

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

In the Matter of)
Telecommunications Relay Services and the) CC Docket No. 90-571
Americans with Disabilities Act of 1990)

FIFTH REPORT AND ORDER

Adopted: September 27, 2002

Released: October 25, 2002

By the Commission: Chairman Powell and Commissioner Abernathy issuing a joint statement;
Commissioner Copps approving in part, dissenting in part, and issuing a
statement.

I. INTRODUCTION

1. Title IV of the Americans with Disabilities Act (ADA), which is codified at section 225 of the Communications Act of 1934, as amended (the Act), mandates that the Federal Communications Commission (Commission) ensure that interstate and intrastate telecommunications relay services (TRS) are available, to the extent possible and in the most efficient manner, to individuals in the United States with hearing and speech disabilities.¹ Title IV aims to further the Act's goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are functionally equivalent to those available to individuals without such disabilities. Since the establishment of this mandate, the Commission has taken numerous steps to increase the availability of TRS, and to ensure that TRS users have access to the same services available to all telephone service users.

2. The ADA requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To achieve functional equivalence to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from "failing to fulfill the obligations of common carriers by refusing calls."² In the *First Report and Order on TRS*, the Commission interpreted

¹ 47 U.S.C. § 225 *et. seq.* TRS enables people with hearing or speech disabilities to communicate by telephone with persons who may or may not have such disabilities. This is accomplished through TRS facilities that deploy special technology and are staffed by communications assistants who relay conversations between persons using either text or voice telecommunications devices. To access TRS, a text telephone (TTY) user dials the telephone number of the local TRS center. For the TTY user, this first step - the outbound call to the TRS center - is functionally equivalent to receiving a "dial tone." The caller then gives the number of the party she desires to call to the communications assistant. The communication assistant, in turn, places an outbound voice call to the called party. The communications assistant serves as the "link" in the conversation, converting all TTY messages from the caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates the call to a TTY user. *See* 47 C.F.R. §§ 64.601(5),(7). Other types of relay services use the communications assistant to interpret the signed communication of one of the parties (video relay services), to translate the text message from the user of a computer or any other Internet Protocol-capable device into voice message (IP Relay), or to facilitate communications for individuals with speech disabilities (speech-to-speech relay services).

² 47 U.S.C. § 225(d)(1)(E).

this ADA mandate to require TRS providers to handle “any type of call normally provided by common carriers,” and placed the burden of proving the infeasibility of handling a particular type of call on the carriers.³ The Commission interpreted “any type of call” to include coin sent-paid calls, which are calls made by depositing coins in a coin-operated public payphone.⁴ Subsequent concerns about the technical difficulties associated with handling coin sent-paid calls through TRS centers, however, resulted in multiple suspensions of the mandate for TRS providers to handle these types of calls. The Commission issued the first of these suspensions in 1993; the current suspension remains in effect until publication of the final rules adopted in this *Fifth Report and Order*.⁵ Because no current technological solution to the coin sent-paid issue appears feasible, this Order eliminates the coin sent-paid requirement and encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones. Because we conclude that it is infeasible to provide coin sent-paid relay service through payphones at this time, and the coin sent-paid functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid TRS calls from payphones.

II. BACKGROUND

A. Coin Sent-Paid Requirement

3. As stated above, Congress directed that TRS providers be capable of handling all calls typically provided by common carriers.⁶ In accordance with this mandate, the Commission required, in the *First Report and Order on TRS*, that TRS providers be able to handle coin sent-paid calls by July 26,

³ Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Report and Order and Request for Comments*, CC Docket No. 90-571, 6 FCC Rcd 4657 (1991) (*First Report and Order*). See 47 C.F.R. § 64.604(a)(3). The Commission rejected subsequent petitions submitted by the industry to exempt coin sent-paid relay calls, noting that carriers had failed to meet the heavy burden of proving that the provision of this service was infeasible. Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, CC Docket No. 90-571, 8 FCC Rcd 1802-04 (1993) (*1993 Order on Reconsideration*).

⁴ See *First Report and Order*, 6 FCC Rcd at 4661 n.18.

⁵ Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Order*, 8 FCC Rcd 8385 (1993) (*1993 Suspension Order*); Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Order*, 10 FCC Rcd 12775 (1995) (*1995 Interim Suspension Order*); Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Memorandum Opinion and Order*, 10 FCC Rcd 10927 (1995) (*Alternative Plan Order*). The suspension was extended seven times, and the most recent extension expired on May 26, 2001. The rules, however, were later suspended pending the adoption of final rules. See *1993 Suspension Order*, 8 FCC Rcd 8385; *1995 Interim Suspension Order*, 10 FCC Rcd 12775; *Alternative Plan Order*, 10 FCC Rcd 10927; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Order*, 12 FCC Rcd 12,196 (1997) (*1997 Suspension Order*); Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Order*, 13 FCC Rcd 15453 (1998) (*1998 Suspension Order*); Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, *Order*, 15 FCC Rcd 6675 (1999) (*1999 Suspension Order*); Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, *Order*, 15 FCC Rcd 15823 (2000) (*2000 Suspension Order*); In the Matter of Telecommunications Relay Services and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 5803 (2001) (*Coin Sent-Paid Second Further Notice*).

⁶ 47 U.S.C. § 225(d)(1)(E).

1993.⁷ Prior to the 1993 deadline, interested parties filed petitions for reconsideration of the Order adopting the coin sent-paid requirement, arguing that TRS was incompatible with coin sent-paid technology.⁸ The Commission found that the petitioning carriers had failed to meet their burden of proving the infeasibility of providing a service readily available to voice telephone users.⁹ The Commission found no basis to exempt TRS providers from handling coin sent-paid calls, and again ordered carriers to comply with the coin sent-paid requirement by July 26, 1993.¹⁰

4. As the July 26, 1993 implementation date for TRS providers to handle coin sent-paid calls approached, several parties requested that the Commission exclude coin sent-paid calls from the mandatory minimum TRS requirements.¹¹ Petitioners explained that TRS was not connected to the Automated Coin Telephone System or the Traffic Operator Position System (TOPS), which are used for rating coin sent-paid calls on a real time basis. Handling TRS calls made with coins at payphones, they contended, would be technically difficult because a relay call is, in fact, two separate calls -- one from the customer to the relay center and a second call from the relay center to the called party. Commenters argued that TOPS, the system for assessing the correct charge for coin calls, and for handling coin collection and return functions, is only able to rate the first leg of the call. Neither TOPS nor the TRS centers are equipped to rate the second leg of the call, which reaches the caller's destination.

5. At the same time that the petitioners asserted that it was infeasible to handle coin sent-paid calls, they suggested that within two years, new technologies would be available to solve the technical difficulties.¹² Consequently, the Common Carrier Bureau¹³ (Bureau) suspended the coin sent-paid rule for an additional two years, until July 26, 1995, so that carriers could develop the technology to

⁷ 47 U.S.C. § 225(c) (1996); 47 C.F.R. § 64.604(a)(3); *First Report and Order*, 6 FCC Rcd at 4657.

⁸ Petitions for reconsideration or clarification of the policies and rules adopted were filed by Ameritech Operating Companies (Ameritech), Bell Atlantic Telephone Companies (Bell Atlantic), Bell South Corporation (BellSouth), GTE Service Corporation (GTE), and New England Telephone and Telegraph Company and New York Telephone Company (NYNEX).

⁹ *1993 Order on Reconsideration*, 8 FCC Rcd at 1802-04.

¹⁰ *Id.*

¹¹ Prior to July 26, 1993, requests for suspension of enforcement of section 64.604(a)(3) were filed by American Public Communications Council (APCC), AT&T Corp. (AT&T), Ameritech, Bell Atlantic, BellSouth, Cincinnati Bell Telephone, GTE, NYNEX, Pacific Bell and Nevada Bell (Pacific Companies), Rochester Telephone Corporation, Southern New England Telephone Company, Southwestern Bell Telephone Company (SWBT), Sprint Corporation (Sprint), United States Telephone Association (USTA), United Telephone Companies and Central Telephone Companies, and US West. In addition, 51 entities, including states, the District of Columbia and Puerto Rico, filed TRS certification applications pursuant to section 64.604 of the Commission's rules. 47 C.F.R. § 64.604 (1996). All 51 entities filed requests for waiver or extension of time to comply with the coin sent-paid requirement.

¹² *1993 Order*, 8 FCC Rcd at 8386.

¹³ The Common Carrier Bureau, now the Wireline Competition Bureau, was responsible for the TRS dockets during the pendency of this rulemaking. The Consumer & Governmental Affairs Bureau is now responsible for TRS policy and rulemaking. The term "Bureau" in this item will be used to refer to both the Common Carrier Bureau and the Consumer & Governmental Affairs Bureau.

provide coin sent-paid service to TRS users.¹⁴

B. Alternative Plan

6. Shortly after the release of the Bureau's *1993 Suspension Order*, an industry team was created to resolve the technical problems associated with handling coin sent-paid relay calls.¹⁵ This team developed a solution using a network platform, called the Coin Signaling Interface (CSI), which would provide an interface between the relay center and the payphone to rate the call. Notwithstanding the development of this solution, as July 26, 1995 approached, several carriers again petitioned the Commission for a continued suspension of the requirement that TRS providers handle coin sent-paid calls. Petitioners asserted that the CSI technology had serious drawbacks, and that compliance with the coin sent-paid requirement still was not technically feasible.¹⁶ Petitioners proposed an Alternative Plan to enable individuals to make relay calls from payphones using payment methods other than coins. The Alternative Plan proposed to require carriers to: (1) allow TRS users to make local TRS payphone calls free of charge; (2) enable TRS users to make toll calls by using calling or prepaid (debit) cards with rates equivalent to or less than those that would apply to a similar conventional call made using coin sent-paid service (coin call rates); and (3) develop programs to educate TRS users about alternative payment methods and to make calling or prepaid cards available to TRS users. Interested parties filed comments and reply comments on the petitions.¹⁷ The Bureau suspended enforcement of the coin sent-paid requirement for one month until August 26, 1995 to evaluate the record.¹⁸

7. On August 25, 1995, the Bureau released a *Memorandum Opinion and Order (Alternative Plan Order)* in which it concluded that providing coin sent-paid relay service was not technically feasible at that time.¹⁹ The Bureau agreed with commenters that the CSI technology would have serious drawbacks. Specifically, the Bureau found that: (1) this technology would result in a 20-30 second post dialing delay, calling into question whether such calls would be functionally equivalent to conventional coin sent-paid calls; (2) in violation of the Commission's rules, it would not be able to accommodate calls from TTYs that transmit data using the American Standard Code for Information Interexchange (ASCII);²⁰ and (3) it would require a special relay access number – different from each

¹⁴ *1993 Order*, 8 FCC Rcd at 8385-86.

¹⁵ The original Industry Team members were the APCC, AT&T, Ameritech, Bell Atlantic, BellSouth, GTE, Hamilton, MCI, NYNEX, Pacific Companies, Sprint, SWBT, USTA, and US WEST.

¹⁶ Petitions requesting suspension of the requirement that TRS be capable of handling coin sent-paid calls by July 26, 1995 were filed by AT&T; Bell Atlantic, BellSouth, GTE, NYNEX, Pacific Companies, SWBT and US West jointly; the Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired (InTRAC); MCI Telecommunications Corporation (MCI); the Nebraska Public Service Commission (Nebraska PSC); Sprint; and USTA.

¹⁷ Comments on the petitions requesting suspension of the requirement that TRS providers be capable of handling coin sent-paid calls by July 26, 1995 were filed by the APCC; AT&T; Hamilton Telephone Company (Hamilton); the Idaho Public Utilities Commission; and jointly by the National Association of the Deaf (NAD), the National Center for Law and Deafness, and Telecommunications for the Deaf, Inc. (TDI). Reply comments were filed by AT&T; Bell Atlantic; BellSouth; GTE; MCI; NYNEX; Pacific Companies; Sprint; and SWBT.

¹⁸ *1995 Interim Suspension Order*, 10 FCC Rcd at 12775.

¹⁹ *Alternative Plan Order*, 10 FCC Rcd at 10927.

²⁰ 47 C.F.R. § 64.604(b)(1). ASCII employs an eight-bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher. Because ASCII is faster, it is the preferred protocol for data (continued....)

state's TRS relay number – to be routed through the CSI platform. Finally, the Bureau acknowledged that operating the CSI platform would be extremely expensive.²¹ Based on these findings, the Bureau suspended the TRS coin sent-paid requirement for an additional two years, until August 26, 1997, and adopted the Alternative Plan for the two-year interim period.²² The Bureau also directed carriers to file two reports on the effectiveness of the Alternative Plan, due 12 and 18 months after the issuance of the Bureau's Order (*12-Month Report* and *18-Month Report* respectively).²³

8. *12-Month Report.* On August 26, 1996, USTA, on behalf of the Industry Team, filed the *12-Month Report*.²⁴ In this report, the Industry Team stated that a variety of consumer education programs had been effective in teaching TRS users how to make relay call using payphones.²⁵ The Report also stated that the Industry Team had consulted with representatives of the TRS user community and revised the educational materials to accommodate their concerns. The Industry Team reported that fewer than 10 complaints about the Alternative Plan had been registered and that these complaints did not challenge the substance of the Alternative Plan, but were directed towards ancillary issues, such as the use of calling cards and prepaid cards.²⁶ The *12-Month Report* represented that all complaints had been handled promptly and that no subsequent corrective action was necessary.

9. *18-Month Report.* The *18-Month Report*²⁷ recommended that the Alternative Plan be made permanent because: (1) the only technical solution that can provide the coin sent-paid service is CSI, which has serious deficiencies; (2) CSI is not cost effective, based on the limited volume of TRS calls made using payphones; and (3) the CSI solution is even more expensive than reported at the time of the Bureau's *1995 Suspension Order*, because of the Commission's decisions in the *1996 Payphone*

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transmission from TTYs over Baudot, which is a seven-bit code, containing only five information bits.

²¹ *Alternative Plan Order*, 10 FCC Rcd at 10929-30. GTE estimated that the CSI solution could initially cost the industry between \$104 and \$111 million for the first year's operation, with recurring costs of between \$10 and \$20 million annually. Independent payphone providers estimated costs at \$20 million for all payphones nationwide.

²² The Bureau stated that the two years were needed to introduce and gain experience with the Alternative Plan, to gather data on TRS and non-TRS payphone use, and to assess any new technical developments that could affect the provision of TRS coin sent-paid calls. *Alternative Plan Order*, 10 FCC Rcd at 10927.

²³ *Id.*

²⁴ The *12-Month Report* was timely filed on August 26, 1996, 12 months after the adoption of the *1995 Suspension Order*. *Twelve Month Report of the Petitioners on Alternate Plan for Telecommunications Relay Services Coin Sent-Paid Calls*, CC Docket No. 90-571 (filed Aug. 26, 1996) (*12-Month Report*).

²⁵ The consumer education programs included bill messages and inserts, informational brochures, posters, news releases, direct mail campaigns, radio and Internet messages, advertisements, call guide pages of telephone directories, and group presentations. *12-Month Report* at 3-4.

²⁶ *12-Month Report* at 5. The report did not specify with whom the complaints were registered or who handled them.

²⁷ The *18-Month Report* was due on February 26, 1997, 18 months after adoption of the *1995 Suspension Order*. The report was filed on March 12, 1997, after the Industry Team received approval from the Network Services Division of the Common Carrier Bureau for an extension of time until this date. *Eighteen Month Report of the Petitioners on Alternate Plan for Telecommunications Relay Services Coin Sent-Paid Calls*, CC Docket No. 90-571 (filed Mar 12, 1997) (*18-Month Report*); Telecommunications Relay Services and the Americans with Disabilities Act of 1990, *Order*, 12 FCC Rcd 3523 (1997).

*Orders*²⁸ and the docket addressing N11 codes and other abbreviated dialing arrangements.²⁹ The *18-Month Report* further contended that carriers had educated consumers about TRS through presentations made to state, regional, and national entities that represented individuals with hearing and speech disabilities and to more general audiences, such as schools and community organizations. The *18-Month Report* also described future planned educational efforts by the Industry Team.

10. The Bureau requested comments on the Alternative Plan and the 12 and 18 month status reports by Public Notice dated May 9, 1997.³⁰ Commission staff subsequently met with representatives from the National Association for the Deaf (NAD), Consumer Action Network (CAN) and Telecommunications for the Deaf, Inc. (TDI) on June 17, 1997, and with representatives from Sprint, MCI, AT&T and USTA on June 18, 1997.³¹ All participants argued that current CSI technology has serious deficiencies, and that, at the time, it was not a viable technology for providing TRS coin sent-paid service. Representatives of TRS consumers also expressed their belief that the consumer education part of the Alternative Plan had not been effective in informing TRS users about how they can use payphones to make TRS calls.

C. 1997 and 1998 Suspension Orders

11. On August 21, 1997, the Bureau released an Order suspending enforcement of the coin sent-paid requirement for an additional year until August 26, 1998 (*1997 Suspension Order*).³² The Bureau found that providing coin sent-paid service through TRS centers still was not technically feasible and that no technical solution that provides functional equivalency appeared imminent. Consequently, the Bureau recommended that the Commission conduct a rulemaking proceeding to determine whether the Commission's requirement that TRS providers be capable of handling all calls, including coin sent-paid calls, should be modified.

12. In the *1997 Suspension Order*, the Bureau directed carriers to continue implementing the Alternative Plan set forth in the *1995 Suspension Order*, and also to implement several of the consumer education proposals contained in the *18-Month Report*.³³ Specifically, the Bureau directed the industry to

²⁸ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, CC Docket 96-128, 11 FCC Rcd 20541 (1996) (*1996 Payphone Order*); *Order on Reconsideration*, 11 FCC Rcd 21233 (1996) (*1996 Payphone Order Reconsideration*), remanded in part sub nom. Illinois Public Telecommunications Ass'n v. FCC and United States, C.A. No 96-1394 (D.C. Cir. July 1, 1997) (collectively *1996 Payphone Orders*).

²⁹ Use of N11 Codes and Other Abbreviated Dialing Arrangements, *Notice of Proposed Rulemaking*, 7 FCC Rcd 3004 (1992); Use of N11 Codes and Other Abbreviated Dialing Arrangements, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5572 (1997).

³⁰ Comment Sought on Eighteen Month Report for Telecommunications Relay Services Coin Sent-Paid Calls, *Public Notice*, No. 74032 (rel. May 9, 1997). On June 2, 1997, comments were filed by APCC, AT&T, Ameritech, CAN, GTE, NAD, jointly by SWBT and the Pacific Companies (SWBT and Pacific Companies Joint Comments), USTA, and University Legal Services-Protection and Advocacy (ULS-P&A). INTELLICALL, INC. (Intellicall) filed late comments on June 3, 1997.

³¹ NAD Ex Parte Letter (June 20, 1997) (filed on behalf of CAN, NAD, and TDI); MCI Ex Parte Letter (June 19, 1997) (filed on behalf of AT&T, MCI, Sprint, and USTA).

³² *1997 Suspension Order*, 12 FCC Rcd 12196.

³³ *Id.* at 12203-04.

(1) work with the hearing and speech disabled community to create and disseminate materials about TRS coin sent-paid calls, without advertising the services of individual carriers or relay providers; (2) send a consumer education letter, which had been developed in consultation with the CAN, to TRS centers, which could then use the letter to educate TRS callers about using payphones; (3) send one or more representatives to regional and national meetings sponsored by the hearing and speech disability community to disseminate information, and to demonstrate how to call TRS centers from payphones;³⁴ and (4) consult with representatives from organizations that represent the hearing and speech disability community to determine the feasibility of executing other proposals contained in the *18-Month Report*, including a proposal to include articles in the magazines or newsletters of CAN's member organizations, and a proposal to create a laminated card with visual characters depicting how to make relay calls from payphones. The Bureau also required carriers to submit a report on their efforts to comply with the Bureau's directives to the Commission within two months of publication of the *1997 Suspension Order* in the Federal Register.³⁵ Carriers filed this report on November 7, 1997.

13. On August 10, 1998, the Bureau issued an Order continuing the suspension of the coin sent-paid requirement. The *1998 Suspension Order* extended the terms and conditions set forth in the *1997 Suspension Order* until August 26, 1999.³⁶ In a letter dated December 2, 1998,³⁷ the Industry Team informed the Commission that it had taken several steps to comply with the directives set forth in the *1997 Suspension Order*. In April and May of 1999, the Commission received consumer responses to the TRS Coin Sent-Paid Industry Team Activity Report.³⁸ These responses contended that the educational letter had not been printed in various organizational newsletters, that coin sent-paid exhibits at conferences did not include prominent displays or hands-on opportunities for consumers, that wallet-sized cards were inconspicuously displayed, and that program books of various events did not list information or workshops about the Alternative Plan.³⁹ Responding parties also raised concerns about efforts to educate the public through web sites, noting that potential users of coin sent-paid phones may not have computers and therefore, access to such sites.⁴⁰

14. In its April 1999 response, CAN requested that the Commission require the Industry Team to develop an annual funding plan, in consultation with CAN, to address the objectives of the Alternative Plan, as modified in 1995. CAN noted that it would support permanent adoption of the Alternative Plan if this funding plan proved to be successful in expanding awareness about TRS payphone

³⁴ Meetings to which the Industry Team were directed to send one or more representatives included Alexander Graham Bell Association Convention; Association for Late Deafened Adults (ALDA) Convention; NAD's Convention; Self Help for Hard of Hearing People (SHHH) Convention; TDI Convention; and states' deaf association conventions.

³⁵ See *1997 Suspension Order*, 62 Fed. Reg. 47152.

³⁶ *1998 Suspension Order*, 13 FCC Rcd 15453.

³⁷ Letter to Magalie Roman Salas, Secretary, FCC, from Mike Del Casino, Regulation Division Manager, AT&T, on behalf of the Industry Team (Dec. 2, 1998) (1998 Industry Team Ex Parte).

³⁸ Ex Parte, CAN Response to Telecommunications Relay Service Coin Sent-Paid Industry Team Activity Report, CC Docket No. 90-571 (April 27, 1999) (CAN Ex Parte); Ex Parte, Alfred Sonnenstrahl, Response to TRS Coin Sent-Paid Industry Team Activity Report (May 3, 1999) (Sonnenstrahl Ex Parte).

³⁹ CAN Ex Parte at 5; Sonnenstrahl Ex Parte at 3.

⁴⁰ CAN Ex Parte at 7; Sonnenstrahl Ex Parte at 5.

access.⁴¹ Since 1998, the Bureau has issued two additional orders suspending the coin sent-paid rules.⁴² The most recent suspension order, released on August 23, 2000, suspended the coin sent-paid requirements for nine months or until such time as the Commission adopts final rules governing TRS users' access to payphones, whichever is earlier.⁴³

D. Coin Sent-Paid Second Further Notice

15. On March 16, 2001, the Commission released a *Second Further Notice of Proposed Rulemaking* on the TRS coin sent-paid requirement.⁴⁴ Because no technological solution to the coin sent-paid issue appeared imminent, the Commission issued the *Coin Sent-Paid Second Further Notice* to further develop the record with the goal of determining the best plan to make the full range of payphone services available to TRS users.⁴⁵ Specifically, the Commission sought comment on whether to modify its rules to permit TRS providers to treat coin sent-paid TRS calls differently from other calls, or to suspend permanently the enforcement of the specific requirement that TRS centers be capable of handling coin sent-paid calls. Additionally, the Commission sought input on proposed rules for providing functionally equivalent payphone service to TRS users.⁴⁶ Finally, the Commission reaffirmed the suspension of the coin sent-paid relay requirement until final rules in this proceeding are adopted and published in the Federal Register.⁴⁷

III. DISCUSSION

A. Functional Equivalence for Coin Sent-Paid Relay Calls

16. Section 225 of the Act requires carriers to provide payphone service for TRS users that is functionally equivalent to that provided to callers not using a relay service. In the *First Report and Order* on TRS, the Commission determined that to be compliant with this mandate, carriers must provide coin sent-paid relay service from payphones.⁴⁸ Technical limitations, however, have made the provision of toll coin sent-paid relay calls infeasible. Rather than attempt to fashion a regulatory solution that might be technically infeasible or overly burdensome to achieve, the Commission left the task of developing a

⁴¹ CAN Ex Parte at 7-8.

⁴² *1999 Suspension Order*, 15 FCC Rcd 6675; *2000 Suspension Order*, 15 FCC Rcd 15823.

⁴³ *2000 Suspension Order*, 15 FCC Rcd 15823.

⁴⁴ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5803. Comments were due on May 7, 2001 and reply comments were due on May 22, 2001. Comments were filed by the Coins Sent-Paid Industry Team (Industry Team) (The Industry Team members are: AT&T; Verizon; Sprint; WorldCom; BellSouth Telecommunications, Inc.; SBC; American Public Communications Council; Hamilton Telephone; Qwest; and Vista IT); Telecommunications for the Deaf, Inc. (TDI), CAN and, the National Association for the Deaf (NAD) filed joint comments (referred herein as TDI\CAN\NAD); Deaf Seniors of America (DSA); and the California Public Utilities Commission (California PUC). Reply comments were filed by the Industry Team and the United States Telecommunications Association (USTA).

⁴⁵ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5803.

⁴⁶ *Id.*

⁴⁷ *Id.* at 5829.

⁴⁸ 47 U.S.C. § 225(c) (1996); 47 C.F.R. § 64.604(a)(3); *First Report and Order*, 6 FCC Rcd at 4657.

technical solution to the industry. The industry, however, has been unable to develop such a technical solution for the last ten years. To date, only one solution for processing toll coin sent-paid relay calls – the CSI solution – has been developed. We therefore examine whether the CSI platform provides an adequate means for TRS providers to satisfy the functional equivalence requirement in section 225 of the Act.

17. We conclude that implementing the CSI platform, as it currently exists, to provide coin sent-paid access to the TRS centers would not result in a TRS service that is functionally equivalent to coin sent-paid or other payphone services available to non-TRS users. As we explained above, CSI is extremely expensive to operate and suffers from other serious drawbacks.⁴⁹ With one exception,⁵⁰ no commenters expressed belief that the Commission should continue to expect the industry to develop an economically feasible technical solution in the foreseeable future. We also note that the number of relay calls made from payphones is decreasing.⁵¹ As a result, we expect that the elimination of the coin-sent-paid requirement will have minimal impact on TRS because alternative methods by which TRS users may place calls from payphones provide functionally equivalent means for placing coin sent-paid TRS calls from payphones. After ten years of attempts by the industry, we find that it is appropriate to conclude that a technological solution is not readily available. Accordingly, we eliminate the requirement that TRS carriers and providers be capable of providing coin sent-paid TRS service from payphones.

B. Payment Methods

1. Local Calls

18. In the *Coin Sent-Paid Second Further Notice*, the Commission proposed that local payphone calls made through TRS centers be provided by carriers to TRS users on a cost-free basis.⁵² All commenters addressing this proposal support it.⁵³ Currently, the first leg of a toll free call to the TRS center is free to the caller.⁵⁴ The second leg of the call to the called party, if local, is also free, pursuant to the Alternative Plan that has been in effect since 1995. TRS users have benefited from this arrangement since that time, and there is no indication that the provision of free local TRS calls has affected the ability

⁴⁹ See *supra* at para. 7, citing *Alternative Plan Order*, 10 FCC Rcd at 10927.

⁵⁰ See California PUC Comments at 3. California advocates a continued temporary suspension of the TRS rules.

⁵¹ See Industry Team Comments at 3 (GTE reported that its coin revenues declined by 22 percent between 1Q 1998 and 1Q 2000. AT&T reported that its coin sent-paid revenues declined by 30 percent from 1Q 1997 and 1Q 2000. Davel Communications, Inc. and PhoneTel Technologies, Inc. also reported declining revenues and the removal of unprofitable payphones for the year ending December 31, 2000). Based on the record, we believe that since coin revenues in general have decreased year to year, that the frequency of relay calls made from payphones has decreased as well.

⁵² See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5816.

⁵³ See Industry Team Comments at 24-25, TDI/CAN/NAD Comments at 5, DSA Comments at 5, California PUC Comments at 4.

⁵⁴ See 47 CFR § 64.1330 (b) which requires that telecommunications relay calls for persons with hearing and speech disabilities are available from all payphones at no charge to the caller. Additionally, each state telecommunications relay center may be reached toll free by using the state's 800 dialing number or the TRS 711 dialing code. As of October 1, 2001, all telecommunications carriers were required to implement the 711 code for access to relay calls. This code enables TRS users to reach the local TRS center from wherever they are placing the call by dialing 711. See *The Use of N11 Codes and other Abbreviated Dialing Arrangements, Second Report and Order*, 15 FCC Rcd 15188, 15190, 15219 (2000) (*N11 Second Report and Order*).

of payphone service providers (PSPs) or carriers to provide TRS users access from payphones.⁵⁵ We therefore mandate that local payphone calls made through TRS centers continue to be provided by carriers to TRS users on a cost-free basis.

19. In the *Coin Sent-Paid Second Further Notice*, the Commission recognized that problems with billing for local TRS calls from payphones may arise when consumers use prepaid cards.⁵⁶ If a consumer uses TRS for a local call from a payphone and provides the communications assistant with the prepaid card access number, the TRS user may be charged for the call because some prepaid cards start charging the moment the number to access the carrier's services is dialed. The communications assistant would not be able to prevent or reverse these charges. Thus, the Commission sought comment on methods to ensure that TRS users are not charged for local payphone calls. The Commission also sought comment on whether communications assistants should ask TRS users for the telephone number to be dialed and inform the TRS users if the call is local, thereby precluding the need for the caller to provide a payment method before it is determined whether the call is local.⁵⁷

20. Although we now require carriers to provide free TRS local calls from payphones, we decline to make communications assistants responsible for determining whether each call is local. TRS users are responsible for determining whether the call is local before providing a prepaid card access code to the communications assistant. We believe that the educational and outreach programs described herein will be sufficient to alert consumers that they need not use prepaid cards for local payphone calls.⁵⁸

21. Some parties are also concerned that a TRS user may be charged for a toll call even if the call distance is only a few blocks.⁵⁹ The Deaf Seniors of America (DSA) proposes that the definition of local calls be clarified and standardized for relay calls. Specifically, DSA recommends that calls within 100 miles be considered local calls for TRS purposes.⁶⁰ We decline to adopt this proposal. As explained by the Industry Team, the methods relay providers use to assign local status to calls from payphones ensures that TRS customers will receive the same, if not more favorable treatment than that of non-hearing or non-speech disabled customers.⁶¹ Because the ADA only mandates functionally equivalent service,⁶² we see no reason to impose an additional requirement that would provide better than functional equivalence. In most states, relay providers reportedly designate wider local calling zones for TRS calls from payphones than for non-relay payphone calls,⁶³ and carriers may continue to expand their local calling area as they see fit. We decline, however, to require local TRS calls to be rated differently.

2. Toll Calls

⁵⁵ See Industry Team Comments at 24-25.

⁵⁶ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5816.

⁵⁷ *Id.* at 5816-17.

⁵⁸ See *infra* at paras. 26-36.

⁵⁹ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5816.

⁶⁰ DSA Comments at 5.

⁶¹ Industry Team Comments at 6.

⁶² 47 U.S.C. § 225.

22. In the *Coin Sent-Paid Second Further Notice*,⁶⁴ the Commission proposed that callers be able to use calling cards,⁶⁵ collect calling or third party billing to pay for toll coin sent-paid relay calls from payphones. We now adopt that proposal because, based on the record in this proceeding, we conclude that there is currently no feasible way for a toll call over TRS to be accomplished using coins.⁶⁶ We also agree with TDI/CAN/NAD that carriers should be required to accept prepaid cards⁶⁷ for toll relay calls from payphones.⁶⁸ Therefore, we will require carriers to allow the use of calling cards, prepaid cards, collect or third party billing for toll calls from payphones. Consistent with our discussion herein, we find that it is not technically feasible⁶⁹ to make toll coin sent-paid relay calls.⁷⁰ Accordingly, we will amend section 64.604(a)(3) as it pertains to a requirement that TRS providers accommodate toll calls using coins.⁷¹

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⁶³ Industry Team Comments at 7.

⁶⁴ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5817.

⁶⁵ A calling card is an alternative method for billing and collecting for telephone services, usually associated with residential or business service. Use is very similar to credit card use, but may have additional “per call” charges added to the per-minute rate.

⁶⁶ See, e.g., Industry Team Reply Comments at 2; USTA Reply Comments at 2-3 (FCC should eliminate requirement that TRS providers be able to handle coin sent-paid calls to eliminate the uncertainty that the temporary suspensions have created for both industry and consumers). See also, *Twelve Month Report of the Petitioners on Alternate Plan for Telecommunications Relay Services Coin Sent-Paid Calls*, CC Dkt. No. 90-571, August 26, 1996 (*Twelve Month Report*); *Eighteen Month Report of the Petitioners on Alternative Plan for Telecommunications Relay Services Coin Sent-Paid Calls*, CC Dkt. No. 90-571, March 12, 1997 (*Eighteen Month Report*);

⁶⁷ Prepaid calling or phone cards are a variation of the calling card, available for purchase by consumers. A prepaid phone card is a card purchased for a set price and used to make long distance calls. These cards are usually sold in dollar amounts or by numbers of minutes. Many people use a prepaid card because of the card’s convenience; it can be purchased in many convenient places, such as grocery stores, newsstands, and post offices. A toll-free access phone number and a personal identification number (PIN) are usually printed on each phone card. Prepaid phone card companies keep track of how much of the card’s time is used according to the card’s PIN number. See *Prepaid Phone Cards: What Consumers Should Know*, <http://www.fcc.gov/cgb/consumerfacts/prepaidcards.html>.

⁶⁸ TDI/CAN/NAD Comments at 5-6.

⁶⁹ The technical difficulty of billing a TRS user for the coin sent-paid calls arises because a relay call is, in fact, two separate calls -- one from the customer to the relay center and a second call from the relay center to the called party. The current system for assessing the appropriate charge for coin calls, and for handling coin collection and return functions, can only cover charges for the first leg of the call. TRS centers are not equipped to perform these functions for the second leg of the call. Communications assistants (those who relay a call from a TRS user to a third party) are not capable of determining the charge for a given call at the time the call is being placed. See *In the Matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Order, CC Dkt. No. 90-571, DA 97-1800 (1997) at n. 8.

⁷⁰ Industry Team Reply Comments at 2-5; USTA Reply Comments at 2-4; but see TDI/CAN/NAD Comments at 5-6 (supports Commission’s proposal to require carriers to allow use of calling cards including prepaid cards, collect, third-party billing).

⁷¹ 47 C.F.R. § 64.604(a)(3).

23. In the *Coin Sent-Paid Second Further Notice*,⁷² the Commission also tentatively concluded that carriers may not charge more than the lower of the coin sent-paid rate or the rate for the calling card, collect, or third-party billing, for TRS toll calls from payphones. We decline to adopt this tentative conclusion because we agree with the California Public Utilities Commission that a requirement to compare the coin sent-paid rate and a calling card rate would be unworkable.⁷³ Although the Industry Team states that the Commission should retain the requirement for calling cards and rely on competitive forces in the prepaid card market,⁷⁴ they have not demonstrated the feasibility of such a requirement.

24. There are technical reasons, discussed above, as well as practical and legal reasons, that we rely on in reaching this conclusion. A call made from a payphone connects to a TRS facility via free local calling.⁷⁵ The caller then communicates to the communications assistant the phone number for the outgoing portion of the call.⁷⁶ If the outgoing portion of the TRS call is a long distance call, the communications assistant must learn from the caller how he or she wishes to pay for the call.⁷⁷ The caller must provide the communications assistant with a prepaid or other calling card, credit card number and personal identification number (PIN) to which the long distance charges will be billed, or third party or collect billing information.⁷⁸ For the charges to be the lower of the coin sent-paid rate or the rate of the caller's preferred billing mechanism,⁷⁹ a comparison must be made. However, the record in this proceeding does not demonstrate that it is feasible to compare the coin-sent rate for a long distance call from a specific payphone and the rate of these alternative billing mechanisms.⁸⁰ Moreover, the Commission does not regulate payphone rates, the contractual relationship between a payphone owner and the long distance carrier for the payphone equipment, or the rates for calling cards, including prepaid

⁷² See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5817.

⁷³ See California PUC Comments at 5; see also Industry Team Reply Comments at 2; USTA Reply Comments at 2-3.

⁷⁴ See Industry Team Comments at 12.

⁷⁵ See 47 CFR § 64.1330 (b).

⁷⁶ See, e.g., California PUC Comments at 4-5; Industry Team Reply Comments at 2; USTA Reply Comments at 2-3.

⁷⁷ See, e.g., Eighteen Month Industry Report at 5.

⁷⁸ See Industry Team Comments at 10-11.

⁷⁹ E.g., calling card, prepaid card, collect or third party billing.

⁸⁰ See, note 5 supra; see also, e.g., Industry Team Comments at iii-iv, 7 (in its 18-Month Report on the Alternative Plan [we] noted carriers do not have the ability to ensure that prepaid rates are always less than the coin sent rate since many of the cards are marketed by non-carriers), at 8 (does not support the Commission's proposal that calls paid for by either collect-calling or third party billing must be offered at rates less than the coin sent rate) and at 9 n. 19 (the FCC does not have authority to regulate prepaid cards), but see (retain the requirement to keep calling cards below the coin rate and rely on competitive forces in the prepaid card market to ensure affordable alternatives to coin dialing) *id.*, at 12; California PUC Comments at 3 (current known technology is an unacceptable solution for processing coin sent-paid relay calls) and at 4 (CPUC does not know how the proposal to compare and charge the lower rate would be implemented because the FCC has deregulated payphone rates and charges, the coin sent-paid rate at each payphone is typically determined in the contract between the payphone service provider and the payphone owner); but see TDI/CAN/NAD Comments at 7 (cost to carriers of matching the lowest prepaid card rate should be minimal and the financial effect on carriers would be small compared to the effect for TRS users vis-à-vis non-TRS users which would be significant).

cards.⁸¹ A requirement that a TRS provider assure the user a lower rate for long distance calls is not required for functional equivalency, as discussed *infra*.

25. The calling card and prepaid phone card markets are currently very competitive, adding to the number of options available to TRS users who make toll calls from payphones.⁸² A long distance consumer may, depending on the per-minute rate, save money on long distance calls using calling cards or prepaid calling cards. Further, payphones may be connected to operator service providers (OSPs) that provide toll calling at higher rates than most consumer cards. Our rules require each payphone provider to post on or near each telephone, in plain view of consumers, the name, address, and toll-free telephone number of the OSP for that payphone. The information must include a written disclosure that the OSP's rates for operator assisted calls are available, that consumers have a right to obtain access to the interstate long distance carrier of their choice, and may call that carrier using that telephone.⁸³ Although we decline to require carriers to charge the lower of the coin sent-paid rate or other available rates, we strongly encourage carriers to eliminate other surcharges on TRS calls,⁸⁴ and to assist callers, through educational outreach, in finding the most cost effective means of making TRS toll calls from payphones. If voluntary educational outreach is not sufficient to prevent TRS users from experiencing excessive surcharges on their calls, the Commission, on its own initiative or at the request of TRS consumers, may revisit this issue.

26. In the *Coin Sent-Paid Second Further Notice*,⁸⁵ the Commission also considered the difficulty of regulating the prepaid card market. We find no need for regulation of the prepaid market at this time because there is robust competition in the prepaid calling market.⁸⁶ Prepaid card rates vary significantly from vendor to vendor, and the Commission has instituted a consumer outreach campaign designed to educate all consumers about smart long distance shopping.⁸⁷ Prepaid card rates are generally easy to obtain and easier to carry than coins. Members of the Industry Team that offer prepaid cards assert they have toll usage rates that, in general, are lower than their applicable coin sent-paid rate.⁸⁸ The Industry Team advises that carriers who are members of the Industry Team have complied with the Alternative Plan by keeping their prepaid and calling card rates below the coin rate for all their customers.⁸⁹ We encourage all long distance carriers to continue this practice or we may intervene to

⁸¹ See, e.g., California PUC Comments at 4-5; Industry Team Reply Comments at 2-4.

⁸² The number of prepaid calling card providers increased from 16 in 1995, to 866 in 1999. See 1999 Statistics of Communications Carriers, Table 5.13, page 245, available for viewing at <http://www.fcc.gov/wcb/iatd/socc.html>.

⁸³ See 47 C.F.R. § 64.703.

⁸⁴ See, e.g., TDI/CAN/NAD Comments at 7.

⁸⁵ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5817.

⁸⁶ See Statistics of Communications Carriers, <http://www.fcc.gov/wcb/iatd/socc.html>.

⁸⁷ See, e.g., Prepaid Phone Cards: What Consumers Should Know, <http://www.fcc.gov/cgb/consumerfacts/prepaidcards.html>; Calls Made From Payphones, FCC Consumer Facts, <http://www.fcc.gov/cgb/consumerfacts/Payphones.html>; and Smart Long Distance Shopping, FCC Consumer Facts, <http://www.fcc.gov/cgb/consumerfacts/Smartshoppin.html>.

⁸⁸ Industry Team Comments at 8.

⁸⁹ *Id.*

require it for TRS calls.⁹⁰

27. TDI/CAN/NAD states that because prepaid cards are exempt from regulation, their use does not meet the ADA's requirement for functional equivalency.⁹¹ Section 225 does not mandate identical payment methods, only functionally equivalent services at equivalent rates. We find that prepaid cards are just one of the options that provides a functional alternative to coin calling that will enable most payphone users to continue to make TRS calls at or below coin sent-paid rates. Prepaid cards are readily available, and the prepaid card market is highly competitive.⁹² The fact that prepaid cards are controlled by market forces rather than regulation does not mitigate their utility as a method that may provide functional equivalency to coin calling. Finally, because new payment methods for toll calls from payphones may become available, we sought comment generally on how our proposed rules could accommodate these new payment methods (e.g., smart cards).⁹³ TDI/CAN/NAD stated that they welcome further industry innovation and creativity regarding new payment methods for TRS consumers.⁹⁴ We concur with TDI/CAN/NAD, and will examine these methods as they develop.

C. Consumer Education Programs

28. In the *Coin Sent-Paid Second Further Notice*, the Commission sought comment on specific educational efforts that would be needed by carriers to inform consumers about the least expensive means of completing TRS calls from payphones.⁹⁵ We continue to believe that extensive outreach campaigns are necessary and appropriate to expand consumer awareness about making TRS calls from payphones. Over the past several years, TRS consumers and industry members have generally reached consensus on the types of outreach and education that can be effective for this purpose. Several of these measures have already been implemented by carriers.⁹⁶ We believe however, that implementation of the current educational and outreach programs have not been sufficient. This may be due to a reluctance on the part of the industry to engage in more extensive outreach efforts prior to our issuing

⁹⁰ We note that consumers have the right to choose a primary long distance company, shop for package deals, and check for restrictions on advertised rates. Consumers should contact their preferred long distance carrier and ask for instructions on how to place a call through that company from a payphone, and obtain information about what the rates or charges are for calls placed from payphones. The consumer has the right and responsibility to let the company know if he or she feels the rate is too high. See <http://www.fcc.gov/cgb/consumerfacts/Payphones.html>. If dissatisfied with the quality of service or charges incurred for toll calling, all consumers are encouraged to file a complaint with the Commission. For information on how to file a complaint, see <http://www.fcc.gov/cgb/complaintfiling.html>.

⁹¹ TDI/CAN/NAD does, however, support the use of calling cards, collect or third-party billing for toll TRS calls from payphones. TDI/CAN/NAD Comments at 5. See also Industry Team Reply Comments at 4.

⁹² See Statistics of Communications Carriers, <http://www.fcc.gov/wcb>.

⁹³ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5819.

⁹⁴ TDI/CAN/NAD Comments at 8.

⁹⁵ *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5819.

⁹⁶ For example, in the 18-Month Report, the Industry Team reported that it had prepared an informational letter and news article for consumer publications, participated in exhibits at national and regional consumer conferences, and developed a laminated card providing a pictorial explanation about TRS access from payphones. Virtually all of the consumer education projects undertaken by the Industry Team were the product of extensive discussions and consultation with the TRS consumer community.

final rules in this proceeding. Our elimination of the coin sent-paid mandate should allow the industry to now turn its efforts to expanding educational programs. Thus, the industry should continue to develop programs to educate users about alternative payment methods and to make calling cards or prepaid calling cards available to TRS users as was required with the *Alternative Plan*. Although such outreach is not mandatory under our rules, we believe that it is an essential element of the continued success of the TRS programs. Accordingly, if we find that consumers are not receiving adequate outreach and education about TRS payphone calls, the Commission, on its own initiative, may consider whether some or all of the recommended measures should become mandatory requirements.

29. In the *Coin Sent Paid Further Notice*, the Commission sought comment on the following outreach proposals, many of which are the product of an industry-consumer consensus, and several of which more clearly define proposals already contained in the *1997 Order*.⁹⁷ The Industry Team generally supports these proposals, but believes that some of them are best carried out by carriers or relay providers on an individual basis, while other proposals are best carried out by a neutral, non-carrier entity.⁹⁸

1. Consumer Education Letter

30. First, the Commission proposed to require that carriers mail to CAN members, member organizations and TRS centers a consumer education letter providing instruction on how to make TRS calls from payphones and the various options available for payment of these calls.⁹⁹ We strongly recommend that carriers provide such instruction, and continue to include a wallet-sized card containing the steps for making TRS payphone calls in that mailing. Carriers should consult with organizations representing individuals with hearing or speech disabilities to develop this letter and card in a manner that is consistent with the consumer outreach and education goals in this proceeding. Carriers can disseminate this letter and card through newsletters and publications of organizations representing TRS users and TRS centers. We also encourage carriers to consult with consumers on the most effective means of disseminating this information. Although we do not envision a continued role for the Industry Team, it has volunteered to work with organizations representing persons with hearing or speech disabilities to develop this letter and to provide copies of the letter to CAN, its member organizations, and TRS centers.¹⁰⁰ We commend the Industry Team on this commitment. TDI/CAN/NAD also agree that a consumer education letter is important, but believe that TRS providers rather than carriers would be better suited to provide such materials.¹⁰¹ We are nevertheless confident that carriers, by consulting with organizations representing individuals with speech and hearing disabilities, will be able to explain adequately how calls are made on their networks.

2. Informational Booths at Conferences

31. In the *Coin Sent-Paid Second Further Notice*, the Commission proposed that carriers attend and set up informational booths at local, regional and national consumer conferences of

⁹⁷ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5820.

⁹⁸ Industry Team Comments at 13.

⁹⁹ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5821.

¹⁰⁰ Industry Team Comments at 14. The Industry Team notes that it worked with representative of consumer organizations to develop the first consumer education letter, and it makes sense to make this the last activity the Industry Team will undertake on behalf of carriers.

¹⁰¹ TDI/CAN/NAD Comments at 9.

organizations representing people who are deaf, hard of hearing and speech disabled.¹⁰² We strongly recommend that carriers do so at those conferences that they believe will reach the most members of the deaf, hard of hearing and speech disabled community.¹⁰³ Because consumers will be able to obtain information from carriers, while at the same time expressing their concerns, the informational booths will help provide an effective and efficient means for consumer education. We also recommend that carriers disseminate educational materials, which may include, but are not limited to, wallet-size cards with visual characters and text describing how to make relay calls from payphones. In addition, we believe that consumers will benefit from carriers providing demonstrations on access to TRS centers from payphones.¹⁰⁴

3. TRS Instructions On or Near TTY Payphones

32. In the *Coin Sent-Paid Second Further Notice*, the Commission sought comment on whether carriers should be required to place instructions on how to make TRS payphone calls near or on TTY payphones located in public areas. TDI/CAN/NAD support such a requirement because they believe that few individuals know how to operate a TTY phone.¹⁰⁵ The Industry Team, however, states that not all carriers own payphones and those that do may not own or control the space near the payphone.¹⁰⁶ Thus, the Industry Team believes that the Commission could not fully enforce a policy requiring carriers to place TRS educational materials on or near all payphones. In addition, the Industry Team explains that state regulatory commissions sometimes license payphone service providers (PSP) and many localities have ordinances addressing payphones and their appearance.¹⁰⁷ Thus, there may be conflicts with the state regulatory commissions.

33. We find that a requirement for carriers to place instructions on how to make TRS payphone calls near or on TTY payphones located in public areas is unnecessary and would be difficult to enforce.¹⁰⁸ Because payphones typically have a limited amount of space and PSPs are already required to post disclosures that fill much of that space,¹⁰⁹ requiring additional information on public phones could be

¹⁰² See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5821. The Industry Team recommends, in the alternative, that the booths should be staffed by an agent of the government, such as the Administrator of the TRS fund. See Industry Team Comments at 15.

¹⁰³ We note that carriers are not required to pool their efforts or costs in staffing educational booths, but may do so at their discretion.

¹⁰⁴ Carriers may also consult with consumers on the most effective means by which carriers should provide these demonstrations, i.e., whether carriers should play a videotape at the booth or set up a live “hands on” demonstration using payphones.

¹⁰⁵ TDI/CAN/NAD Comments at 10.

¹⁰⁶ Industry Team Comments at 16.

¹⁰⁷ *Id.* at 17. The Industry Team recommends that, if the Commission further investigates on-site payphone instructions, it should work with the state regulatory commissions to modify and/or adopt state-level payphone licensing requirements addressing TRS educational information.

¹⁰⁸ The Industry Team agrees, stating that such a requirement would be impractical and of questionable legality. Industry Team Comments at 16.

¹⁰⁹ See 47 U.S.C. § 226(c).

costly and add to customer confusion.¹¹⁰ In light of these difficulties, and the expected effectiveness of our other outreach mechanisms, we do not believe it is necessary to mandate information to be placed on or near payphones. Although posting instructions on how to make TRS payphone calls on or near TTY payphones in public areas is not required at this time, we encourage carriers to work with PSPs to voluntarily make such information available at payphone sites wherever possible.

4. TRS Web Site

34. In the *Coin Sent-Paid Second Further Notice*, the Commission also sought comment on whether to require carriers to establish an Internet web site for individuals to obtain information about making relay calls from payphones.¹¹¹ Such web sites could illustrate how to make relay calls from payphones, provide information on the cost of such calls, display the consumer education letter and/or provide a video on making a relay call from a payphone. Although not all TRS users have access to computers, TDI/CAN/NAD welcome the development of web sites that provide information on how to make TRS payphone calls.¹¹² The Industry Team does not believe it is feasible for carriers to maintain and share the cost of a joint web site on a permanent basis.¹¹³ The Industry Team states that a more practicable option would be for the Commission itself to establish a web site with TRS educational material, or select an entity (possibly NECA) to establish and maintain such a web page.¹¹⁴ We note that currently our web site provides detailed information on telecommunications relay service, including how to make coin sent paid TRS calls. Additionally, the Consumer & Governmental Affairs Bureau has available a Fact Sheet describing how to make relay calls from payphones.¹¹⁵

35. However, we believe that carriers are better positioned to provide information on their TRS service offerings, whether individually or jointly. Because computer and web access are on the rise, consumers will benefit from consumer outreach and education provided by carriers through individual or joint websites.¹¹⁶ Accordingly, we strongly recommend that carriers create such sites.

5. TRS Information in Telephone Directories

36. In the *Coin Sent-Paid Second Further Notice*, the Commission proposed, as originally suggested by GTE, to require carriers to place step-by-step instructions that describe how to make relay calls from payphones in telephone directories. The Commission also sought comment on the information that should be published in telephone directories.¹¹⁷ The Industry Team supports this proposal, but notes that potential complications may exist because, it believes, public information placed in directories should

¹¹⁰ Industry Team Comments at 16.

¹¹¹ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5821.

¹¹² TDI/CAN/NAD Comments at 10.

¹¹³ Industry Team Comments at 17.

¹¹⁴ *Id.*

¹¹⁵ The Fact Sheet is available via the Internet at: http://www.fcc.gov/cgb/dro/trs/trs_payphone.html.

¹¹⁶ The Industry Team Notes that most of its members already have web sites with TTY payphone instruction and are not in a position to establish an industry-wide web site. Industry Team Reply Comments at 5.

¹¹⁷ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5821.

change as little as possible over time.¹¹⁸ Thus, the Industry Team recommends that any requirement to publish such information in directories should not be effective until a final decision on TRS coin sent-paid calling is made.¹¹⁹ The Industry Team also notes that because directories are only published periodically, often annually, the Commission should give carriers a sufficient window of time after the effective date of its final Order to include TRS educational materials in their directories.¹²⁰

37. Although we do not adopt a legal requirement at this time, we encourage carriers to place step-by-step instructions in telephone directories that describe how to make relay calls from payphones. Because of the nature of the directory publishing market, we encourage publishers to gather this information and publish it as soon as possible. Moreover, we encourage publishers to include, but not necessarily limit this information to: step-by-step instructions for making local and toll TRS calls from payphones,¹²¹ numbers to call for assistance and information about relay services, the charges associated with making non-local TRS calls, and the billing options available. Providing this information in telephone directories will ensure that TRS users have an easily accessible source of information for some of their basic questions, no matter where they are calling from.

6. Consultation With the Disability Community

38. The Commission proposed in the *Coin Sent-Paid Second Further Notice* that carriers regularly consult with representatives of people with hearing and speech disabilities in carrying out the above measures to determine the effectiveness of each of these consumer education programs.¹²² The Industry Team notes that it will already be working with consumer organizations to develop a consumer education letter and wallet-sized cards reflecting the Commission's new regulations.¹²³ Thus, the Industry Team does not see the need for special meetings confined to carriers and consumer groups to evaluate the effectiveness of the other outreach measures, and recommends that any such efforts should be undertaken by a governmental entity.¹²⁴ TDI/CAN/NAD, however, believe that carriers should consult and discuss issues nationwide with TRS providers, the National Association of State Relay Administrators, and the Telecommunications Equipment Distribution Program Administrators. TDI/CAN/NAD also recommend that carriers continue to talk with national organizations and suggest that carriers consult with the Consumer/Disabilities Telecommunications Advisory Committee.¹²⁵ The California PUC also agrees that when implementing these proposals, carriers should regularly consult with the appropriate state entities and representatives of people with hearing and speech disabilities in determining the appropriate content

¹¹⁸ Industry Team Comments at 18.

¹¹⁹ *Id.* The publication in the Federal Register of the rules adopted in this order, eliminating the coin sent-paid requirement, will signify such a final decision. *See infra* at paras. 58-61.

¹²⁰ *Id.*

¹²¹ TDI/CAN/NAD specifically supports this proposal. *See* TDI/CAN/NAD comments at 10.

¹²² *See Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5822.

¹²³ Industry Team Comments at 18.

¹²⁴ *Id.* at 19.

¹²⁵ TDI/CAN/NAD Comments at 8. TDI/CAN/NAD also hopes that this Committee will establish a subcommittee to focus exclusively on TRS issues. Thus, TDI/CAN/NAD recommends that this Committee, via the TRS subcommittee, coordinate its efforts with those of the Commission's Technological Advisory Board on a regular basis.

of these programs.¹²⁶ We agree that such consultation could be beneficial to consumer outreach and education efforts. Accordingly, we strongly recommend that carriers regularly consult with representatives of people with hearing and speech disabilities to determine the effectiveness of each of these consumer education programs

7. Other Outreach and Educational Efforts

39. The Commission also requested comment on additional methods needed to educate TRS users about their payphone options, and the extent to which such outreach efforts should be coordinated with outreach and education efforts required in other TRS proceedings.¹²⁷ TDI/CAN/NAD suggest that the industry should set up demonstrations at shopping malls, public transit facilities, and sports arenas.¹²⁸ Although we are not requiring such measures at this time, we encourage carriers and industry members to utilize these and other such measures to help educate the public about how to make relay calls from payphones.

8. Reporting Requirements

40. Finally, in the *Coin Sent-Paid Second Further Notice*, the Commission proposed that twelve months after final rules are adopted in this proceeding, carriers should submit a report to the Commission, detailing the steps that have been taken to comply with the consumer education programs contained in this *Fifth Report and Order*.¹²⁹ The Industry Team agrees that a one-time report will be sufficient if the Commission requires one.¹³⁰ TDI/CAN/NAD also support this proposal, and agree that no further reporting requirements are necessary for carriers.¹³¹ We require carriers, via the Industry Team, to submit a report to the Commission twelve months after publication of this Order in the Federal Register. Such a report will facilitate our efforts to ensure that TRS consumers have the information they need to complete TRS calls from payphones. This report should be in narrative form and address the following issues: (1) implementation and effectiveness of consumer education of calling cards and/or prepaid cards for toll calls; (2) coordination with the TRS user community; and (3) identification of any problem areas and corrective action taken. This report will also enable us to monitor the interaction between carriers and representatives of people with hearing and speech disabilities. We note, however, that carriers have an ongoing obligation under our rules to provide the public with information about the availability and use of TRS, including the availability and use of payphones to access TRS.¹³² Therefore, if necessary to ensure that carriers are meeting this obligation, we may impose additional reporting

¹²⁶ California PUC Comments at 5.

¹²⁷ See, e.g., *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5822. See also *Improved TRS Order*, 15 FCC Rcd at 5194-95; *N11 Second Report and Order*, 15 FCC Rcd at 15214-15.

¹²⁸ TDI/CAN/NAD Comments at 10.

¹²⁹ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5822.

¹³⁰ Industry Team Comments at 20. The Industry Team also notes that national outreach efforts, as well as outreach activities undertaken by carriers, should be taken into consideration at the end of the first year from the date on which the new rules become effective.

¹³¹ TDI/CAN/NAD Comments at 9. TDI/CAN/NAD also asserts that TRS administrators should provide periodic reports to the Commission as part of their certification process.

¹³² 47 C.F.R. § 64.604(c)(3). Our proposal to not require additional reporting by carriers after submission of this 12-month report will not relieve carriers of this ongoing obligation.

requirements in the future.

D. TTY to TTY Calls from Payphones

41. In the *Coin Sent-Paid Second Further Notice*, the Commission proposed to ensure that TRS users are able to make TTY to TTY calls from payphones using the carriers of their choice, at rates that are equivalent to voice-to-voice calls from payphones.¹³³ Specifically, the Commission sought information on the step-by-step procedures for making both TTY to TTY local and toll calls from payphones, and requested information on options for the method of payment for such calls.¹³⁴ No party provided the information the Commission requested on this issue. The Industry Team, however, states that even though persons with hearing disabilities may make TTY to TTY calls from a payphone, the Commission has previously determined that a TTY to TTY call is not a TRS call and therefore is out side the scope of this proceeding.¹³⁵ We agree. The ADA defines telecommunications relay services as telephone transmission services that enable “an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual who does not have such a hearing or speech impairment...” which includes a communication between a TTY-user and “an individual who does not use such a device.”¹³⁶ TTY to TTY calls do not meet the ADA definition of TRS as a communication service between a person with a hearing or speech disability and a hearing individual, or between a TTY-user and “an individual who does not use such a device.”¹³⁷ We are, however, concerned that both TTY to TTY and TRS consumers are able to use the carrier of their choice and will address this issue in a separate proceeding. Nevertheless, we strongly urge carriers and providers to include information on how to make TTY to TTY payphone calls in their outreach and education materials.

E. Monitoring Technological Solutions to Coin Sent-Paid Calling

42. In the *Coin Sent-Paid Second Further Notice* the Commission explained that the proposal to exempt coin sent-paid calls from the TRS requirements on a permanent basis comes after nearly a decade of concerted efforts to find a technical solution that could make the handling of these calls both feasible and functionally equivalent to conventional voice telephone calls.¹³⁸ Although a functionally equivalent technical solution still does not appear to be imminent, rapidly changing developments in the field of telecommunications leaves open the possibility that a technical solution will be developed at some time in the future.

¹³³ See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5822. Because the Alternative Plan does not mention TTY to TTY calls from payphones, our concern was that many TRS users are either unaware of their ability to make TTY to TTY calls from payphones, unfamiliar with how to make those calls, or unable to use their carrier of choice when making such calls.

¹³⁴ *Id.*

¹³⁵ See Industry Team Comments at 21. See also, Establishment of a Funding Mechanism for Interstate Operator Services for the Deaf, *Memorandum Opinion and Order*, 11 FCC Rcd 6808, 6817-18 (1996). See also 47 U.S.C. § 225(a)(2)-(3), 47 C.F.R. § 64.601(7)-(8).

¹³⁶ 47 U.S.C. § 225(a)(3). See also 47 C.F.R. § 64.604(7).

¹³⁷ *Id.*

¹³⁸ *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5823.

43. The Industry Team states that it has monitored technical developments since 1995 to determine whether a technical solution is feasible, and none has developed. In the past, the Industry Team has also sent letters to leading telecommunications research and development companies requesting quotes for a technical solution to facilitate TTY calls from payphones to TRS centers.¹³⁹ Only one company, Siemens, responded, but it was unable to provide a solution. The Industry Team has also spoken with Essential Communications, which indicated that any solution would be too cumbersome and unfriendly to payphone customers. The Industry Team also notes that a solution may be economically infeasible, in addition to technically infeasible.¹⁴⁰ Thus, with the decreasing use of payphones and the increasing use of wireless devices, the incentive to develop such a solution has also decreased. We agree with the Industry Team that the benefits of requiring carriers to monitor these potential developments are negligible, and the newly formed Consumer/Disability Telecommunications Advisory Committee is better suited for this purpose.¹⁴¹ Accordingly, we decline to require carriers to monitor and report on technical developments.¹⁴² This is supported by the Industry Team and TDI/CAN/NAD.¹⁴³ If a technical solution shows promise, the Committee could begin a more detailed inquiry into its feasibility.

F. Impact of the Recent Commission Decisions on our Proposed Rules

44. Following the release of the *1995 Suspension Order*, the Commission issued the *1996 Payphone Orders*, in which the Commission adopted new rules and policies governing the payphone industry.¹⁴⁴ Thus, the Commission sought comment on how the *1996 Payphone Orders* might affect relay calls from payphones or whether these orders will interfere with the ability of carriers to provide TRS users with payphone access under our proposed rules.¹⁴⁵ None of the commenting parties stated any potential conflicts between the provisions of the *Payphone Order* and our proposed rules. In addition, TDI/CAN/NAD believe that the requirements in the *1996 Payphone Orders* will not interfere with the rules established herein because local calls by TRS users will remain free.¹⁴⁶ We concur and believe that

¹³⁹ Industry Team Comments at 22. Letters were sent to Lucent, Siemens, Nortel, Rockwell and Essential Communications.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 23-24.

¹⁴² See *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5823 (finding that this Committee will be a useful forum for discussing technological developments in the provision of coin sent-paid calls through TRS centers, The Consumer/Disability Telecommunications Advisory Committee makes recommendations to the Commission regarding consumer and disability issues within the jurisdiction of the Commission to facilitate the participation of consumers, including people with debilitates and underserved populations, in the proceedings before the Commission. *Id.* (citing FCC Announces Appointment of Membership, Meeting Date, and Agenda for the First Meeting of the Consumer/Disability Telecommunications Advisory Committee, *Public Notice*, DA 01-517 (rel. Mar. 2, 2001)).

¹⁴³ See Industry Team Comments at 24, TDI/CAN/NAD Comments at 11-12.

¹⁴⁴ *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5823. See also, *1996 Payphone Orders*, 11 FCC Rcd 20541, 11 FCC Rcd 21233. Section 276(a)(1) of the Communications Act prohibits any Bell operating company that provides payphone service from subsidizing its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations. See also, 47 U.S.C. § 276(a)(1).

¹⁴⁵ *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5823-24.

¹⁴⁶ See TDI/CAN/NAD Comments at 12.

the *1996 Payphone Orders* will not affect TRS calls placed from payphones.

45. In the *Coin Sent-Paid Second Further Notice*, the Commission also sought comment on whether carriers should be reimbursed from the Interstate TRS Fund for providing TRS users with free local calls under the proposed rules and whether the procedures are consistent with section 276(a)(1) of the Act.¹⁴⁷ TDI/CAN/NAD believe that TRS providers should be able to seek reimbursement from the Interstate TRS Fund for free local TRS calls to promote developments that will allow TRS users to make more functionally equivalent calls.¹⁴⁸ We, however, find that reimbursement for local TRS calls is not necessary because the states and carriers consider such costs when entering into their contracts and determining their general overhead expenses.

IV. CONCLUSION

46. This *Fifth Report and Order* addresses the means by which individuals with hearing and speech disabilities will be able to make calls from payphones and eliminates the requirement that carriers be capable of providing coin sent-paid TRS calls. The measures adopted herein seek to accommodate the concerns of both carriers and individuals with hearing and speech disabilities. We believe that the measures adopted herein facilitate the provision of payphone service to TRS users that is functionally equivalent to traditional payphone service provided to non-TRS users.

V. PROCEDURAL MATTERS

A. Alternative Formats for Persons with Disabilities

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

B. Ex Parte Presentations

48. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a) (1994). Written submissions, however, will be limited as discussed below.

C. Final Regulatory Flexibility Analysis

49. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁴⁹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Telecommunications Relay Service and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*.¹⁵⁰ The

¹⁴⁷ *Coin Sent-Paid Second Further Notice*, 16 FCC Rcd at 5823. *See also* 47 U.S.C. § 276(a)(1).

¹⁴⁸ *See* TDI/CAN/NAD Comments at 12. The Industry Team does not oppose reimbursement for uncompensated costs of local calling from payphones, but does not believe it is required to ensure continued availability of TRS access from payphones. *See* Industry Team Comments at 25.

¹⁴⁹ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996,(SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

¹⁵⁰ Telecommunications Relay Service and the Americans with Disabilities Act of 1990, *Second Further Notice of* (continued....)

Commission sought written public comment on the proposals in the *Second Further Notice of Proposed Rulemaking*, including comment on the IRFA. The comments received discussed only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.¹⁵¹

1. Need for, and Objective of this *Fifth Report and Order*

50. This proceeding was generally initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. Our specific concern was to address the inability to make coin sent-paid TRS calls from payphones. Because no technological solution to the coin sent-paid issue appeared imminent, the Commission issued the *Second Further Notice of Proposed Rulemaking* to further develop the record with the goal of determining the best plan to make the full range of payphone services available to TRS users. This *Fifth Report and Order* addresses the means by which individuals with hearing and speech disabilities will be able to make calls from payphones and eliminates the requirement that carriers be capable of providing coinsent-paid TRS calls.

2. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

51. No comments were filed in response to the IRFA in this proceeding. No comments on the *NPRM* were received concerning the small business issues. The Commission has nonetheless considered any potential significant economic impact of the rules on small entities, and as discussed in Section 5, *Infra*, has concluded that the rules adopted impose no significant economic burden on small businesses.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.

52. 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 rules adopted herein.¹⁵² The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁵³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁵⁴ 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

(Continued from previous page) _____
Proposed Rulemaking, 16 FCC Rcd 5803 (2001).

¹⁵¹ See 5 U.S.C. § 604.

¹⁵² 5 U.S.C. § 604(a)(3).

¹⁵³ 5 U.S.C. § 601(6).

¹⁵⁴ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the 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."

additional criteria established by the Small Business Administration (SBA).¹⁵⁵

53. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. The most reliable source of information available at this time regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, is data the Commission publishes annually in its *Telecommunications Provider Locator Report*, regarding FCC Form 499-A.¹⁵⁶

54. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of “small entity” specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to the FCC’s most recent data, there are approximately 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses.¹⁵⁷ The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers.¹⁵⁸ Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities.¹⁵⁹ Consequently, the FCC estimates that there are fewer than 5 small TRS providers that may be affected by the proposed rules, if adopted.

55. *Payphone Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Provider Locator Report*. According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services.¹⁶⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 936 small entity pay telephone operators that may be affected by this *Fifth Report and Order*.

56. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year

¹⁵⁵ 15 U.S.C. § 632.

¹⁵⁶ FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1-2 (November 2001) (*Provider Locator*).

¹⁵⁷ See National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry,

¹⁵⁸ North American Industry Classification System (NAICS) code 513310.

¹⁵⁹ MCI, for example, provides relay service in approximately only 3 states but is not a small business.

¹⁶⁰ *Provider Locator* at Table 1.

at the end of 1992.¹⁶¹ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent local exchange carriers (LECs). The FCC does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the FCC estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs.¹⁶²

57. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹⁶³ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁶⁴ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.¹⁶⁵

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

58. The rules require carriers to submit a one-time report, twelve months after publication of this *Fifth Report and Order* in the Federal Register, detailing the steps they have taken to comply with the consumer requirements contained herein. Any additional costs incurred as a result of this proceeding should be nominal because the entities affected, including any small businesses, have been in compliance with the *Alternative Plan Order*, and because the reporting requirement is a one-time requirement.

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

59. The RFA requires an agency to describe any significant alternatives that it has considered

¹⁶¹ 1992 Census.

¹⁶² NAICS code 513310.

¹⁶³ 15 U.S.C. § 632.

¹⁶⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

¹⁶⁵ NAICS code 513310.

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 or reporting requirements under the rule for 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 small entities.¹⁶⁶

60. For the following reasons, no steps need to be taken to minimize the economic impact on small businesses or to consider alternatives to minimize the economic impact on small businesses. First, the requirements in this *Fifth Report and Order* will have minimal impact on small entities because they require actions already being undertaken under the *Alternative Plan*. In this sense, the requirements merely formalize such actions. These actions are as follows: 1) providing free local calling from payphones; and 2) submitting a one-time report, to the Commission, 12-months after final rules are adopted in this proceedings regarding the steps that have been taken to comply with the consumer education recommendations contained in the Report and Order.

61. Second, although the *Report and Order* recommends an extensive consumer outreach program, the program is only recommended, not required. Since the outreach program is not required, neither large or small entities must comply. Therefore, we conclude that the action taken herein should not adversely affect any small entities. Furthermore, this action aids all affected entities, including small businesses, as states and carriers consider such costs when entering into their contracts and determining their general overhead expenses.

6. Report to Congress.

62. The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁶⁷ In addition, the Commission will send a copy of the *Report and Order* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fifth Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁶⁸

D. Paperwork Reduction Act of 1995 Analysis

63. This Report and Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA) Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

VI. ORDERING CLAUSES

64. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 225 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 225 and 303, this Report and Order is ADOPTED, and Part 64 of the Commission's Rules ARE AMENDED as set forth in the

¹⁶⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

¹⁶⁷ See 5 U.S.C. § 801(a)(1)(A).

¹⁶⁸ See 5 U.S.C. § 604(b).

attached Appendix A and SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

65. IT IS FURTHER ORDERED that the information collection(s) contained in the Report and Order SHALL BECOME EFFECTIVE following approval by the Office of Management and Budget in the Federal Register announcing the effective date for those sections.

66. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Fifth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A**Final Rules****VII. APPENDIX A****PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for Part 64 is amended to read as follows: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.604 is amended by revising paragraphs (a)(3) as follows:

♣ 64.604 Mandatory Minimum Standards

(a) * * *

(3) *Types of Calls* – Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call. Relay service providers are permitted to decline to complete a call because credit authorization is denied.

* * * * *

**JOINT STATEMENT OF CHAIRMAN MICHAEL K. POWELL
AND
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Telecommunications Relay Services and the Americans With Disabilities Act of 1990

We are pleased to support this Report and Order, which ensures that telecommunications relay services (TRS) will be fully accessible via payphones to individuals with hearing or speech disabilities. For years, the Commission and carriers have searched in vain for a technical means of allowing consumers with hearing or speech disabilities to place toll TRS calls by depositing coins into payphones. As the Report and Order explains in detail, these collaborative efforts have proved fruitless. The only available technology for handling such “coin sent-paid calls” would subject consumers to long delays before calls are completed, fail to accommodate certain TTY calls, and require a separate access number — all of which would undermine any claim of functional equivalence. We are pleased that carriers have agreed to make permanent the interim plan requiring them to carry local TRS calls from payphones free of charge (long distance TRS calls will be made via calling cards, prepaid cards, and the like). A key part of the permanent plan is the consumer outreach and education component.

The Report and Order recommends several measures that, taken together, should ensure that consumers are fully informed about completing TRS calls from payphones. We recognize that the Commission is making strong recommendations only — rather than adopting prescriptive rules — at this time. We are willing to support this approach because of the cooperative and productive efforts made by carriers to date. We have no reason to believe that any carrier will fail to implement our recommendations regarding outreach and education. However, if the reports that carriers must file a year from now indicate that these voluntary outreach measures have not succeeded in giving TRS users the information they need, we would then support the adoption of mandatory outreach requirements to effectuate the goals underlying section 225 of the Act.

The reports required by this Order will facilitate our efforts to ensure that TRS consumers have the information they need to complete TRS calls from payphones. These reports will be in narrative form and will advise us about the implementation and effectiveness of consumer education of calling cards and/or prepaid cards for toll calls; coordination with the TRS user community; and identification of any problem areas and corrective action taken. We will learn about consumer education letters, information booths at conferences for persons with disabilities and in shopping malls or sports arenas. We will learn about the success or failure of TRS instructions on or near TTY payphones and on carriers’ Internet web sites, and TRS information in telephone directories. We will also learn about industry efforts to consult with the various disability communities. If voluntary efforts by the industry are unsuccessful in their educational and outreach programs with the guidance provided in this Report and Order, then we stand ready to reevaluate our position and consider standards for education and outreach. We note that carriers continue to have an ongoing obligation under our rules to provide the public with information about the availability and use of TRS.

**Statement of Commissioner Michael J. Copps,
Approving in Part, Dissenting in Part**

Re: Telecommunications Relay Services and the Americans with Disabilities Act of 1990

Over a decade ago when it passed the Americans with Disabilities Act, Congress recognized the importance of access to telecommunications for the millions of Americans with disabilities. In that statute, Congress directed the Commission to implement its vision that those with disabilities should have access to functionally equivalent services. I dissent in part from this Order because I conclude that a significant part of this decision is at odds with Congress' statutory mandate.

Last month, this Commission took action that could eliminate access to wireless services for those who are deaf or hard of hearing. In that order, the Commission phased out the analog wireless standard with inadequate commitment to ensure hearing aid compatible devices for digital wireless services.

This month, the Commission adopts an Order that could increase the cost of another option – payphones – for those with disabilities. Under Section 225(d)(1)(D) of the Act, the Commission has an obligation to ensure that “users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communications services.” In accordance with this mandate, the Commission required carriers to handle coin calls for consumers using telecommunications relay services (TRS). Due to concerns about technical problems with coin relay calls, the Commission for the past decade adopted an alternative plan proposed by carriers. Pursuant to this plan, carriers would not need to offer coin relay calls, but instead must offer free local TRS calls, must allow customers to make toll relay calls using prepaid or calling cards at rates equivalent to or less than the coin rate, and must develop programs to educate TRS users about alternatives to coin calls.

In today's Order, the Commission backs away from that alternative plan. The majority here eliminates entirely the requirement that carriers provide coin TRS calls from payphones. In addition, although the Commission maintains the rule that carriers provide free local TRS calls – which I support -- the majority no longer requires that carriers provide alternatives for toll calls at rates equal to or less than the coin rate. I fail to see how these actions satisfy the Commission's statutory obligation under section 225. Moreover, the Commission makes it even more difficult for consumers by eliminating requirements for outreach to inform consumers of the least expensive options.

Some may view this order as only a small step back from the functional equivalence mandated by Congress. But when we are talking about the millions of Americans with disabilities, and the millions more who communicate with these citizens, any step back from Congress' directive is unacceptable.

Some may also argue that there are competitive alternatives available for TRS users with rates less than the coin rate. Yet, in this Order, the majority requires neither educational efforts nor outreach to ensure that consumers are aware of these options. The majority reaches this conclusion notwithstanding its finding that “the current educational and outreach programs have not been sufficient” and notwithstanding comments in this docket that carriers often impose surcharges on TRS calls using those alternative options that render the rates higher than the coin rate.

I sincerely hope that these two orders do not indicate the start of an assault on the gains in accessibility made by those with disabilities over the past decade. As technology advances, we should be moving forward on accessibility, not retreating.