

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 10–51; FCC 23–78; FR ID 206954]

Video Relay Service Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC or Commission) seeks comment on amending its rules on compensation from the Telecommunications Relay Services (TRS) Fund for providers of Video Relay Service (VRS) to address a number of special situations. The Commission proposes to allow VRS providers additional compensation for responding to a consumer's justified request that a Deaf Interpreter be added to a call. The Commission believes that providing additional compensation for such calls will advance the statutory objective to make functionally equivalent TRS available. The Commission also seeks comment on whether the TRS Fund should support: other methods of communication with eligible TRS users, such as cued language, as a specialized form of VRS; the routing of VRS calls to a Communication Assistant (CA) with a particular skill set or knowledge of a specific subject matter; calls between a VRS user who is deafblind and another VRS user; and, voice carry over (VCO) calls between a TRS user who is deafblind and a hearing user.

DATES: Comments are due April 15, 2024. Reply comments are due April 29, 2024.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 03–123 and 10–51 by the following method:

Federal Communications Commission's website: <https://apps.fcc.gov/ecfs>. Follow the instructions for submitting comments.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Joshua Mendelsohn, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202–559–7304, or Joshua.Mendelsohn@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking, document FCC 23–78, adopted on September 22, 2023, released on September 28, 2023, in CG Docket Nos.

03–123 and 10–51. The full text of document FCC 23–78 is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS).

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Further Notice of Proposed Rulemaking is

available at <https://www.fcc.gov/proposed-rulemakings>.

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

Background

Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure the availability of TRS to persons who are deaf, hard of hearing, or deafblind or who have speech disabilities, to the extent possible and in the most efficient manner. 47 U.S.C. 225(b)(1). TRS are defined as telephone transmission services enabling such persons to communicate by wire or radio in a

manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services. 47 U.S.C. 225(a)(3). VRS, a relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment, is supported entirely by the TRS Fund. VRS providers are compensated for the reasonable costs of providing VRS in accordance with payment formulas approved by the Commission.

Further Notice of Proposed Rulemaking

In document FCC 23–78, the Commission seeks further comment on whether, and under what circumstances, the Commission should provide additional compensation for specific types of specialized service identified by commenters, and how such compensation should be structured.

Deaf Interpreters. The Commission seeks comment on whether VRS providers should receive additional compensation for responding to a consumer's justified request that a Deaf Interpreter be added to a call. According to the Registry for Interpreters for the Deaf, Inc. (RID), a *Certified Deaf Interpreter* is a holder of a certification that the individual is deaf or hard of hearing, possesses native or near native fluency in American Sign Language (ASL), has demonstrated knowledge and understanding of interpreting, deafness, the deaf community, and deaf culture, and has specialized training or experience in the use of tools to enhance communication. RID adds that Certified Deaf Interpreters are recommended for assignments where an interpreter who is deaf or hard of hearing would be beneficial, such as when the communication mode of an individual who is deaf is so unique that it cannot be adequately accessed by interpreters who are hearing. The record indicates that such interpreters are sometimes needed on VRS calls to enable functionally equivalent communication in ASL. For example, a commenter states that Deaf Interpreters provide necessary support to consumers with limited English or ASL proficiency, or cognitive or motor disabilities. It is also apparent that providing a Deaf Interpreter adds significantly to the cost of handling a VRS call where such interpreters are required. The Commission therefore believes that providing additional compensation for such calls will advance the objective of section 225 to make functionally equivalent TRS

available. The Commission also believes such additional compensation can be implemented relatively efficiently, without adding administrative burdens disproportionate to the resulting benefits. The Commission seeks comment on its proposal and these underlying assumptions.

As a threshold matter, the Commission seeks comment on the extent to which Deaf Interpreters (whether “Certified” or not) are currently being used in VRS. What percentage of a VRS provider's calls and minutes involve the provision of such additional assistance? How often are Certified Deaf Interpreters requested, and how often are such requests granted? Is there evidence that VRS providers are failing to provide a Certified Deaf Interpreter when such assistance is warranted? If so, what concerns lead VRS providers to withhold such assistance—given that the Commission's allowable cost criteria do not exclude the costs of such assistance from allowable costs that may be subject to TRS Fund support?

If additional compensation is provided for the use of Certified Deaf Interpreters, what criteria should be applied to determine when such additional compensation is paid? Should the Commission adopt RID's description as a definition for *Certified Deaf Interpreter*? Should that definition be modified or supplemented with other pertinent information? Should the Commission require that persons providing such assistance be certified, and if so, what bodies should be deemed qualified to issue such certifications? How should the Commission define the occasions when a Certified Deaf Interpreter is needed for a VRS call? For example, should the Commission adopt a commenter's suggested criterion, authorizing additional compensation when a Certified Deaf Interpreter is needed to provide necessary support to consumers with limited English or ASL proficiency, or cognitive or motor disabilities, or should different or more specific criteria be applicable? The Commission also seeks comment on the costs of providing this additional service, and how additional compensation should be determined. What additional amount, if any, would be necessary to incentivize providers to make this service available when needed? Alternatively, should the provision of Certified Deaf Interpreters when needed be mandatory for all VRS providers? The Commission also seeks comment on any changes to the call detail reporting requirements that may be needed to facilitate reporting calls

that include Deaf Interpreters and to allow the TRS Fund administrator to validate those calls for compensation.

Interpreting Other Than ASL. The Commission also seeks comment on whether other methods of communication with eligible TRS users, such as cued language, should be authorized for compensation as a specialized form of VRS. How many people currently use cued language? To what extent could such a service be effectively offered by VRS providers, and what are the relevant additional costs that would be incurred to provide such a service? If authorized, how should the additional reasonable costs of such a service be determined for the purpose of setting an appropriate amount of additional compensation?

Skills-based Interpreting. The Commission further seeks comment on whether VRS providers should receive additional compensation for responding to a VRS user's request to have a call routed to a CA with particular skill sets—such as particular spoken-language abilities, interpreting, transliteration, and signing styles and skills, or knowledge of specific subject matters, such as medicine, law, or technology. To what extent would the provision of skills-based interpreting enable functionally equivalent communications? To what extent could such a service be effectively offered by VRS providers, and what are the relevant additional costs that would be incurred to provide such a service? Would costs vary depending on the type of skill set? How should the costs for differing skill sets be determined for setting an appropriate amount of additional compensation? How could the additional costs be verified?

If additional compensation is provided, what criteria should be applied to determine when such compensation is paid? What criteria should be met to determine that a CA has a particular skill set, and how should the Commission verify that such CAs provided such skills during a call? How should the Commission verify that the skills-based interpreting improved the call quality beyond what the user would have received from an interpreter without the identified skill set? The Commission also seeks comment on any changes to the call detail reporting requirements that may be needed to facilitate reporting calls that include skills-based interpreters and to allow the TRS Fund administrator to validate those calls for compensation.

Compensable Calls for VRS Users Who Are Deafblind. The Commission seeks comment on whether the TRS Fund should support calls between a

VRS user who is deafblind and another VRS user. Do such calls require the participation of a CA for functionally equivalent communication? The Commission believes that during such a call, the VRS user who is deafblind would be signing to the other VRS user on the call and would receive a typed communication from the CA of the signed communication from the other VRS user. What are the costs and benefits of allowing such calls to be compensable from the TRS Fund? What changes, if any, would need to be implemented to a VRS provider's platform, to the TRS Numbering database, and to call details records to allow such calls to be compensated when a CA is needed? Should the Compensation Additive for calls from individuals who are deafblind apply to such calls? Or should an alternative compensation rate be considered for such calls? What rules, if any, would need to be revised or adopted to permit such calls to be compensable?

Voice Carry Over Calls. The Commission also seeks comment on whether voice carry over (VCO) calls between a TRS user who is deafblind and a hearing user should be compensable from the TRS Fund. In such a call, where the individual who is deafblind is using their voice, rather than ASL, the role of the CA is limited to typing the voiced communications of the other party to the call. The Commission seeks comment on how to classify such calls within the TRS program. On its face, such a call does not seem to be classifiable as VRS because no party is using ASL or other form of sign language. Should such a call be classified as an internet Protocol Captioned Telephone Service (IP CTS) call or a VCO IP Relay call? What are the costs and benefits to finding such calls to be compensable? Would permitting such calls allow individuals who are deafblind that use ASL, their own voice, and Braille to complete all of their calls to hearing individuals on one TRS platform? Would it be an inefficient use of available VRS CAs, if no ASL is used on the call? Are there technological alternatives available on VRS platforms, such as voice-to-Real Time Text (RTT) or captioning using automatic speech recognition that would allow the other party to the call to have their voice transcribed and converted to braille without the presence of a VRS CA? If so, should such calls be considered point-to-point video calls on a VRS platform or should it be considered a compensable relay call, and if so, what compensation rate should apply to such calls?

Digital Equity and Inclusion. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed. Specifically, the Commission seeks comment on how these proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this document. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments provided in this document.

Need for, and Objective of, the Proposed Rules. Under section 225 of the Communications Act, as amended, the Commission is tasked with ensuring that TRS are available to the extent possible and in the most efficient manner to individuals with disabilities. The Commission seeks comment on additional compensation for VRS specialized services, including the use of Certified Deaf Interpreters, other methods of communications, such as cued speech, and skills-based interpreting. The Commission proposes adding an incentive per minute compensation amount to the compensation levels to provide these services and seeks comment on alternative approaches for providing additional compensation. The incentive would be added to the per-minute compensation rate that the provider is eligible to receive for the provisioning of VRS. In considering these proposals, the Commission seeks to ensure the availability of functionally equivalent VRS, provided in the most efficient manner, and ensure that the Commission's regulations encourage the use of existing technology and do not discourage or impair the development of improved technology. Providing compensation for VRS specialized services with added per-minute rates, the Commission expects to encourage

the provisioning of these services to help ensure that individuals who need services beyond traditional VRS have access to the communications network in a manner that is functionally equivalent. The compensation proposal would allow providers to offer and improve the availability of these specialized services over time. The proposed limitations on the amount of compensation and the conditions for receiving the compensation would ensure that VRS with specialized services is offered in the most efficient manner.

The Commission also seeks comment on the need for rule changes to allow communications assistants (CA) to be present on calls between VRS users who are deafblind and another VRS user, as well as the compensability of voice carry over calls for VRS users who are deafblind. Addressing these contours of compensability and eligibility will help ensure that the provision of services to individuals who are deafblind are functionally equivalent and offered in the most efficient manner.

Legal Basis. The proposed action is authorized pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152 and 225.

Small Entities Impacted. The proposals will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Reporting, Recordkeeping, and Other Compliance Requirements. In assessing the cost of compliance for small entities, at this time the Commission is unable to quantify the cost of compliance with any of the potential rule changes that may be adopted. Additionally, the Commission is currently not in a position to determine whether, if adopted, the proposals and matters upon which the Commission seeks comment will require small entities to hire professionals to comply. However, as the proposed rules are essentially an expansion of an existing framework used by VRS providers, the Commission does not anticipate that small entities will be required to hire professionals to comply with any rule modifications the Commission ultimately adopts. The Commission expects the information received in comments, including any requested cost information, will help the Commission identify and evaluate relevant compliance issues, including costs, that may impact small entities.

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

Commission is taking steps to minimize the economic impact on small entities and is considering significant alternatives by proposing and seeking alternative proposals for providing compensation for VRS specialized services. The Commission will consider these proposals to maintain and improve choice among suppliers for VRS users using specialized services; help maintain functionally equivalent service; and maintain an efficient VRS market over the long term in accordance with the Commission's statutory obligations. For example, in considering the proposal to allow additional compensation for specialized services, the Commission's intent is to help ensure that VRS is provided in a manner that would allow all individuals with disabilities to have the ability to engage in functionally equivalent communications while recognizing the additional costs small and other providers will encounter to provision these services. Further, allowing such compensation is an alternative to adopting and imposing a specific requirement for VRS providers to

provide such services and would help ensure specialized services are voluntarily offered and minimize the cost to providers by allowing providers the opportunity to recover costs incurred in the provision of such services beyond the cost of providing traditional VRS. In the alternative, the Commission could adopt a specific mandate for the provision of these VRS specialized services or decline to allow additional compensation, but continue to allow providers to offer specialized services at the prevailing VRS compensation level. The Commission seeks comment on the effect these proposals will have on VRS providers that provision these specialized services.

The Commission seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals. The Commission expects to more fully consider the economic impact on small entities, based on any comments received, prior to reaching its final conclusions and adopting final rules in this proceeding.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals. None.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

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