall warn the caller and call recipient each time they make a call or receive a call that their calls via the service are not encrypted. We will address the issue of security of IP Relay further in this proceeding.

IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

A. Overview

39. In the foregoing *Declaratory Ruling*, we authorized providers of IP Relay to recover their costs from the Interstate TRS Fund. We did so because currently there is no automatic means by which a caller's location can be determined. Therefore, it cannot be automatically determined whether a call via IP Relay is intrastate or interstate. The PSTN-based TRS system uses the caller's ANI to determine the area code from which a call is made. This piece of information, along with the area code of the number being called, allows the TRS provider to determine whether the call is intrastate or interstate

⁸⁶ *See id.*, § 64.604(a)(2).

⁸⁷ *See* AT&T Comments, at 12; California Comments, at 4.

⁸⁸ *See* SHHH Comments, at 9; TDI Comments, at 12; Charles Sterling Comments, at 1-2.

⁸⁹ *See* WorldCom Comments, at 8.

⁹⁰ *See* TDI Comments, at 12.

⁹¹ *See* AT&T Comments, at 12.

⁹² *See id.*

and recover its costs from the state or from the Interstate TRS Fund accordingly. Because the first leg of a call made via IP Relay comes from the caller to the IP Relay center via the Internet, there is no ANI, and because Internet addresses have no geographic correlates, there is no comparable automatic method for determining whether the caller is in the same state as the call recipient.

40. This *Second Further Notice of Proposed Rulemaking* inquires into cost recovery mechanisms for IP Relay. The Commission previously sought public comment on "use of the World Wide Web for voice communications, internet telephony, and any other technologies or changes to technology that may improve relay services or should be available via TRS."⁹³ Authorizing cost recovery for IP Relay, and thereby encouraging the growth of IP Relay, is an important step forward in providing improved TRS service. This *Second Further Notice of Proposed Rulemaking* supplements the prior *Further Notice of Proposed Rulemaking*,⁹⁴ and addresses issues that arise from this authorization of cost recovery for IP Relay.

B. Cost Recovery

41. In the *Declaratory Ruling* above, we allow recovery of all costs of providing IP Relay from the Interstate TRS Fund "until such time as a determination is made concerning the appropriate permanent cost recovery methodology."⁹⁵ We request public comment on whether we should attempt to devise a method for allocating calls as intrastate or interstate, and, if so, suggestions for how we may accomplish this goal.

42. Section 225 of the Communications Act directs the Commission to prescribe regulations that "generally provide that costs caused by interstate [TRS] shall be recovered from all subscribers for every interstate service and costs caused by intrastate [TRS] shall be recovered from the intrastate jurisdiction."⁹⁶ The Commission has traditionally "determined the nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers."⁹⁷ In defining whether a call is interstate or intrastate, we tentatively conclude that we should follow this tradition and classify a TRS call, whether made via PSTN-based or IP Relay, by the location of the call's originator and the location of the ultimate recipient, without reference to the location of the TRS center, any Internet Service Provider (ISP), or other intermediate points of switching or exchange. The Commission has defined a communication as interstate "when the communication or transmission originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state, territory, possession, or the District of Columbia."⁹⁸ We tentatively propose to apply this reasoning in determining the jurisdictional nature of IP-initiated TRS calls. We request comment on whether this tentative proposal is appropriate, or whether we should use alternate or additional factors in determining the nature of IP Relay calls for purposes of recovery from the Interstate TRS Fund.

43. However, for purposes of determining recovery of costs from the Interstate TRS Fund, this

⁹³ *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, at 5197.

⁹⁴ *See id.*

⁹⁵ *Supra* ¶ 18.

⁹⁶ 47 U.S.C. § 225(d)(3)(B).

⁹⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Declaratory Ruling, Inter-Carrier Compensation for ISP-Bound Traffic (Reciprocal Compensation)*, CC Docket No. 99-68, *Notice of Proposed Rulemaking*, 14 FCC Rcd 3689, 3695 (1999).

⁹⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report to Congress*, 13 FCC Rcd 11,501, 11,555 (1998).

methodology of allocation is problematic because, as explained above, there is no automatic means of determining the origination of IP Relay calls. In the absence of this information, TRS providers cannot determine, or report to the TRS Fund Administrator, whether a call is interstate or intrastate. We seek comment on whether Section 225 of the Communications Act requires us to develop a cost allocation methodology for IP Relay calls, or whether the statute gives us the discretion to conclude that all costs for IP Relay shall be reimbursable from the Interstate TRS Fund. To the extent that commenters believe that costs must be allocated between the interstate and intrastate jurisdictions for purposes of recovery from the Interstate TRS Fund, we request that they consider what methods may exist, or could be developed, to determine the location of a caller using IP Relay. For example, we seek comment on whether we should establish a method by which IP Relay callers establish profiles that identify the state from which they are calling from. Further, we ask commenters to consider whether the use of a fixed allocator would satisfy the statutory requirement that costs caused by interstate relay services be recovered from all subscribers for every interstate service, and if so, how such a fixed allocator could best be derived. Specifically, we request comment on the propriety of using PSTN-based TRS calling patterns to determine the percentages of IP Relay calls that are intrastate and interstate, given that TRS users are not using IP Relay to access Web sites or other Internet features, but to make functionally equivalent telephone communications.

44. We also ask commenters to address whether the Commission should be responsible for devising a fixed allocator for dividing the reimbursement for IP Relay costs between the Interstate TRS Fund and the states, or whether we should charge some other party with this responsibility. For example, we seek comment on whether the existing Interstate Telecommunications Relay Service Advisory Council, or a similar federal-state multi-jurisdictional advisory council is best suited to develop such methodologies.

45. We emphasize that the scope of our inquiry is confined to IP Relay only and to the recovery of TRS costs from the Interstate TRS Fund. This inquiry is not intended to regulate the Internet, nor to establish standards for the separation of Internet traffic in general, but to regulate IP Relay as a means of functionally equivalent access to the voice telephone network, and to specify how TRS providers may recover the costs for IP Relay. This regulation is pursuant to the authority granted to the Commission by Congress in the Americans with Disabilities Act, codified in Section 225 of the Communications Act.

V. CONCLUSION

46. For all the reasons stated above, we clarify that TRS includes Internet-based relay services, and that providers of such services as IP Relay are eligible to recover their costs. In order to encourage the development of this emerging technology and minimize the effort required to recover costs, all cost recovery for Internet-based relay services shall be from the Interstate TRS Fund. We direct NECA to pay eligible Internet-based relay services providers using PSTN-based TRS formula rate per minute. This compensation level for IP Relay-based TRS is to be implemented upon release of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking* by the Commission, and shall be paid only for IP Relay Services provided after the release of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*.

VI. PROCEDURAL MATTERS

Ex Parte Presentations

47. This *Notice of Proposed Rulemaking* is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's

rules, provided that they are disclosed.⁹⁹

Regulatory Flexibility Act

48. As required by the Regulatory Flexibility Act (RFA),¹⁰⁰ the Commission has prepared a Final Certification certifying that the rules promulgated in the *Declaratory Ruling* will not have “a significant economic impact on a substantial number of small entities.”¹⁰¹ The Final Certification is set forth in Appendix A.

49. As required by the RFA, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the remainder of the *Second Further Notice of Proposed Rulemaking*, and they should have separate and distinct headings designating them as responses to the IRFA. The Commission will send a copy of the *Second Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.¹⁰²

Paperwork Reduction Act

50. The requirement for collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 USC 3504 (H)). Persons wishing to comment on this collection of information should direct their comments to Judy Boley, Office of the Managing Director, Federal Communications Commission, The Portals, Room 1C-804, 445 12th Street SW, Washington, DC 20554, tel. 202-418-0214, e-mail jboley@fcc.gov.

Comment and Reply Dates

51. Pursuant to 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 30 days after Federal Register Publication, and reply comments on or before 45 days after Federal Register Publication. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

52. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the

⁹⁹ See generally, 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

¹⁰⁰ See 5 U.S.C. § 603.

¹⁰¹ 5 U.S.C. § 605(b).

¹⁰² The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m.. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325 Washington, DC 20554.

53. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, S.W., Room 5-A741, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98-67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

VII. ORDERING CLAUSES

54. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152 and 225, this DECLARATORY RULING IS ADOPTED.

55. IT IS FURTHER ORDERED that WorldCom's *Petition for Clarification* IS GRANTED to the extent indicated herein.

56. IT IS FURTHER ORDERED that the waivers requested by WorldCom in its *Petition for Clarification*, regarding certain of the minimum standards for TRS contained in Section 64.604 of our rules, 47 C.F.R. § 64.604, ARE GRANTED, to the extent indicated herein.

57. IT IS FURTHER ORDERED that the Administrator of the Interstate TRS Fund, the National Exchange Carriers Association, SHALL upon release of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking* by the Commission, pay eligible providers of IP Relay the costs of providing IP Relay using the PSTN-based TRS formula rate per minute.

58. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 225, 303 (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154 (j), 225, 303(r), and 403, the NOTICE OF PROPOSED RULEMAKING IS ADOPTED. Comments regarding the NOTICE OF PROPOSED RULEMAKING ARE REQUESTED as described above.

59. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

60. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

61. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This *Declaratory Ruling and Second Notice of Proposed Rulemaking* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary

APPENDIX A

FINAL REGULATORY FLEXIBILITY CERTIFICATION

1. The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁰³ requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”¹⁰⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰⁶ 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).¹⁰⁷

2. This *Declaratory Ruling* addresses a Petition for Clarification (*Petition*) filed by WorldCom, Inc. (WorldCom) in December of 2000.¹⁰⁸ This *Petition* requests that the Federal Communications Commission (Commission) clarify that Internet Protocol (IP) telecommunications relay services (TRS) are eligible for reimbursement from the Interstate Telecommunications Relay Service Fund. The Commission sought comments on the WorldCom Petition in a Public Notice.¹⁰⁹ As a result of the WorldCom *Petition* and filed public comments, the Commission is issuing this *Declaratory Ruling* which will allow WorldCom to recover such costs.

3. As noted in paragraph 59 of the *Declaratory Ruling*, this item imposes a regulatory burden on the Interstate TRS Fund Administrator, requiring it to pay qualified providers of IP telecommunications relay services (TRS) for their costs caused by their TRS. The Interstate TRS Fund is a not-for-profit organization, and therefore is a “small organization.” A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹⁰ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹¹¹ Because the

¹⁰³ The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁰⁴ 5 U.S.C. § 605(b).

¹⁰⁵ 5 U.S.C. § 601(6).

¹⁰⁶ 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.”

¹⁰⁷ 15 U.S.C. § 632.

¹⁰⁸ WorldCom, *Petition for Clarification*, CC Docket No. 90-571, *Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Dec. 22, 2000.

¹⁰⁹ Consumer Information Bureau Seeks Additional Comment on the Provision of Improved Telecommunications Relay Service, DA 01-1555, *Public Notice*, 16 FCC Rcd 13,100, Jun. 29, 2001; published at 66 Fed. Reg. 37,631 (Jul. 19, 2001).

¹¹⁰ 5 U.S.C. § 601(4).

Interstate TRS Fund is the only entity affected by the *Declaratory Ruling*, we conclude that a "substantial number" of small entities will not be affected by the *Declaratory Ruling*.

4. Therefore, we certify that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Declaratory Ruling*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.¹¹² In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.¹¹³

(...continued from previous page)

¹¹¹ U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

¹¹² See 5 U.S.C. § 801(a)(1)(A).

¹¹³ See 5 U.S.C. § 605(b).

APPENDIX B**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹¹⁴ the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking*.¹¹⁵ 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 *Declaratory Ruling and Second Further Notice of Proposed Rulemaking* provided in paragraph 51 of the item. The Commission will send a copy of the *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).¹¹⁶ In addition, the *Declaratory Ruling and Second Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.¹¹⁷

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

2. Telecommunications Relay Service (TRS), which is provided through the public switched telephone network (PSTN), enables persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities.¹¹⁸ TRS facilities have special equipment and are staffed by communications assistants (CAs) who relay conversations between people who use text telecommunications devices and people who communicate by voice. WorldCom, Inc. (WorldCom) indicates that its Internet Protocol (IP) Relay service is used in a manner similar to the PSTN-based TRS system. The user establishes a local connection to an Internet Service Provider using a computer, web phone, personal digital assistant, or any other IP-capable device. The user clicks on the relay operator icon, and when the call reaches the Internet platform a connection is automatically established, via an 800 number, to the WorldCom relay center. The call is then routed to a CA and a regular relay session is initiated.¹¹⁹

¹¹⁴ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹¹⁵ We expect that we could have complied with the RFA by completing an Initial Regulatory Flexibility Certification on this issue; however, we have chosen instead to complete this Initial Regulatory Flexibility Analysis for a more complete record. 5 U.S.C. § 605(b).

¹¹⁶ See 5 U.S.C. § 603(a).

¹¹⁷ See 5 U.S.C. § 603(a).

¹¹⁸ 47 C.F.R. § 64.601(5), (7).

¹¹⁹ WorldCom, *Petition for Clarification*, CC Docket No. 90-571, *Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Dec. 22, 2000, at 2.

3. WorldCom's Petition for Clarification (*Petition*)¹²⁰ asked the Commission to clarify (1) that IP Relay falls within the definition of TRS and (2) that it is entitled to recover its operating costs under Section 225 of the Communications Act.¹²¹ WorldCom further requested that the Commission allow it to recover all of the costs of its IP Relay service from the Interstate TRS Fund. Calls come to IP relay via the Internet, and there is currently no automatic method by which the IP Relay center can tell whether a given call is intrastate or interstate, given that Internet addresses have no geographic correlates. This is in contrast to PSTN-based TRS, in which the TRS center uses the caller's Automatic Numbering Identification (ANI) to identify the location of the caller.

4. The Commission briefly addressed the potential impact of the Internet on TRS earlier in this proceeding¹²² when the Commission requested comment on the provision of improved TRS and on WorldCom's *Petition*.¹²³ The Public Notice asked for public comment on the benefits of IP Relay, the appropriate means for allowing WorldCom to recover the costs of providing IP Relay, the minimum standards that should apply to IP Relay, and the security of IP Relay calls.¹²⁴ The Commission received 12 comments and five reply comments from carriers, organizations representing the deaf community, and public officials, along with hundreds of e-mail comments and letters from individuals who use IP Relay.¹²⁵

5. In the *Second Notice of Proposed Rule Making* aspect of this item, we request comment on whether recovery of costs from the Interstate TRS Fund for IP Relay should be a temporary or a permanent measure. If this should be a temporary measure, we seek comment from the public on how IP Relay TRS providers can develop the capability to determine whether a call is intrastate or interstate. If a permanent measure, we seek comment on the bases for such proposed action. Finally, we seek comment on the mechanisms for applying the process of reimbursement for all affected IP TRS Relay providers, including any small entities providing TRS.

B. Legal Basis

¹²⁰ WorldCom, *Petition for Clarification*, CC Docket No. 90-571, *Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Dec. 22, 2000.

¹²¹ 47 U.S.C. § 225.

¹²² We solicited comment on the use of the World Wide Web for TRS voice communications in the *Improved Service Report and Order and Further Notice of Proposed Rulemaking*. "We also seek comment on improved transmission speed, wireless messaging services, use of the World Wide Web for voice communications, Internet telephony, and any other technologies or changes to technology that may improve relay services or should be available via TRS." See *Improved Service Report and Order and Further Notice of Proposed Rulemaking*, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 5140, 5197 (2000) (*Improved Service Report and Order and Further Notice of Proposed Rulemaking*).

¹²³ Consumer Information Bureau Seeks Additional Comment on the Provision of Improved Telecommunications Relay Service, DA 01-1555, *Public Notice*, 16 FCC Rcd 13,100, Jun. 29, 2001; published at 66 Fed. Reg. 37,631 (Jul. 19, 2001).

¹²⁴ See *Public Notice*, 16 FCC Rcd., at 13,103. The Public Notice also sought comment on IP capabilities and outreach regarding TRS. While we do not reach these issues in our consideration of WorldCom's Petition, we will consider these comments along with the other comments received in response to our *Improved Service Report and Order and Further Notice of Proposed Rulemaking*.

¹²⁵ Comments were filed by AT&T, Inc. (AT&T), the California Public Utilities Commission (California), Katherine Keller, Dana Mulvany, the National Association for the Deaf (NAD), Self Help for Hard of Hearing People (SHHH), Sprint Corporation (Sprint), Charles Sterling, Telecommunications for the Deaf, Inc. (TDI), The United States Telecommunications Association (USTA), Ronald Vickery, and WorldCom. Additionally, individuals sent over a hundred e-mails. California, Dana Mulvany, TDI, USTA, and WorldCom filed reply comments.

6. The proposed action is authorized under Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

7. 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.¹²⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹²⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹²⁸ 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 SBA.¹²⁹

8. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the TRS.¹³⁰

9. **TRS Providers.** Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to TRS providers. The closest applicable definitions under the SBA rules are for wired telecommunications carriers and telecommunications resellers.¹³¹ The SBA defines such establishments to be small businesses when they have no more than 1,500 employees.¹³² According to our most recent data,¹³³ there are 11 interstate TRS providers, which consist of entities whose core businesses are as interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. We note that currently there are no wireless IP Relay TRS providers. However, we welcome comments on the proposals in our *Second Notice of Proposed Rulemaking* from wireless service providers. 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 11 small TRS providers that may be affected by the proposed changes. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should

¹²⁶ 5 U.S.C. § 603(b)(3).

¹²⁷ 5 U.S.C. § 601(6).

¹²⁸ 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."

¹²⁹ 15 U.S.C. § 632.

¹³⁰ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (Aug. 2001).

¹³¹ 13 C.F.R. § 120.201, North American Industry Classification System (NAICS) Code 513310 and 513330.

¹³² See 13 C.F.R. § 121.201, NAICS Code 513310 and 513330.

¹³³ This is recent data from National Exchange Carriers Association, which administers the Interstate TRS Fund.

conclude, for RFA purposes, that any TRS providers are small entities.¹³⁴

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

10. If rules establishing a reimbursement system for IP Relay providers are promulgated pursuant to this proceeding, all providers of IP Relay, including small entities, will be required to report to the TRS Administrator data needed to calculate their reimbursement amount. This data would be provided on an existing Interstate TRS Fund Administrator's form. This form is straightforward and simple to complete. In addition, the form represents data that is already collected by TRS providers.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."¹³⁵

12. The proposals in the *Second Further Notice of Proposed Rulemaking*, 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 principle 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.¹³⁶ Easily the majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers. The majority of IP Relay TRS is likely to be provided by these same carriers.¹³⁷ We believe that the number of small entities impacted by these proposals, apparently 11, would be potentially very small.

13. With respect to proposals in the *Second Further Notice of Proposed Rulemaking*, common carriers providing voice transmission services that are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through competitively selected vendors, or in concert with other carriers.¹³⁸ Because of the array of options available to TRS providers when complying with these requirements, the Commission expects that the proposals contained in the *Second Further Notice of Proposed Rulemaking* will have minimal impact on small entities. We tentatively conclude that our proposals in the *Second Further Notice of Proposed Rulemaking* would impose minimum burdens on small entities. We seek comment on our tentative conclusion.

14. At this time, there is no mechanism available that would allow differentiation between

¹³⁴ There is currently one provider of IP Relay TRS, WorldCom, Inc. WorldCom, Inc. is not a small entity. AT&T Corp. and Sprint. Inc. have indicated their intention to provide IP Relay TRS. These two corporations are not small entities. Therefore they are outside the statutory mandated scope of this IRFA.

¹³⁵ 5 U.S.C. § 603(c)(1) – (c)(4).

¹³⁶ See 47 U.S.C. § 225(d)(2).

¹³⁷ Currently, WorldCom, which is a large entity, is the only provider of IP Relay.

¹³⁸ See 47 U.S.C. § 225(c).

intra- and inter-state calls made through the Internet. The *Second Further Notice of Proposed Rulemaking* identifies and requests comment on establishing a mechanism for reimbursing IP Relay providers based on the use of a fixed allocator. If an allocator were to be established, all TRS providers, including small entities, would be able to determine the appropriate amount for reimbursement. Such an approach would satisfy the statutory requirement that costs caused by interstate relay service be recovered from all subscribers for every interstate service. An alternative the Commission is considering is making the interim arrangement of cost recovery from the Interstate TRS Fund for all calls permanent. We recognize that this alternative may benefit small TRS providers, by simplifying reporting requirements and clarifying reimbursement amounts. We seek comment on the statutory basis for such a decision.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

15. None.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN ABERNATHY**RE: PROVISION OF IMPROVED TELECOMMUNICATIONS RELAY SERVICES AND SPEECH-TO-SPEECH SERVICES FOR INDIVIDUALS WITH HEARING AND SPEECH DISABILITIES, CC DOCKET NO. 98-67, DECLARATORY RULING AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING.**

The FCC must not allow regulatory artifacts to slow innovation by limiting support for TRS to older technologies. IP Relay – a service that has the ability to improve communication for all Americans that rely on TRS – is just the sort of development that should warrant the Commission’s prompt attention. My only regret is that we did not act sooner to provide flexibility for this service innovation. Thus I am very pleased that today we are classifying IP Relay as a part of TRS.

Congress provided funds to support “telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire and radio with a hearing individual.”¹³⁹ Certainly IP Relay falls under this classification.

Granting TRS providers technological flexibility will continue to lead to substantial innovation in the marketplace. Now users of TRS need not restrict their telephone communications to places equipped with TTYs or specialized software; all they need is a connection to the Internet. Moreover, when conversing over IP Relay, there are more activities available to people who are deaf or hard of hearing. They can participate in a conference call, or go online while holding a conversation. These added services come at a lower price to digital consumers – individuals who use IP Relay need only invest in a computer, instead of a computer and a TTY.

In light of these advantages, I would have granted IP relay providers more flexibility in meeting our emergency call information requirements. Our current rules require a TRS provider automatically to provide caller identification information; currently IP Relay providers do not have access to that information. It is unclear to me that such location information is critical given the user of IP relay would generally know both where they are and by definition must be capable of using a keyboard and therefore I am reluctant to drive up the costs of the service. Nor am I prepared to deny IP Relay service based on this factor alone. I believe the marginal increase in safety associated with automatic location information, when balanced with the broader public interest benefits of deployment of IP Relay, argues for a more flexible regulatory approach in the short term.

Nevertheless, I am pleased to support the Declaratory Ruling and Second Further Notice of Proposed Rulemaking in this docket. I hope we can learn from developments in IP Relay and continue to adapt our regulations to technological change to ensure our policies do not relegate some consumers to a technological backwater. I look forward to working with TRS users, relay providers, states, the staff, and my fellow Commissioners to ensure the continued vitality of our TRS policies.

¹³⁹ 47 U.S.C. § 225(a)(3).

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,**

Re: Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

I am pleased to support this declaratory ruling that will make Internet Relay available as an option for the millions of Americans with disabilities and those who communicate with these citizens. As new technologies develop, we have an obligation to do everything we can to realize the vision of Congress that those with disabilities have access to ***functionally equivalent*** services so that ***all*** citizens can participate fully in our society.

I saw a demonstration of IP Relay and other new technologies at the TDI conference in South Dakota last summer, and it is clear that the advanced products and services I saw can go a long way toward enabling people with disabilities to obtain information and to communicate with others in ways that we could only dream about a few years ago. I am truly pleased that we will be holding a Forum and Expo here at the FCC on May 3 that will focus on relay services. This will be a great opportunity to see these new technologies in action and to draw public and, I hope, Congressional attention to a wide range of disabilities issues. I hope we can all work hard to make this Forum and Expo a huge success.

The item we approve today is part of a larger whole. It is just one of the important initiatives and challenges that we face in meeting the several disabilities challenges before us. The Commission needs to complete its section 255 proceeding on accessibility to equipment and services and to ensure that we are doing all we can to carry out fully Congress' directives. We should address other important issues such as hearing aid compatibility for digital wireless phones, accessibility to digital and interactive television, and implementation this year of video description and TTY access to E-911.

We must always be sure that our rules are being enforced. And finally, we must get our own house in order through such actions as making sure that those with disabilities are able to access government information through the Internet or via other information technologies, as Congress directed.

This is such an important area. The reality is so far away from how things should and could be. I was astounded to learn that the unemployment rate in the disabilities community is in the vicinity of 75 percent. That's just unacceptable. It's a waste of national talent and national treasure that costs not only these people, but our country, greatly. These issues affect all of us – not only the millions of Americans with disabilities, but also the millions more who communicate with these citizens and whose lives would be improved as their lives are improved.

So I'm pleased we're moving forward on this, and I commend the Bureau for the item.