

1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

May 16, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.209 is revised to read as follows:

§ 180.209 Terbacil; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide terbacil, (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites [3-tert-butyl-5-chloro-6-hydroxymethyluracil], [6-chloro-2,3-dihydro-7-hydroxymethyl 3,3-dimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], and [6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo(3,2-a) pyrimidin-5-one], calculated as terbacil, in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa, forage	1.0
Alfalfa, hay	2.0
Apple	0.3
Asparagus	0.4
Blueberry	0.2
Caneberry	0.2
Peach	0.2
Peppermint, tops	2.0
Spearmint, tops	2.0
Strawberry	0.1
Sugarcane, cane	0.4
Watermelon	1.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E6-8275 Filed 5-30-06; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03-123; FCC 06-57]

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

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission addresses a petition (Petition) requesting clarification that a Video Relay Service (VRS) provider may not receive compensation from the Interstate telecommunications relay service (TRS) Fund (Fund) if it blocks calls to competing VRS providers from equipment it gives to consumers.

DATES: Effective July 31, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This document does not contain new or modified information collection requirements subject to the PRA of 1995, Public Law 104-13. In addition, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506 (c)(4). This is a summary of the Commission’s document FCC 06-57, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CG Docket No. 03-123, adopted May 3, 2006, released May 9, 2006 addressing issues raised in the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH or Petitioner) Petition for Declaratory Ruling: Petition for Declaratory Ruling on Interoperability, CC Docket No. 98-67, CG Docket No. 03-123, filed February 15, 2005.

The full text of document FCC 06-57 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW.,

Room CY-A257, Washington, DC 20554. Document FCC 06-57 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site <http://www.bcpweb.com> or by calling 1-800-378-3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Document FCC 06-xxx can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

Synopsis

CCASDHH filed a Petition for Declaratory Ruling on Interoperability on February 15, 2005, requesting the Commission to declare that a VRS provider may not receive compensation from the Interstate TRS Fund (Fund) if it blocks calls to competing VRS providers from equipment it distributes to consumers. CCASDHH is a coalition of eight community-based nonprofit agencies providing various social services to deaf and hard-of-hearing consumers in California. *See* Petition at 1, note 1. The Commission agrees, and concludes that the practice of restricting the use of VRS equipment to a particular provider—sometimes termed “call blocking”—is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns.

Traditional TRS and VRS

When Congress enacted section 225 of the Communications Act, and the Commission implemented the TRS, relay calls were placed using a text telephone device (TTY) connected to the Public Switched Telephone Network (PSTN). In such a “traditional” TRS call, a person with a hearing (or speech) disability dials a telephone number for a TRS facility using a TTY. In this context, the first step for the TRS user, the completion of the outbound call to the TRS facility, is functionally equivalent to receiving a “dial tone.” *See, e.g.,* 47 CFR 64.601(1).

VRS allows persons using American Sign Language (ASL) to access the telephone system through a broadband Internet video connection between the VRS user and the communications assistant (CA). A VRS user may initiate a VRS call either via a VRS provider's Web site or directly through VRS

equipment connected to the Internet. With VRS, the dial tone equivalent is when the VRS user establishes a video connection with the CA, who then places an outbound telephone call to a hearing person. During the call, the CA communicates in ASL with the VRS user and by voice with the hearing person. As a result, the conversation between the two end users flows in near real time and in a faster manner than with a TTY or a text-based TRS call. VRS therefore provides a degree of “functional equivalency” that is not attainable with text-based TRS by allowing those persons whose primary language is ASL to communicate in sign language, just as a hearing person communicates in, *e.g.*, spoken English.

VRS Equipment and Provider Marketing Practices

VRS usage has grown rapidly. VRS first began in January 2002, with approximately 7,200 monthly minutes of use. By January 2004, there were nearly a half million monthly minutes of use. Most recently, in December 2005, the number of VRS minutes surpassed three million. *See* TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA), <http://www.neca.org> (under Resources, then TRS Fund). Further, there are now eight VRS providers, and more are expected.

VRS consumers can use a variety of equipment to communicate with the VRS CA in the video-to-video leg of a VRS call. Consumers generally use either a small camera that connects to a personal computer (generally called a “webcam”) or a videophone that directly attaches to a television. Both must have a broadband Internet connection. Most commonly, VRS consumers use a videophone device that attaches to a television. These devices are popular because they do not require a computer and are easy to use. The D-link (also called “i2eye”) videophone and the VP-100 videophone, both developed by Sorenson, are the most widely used videophone devices. Petition at 4, note 4. The D-Link i2eye is available for purchase on the retail market for approximately \$200 and also is offered for free by some VRS providers. The D-Link is essentially a more basic model than the VP 100, with fewer user interface features and a slightly lower quality of video image. Both use the same proprietary video compression technology that enables these devices to work effectively with TVs. The VP-100 videophone has additional features that distinguish it from the D-Link and other videophones. Also, the VP-100 videophone is

available only from Sorenson, with the restrictions Sorenson has placed on the use of device, as discussed below.

The popularity of VRS and the competition between the VRS providers to increase their share of the VRS market has resulted in the providers using a variety of marketing practices to gain new customers and a larger market share. These include the practice of distributing and installing VRS equipment at consumers' premises at no charge to the consumer. The Commission has made clear that the costs of consumer equipment that a provider may give to a consumer are not compensable from the Fund. *See* NECA, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CC Docket No. 98-67 at Appendix A (Relay Service Data Request Instructions), p. 4 (filed April 25, 2005) (stating that “[t]he cost of equipment given to, sold to, and/or used by relay callers, and call incentives, are not to be reported as expenses” (emphasis in original)); *VRS Marketing Practices Declaratory Ruling*, 20 FCC Rcd 1469, paragraph 8, note 30; published at 70 FR 9239 (February 25, 2005).

Sorenson distributes VP-100s to its customers free of charge, but presently Sorenson does not permit its customers to use a VP-100 to make an outgoing VRS call through any VRS provider's service except its own. *See* Sorenson *Ex Parte* (January 6, 2006) at 12 (“Sorenson has decided to offer users a VP-100 only in conjunction with access to its interpreters”).

Presently, a consumer who desires to obtain and use the Sorenson VP-100 can only make VRS calls through Sorenson's relay service, unless the consumer has a second piece of equipment and the ability to use his or her broadband Internet connection with either piece of equipment. *See* Sorenson Reply Comments at 4; <http://www.sorensonvrs.com/apply/index.php>. Sorenson allows customers to make peer-to-peer calls—*i.e.*, direct videophone-to-videophone calls—to other individuals free of charge even if the other party is not using a VP-100. These calls are not TRS calls and therefore are not regulated or compensated under section 225 of the Communications Act. Sorenson states that these calls constitute more than 80 percent of all Sorenson calls. Sorenson *Ex Parte* (January 6, 2006) at 10-11.

The Commission notes that on February 20, 2006, Sorenson issued a press release announcing plans to allow, by July 1, 2006, users of its videophones to use the services of other VRS providers. *See* <http://>

www.sorensonvrs.com. That announcement, addressing Sorenson's future marketing plans, does not preclude us from ruling on the Petition.

Another provider, Hands On, has engaged in a similar marketing practice that involves the distribution and installation of a free pre-configured router and videophone that restricts its customers to using its VRS service. The customers agreeing to this arrangement receive reimbursement from Hands On for their broadband access charge. See *Sorenson Ex Parte* (January 6, 2006) at 12–13 n.33; *CSD Ex Parte Letter* (November 7, 2005). Hands On asserts that it adopted the practice of blocking access to competitors over the broadband service it provides “out of competitive necessity to prevent loss of market share.” Hands On *Ex Parte* (November 11, 2005) at 13 (attachment). Hands On further asserts, however, that it does not block videophones supplied by competitors, and that in any event it “believes all blocking of consumer access to competitors should be prohibited” because otherwise other providers will do the same and “balkanize the VRS market.”

The Petition

Petitioner requests a Declaratory Ruling that VRS providers receiving compensation from the Fund are prohibited from restricting VRS equipment from accessing other VRS providers, because that this practice violates the principle of functional equivalency. Petition at iii–iv, 8–10; see 47 U.S.C. 225(a)(3). Petitioner focuses in particular on Sorenson's practice of giving its VP–100 videophone to consumers for free but restricting its use to Sorenson's VRS service and blocking customers from contacting any other VRS provider. Petitioner asserts that this practice violates functional equivalency because Sorenson's customers are unable to use the services of other VRS provider for any incoming or outgoing calls. Petition at iii. Petitioner asserts that although consumers could access multiple providers by having two sets of equipment, “having two sets of devices creates a considerable burden for consumers,” who must, for example, “keep separate lists of contacts, unique names and passwords, and learn how to operate two systems.” Petition at iv. Petitioner states that “just as hearing people are not expected to have two separate devices to make or receive calls * * * neither should VRS users be expected to have dual equipment.” Petition at iv. The Petition also emphasizes that because it is not always possible to promptly reach an available CA, if VRS equipment is restricted

consumers have no choice but to wait for an available CA; they cannot, instead, try to place a call through another provider. Petition at iv at 5. Petitioner also argues that a consumer's consent cannot justify compensating a provider from the Interstate TRS Fund, if that provider is restricting the use of its equipment. Petition at iv at 5. Petitioner also asserts that deaf VRS consumers accepting Sorenson's equipment often do not have a full understanding of restrictions placed on their use of the equipment. Petition at 10. Petitioner states that as “the final arbiter of the [Interstate TRS] Fund, the [Commission] has a duty to ensure that all providers of VRS act in a manner that does not frustrate the purposes of section 225 of the Communications Act, or interfere with the other objectives of the Communications Act.” Petition at 24.

Petitioner also asserts that requiring interoperability is in the public's interest. Petitioner emphasizes that blocking access to other VRS providers creates a serious danger for VRS consumers attempting to place a VRS call in the event of an emergency. Petition at 19–22. Petitioner notes that many videophone users have abandoned their TTYs and choose to use VRS exclusively for calls to hearing individuals. Petition at 19–20. As a result, in the event of an emergency, if a consumer cannot promptly reach a CA through the only VRS provider they are allowed to use with their equipment, they will not be able to call emergency services at all. Petition at 20. Petitioner contends that a “practice that prohibits customers from accessing another VRS provider [during an emergency] conflicts with our nation's homeland security policies, which are designed to facilitate, not restrict, access to emergency support—especially when an emergency strikes a sizeable area.” Petitioner also notes that there may be times when a provider's service is shut down or overwhelmed by an influx of calls, and that in such cases it is imperative that consumers have access to all VRS providers, as well as all available interpreters. Petition at 22.

Finally, Petitioner asserts that restricting the use of VRS equipment to a single provider is at odds with the Commission's emphasis on open and integrated telecommunications networks, including the Internet, and interconnection principles. Petitioner maintains that this practice is “contrary to the Commission's overall efforts to achieve a seamless and integrated network of communications services, and inconsistent with national policies promoting competition,

nondiscriminatory practices, and dialing parity.” Petition at iii. Petitioner states that “Congress and the Commission have consistently renewed their commitment to policies that promote the interconnection of services and equipment, in the interest of both furthering competition and facilitating use of the nation's public telecommunications networks by the broadest number of consumers.” Petition at 8. Petitioner emphasizes that the requirement in the TRS rules that providers offer consumers their long distance carrier of choice “is a form of interoperability designed to foster competition for relay calls made over long distance.” Petition at 8. Relatedly, Petitioner asserts that requiring interoperability would level the playing field and foster competition by encouraging new providers to offer service. Petition at 22–23.

The Comments

On March 1, 2005, the Petition was placed on Public Notice. See *Petition for Declaratory Ruling filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) concerning Video Relay Service (VRS) Interoperability*, CC Docket No. 98–67, CG Docket No. 03–123, Public Notice, 20 FCC Rcd 4162 (March 1, 2005); published at 70 FR 12884 (March 16, 2005) (*Interoperability PN*). Six TRS providers and six organizations filed comments and reply comments. Of these commenters, only Sorenson opposes the Petition. Numerous individuals also filed comments and reply comments, most of which generally support the Petition. Many *ex parte* meetings and paper filings also occurred.

The Comments. Supporting commenters generally make the same arguments as Petitioner. They assert that because equipment restrictions limit the ability of the consumers to use their VRS provider of choice, the practice violates the functional equivalency mandate. The commenters argue that consumers should not be locked into using one provider's relay service simply because the provider gave the consumer free VRS equipment. Commenters further assert that this practice compels consumers who desire to have access to multiple providers to have more than one videophone device, which is burdensome and costly. Commenters state that it is inconsistent with functional equivalency to require consumers using VRS to use two or more separate video devices to ensure that they can promptly reach a VRS CA (the equivalent of reaching a dial tone when hearing people can use a single

conventional voice phone). Commenters also emphasize that restricting the use of VRS equipment can thwart a consumer's ability to contact promptly emergency services. If the consumer cannot promptly reach a CA (e.g., because of long wait times), the inability to place a call through another VRS provider puts their safety at risk. Most individual commenters also express the desire to be able to call any of the VRS providers in an emergency.

Sorenson's Response. Sorenson opposes the Petition. Sorenson acknowledges that it presently does not permit a consumer to use its VP-100 device to place a VRS call through any other VRS provider's service. But Sorenson asserts that consumers using the VP-100 still remain free to use any providers' VRS service with any other equipment they may have.

Sorenson characterizes its VRS service as a "total service platform," which it states it has developed at considerable expense. According to Sorenson, this platform includes provision of the VP-100 with its "high-quality video imagery," access to highly trained interpreters, maintenance and repair of all elements of its service (including the VP-100), and unlimited point-to-point calling. Sorenson asserts that each provider "should be free to offer whatever service packages it thinks will be most attractive to consumers." Sorenson also describes its total service platform approach as consistent with the approach used by most consumer communications today, such as wireless providers. Sorenson argues that if it were forced to "unbundle its platform," i.e., permit consumers to use its VP-100 with other VRS providers, the VP-100 would no longer be part of Sorenson's service and therefore, e.g., Sorenson would not be responsible for maintaining and repairing the equipment.

Sorenson further asserts that if it is required to permit consumers to use its VP-100 to make calls through other providers' VRS service, "much of the incentive to develop innovations will disappear because any new technology will be shared with all other VRS providers, thus precluding the inventor from recovering or profiting on any investment made." Sorenson Reply Comments at 11; Sorenson *Ex Parte* (January 6, 2006) at 17. Sorenson contends that under section 225 of the Communications Act, the Commission has the obligation to ensure that the TRS regulations encourage, not impair, the development of new technology and that it has a duty to make TRS available to all Americans in an expeditious manner as possible. Sorenson therefore

argues that allowing a competitive VRS market without regulatory intervention—such as an interoperability requirement—will "encourage providers to invest in advanced technology for VRS products and services, which will, in-turn, benefit the deaf and hard-of-hearing communities."

Sorenson also maintains that its proposed solution for handling emergency calls made via their VRS service—identifying emergency calls that are in queue and routing them to a CA trained in facilitating the VRS caller in reaching an appropriate PSAP—negates the argument that providing access to emergency service requires interoperability. Sorenson *Ex Parte* (January 6, 2006) at 18–20. Sorenson asserts that they are implementing a process whereby incoming VRS customers calling 9–1–1 will automatically be moved to the front of the queue and that those incoming calls will be routed to CAs who are specially trained regarding proper handling of 9–1–1 calls. Sorenson explains that it "plans to integrate software that automatically moves the caller, in an emergency situation, to the front of the queue for the next available operator."

Discussion

The Commission concludes that a provider's practice of restricting the use of VRS as described herein—including by blocking calls to other providers or providing degraded service quality for connections to the service of other VRS providers—is inconsistent with the functional equivalency mandate, the public interest, and the TRS regime as intended by Congress. The Commission further concludes that all VRS consumers must be able to place a VRS call through any of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. As a result, effective July 31, 2006, any VRS provider restricting the use of its service so that a consumer cannot use it to place or receive a call through any of the VRS providers' relay service will be ineligible for compensation from the Interstate TRS Fund. See *paragraph 43, infra* addressing effective date.

Functional Equivalency. The Commission concludes that restricting access to competing VRS providers is inconsistent with section 225 of the Communications Act's functional equivalency mandate. 47 U.S.C. 225(a)(3). Voice telephone users reach a dial tone almost instantaneously every time they pick up the telephone. For TRS users, the Commission has recognized that reaching a CA ready to

handle the call is essentially the same as reaching a dial tone. See, e.g., 2004 *TRS Report and Order*, 19 FCC Rcd 12480, paragraph 3, note 18. Therefore, "the ability of a TRS user to reach a CA prepared to place his or her call * * * is fundamental to the concept of 'functional equivalency.'" *Call Handling Practices PN*, 20 FCC Rcd 1474; published at 70 FR 8034 (February 17, 2005) (internal quotation marks omitted). For this reason, the TRS regulations include a speed of answer requirement so that a TRS user does not have to wait to reach a CA. See 2005 *VRS Speed of Answer Order*, 20 FCC Rcd 13168, paragraph 6; published at 70 FR 51649 (August 1, 2005). For text-based TRS services, the speed of answer requires that 85 percent of all calls be answered within 10 seconds. 47 CFR 64.604(b)(2) of the Commission's rules. Presently, for VRS, the speed of answer rule requires 80 percent of all calls to be answered within three minutes. See 2005 *VRS Speed of Answer Order*, 20 FCC Rcd 13165, paragraph 1 (although this requirement had been waived for VRS, effective January 1, 2006, 80 percent of all VRS calls must be answered within 3 minutes). This longer speed of answer period for VRS reflects concerns over the shortage of qualified interpreters available to handle VRS calls. 2005 *VRS Speed of Answer Order* 13174–13175, paragraph 18.

If a consumer is limited to using only one provider's service, the consumer is dependent solely on that provider to reach a CA available to place a call. If there is a long wait time, or the call is urgent, the consumer cannot attempt to contact a CA of another provider's service because such calls are blocked. Therefore, at any particular moment in time, a VRS user is at a disadvantage compared to voice callers because a CA may not be available to handle the VRS user's call, and the VRS user cannot promptly reach a "dial tone." As CAC states, "[w]hen a hearing person picks up the telephone to make a call, that individual can immediately access anyone, anytime, regardless of the telephone carrier to which that person or the called party subscribes. This same capacity is not being made available to those VRS users who are restricted to one service provider. These consumers are presently unable to switch to another provider to make their calls, even when their primary provider has no dial tone i.e., no interpreter available to place the call." CAC Comments at 3. Although the VRS speed of answer requirement was adopted to address this issue, because compliance with the rule is measured on a monthly basis, and the

compliance rate is presently 80 percent of all calls, even if the standard is met a VRS user may have to wait a significant amount of time to reach a CA. Therefore, in these circumstances, speed of answer does not necessarily ensure functional equivalency for any particular call.

The Commission also believes that it is inconsistent with functional equivalency to require VRS users to have two sets of equipment to ensure that they can promptly reach a CA, and impractical in an urgent situation to expect users to have to switch out equipment if one provider is not available quickly enough. For many consumers, particularly those that are not technologically sophisticated, switching relay equipment that is attached to the consumer's broadband Internet connection is not a simple matter. For example, at a minimum the consumer must ensure that: (1) He or she has selected the right piece of equipment for the particular provider; (2) the equipment is turned on and plugged into the Internet connection; (3) the other piece of equipment is turned off and disconnected from the Internet connection; and (4) the piece of equipment is properly configured to read the correct IP address of the VRS provider. Voice telephone users are not required to have multiple sets of equipment to obtain a dial tone and access the telephone network. In addition, this is burdensome and costly. Further, requiring consumers to have two sets of equipment to access multiple providers adversely affects a VRS user's ability to receive incoming calls. If, for example, only one device is turned on, the router may nevertheless direct the incoming call to the device that is turned off, and as a result the VRS user will miss the call. Voice telephone users do not similarly risk missing incoming calls because of the necessity of having multiple equipment to ensure access to a dial tone.

Further, call blocking adversely affects the ability of hearing person to successfully initiate a VRS call. If a hearing person is limited to calling a deaf person through one provider's service, the choices of the hearing person are constrained by an arrangement to which he or she is not a party and likely does not even know about. The hearing person may attempt to place a VRS call through several providers before reaching the one provider that can place a call to the VRS user. This not only discourages VRS calls initiated by hearing persons, but again is inconsistent with TRS as a service that must be available to give persons with hearing and speech

disabilities access to the telephone system, regardless whether the person with a disability or the voice telephone user initiates the call. In sum, consistent with functional equivalency, all VRS consumers must be able to place a VRS call through any of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. Therefore, a provider may not block calls so that VRS equipment cannot be used with other providers' service. In addition, a provider may not take other steps that restrict a consumer's unfettered access to other providers' service. This includes the practice of providing degraded service quality to consumers using VRS equipment or service with another provider's service. Finally, new providers seeking to offer service have the burden of ensuring that their service is interoperable with existing providers' service.

The Public Interest and Access to Emergency Services. The Commission has repeatedly emphasized the public interest importance of ensuring that consumers have access to emergency services. Because a VRS user, like all consumers, must be able to contact promptly emergency services, the Commission also concludes that restricting consumers to contacting a single VRS provider is inconsistent with the public interest.

As noted above, many individuals with hearing and speech disabilities use TRS to contact emergency services. If a VRS user is restricted to placing a call with one provider, and that provider's wait time prevents the user from promptly reaching a CA in the event of an emergency, the consumer may suffer serious harm. Even assuming a VRS provider is able to develop a means of promptly handling emergency calls, this does not negate the broader public interest in ensuring full VRS access to all providers. In the event of an emergency, or an event that might temporarily affect a particular provider's ability to offer service, consumers must be able to call any CA to reach emergency services. Particularly in the aftermath of September 11, 2001, and recent hurricanes in the Gulf Coast, the Commission finds that it is essential to ensure that VRS consumers are not dependent on services of a single provider in the event of an emergency.

Call Blocking Cannot be Justified as Part of a "Total Platform Service." Sorenson contends that it may receive compensation from the Fund regardless of how it provisions relay service with equipment and other services. Sorenson's argument is premised on at least four points: (1) The provision of

TRS is no different from the provision of other communication services to the public, including wireless telephone calls, traditional wireline telephone calls, and satellite television; (2) TRS providers therefore may offer whatever "service package" they like, which may include bundling equipment, the relaying of calls, maintenance and repair of the equipment, and additional features; (3) bundling equipment with service is essential to ensuring that the provider recovers the cost of developing the equipment (*i.e.*, a return on investment) and therefore can continue to innovate; and (4) bundling equipment with service permits deaf consumers to use the equipment to make free peer-to-peer calls, which furthers the goal of improving communication for deaf people. As summarized below, Sorenson's points cannot support the use of the Interstate TRS Fund to compensate call blocking practices.

First, TRS is fundamentally different from the provision of wireless telephone, satellite television, or similar services that may bundle equipment and services in that these services are market-based and, unlike TRS, are paid for by any consumer wishing to subscribe. By contrast, TRS is an accommodation for persons with disabilities required of voice telephone providers as mandated by Congress. TRS is fully compensated by the states and the Federal Interstate TRS Fund; it is not paid for by the consumer. Moreover, section 225 of the Communications Act focuses on the provision of relay service. Indeed, this is apparent from the plain language of section 225 of the Communications Act, which is directed at "services" that carriers must offer in their service areas that enable communication between persons who use a TTY or other nonvoice terminal device and an individual who does not use such device. 47 U.S.C. 225(a)(3) and (c); *see also* CSD and *Hamilton Ex Parte* (January 25, 2006) at 5 (attachment) ("the FCC has always interpreted the ADA's TRS mandates to require the provision of relay services, not the manufacture and distribution of equipment uses with those services"). Section 225 of the Communications Act requires carriers to make relay service available to handle calls that consumers choose to make, and provides a mechanism whereby they will be compensated for their reasonable costs of operating relay facilities and relaying calls. For this reason, relay users have traditionally purchased their own devices (*e.g.*, TTYs) or received them from state programs. Although more

recently some providers have distributed free TRS equipment to consumers, consistent with the purpose of section 225 of the Communications Act, the Commission has made clear that the costs of consumer equipment are not compensable from the Fund.

Second, and for the same reason, not all "service packages" marketed by TRS providers are compensable from the Fund under section 225 of the Communications Act. TRS is a service that certain common carriers are required to offer (and that some non-common carriers such as Sorenson have voluntarily chosen to offer) that is defined by section 225 of the Communications Act and the TRS mandatory minimum standards. If a provider offers service in compliance with these rules, it may be compensated from the Fund. But an entity cannot determine for itself that it is going to provide something different than or beyond the Commission's rules, and still expect compensation from the Fund. For example, Video Remote Interpreting (VRI) is a commercial service similar to VRS for which consumers must pay a fee. *See generally Call Handling Practices PN*, 20 FCC Rcd 1475 (distinguishing VRI and VRS). Sorenson make the related argument that call blocking is necessary to allow it to recover the cost of developing its equipment. *See, e.g.,* Sorenson Comments at 29. As noted above, entities that develop customer equipment are, of course, free to sell their equipment to consumers to recover their investment in the equipment.

Sorenson's final argument, that its "bundled" approach permits deaf consumers to make free peer-to-peer calls, is irrelevant to the fundamental point that to receive compensation from the Fund a company must allow full unrestricted access to this nation's communications network. In related contexts, the Commission has repeatedly adhered to policies favoring open access to networks and interoperability of terminal equipment. For example, in the context of connecting terminal equipment to the telephone network, the Commission has promulgated a series of rules to ensure open access and interoperability. *See* 47 CFR 68.1 *et seq.* Moreover, policies of open access and interconnection were fundamental to the Telecommunications Act of 1996. For example, section 251 of the Communications Act provides a duty of telecommunications carriers to interconnect with other carriers and "not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to

section 255 of the Communications Act (Access by Persons with Disabilities)." 47 U.S.C. 251(a)(1) & (2).

Research and Development. Some commenters assert that in connection with requiring interoperability the Commission should permit recovery of some costs for research and development relating to the improvement of VRS service. The Commission has previously emphasized that, as a general matter, engineering and other expenses for research and development to meet waived mandatory minimum standards, or to provide enhancements beyond applicable non-waived mandatory minimum standards, are not compensable from the Fund. *See, e.g., 2004 TRS Report and Order*, 19 FCC Rcd 12547-12548, paragraphs 188-189. The Commission clarifies, however, that to the extent providers engage in research and development directed at the provision of service to the consumer as required by the rules, *e.g.,* the routing and handling of calls at the relay center, such costs may be compensable subject to the "reasonableness" standard. Such costs do not include those directed at issues inherent in Internet-based services generally or the provision of Voice over IP (VoIP).

Notification. The Commission requires any VRS provider that has restricted the use of TRS equipment to notify their customers by July 1, 2006, that, upon the effective date of this *Declaratory Ruling*, they may make or receive a VRS call through any of the providers. Further, as of that date, it will be an impermissible marketing practice for any provider to tell or suggest to any consumer that the consumer may not be used to make a relay call through another provider's service. *Cf. Call Handling Practices PN*, (addressing improper TRS marketing practices).

Effective Date. The Commission recognizes that because the provision of VRS is now subject to a speed of answer requirement, and as a result of this order some providers may experience an increase in call volume, all providers may need a period of time to adjust their operations to take into account the possible effect of this order. *See, e.g.,* Sorenson *Ex Parte* (January 24, 2006) at 1 (requesting if the Commission requires interoperability a reasonable amount of time "to implement software, hardware, and other modifications necessary to comply" with the new rule); Hands On *Ex Parte* (January 27, 2006) (noting that elimination of call blocking may result in a "temporary dislocation of the market" as consumers will be free to choose any provider to make a VRS call, and therefore requesting a 90 day waiver

of the speed of answer requirement). For these reasons, this *Declaratory Ruling* shall be effective July 31, 2006. Beginning on that date, any VRS provider restricting its service as described above will be ineligible for compensation from the Fund.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA, *see* 5 U.S.C. 601-612, has been amended by the Contract with America Advancement Act of 1996, Public Law 104-121, 110 Statute 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 605(b). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 5 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

This *Declaratory Ruling* addresses a petition requesting the Commission to declare that a VRS provider may not receive compensation from the Interstate TRS Fund if it blocks calls to competing VRS providers. *See CCASDHH Petition*, note 1, *supra*. The Commission concludes that the practice of restricting the use of VRS to a particular provider is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns. *See* 47 U.S.C. 225(a)(3), note 2, *supra*. The Commission further concludes that all VRS consumers must be able to place a VRS call through any

of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, the Commission finds that it is in the public interest that all VRS consumers can place and receive calls through any VRS providers' service in the event of emergency and urgency. Therefore, this *Declaratory Ruling* concludes that providers must ensure that all VRS consumers can place and receive calls through any of the VRS providers' service in order to receive compensation from the Interstate TRS Fund. The Interstate TRS Fund administrator distributes the VRS providers for reasonable costs of providing VRS. Each year, the Interstate TRS Fund administrator, the National Exchange Carrier Association, Inc. (NECA), proposes the compensation rates for the various forms of TRS, including VRS, to the Commission. NECA collects and reviews projected cost and minutes of use data submitted by TRS providers to determine the annual TRS compensation rates. Reasonable compliance cost is included in the projected cost submitted by TRS providers. See paragraphs 8–9, *supra*. See also, TRS Fund Performance Status Reports maintained by National Exchange Carrier Association (NECA) as of October 31, 2005, <http://www.neca.org> (under Resources, then TRS Fund). In order to be compensated for the costs of providing VRS, the providers are required to meet the applicable TRS mandatory minimum standards as required in § 64.604. See generally 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules. Reasonable costs of compliance with this *Declaratory Ruling* are compensable from the Fund. Because the providers will be recouped for the costs of compliance within a reasonable period, the Commission asserts that the providers will not be detrimentally burdened. Therefore, the Commission certifies that the requirements of the *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities.

The Commission also notes that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201 of the Commission's rules, NAICS code 517110. According to Census Bureau data for 1997, there were

2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.") Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund: AT&T Corp.; Communication Access Center for the Deaf and Hard of Hearing, Inc.; Hamilton Relay, Inc.; Hands On; MCI; Nordia Inc.; Sorenson; and Sprint. The Commission notes that two of the providers noted above are small entities under the SBA's small business size standard. Because two of the affected providers will be promptly compensated within a reasonable period for complying with this *Declaratory Ruling*, the Commission concludes that the number of small entities affected by our decision in this Order is not substantial. Therefore, the Commission certifies that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA. See 5 U.S.C. 605(b).

Congressional Review Act

The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act because the adopted rules are rules of particular applicability. See 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152 and 225, the *Declaratory Ruling* is adopted. CCASDHH's Petition is granted to the extent indicated herein. The *Declaratory Ruling* shall become effective July 31, 2006.

The Commission will send a copy of the *Declaratory Ruling*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–8376 Filed 5–30–06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–992; MB Docket No. 05–269; RM–11267]

Radio Broadcasting Services; Allegan, Mattawan, and Otsego, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Forum Communications, Inc., licensee of FM Station WZUU, proposing the substitution of Channel 223A for Channel 222A at Allegan, reallocation of Channel 223A from Allegan to Mattawan, Michigan, as its first local service and modification of the FM Station WZUU license accordingly. To prevent removal of Allegan's sole local service, the document grants the reallocation of co-owned Station WQXC–FM, Channel 265A from Otsego to Allegan, Michigan and modification of the Station WQXC–FM license accordingly. A staff engineering analysis has determined that Channel 223A can be allotted to Mattawan in conformity with the Commission's rules, provided there is a site restriction of 10.6 kilometers (6.6 miles) southeast at reference coordinates 42–07–45 NL and 85–43–13 WL. Additionally, Channel 265A can be allotted to Allegan in compliance with the Commission's rules, at the Station WQXC(FM) existing transmitter site at coordinates 42–30–31 NL and 85–46–08 WL. The reallocations are located within 320 kilometers (200 miles) of the U.S.-Canadian border. Canadian concurrence has been requested and approved for these reallocations.

DATES: Effective June 22, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.